The Ontario Securities Commission

OSC Bulletin

June 27, 2003

Volume 26, Issue 26

(2003), 26 OSCB

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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Published under the authority of the Commission by:
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Toronto, Ontario
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The OSC Bulletin is published weekly by Carswell, under the authority of the Ontario Securities Commission.

Subscriptions are available from Carswell at the price of $549 per year.

Subscription prices include first class postage to Canadian addresses. Outside Canada, these airmail postage charges apply on a current subscription:

U.S.	$175
Outside North America	$400

Single issues of the printed Bulletin are available at $20 per copy as long as supplies are available.

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ISSN 0226-9325

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Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

JUNE 27, 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
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Robert L. Shirriff, Q.C.	—	RLS
Suresh Thakrar	—	ST
Wendell S. Wigle, Q. C.	—	WSW

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	**Teodosio Vincent Pangia, Agostino Capista and Dallas/North Group Inc.**
	s. 127
	Y. Chisholm in attendance for Staff
	Panel: TBA
July 11, 2003	**Brian Anderson, Leslie Brown, Douglas Brown, David Sloan and**
10:00 a.m.	**flat Electronic Data Interchange (a.k.a. F.E.D.I.)**
	s. 127
	K. Daniels in attendance for Staff
	Panel: HLM/WSW/RLS
July 21, 2003	**Robert Davies**
10:00 a.m.	s. 127
	T. Pratt in attendance for Staff
	Panel: HLM/RWD
October 7 to 10, 2003	**Gregory Hyrniw and Walter Hyrniw**
	s. 127
	Y. Chisholm in attendance for Staff
	Panel: TBA

October 20 to 31, 2003 — **Ricardo Molinari, Ashley Cooper, Thomas Stevenson, Marshall Sone, Fred Elliott, Elliott Management Inc. and Amber Coast Resort Corporation**

s. 127

I. Smith in attendance for Staff

Panel: TBA

November 3 to 21, 2003

10:00 a.m. — **Patrick Fraser Kenyon Pierrepont Lett, Milehouse Investment Management Limited, Pierrepont Trading Inc., BMO Nesbitt Burns Inc.*, John Steven Hawkyard+ and John Craig Dunn**

s. 127

K. Manarin in attendance for Staff

Panel: TBA

* BMO settled Sept. 23/02
\+ 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

Global Privacy Management Trust and Robert Cranston

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

Philip Services Corporation

S. B. McLaughlin

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

1.1.2 Notice of Request for Comments - Proposed Multilateral Instrument 52-108 Auditor Oversight, Proposed Multilateral Instrument 52-109 Certification of Disclosure in Companies' Annual and Interim Filings and Proposed Multilateral Instrument 52-110 Audit Committees

NOTICE OF REQUEST FOR COMMENTS

PROPOSED MULTILATERAL INSTRUMENT 52-108 AUDITOR OVERSIGHT, PROPOSED MULTILATERAL INSTRUMENT 52-109 CERTIFICATION OF DISCLOSURE IN COMPANIES' ANNUAL AND INTERIM FILINGS AND PROPOSED MULTILATERAL INSTRUMENT 52-110 AUDIT COMMITTEES

Request for Public Comment

The Commission is publishing for a 90-day comment period the following materials in today's Bulletin:

Auditor Oversight

- proposed Multilateral Instrument 52-108 *Auditor Oversight*

Certification of Annual and Interim Filings

- proposed Multilateral Instrument 52-109 *Certification of Disclosure in Companies' Annual and Interim Filings*
- proposed Companion Policy 52-109CP *Certification of Disclosure in Companies' Annual and Interim Filings*
- proposed Forms 52-109F1 and 52-109F2

Audit Committees

- proposed Multilateral Instrument 52-110 *Audit Committees*
- proposed Companion Policy 52-110CP *Audit Committees*
- proposed Forms 52-110F1 and 52-110F2

The proposed materials are published in Chapter 6 of the Bulletin. We request comments on the proposed materials by **September 25, 2003.**

1.1.3 Statement of Priorities for the Financial Year to End March 31, 2004

NOTICE OF STATEMENT OF PRIORITIES

FOR FINANCIAL YEAR TO END MARCH 31, 2004

The *Securities Act* requires the Commission to deliver to the Minister by June 30th of each year a statement of the Commission setting out its priorities for its current financial year in connection with the administration of the Act, the regulations and rules, together with a summary of the reasons for the adoption of the priorities. The first such statement was delivered for the year ended March 31, 1995 (18 OSCB 2962).

In the notice published by the Commission on April 4, 2003 (26 OSCB 2685), the Commission set out its proposed Statement of Priorities and invited public input in advance of finalizing and publishing the 2003/2004 Statement of Priorities. As of June 3, 2003, seven responses had been received. The Commission wants to thank all the parties who have provided comments.

Most of the suggestions were focused on specific action steps that could be taken to achieve the identified priorities. There continues to be strong support for initiatives that would improve the efficiency of our markets through harmonization of regulatory requirements. The approaches preferred by respondents to improve the regulatory system ranged from the development of a single, harmonized regulatory regime to implementation of a single, national regulator model. As the comments received supported the identified priorities, no revisions were made to the document.

June 27, 2003.

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Ontario

THE ONTARIO SECURITIES COMMISSION

STATEMENT OF PRIORITIES

FOR

FISCAL 2003/2004

June 2003

Introduction

The *Securities Act* requires the Ontario Securities Commission (OSC) to deliver to the Minister, and to publish in its Bulletin by June 30 of each year, a statement by the Chair setting out the proposed priorities for the Commission for its current financial year. The OSC remains committed to delivering its regulatory services in a businesslike manner and to working closely with its CSA colleagues and market participants to ensure that the regulatory system remains relevant to the changing marketplace. The Statement of Priorities articulates the business strategy and priorities the OSC has set for 2003/2004 to accomplish these goals.

Our Vision Canadian financial markets that are attractive to domestic and international investors, issuers and intermediaries because they have integrity and are cost efficient.

Our Mandate To provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in their integrity.

Our Approach We will be:

- Proactive, innovative and cost effective in carrying out our mandate,
- Fair and rigorous in applying the rules to the marketplace, and
- Timely, flexible and sensible in applying our regulatory powers to a rapidly changing marketplace.

Key Challenges

The OSC recognizes that it must address a number of key trends and changes affecting our business environment,

capital markets, market participants and the global regulatory framework.

Enhancing Public Confidence in Capital Markets

Public confidence in capital markets around the world has declined significantly. Trust and confidence in financial reporting, auditing and corporate governance structures have been damaged by U.S. corporate accounting failures and bankruptcies. Geopolitical events as well as significant declines in personal portfolio values have also hurt confidence levels. In response to advances in U.S. investor protection regulation Ontario has passed *Keeping the Promise for a Strong Economy Act (Budget Measures), 2002* to enhance investor confidence. The statute provides new powers that will help the OSC to carry out its mandate. However, the use of these powers will also increase external focus on our accountability.

Streamlining the Securities Regulatory Process

The costs and complexities associated with doing business with many different regulators with differing rules and regulations across Canada is generating increasing dissatisfaction with the structure of financial services regulation, and in particular, securities regulation, in Canada. This fragmented regulatory environment is cumbersome, costly and frustrating for stakeholders. It is having a negative impact on the competitiveness of our capital markets and ultimately the cost to our market participants of raising capital.

Global Integration of Markets and Market Participants

Financial markets are global. Borders no longer serve as barriers to capital flows. Those seeking to invest and those seeking capital go where they see the opportunity for the best returns for the risks assumed. As capital flows become global, so do the market intermediaries and infrastructure servicing the business. Many of the largest intermediaries are global conglomerates combining banking, insurance and securities services in one entity.

Changing Investor Demographics

The past decade has seen significant growth in the investor community in Canada. Institutional investors are becoming larger and more sophisticated, while investment in the markets by retail investors has grown explosively - both directly and through the purchase of investment funds. Both groups need to have confidence in the integrity of the capital markets, but their informational and educational needs may be very different.

Rapid Pace of Innovation

Competition is driving market innovation and the creation of ever more sophisticated financial products, trading techniques and strategies. Technology facilitates these changes, making innovative products and services easier and cheaper to design, market and deliver to the consumer. The functions of intermediaries are changing. Trades can be executed directly from any location. The emergence of direct links into existing trading platforms, bypassing investment dealers, and the proliferation of alternative marketplaces has fundamentally altered the structure of the financial environment.

What This Means for the OSC

For Canadian financial markets to be attractive to all market participants, they must be, and be seen to be, fair and efficient while maintaining protection for investors. Given the trends and challenges outlined above, we need to find creative and innovative solutions to new issues, be willing to re-evaluate existing practices in light of changing circumstances and operate in a transparent and accountable manner. In particular, we need to focus on:

- Making decisions at the pace at which our markets are changing,
- Insisting that investors receive the understandable, accurate and complete disclosure they need to make informed investment decisions,
- Maintaining a globally competitive regulatory regime that adequately addresses investor protection,
- Educating consumers so they can help protect themselves,
- Providing more client focussed service delivery,
- Fostering seamless regulation to minimize the burden on market participants,
- Enforcing clear rules in a consistent and visible manner,
- Building on our relationships in the regulatory community, both domestic and international, making use of the best lessons from each and relying on their expertise where practicable, and
- Facilitating the fair and efficient operation of exchanges, clearing and settlement functions and other elements of the market infrastructure.

Our Goals

The OSC is committed to achieving our vision. To do so, we have developed a four-year strategic plan. In implementing it, we will at all times act consistently with our mandate. The goals and initiatives are not presented in order of priority. Fundamentally, the OSC will focus on making our capital markets safer, more efficient and easier to access and use for market participants. Our plan calls for stepping up our efforts in the following areas:

- Promoting harmonization of regulatory systems both domestically and internationally, including the pursuit of a more effective national securities regulatory system,

- Undertaking prevention-oriented activities, including proactive public education,
- Taking a risk-based approach to regulation, and
- Being less prescriptive and more flexible in our regulatory approach wherever practical.

Across the planning horizon we will strive to achieve the following outcomes:

1. Ontario's capital markets and financial services regulatory system will be fully consolidated, harmonized nationally, and coordinated internationally.

We will continue the following key initiatives towards achieving this outcome:

a) Complete the CSA project to propose Uniform Securities Laws,

b) Work with regulators, governments and industry participants in moving towards a more effective national securities regulatory system,

c) Participate actively in International Organization of Securities Commissions (IOSCO) and Council of Securities Regulators of the Americas (COSRA) initiatives and, where appropriate, provide leadership,

d) Continue to work with the Financial Services Commission of Ontario (FSCO) on initiatives to coordinate our regulatory activities and on the proposed creation of a new regulatory structure,

e) Initiate and foster initiatives which reduce the use of off shore trading to circumvent securities laws,

f) Reduce inter-jurisdictional impediments to information sharing and enforcement support,

g) With the Joint Forum of Financial Regulators, develop and implement harmonized financial services regulatory solutions,

h) Continue development of national electronic information systems to facilitate the activities of market participants,

i) In accord with the plan made in 2002, continue to work with industry through the Bond Market Transparency Committee to ensure implementation of ATS Rules with respect to application to fixed income markets that achieves effective regulation and also supports innovation and efficiency in the bond markets, and

j) In accord with the plan for completion by 2004, develop a model to permit flexibility in the business models that registrants can use.

During 2003/2004 the OSC will focus resources on restructuring the registration system. As part of this process, the OSC will continue work towards harmonizing categories of registration and conditions of registration across Canada and to creating a passport system permitting a registrant in one province to trade or advise in another. The OSC will also work to effectively manage the starting-up of the National Registration Database.

We will measure success by the following:

- Market participants will utilize one "window" to access the market conduct regulatory system in Canada.
- Impediments to investigation and enforcement initiatives created by international boundaries will be substantially reduced as a result of increased harmonization of international disclosure laws and procedures.

2. Market participants and investors will have confidence in the integrity of Ontario's capital markets.

We will implement the following key initiatives towards achieving this outcome:

a) Work with the provincial government and our CSA colleagues on legislative initiatives to strengthen our regulatory system and improve investor confidence:

   - in response to the Report of the Five Year Review Committee, and
   - in response to U.S. initiatives (e.g., Sarbanes-Oxley and the new NYSE listing standards),

b) Respond to the introduction of *Keeping the Promise for a Strong Economy Act (Budget Measures), 2002* including developing and proposing any necessary rules and enforcement protocols,

c) Work with our CSA and SRO colleagues to develop and implement strategies to reduce unlawful insider trading in Canada,

d) Coordinate with foreign regulators to identify and close "gaps" in regulation between jurisdictions that may be used to support illegal market conduct,

e) Develop and propose a revised framework for regulating mutual funds and their managers that relies on independent oversight as a means to address conflicts of interest and focuses on the responsibilities of the fund manager in managing mutual funds, and

f) Complete development of a Fair Dealing Model proposal.

During 2003/2004 the OSC plans to publish draft rules for comment to address the following issues:

- Auditor Oversight
- CEO/CFO Certification of Financial Information
- Composition and Responsibilities of Audit Committees

The OSC will also examine potential approaches to address issues related to Board independence including guidelines for committees (nominating, compensation etc.).

We will measure success by the following:

- Public surveys of market participants will show an increase in confidence.
- Other major securities regulators will exempt Canadian businesses from their investor confidence requirements in recognition that our regulatory regime is effective.
- Domestic and international investor confidence in the integrity of the Ontario regime will improve.
- The revised framework for regulating mutual funds will significantly update and simplify product regulation for mutual funds and clarify our approach to investment funds that are not conventional mutual funds.
- Investors, issuers and other market participants who use the Ontario capital markets will be afforded access, protection, education and information at levels similar or superior to those of the best of our peer group.

3. Regulatory Interventions in Ontario will be balanced and merit based.

We will undertake the following key initiatives towards achieving this outcome:

a) Make appropriate changes to our practices as a result of the recommendations of the Regulatory Burden Task Force,

b) Assess the impact of "soft dollars" on market efficiency, analyst bias and competitiveness,

c) Improve accountability through the use of rigorous Cost Benefit Analysis and risk based assessments for all proposed initiatives,

d) Monitor changes in the regulation of the structure of investment banks and research units in other countries to determine the need (if any) for change in Canada.

We will measure success by the following:

- It will be clear to investors, issuers and intermediaries that the benefits of regulation appreciably outweigh the costs of regulation.
- There will be examples of our fostering and implementing non-regulatory alternatives where such action is supported by a better cost/benefit relationship than new regulation.
- The effective cost and burden of regulation will be competitive with our peers, without undermining investor protection and confidence.

4. The OSC will have superior and transparent governance and accountability mechanisms.

We will undertake the following key initiatives towards achieving this outcome:

a) Adopt a more customer focused approach to our communications and service delivery,

b) Improve the transparency of OSC corporate governance practices and accountability mechanisms, and

c) Tailor the form and method of access to OSC communications to the needs of OSC constituents, including implementing predominantly electronic-based communications vehicles and redesigning the OSC Website.

We will measure success by the following:

- 100% of OSC communications will be accessible electronically by 2005.
- Public surveys of market participants will show improved ratings for OSC customer service.

2003/2004 Financial Outlook

The OSC has budgeted total 2003/2004 operating expenditures of $57.8 million, a 3.5% increase over 2002/2003 expenditures. The key budget component is salaries and benefits costs, which are projected to rise by 8.6% to $40.7 million. This increase reflects the annualized cost impact of previous hiring as well as higher pension costs as contribution rates have returned to normal levels. Total staffing is projected to increase by six staff. The budget includes a continued reduction in professional services costs reflecting greater reliance on internal resources. The OSC has budgeted $3.2 million for professional services costs in 2003/2004, a 10.0% decrease from the 2002/2003 budget.

The OSC revenue forecast for 2003/2004 is $65.0 million, which is 7.8% lower than the $70.5 million received in 2002/2003.

The OSC implemented a restructured fee schedule effective March 31, 2003. The new fee schedule is consistent with the commitment to more closely align the fees charged to market participants to the costs of the services they use directly and the benefits derived through participation in our markets. Under the previous fee approach the OSC initially used excess fee revenues to create a financial reserve. Currently, the OSC remits all revenues which are surplus to its operations to the Ontario government. Going forward the OSC plans to review its fee structure every three years. Any surplus net revenues generated across the three-year period will be used by the OSC in calculating future fee levels and would reduce the need for future fee increases. Through this approach the OSC will be able to ensure that the fees paid by industry participants do not exceed the actual costs of its regulatory activities.

Report on 2002/2003 Organizational Priorities

A summary of the performance of the OSC in meeting the goals and priorities identified in the 2002/2003 Statement of Priorities is provided below.

1. **Ontario's capital markets and financial services regulatory system will be fully consolidated, harmonized nationally and coordinated internationally.**

2002/2003 Initiatives

a) Complete the CSA project to develop a proposed Uniform Securities Law,

b) Develop legislative proposals to permit delegation of powers and duties among Canadian securities regulators and a comprehensive delegation model in support of it,

c) Support implementation of the merger of the OSC and the FSCO,

d) Participate actively in International Organization of Securities Commissions (IOSCO) and Council of Securities Regulators of the Americas (COSRA) initiatives and, where appropriate, provide leadership.

e) With the Joint Forum of Financial Regulators (Joint Forum), develop and propose harmonized financial services regulatory solutions in the following areas:

- proficiency standards for financial intermediaries,
- common licensing requirements,
- capital accumulation plans, and
- individual variable insurance contracts and mutual funds.

2002/2003 Results

In March 2002, the CSA announced an initiative to develop uniform securities legislation for adoption across Canada. On January 30, 2003, the CSA published for comment a concept proposal, *Blueprint for Uniform Securities Laws for Canada*. Although the primary focus of the project is to achieve harmonization of legislation, efforts are also being made to simplify and streamline the regulatory system. The following are the most significant policy changes proposed in the concept paper:

- the ability for a securities regulator to delegate decision-making across all regulatory functions to another securities regulator
- a streamlined system for inter-jurisdictional registration of firms and individuals
- a civil liability regime for secondary market participants
- a streamlined securities act with details largely contained in rules to allow future changes to securities laws to be made in a timely and harmonized manner through the rule-making process.

The next phase of the project involves review and analysis of comments on the concept proposal, discussions with governments, SROs and industry participants, review of all rules and policies and drafting of a uniform act and uniform rules. The CSA objective is to have uniform legislation ready for consideration by each province and territory in 2004.

Significant progress was achieved towards completing the following major OSC rules and policies.

The following rules/policies came into force during 2002/2003:

11-201: Delivery of Documents by Electronic Means (amendments)
12-201: Mutual Reliance Review System for Exemptive Relief Applications (amendments)
41-601: Capital Pool Companies
45-502: Dividend or Interest Reinvestment and Stock Dividend Plans (amendments)
45-503: Trades to Employees, Executives and Consultants (amendments)
46-201: Escrow for Initial Public Offerings
51-201: Disclosure Standards
54-101: Communication with Beneficial Owners of Securities of a Reporting Issuer
62-501: Prohibited Stock Market Purchases of the Offeree's Securities by the Offeror during a Take-over bid
62-601: Securities Exchange Take-over Bids - Trades in Offeror's Securities (amendments)

The following rules/policies were published for comment during 2002/2003:

45-102: Resale of Securities (amendments),
45-105: Trades to Employees, Senior Officers and Consultants (Multilateral Instrument to replace local rule)
51-101: Standards of Disclosure for Oil and Gas Activities
51-102: Continuous Disclosure Obligations
55-201: System for Electronic Disclosure by Insiders (amendments)
61-501: Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions (amendments)
72-502: Continuous Disclosure and Other Exemptions Relating to Foreign Issuers,

Staff issued Notice 55-308 to address stakeholder questions on insider reporting obligations.

During the year Frequently Asked Questions on New Rules were issued on the following rules:

- 43-101: Standards of Disclosure for Mineral Projects
- 45-102: Resale of Securities
- 54-101: Communication with Beneficial Owners of Securities of a Reporting Issuer

The applications Mutual Reliance Review System (MRRS) policy was amended in June. The amendments further refined the system and addressed some stakeholder concerns.

A reconsidered approach to revocation of cease trade orders was presented to the Commission in [March 2003].

The OSC worked with FSCO on various initiatives to coordinate our regulatory activities.

The OSC was accepted as a signatory to the IOSCO Multilateral Memorandum of Understanding concerning consultation and cooperation and the exchange of information (the "IOSCO MOU") and signed the IOSCO MOU on October 23, 2002. The IOSCO MOU recognizes the increasing international activity in the securities and derivatives markets, and the corresponding need for mutual cooperation and consultation among IOSCO members to ensure compliance with, and enforcement of, their securities and derivatives laws and regulations, and establishes an international benchmark for cooperation and information sharing among IOSCO members.

As part of the Joint Forum's effort to harmonize the regulation of segregated funds and mutual funds, a consultation paper *Rethinking Point of Sale Disclosure for Segregated Funds and Mutual Funds* was released for comment on February 13, 2003. The consultation paper recommends a streamlined disclosure system consisting of a foundation document, a continuous disclosure record, a short fund summary and a consumers' guide.

The Joint Forum has initiated a project to coordinate and harmonize the treatment of capital accumulation plans (CAPs) across Canadian jurisdictions and across the insurance, pension and securities sectors within each jurisdiction. Currently investors receive varying degrees of regulatory protection depending on the investment product they purchase and the regulatory framework that applies to it. The goal is to give similar protection to investors. The Joint Forum has developed regulatory principles for CAPs. Guidelines for the operation of capital accumulation plans based on the principles were completed by a task force of industry representatives and staff from members of the Joint Forum. The guidelines were presented to the Joint Forum for approval and published for comment in April 2003.

Another accomplishment for the Joint Forum is the Financial Services OmbudsNetwork (FSON), an integrated complaint management and dispute resolution service for financial services consumers which became fully operational in November 2002.

2. Regulatory interventions in Ontario will be timely, balanced and proportionate to the risks involved.

2002/2003 Initiatives

a) Initiate and foster initiatives which reduce the use of off shore trading to circumvent securities laws,

b) Reduce inter-jurisdictional impediments to information sharing and enforcement support,

c) Make appropriate changes to our practices as a result of the recommendations of the Regulatory Burden Task Force, and

d) Work with the provincial government and our CSA colleagues to implement legislative changes that may be made as a result of the recommendations of the Five-Year Review Committee.

2002/2003 Results

The OSC has continued to develop new processes and procedures with law enforcement, Canadian financial regulators and international securities regulators to share information in an effective and timely manner.

The OSC has been successful in utilizing existing and new formal arrangements to obtain information and evidence from traditional bank secrecy jurisdictions that have lead to the initiation of proceedings in respect of allegations of insider trading or to assist in the ongoing investigation into certain other matters. Through our involvement in IOSCO we have made presentations to international organizations detailing the risks to capital markets in circumventing securities laws associated with the use of offshore accounts. The OSC has continued to provide recommendations to the Investment Dealers Association regarding proposed changes to their current by-laws in respect of the know-your-client rules and client identification requirements.

The Minister's Five Year Review Committee published its Draft Report for comment on May 29, 2002. The Committee's Draft Report represents a comprehensive survey of securities legislation in Ontario and its recommendations aim to ensure that securities legislation in Ontario is up to date and that the OSC is able to proactively enforce clear standards to protect investors and foster a fair and efficient marketplace. In December 2002, the Government of Ontario passed the *Keeping the Promise for a Strong Economy Act (Budget Measures), 2002* which introduces important amendments to the *Securities Act*, most of which were recommended in the Draft Report. Among the most significant changes being made to the *Securities Act* (once proclaimed in force) that are based on the Draft Report, are amendments to:

- Introduce a regime of statutory civil liability for secondary market disclosure.
- Increase the maximum penalties which a court can impose for breach of the Act to $5 million and imprisonment for five years less a day.
- Give the Commission the power to impose an administrative penalty or to order disgorgement.
- Introduce prohibitions against fraud and market manipulation and making misleading statements.
- Give the Commission rulemaking authority relating to audit committees.
- Enshrine in the Act the concept of continuous disclosure reviews.

The comment period for the Draft Report expired in August 2002. The Committee received 45 comment letters and met 24 times between September 2002 and January 2003 to review the comment letters and finalize its Report. The Final Report was delivered to the Minister in Spring 2003.

3. Investors, issuers and other market participants who use the Ontario capital markets will be afforded access, protection, education and information at levels similar or superior to those of the best of our peer group.

2002/2003 Initiatives

a) Foster the implementation of the Industry Analyst's Standards Report (Setting Analyst Standards: Recommendations for the Supervision and Practice of Canadian Securities Industry Analysts) recommendations, where appropriate.

b) Foster the implementation of the Saucier Report (Beyond Compliance: Building a Governance Culture) recommendations, where appropriate.

c) Tailor the form and method of access to OSC communications to the needs of OSC constituents, including implementing predominantly electronic-based communications vehicles and redesigning the OSC Website.

2002/2003 Results

Significant progress was achieved towards completing these initiatives. During the past year the OSC:

- Led a CSA issue-oriented review of executive compensation disclosures and communicated the results in CSA Notice 51-304; also carried out an issue-oriented review of non-GAAP earnings measures
- Completed continuous disclosure reviews of all Ontario-based TSX 100-based companies that had not been recently reviewed (plus some companies based in other provinces), including additional procedures relating to review of minutes, audit committee materials, etc.
- Established a website-based "Refilings and Errors" list to provide greater transparency of companies that refile or restate disclosure documents due to a regulatory review, and issued accompanying staff notice 51-711.
- Established the Continuous Disclosure Advisory Committee, the Small Business Advisory Committee and the NI 54-101 Advisory Committee.
- Commenced a "real time review" program as well as issue-oriented reviews of MD&A disclosure and of continuous disclosure filings of income funds.
- Finalized NP 51-201, which provides guidance on selective disclosure, corporate disclosure practices and related issues.
- Published for comment a draft national rule to harmonize and update continuous disclosure requirements across the CSA.

In early 2003, the OSC undertook steps to increase transparency in connection with its governance and accountability structure. The OSC's Website now contains a section entitled "Governance and Accountability" which discusses the structure of the OSC and identifies its committees, their mandates and members. Several steps were taken during the year to improve the electronic availability of OSC documents and other information, including:

- Several new features have been added to the OSC's web-site, including terms and conditions imposed on registrants and comments on drafts of concept papers, policies rules and other instruments;
- The National Registration Database was launched on March 31, 2003. Stakeholders interested in the launch of the National Registration Database

(NRD) were kept up-to-date via a comprehensive e-mail campaign and the launch of a web-site dedicated to NRD. This approach will also be used to communicate other initiatives, such as SEDI.

- A re-launch of the OSC web-site, which includes a more accurate and powerful search capability and the use of content management software is planned for calendar 2003.

The OSC's Investor Communications team continued to implement initiatives with more emphasis on community outreach. The goal is to raise awareness of the OSC and deliver investor protection messages to audiences across Ontario by using OSC-trained volunteers to work with community groups. The following programs were delivered:

- *Protect Your Money*, is a joint project with the Ontario Senior Secretariat delivered by volunteers from the Volunteer Centre of Toronto. "Protect Your Money" presentations are hosted by Members of Provincial Parliament and are aimed at seniors.

- *OSCAR* (Ontario Securities Commission Agent Representative), is an investor education outreach program designed to engage community leaders who, on behalf of the OSC, speak to audiences in their community. OSCAR began as a pilot project in Aurora, Chatham, Kingston, Ottawa and Windsor and is being expanded to include London, Kitchener, Barrie, Peterborough and the GTA.

1.1.4 Amendment to IDA By-law No. 10.7 Regarding the Past Chair of the National Advisory Council by the IDA to Securities Industry Organizations and Securities Regulatory Organizations - Notice of Commission Approval

AMENDMENT TO IDA BY-LAW NO. 10.7 – PAST CHAIR OF THE NATIONAL ADVISORY COUNCIL BY THE IDA TO SECURITIES INDUSTRY ORGANIZATIONS AND SECURITIES REGULATORY ORGANIZATIONS

NOTICE OF COMMISSION APPROVAL

The Ontario Securities Commission approved amendment to IDA By-law No. 10.7 regarding the Past Chair of the National Advisory Council. In addition, the Alberta Securities Commission did not disapprove and the British Columbia Securities Commission did not object to the amendment. The amendment proposes to include the immediate past chair of the National Advisory Council as a voting member of the National Advisory Council to ensure continuity on the Council. The amendment is housekeeping in nature. A copy of the amendment is published in Chapter 13 of the Ontario Securities Commission Bulletin.

1.1.5 TSX Venture Exchange Inc. - Request for Comments on Proposed Policies and Forms and Corporate Finance Policy Amendments for the Inactive Issuer Board

**TSX VENTURE EXCHANGE INC.
REQUESTS COMMENTS ON PROPOSED POLICIES AND FORMS AND CORPORATE FINANCE POLICY AMENDMENTS FOR THE INACTIVE ISSUER BOARD
(THE "INACTIVE BOARD")**

TSX Venture Exchange Inc. ("TSX Venture Exchange") has published a Request for Comments on the proposed policies and forms for the Inactive Board as well as consequential amendments to TSX Venture Exchange Policy 2.4 *Capital Pool Companies*, Policy 2.5 *Tier Maintenance Requirements and Inter-Tier Movement* and Policy 2.6 *Reactivation of Inactive Board Companies*.

The comment period closes on July 25, 2003.

Comments should be in writing and delivered to:

Susan Copland
Manager, National Policy
TSX Venture Exchange
Suite 2700, 650 West Georgia Street
Vancouver, B.C.
V6B 4N9

Fax: (604) 844-7502
e-mail: **susan.copland@tsxventure.com**

Please note that comments will not be considered confidential.

Copies of all applicable materials are available on TSX Venture Exchange's website at **www.tsx.com** or by accessing the following link to the TSX Venture Exchange corporate finance manual webpage:

http://www.tsx.com/en/productsAndServices/listings/cdnx/resources/resourcePolicies.html

1.2 Notices of Hearing

1.2.1 Dual Capital Management Limited et al. - ss. 127 and 127.1

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

AND

IN THE MATTER OF
DUAL CAPITAL MANAGEMENT LIMITED,
WARREN LAWRENCE WALL, SHIRLEY JOAN WALL,
DJL CAPITAL CORP., DENNIS JOHN LITTLE,
AND BENJAMIN EMILE POIRIER

AMENDED NOTICE OF HEARING
(Section 127 and 127.1)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at its offices on the 17th Floor, 20 Queen Street West, Toronto, Ontario commencing on Wednesday, the 21st day of May, 2003, at 11:30 a.m. or as soon thereafter as the hearing can be held:

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

(a) to make an order that the respondents Dual Capital Management Limited, Warren Lawrence Wall and Shirley Joan Wall cease trading in securities, permanently or for such time as the Commission may direct;

(b) to make an order that any exemptions contained in Ontario securities law do not apply to the respondents Dual Capital Management limited, Warren Lawrence Wall and Shirley Joan Wall or any of them permanently, or for such period as specified by the Commission;

(c) to make an order that the respondents Warren Lawrence Wall and Shirley Joan Wall resign one or more positions that the respondents or any of them hold as a director or officer of an issuer;

(d) to make an order that the respondents Warren Lawrence Wall and Shirley Joan Wall be prohibited from becoming or acting as director or officer of any issuer;

(e) to make an order that the respondents Warren Lawrence Wall and Shirley Joan Wall be reprimanded;

(f) to make an order that the respondents Dual Capital Management Limited, Warren Lawrence Wall and Shirley Joan Wall, or any of them, pay the costs of Staff's investigation in relation to the matters subject to this proceeding;

(g) to make an order that the respondents Dual Capital Management Limited, Warren Lawrence Wall and Shirley Joan Wall, or any of them, pay the costs of this proceeding incurred by or on behalf of the Commission; and/or

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

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

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

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

April 30, 2003.

"John Stevenson"

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

AND

**IN THE MATTER OF
DUAL CAPITAL MANAGEMENT LIMITED,
WARREN LAWRENCE WALL, SHIRLEY JOAN WALL,
DJL CAPITAL CORP., DENNIS JOHN LITTLE,
AND BENJAMIN EMILE POIRIER**

**AMENDED STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES
COMMISSION**

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

Introduction

1. Dual Capital Management Limited ("Dual Capital") is incorporated under the laws of Ontario and since October, 1994, carried on business as the general partner of Dual Capital Limited Partnership (the "Limited Partnership"). Dual Capital has not been registered in any capacity pursuant to section 25(1) of Ontario *Securities Act* R.S.O. 1990, c.S.5, as amended (the "Act").

2. Warren Lawrence Wall ("Warren Wall") is an individual residing in Ontario and at all material times was the President and a director of Dual Capital. Warren Wall has not been registered in any capacity pursuant to section 25(1) of the Act.

3. Shirley Joan Wall ("Joan Wall") is an individual residing in Ontario, and at all material times was a director and the secretary/treasurer of Dual Capital. Prior to June 28, 1995, Joan Wall was not registered in any capacity pursuant to section 25(1) of the Act. Joan Wall was registered as a salesperson with Triple A Financial Services Inc. ("Triple A"), a mutual fund dealer and limited market dealer, pursuant to section 26(1) of the Act from June 28, 1995 to October 13, 1998. As at October 20, 1998, Joan Wall was registered as a salesperson with Investment and Tax Counsel Corporation, a mutual fund dealer, and also a limited market dealer (as of May 5, 1999) pursuant to section 26(1) of the Act. Joan Wall has not been registered in any capacity since June 30, 2000.

Trading Without a Prospectus Contrary to the Requirements of Ontario Securities Law

4. During the period from October, 1994 to December, 1996, the general partner, Dual Capital, accepted subscriptions to the Units from investors residing in Ontario.

5. During the material times, the respondents, Dual Capital, Warren Wall, Joan Wall, Little and Poirier, traded in securities, namely the 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.

6. The 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.

7. Further, the Offering Memorandum dated October 18, 1994 as amended on December 19, 1994 for the Limited Partnership (the "Offering Memorandum") was not delivered to the Commission as required under Ontario securities law. The Offering Memorandum was also not provided to each investor who purchased the Units.

8. In addition, on or about May 27, 1997, Warren Wall, on behalf of the general partner, Dual Capital, filed with the Commission a Form 20 purporting to report a trade under clause 72(1)(p) of the Act. The Form 20 filed with the Commission did not contain complete and/or accurate information as required under Ontario securities law, including, but not limited to, accurate and complete information concerning the date(s) of the trade(s), the names of the purchaser(s), and the amount or number of securities purchased under the offering of the Units. In addition, the Form 20 filed stated that the promoter, DJL Capital, received $47,233.85 as compensation, when in fact DJL Capital received payments in the amount of approximately U.S. $161,525.00.

Trading in the Units Contrary to Requirements of Ontario Securities Law

9. Dual Capital and Warren Wall between October 13, 1994 and December 4, 1996 traded in securities, namely, limited partnership units of Dual Capital Limited Partnership without being registered to trade in such securities as required by section 25(1) of the Act.

10. Joan Wall between October 13, 1994 and June 27, 1995 traded in securities, namely, limited partnership units of Dual Capital Limited Partnership without being registered to trade in such securities as required by section 25(1) of the Act.

Misrepresentations to Investors Contrary to the Public Interest

(i) Use of Proceeds

11. The summary of the Offering Memorandum states, in part, the following with respect to "Use of Proceeds":

"The net proceeds of this Offering, after deducting the expenses of the issue, are estimated to be a maximum of $5,000,000.00 and a minimum of $860,000.00. The Limited Partnership will use the net proceeds of this Offering to facilitate trades in financial instruments, such as bank debentures, thereby providing income to the Limited Partnership."

12. The Offering Memorandum represented that the "Trading Partner" (which party is not identified in the Offering Memorandum) would seek to provide an annual rate of return to the Limited Partnership and related parties equal to 30% of the funds placed on deposit. The Offering Memorandum further represented that the "....foregoing will be paid on a monthly basis and is subject to the Trading Partner effecting trades."

13. During the material times, Dual Capital, Warren Wall and Joan Wall failed to disclose to investors that certain funds accepted from investors for the purchase of Units were not used to "facilitate trades in financial instruments", and further failed to disclose that investors' funds instead were used for payments to various companies and persons, including monthly payments to existing investors, commissions and/or other payments to Little and/or DJL Capital, commissions and/or other payments to Dual Capital and/or Dual Financial Group Inc., a company owned by Warren and Joan Wall, and commissions and/or other payments to salespersons who sold the Units.

(ii) Representations in Promotional Material

14. Further, a brochure (the "Brochure") entitled "International Lending Programme - Investor Information" prepared by Warren Wall and/or 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 misleading to investors and contrary to the public interest.

Conviction of Dual Capital Management Limited, Warren Wall and Joan Wall of Violations of Ontario Securities Law

15. 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 the following five charges laid under section 122 of the Act:

(1) Dual Capital and Warren Wall between October 13, 1994 and December 4, 1996 traded in securities, namely limited partnership units of Dual Capital Limited Partnership without being registered to trade in such securities as required by section 25(1) of the Act and did thereby commit an offence contrary to section 122(1)(c) of the Act.

(2) Shirley Joan Wall between October 13, 1994 and June 27, 1995 traded in securities, namely, limited partnership units of Dual Capital Limited Partnership without being registered to trade in such securities as required by section 25(1) of the Act and did thereby commit an offence contrary to section 122(c) of the Act.

(3) Warren Wall and Joan Wall between October 13, 1994 and December 4, 1996, being a director or officer of Dual Capital Management Limited, did authorize, permit or acquiesce in the offence committed by Dual Capital described in subparagraph 1 above, and did thereby commit an offence contrary to section 122(3) of the Act.

(4) Dual Capital, Warren Wall and Joan Wall between October 13, 1994 and December 4, 1996 did trade in securities, namely limited partnership units of Dual Capital 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 and did thereby commit an offence contrary to section 122(1)(c) of the Act.

(5) Warren Wall and Joan Wall between October 13, 1994 and December 4, 1996, being a director or officer of Dual Capital, did authorize, permit or acquiesce in the offence committed by Dual Capital described in suparagraph 4 above and did commit an offence contrary to section 122(3) of Act.

16. The guilty pleas were entered following twelve days of trial, after the prosecutor for the Ontario Securities Commission had called its witnesses to testify and closed its case, after the defence had called four witnesses, and during the re-examination of Warren Wall (who had testified on his own behalf and been subject to cross examination by the prosecutor for the Ontario Securities Commission.) 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.

17. In the course of delivering his Reasons for Sentence, Mr. Justice Douglas made findings of fact , based on the evidence at trial, including the following findings:

(1) The direct loss to the 56 members or so of the public who relied upon the accused persons can be considered, which (ignoring, for the moment, so-called repayments of interest and principal) is something in the range of 1.5 million dollars U.S., or, at a generous current exchange rate of 66 cents Canadian to the U.S. dollar, approximately $2,265,000.00 Canadian .... It appeared to be the position of the accused that they did not particularly profit from this mis-adventure, but that other more culpable persons did.

(2) Dealing with the conduct of the accused until January 26th, 1995, during this period of time, the accused, with others, conceived and formulated this investment scheme. They in part documented it, and, importantly, sold it to their clients. In this period of time they raised $860,000.00 U.S. or 1.3 million dollars Canadian.

(3) Respecting the conceptualization, formulation and documentation of the investment scheme, Mr. Wall testified that the idea of the investment scheme (referenced under various headings, including the "Roll Programme" and the "International Lending Programme") came to him by way of Dennis Little and D.J.L. Limited, Bob Adams, Mr. Altman of A.A.A. Financial Services, all of which led to Mr. Poirier and Mr. Adams of Dundas and, ultimately, Mr. Huppe of Oakville.

(4) To varying degrees, Mr. Wall pointed to these gentlemen as being to blame for this fiasco, as through counsel, so did Mrs. Wall. I utterly reject the testimony of Mr. Wall in this regard. The evidence supports only the inference of guilty knowledge respecting these events on behalf of both Mr. Wall and Mrs. Wall.

(5) I find that the Roll Programme as conceived, was and remained 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.

(6) Any complete reading of the Investor Lending Programme One or Investor Lending Programme Two will show the nonsensical nature of the proposal. Under cross-examination, Mr. Wall was forced to admit that many of the eight representations numbered and contained in each of these were essentially false throughout the time-frame of the Programme.

(7) Referencing the investment concept provisions of the two Offering Memoranda leads one to a similar conclusion. I reject utterly that Mr. Wall, a seasoned business man, trained in the arcane of insurance contracts and insured investments, and Mrs. Wall, similarly exposed and trained and also licensed, at least from June 1995 to sell mutual funds, did not recognize the significant risks associated with the concept, even as it was described in the Offering Memoranda.

(8) For example, at page five of the First Offering Memorandum, under the heading Investment Concept, the following is stated:

"The business of the limited partnership is to realize profits on trades of financial instruments such as bank debentures and thus provide income for the limited partners. To this end, the net proceeds of the offering will be placed through an intermediatory company on deposit with Canadian or international bank. The trading company; the trading partners will be selected by the general partner will arrange for the purchase and sale by an international bank financial institution or brokerage firm, the financial institution, a financial instrument such as bank debentures without placing the limited

partners' funds at risk. The funds placed on deposit by the limited partnership together with funds from other sources will serve as a guarantee to the other contracting party that the transactions will be effected. The trading partner will seek to provide an annual rate of return to the limited partner and related parties equal to 30 percent of the amount of funds placed on deposit by the partnership. The annual rate of return to the limited partners is expected to be 14 percent. The rate of return ultimately realized will be based on the performance of the trading partner which will be on a best efforts basis. The limited partnership will not buy or sell financial instruments and it is not expected that the funds placed on deposit will be used directly in such transactions, rather the trading partner will seek a potential purchaser of the financial instrument, and at such time as the purchase is confirmed will then identify the seller. The limited partnership's funds on deposit will be combined with funds from other sources and serve as a guarantee to the seller that the financial institution will be able to effect the purchase. The trading party will not arrange for the purchase of a financial instrument unless the ultimate purchaser has been identified and payment effected by that party. The financial institution will realize a profit on the transaction based on the spread between the price at which the financial institution buys the financial instrument and the price at which it immediately thereafter sells the financial instrument. A similar process will be followed when the trading partner first identifies a potential seller of the financial instrument as oposed to a purchase."

(9) I simply reject that Mr. and Mrs. Wall had any belief in the viability of this scheme based on this fundamental contradiction between the assertion of no risk and the assertion of placing these funds on guarantee.

(10) I find that Mr. and Mrs. Wall made a series of misrepresentations designed to mislead investors with respect to this risk, and indeed to take the risk.

(11) Turning to the sale of the investment scheme, to sell this scheme, the Investment Lending Programme and Summaries were prepared either in the Wall's office or forwarded from there. They were forwarded to clients and various brokers. No effort was made to screen the investment so that only sophisticated investors were solicited. No effort was made to ensure that only those who could afford such significant losses were solicited.

(12) Indeed, the evidence is conclusive and nearly complete that all of the investors were neither sophisticated (but naive), nor rich (but poor) or, at least, dependent upon the little money they had.

(13) The Walls told some people that they were themselves investing in this. They were not. Others were told to borrow money to invest in this scheme.

(14) As noted above, the Investment Lending Programme One and Two and Summaries were finally admitted, for the most part, to be misrepresentations.

(15) The short point, here, was that the documentation was prepared, either by the Walls or someone else, but it was accepted by the Walls, reviewed by the Walls and went out on their letterhead. It went to their clients. It was prepared, in my view, quite deliberately to highlight the selling points. Those selling points were false. The Walls knew they were false.

(16) The Programme was not only sold by written falsehoods, but also orally, evidence dramatically points to the equal participation of both Warren and Joan Wall. Mrs. Wall, on that evidence, perhaps played somewhat of an unique role in convincing people, particularly women, to invest in this programme.

(17) What was the conduct after December 17th, 1996, the start of the Ontario Securities investigation?

(18) Well, there is no doubt that there is some bad blood between the secretary, Ms. Alderman and the Walls. I accept her evidence in all essential aspects, notwithstanding the attempts by the Walls, in my view, to seduce, co-op and buy her silence over the years of her employment.

(19) She told us the truth when she said the following. First, that the computer records were deleted to remove them from the grasp of the Ontario Securities Commission. Second, the hard copy records were put into garbage bags so they could be destroyed. Third, she was told to lie to the Ontario Securities

Commission as to what happened to those records. And fourth, Exhibit Two(d) was created to falsely provide the Ontario Securities Commission with the impression there were only 24 investors, and that the Walls through D.F. Group had personally invested $440,000.00.

18. It is the position of Staff that the conduct alleged above, and the conviction of the respondents, Dual Capital, Warren Wall and Joan Wall of the offences outlined above, constitutes conduct contrary to the public interest.

19. Such additional allegations as counsel may advise and the Commission may permit.

April 30, 2003.

1.3 News Releases

1.3.1 Police Search Toronto Brokerage Firms

FOR RELEASE
June 18, 2003

POLICE SEARCH TORONTO BROKERAGE FIRMS

Toronto, Ontario (Wednesday, June 18, 2003) - Today, police executed fourteen search warrants at thirteen brokerage firms and one business entity in the Greater Toronto Area in connection with an investigation into alleged stock market manipulation. The searches are part of a joint investigation conducted by the RCMP Greater Toronto Area Commercial Crime Section, the Ontario Securities Commission, the Ontario Provincial Police Anti-Rackets Section, the Greater Toronto Area Combined Forces Special Enforcement Unit and the Toronto Integrated Proceeds of Crime Unit.

The purpose of these searches is to collect documentary and other evidence to support the continuing investigation. The searches began at approximately 3:00 p.m. today and involved approximately thirty police investigators from the participating agencies. The searches of these particular firms do not indicate complicity in the matter under investigation.

"This is part of our on-going integrated law enforcement effort to help ensure that Canada's capital markets remain among the safest in the world," stated Inspector Bob Davis, Officer in Charge of the RCMP Greater Toronto Area Commercial Crime Section. "Our investigation focuses on a small part of the stock market involving high-risk, highly-speculative stocks on the fringe of the stock market. Despite its limited impact on the average investor, we are concerned about any illegal activity that takes place in Ontario's capital markets and we will aggressively investigate any allegations of wrong-doing."

"This investigation is an example of the pro-active stance that regulators and police are taking to ensure the safety of our capital markets," said Ontario Securities Commission Executive Director Charles Macfarlane. "Investors can also help themselves by doing their homework before they invest in a risky, highly-speculative venture."

Since this is an active investigation, no further details can be provided.

The RCMP Greater Toronto Area Commercial Crime Section is committed to protecting the integrity of Canada's financial and commercial systems through aggressive, intelligence-led multi-functional investigative efforts to uncover illicit activities that undermine the confidence in Canada's financial system. Specifically, the RCMP GTA Commercial Crime Section focuses on investigations as follows: those involving organized crime; where the Government of Canada is a victim; where a mandated Federal Statute has been violated; and cross-border financial crime.

The Ontario Securities Commission (OSC) is a self-funded Crown Corporation responsible for administering the Ontario *Securities Act* (Ontario) and the *Commodity Futures Act*. The OSC's mandate is to provide protection to investors from unfair, improper or fraudulent practices, and to foster fair and efficient capital markets and confidence in the integrity of capital markets.

The mandate of the Combined Forces Special Enforcement Unit (CFSEU) is to uncover, investigate, prosecute and disrupt criminal organizations. The Unit is comprised of members from the Toronto Police Service; the Ontario Provincial Police; York, Peel and Durham Regional Police; Citizenship and Immigration Canada; Canada Customs and Revenue Agency; Canadian Security Intelligence Service; Criminal Intelligence Service Ontario; Federal Department of Justice; the Provincial Crown Prosecution Service; and the Royal Canadian Mounted Police.

Ontario Provincial Police Anti Rackets is a section within the OPP Investigation Bureau. It specializes in economic crime and consumer fraud. OPP Anti Rackets also manages and operates the PhoneBusters National Call Centre (PNCC). Consisting of OPP and RCMP officers along with 50 community volunteers, it is the only police led call centre in Canada.

The Toronto Integrated Proceeds of Crime Unit is a Joint Task Force comprised of the Ontario Provincial Police, Peel Regional Police, Toronto Police Service, the Royal Canadian Mounted Police, Canada Customs and Revenue Agency, Department of Justice, Forensic Accounting Management Directorate and Seized Property Management Directorate. The Task Force's mandate is to identify, restrain and/or seize cash and assets derived from the profits made by the commission of criminal offences for subsequent forfeiture through the Canadian judicial system.

Media Contact:

Corporal Michele Paradis
RCMP Media Relations Officer
(416) 715-2375 - pager
(905) 691-3952 - cell
(416) 452-7947 - office

Frank Switzer
Director of Communications
Ontario Securities Commission
(416) 593-8120 - office
(647) 283-9146 - cell

1.3.2 CSA News Release - Securities Regulators Release Revised Disclosure Rule

For Immediate Release
June 20, 2003

SECURITIES REGULATORS RELEASE REVISED DISCLOSURE RULE

Calgary – Canadian securities regulators today issued proposed new requirements for financial statements and other continuous disclosure by public companies. The proposal incorporates modifications made in response to public and industry input on the original proposal published last year.

The proposed rule -- National Instrument 51-102 *Continuous Disclosure Obligations* -- would establish enhanced, consistent disclosure standards across Canada. It deals with financial statements, management's discussion and analysis (MD&A), reporting of material changes and significant business acquisitions (a new requirement), annual information forms (AIFs), executive compensation disclosure, shareholder meeting circulars, restricted share disclosure requirements and some other filing requirements.

"This new rule should benefit both issuers and investors," said Stephen Sibold, chair of the Canadian Securities Administrators (CSA). The CSA is the umbrella organization representing the 13 provincial and territorial securities commissions.

"A uniform set of requirements reduces the cost and complexity that public companies face today in trying to satisfy different standards in various provinces and territories," said Sibold. "We have also taken this opportunity to bring our requirements up to date, to streamline or eliminate some requirements, and to address some information gaps in the old system. The public and industry comment on the original proposal has been thorough and very helpful."

Changes from the original proposal include:

- A new, transparent and easy-to-apply concept of "venture issuer" that replaces a variety of categories of junior or small issuers. Venture issuers would be subject to differing treatment in some areas, in response to comments concerning their more limited resources.

- Streamlined requirements for business acquisition reporting.

- Clarification of the process for determining when, and to which investors, disclosure documents must be sent – giving investors an opportunity each year to express their wishes, while reducing document deliveries to investors who do not wish them.

NI 51-102 can be found on the CSA member websites listed below. The CSA is requesting comments by Aug. 19, 2003.

Media relations contacts:

Joni Delaurier
Alberta Securities Commission
403-297-4481
www.albertasecurities.com

Andrew Poon
B.C. Securities Commission
604-899-6880
1-800-373-6393 (B.C. & Alberta only)
www.bcsc.bc.ca

Eric Pelletier
Ontario Securities Commission
416-595-8913
www.osc.gov.on.ca

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

Ainsley Cunningham
Manitoba Securities Commission
204-945-4733
1-800-655-5244 (Manitoba only)
www.msc.gov.mb.ca

Saskatchewan Financial Services Commission
306-787-5645
www.sfsc.gov.sk.ca

Nova Scotia Securities Commission
902-424-7768
www.gov.ns.ca/nssc

1.3.3 OSC to Consider Settlement Reached with Dual Capital Management Limited et al.

FOR IMMEDIATE RELEASE
June 20, 2003

OSC TO CONSIDER SETTLEMENT REACHED WITH DUAL CAPITAL MANAGEMENT LIMITED, WARREN LAWRENCE WALL AND SHIRLEY JOAN WALL

TORONTO – The Ontario Securities Commission will consider a settlement agreement reached by Staff of the Commission with Dual Capital Management Limited, Warren Lawrence Wall and Shirley Joan Wall. The hearing will take place on Tuesday June 24, 2003 at 10:00 a.m. in the Main Hearing Room of the Commission's offices, located on the 17th floor, 20 Queen Street West, Toronto.

Staff of the Commission allege that Dual Capital and the Walls participated in an illegal distribution of securities of Dual Capital Limited Partnership, and engaged in other conduct contrary to the public interest. The proposed settlement concerns proceedings before the Commission.

In a separate proceeding, the Commission prosecuted Dual Capital, Warren Wall and Joan Wall in the Ontario Court of Justice in respect of the illegal distribution and sale of the units of Dual Capital Limited Partnership, resulting in their conviction on several charges. On October 30, 2000, The Honourable Judge J.J. Douglas sentenced Warren Wall to a prison term for a total of 30 months and Joan Wall to a prison term for a total of 22 months. A fine in the amount of $1,000,000 was imposed against Dual Capital Management Limited, the general partner of Dual Capital Limited Partnership.

The terms of the settlement agreement between Staff and Dual Capital, Warren Wall and Joan Wall are confidential until approved by the Commission. The hearing is open to the public except as may be required for the discussion of confidential matters.

Copies of the Amended Notice of Hearing and Amended Statement of Allegations dated April 30, 2003 in this matter, and the Reasons for Sentence of the Honourable Judge J.J. Douglas (published February 2, 2001) are available on the Commission's website at **www.osc.gov.on.ca.**

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

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

1.3.4 Investor e.ducation Fund News Release - New Interactive Centre Quizzes Launched by InvestorED.ca

FOR IMMEDIATE RELEASE
June 24, 2003

NEW INTERACTIVE CENTRE QUIZZES LAUNCHED BY INVESTORED.CA

TORONTO – How do you handle risk? Does your investment behaviour make you a target for scams? How much do you know about investing? InvestorED.ca's Interactive Centre now offers a series of new quizzes which can enhance your investment know-how and help you protect yourself from investment fraud.

Three new risk quizzes help you gauge your tolerance for risk and understand how much risk you are willing to take to reach your investment goals. The Risk Comfort quiz analyzes the amount of risk and the types of chances you're prepared to take and provides you with tips on how to reduce your risk.

The Fraud Vulnerability quiz helps you determine if your behaviour makes you susceptible to fraud. By completing this quiz, you'll discover what you can do to protect yourself. This section also links to Industry Canada's Consumer Fraud Quiz and the Investment Fraud Awareness Quiz developed jointly by the North American Securities Administrators Association and the Canadian Securities Administrators.

The Investment Knowledge quiz provides you with helpful tips on how to become a savvier investor.

These new quizzes join the popular Mutual Fund Fee Impact Calculator and interactive tools from the Canadian Securities Administrators on investorED.ca's Interactive Centre. More investor tools will be added throughout the year.

Established by the Ontario Securities Commission in 2000, the Investor *e*.ducation Fund is dedicated to providing investors with easy-to-use, relevant and trusted financial information. Launched in early February, our website www.investorED.ca gathers resources from the most objective sources of investment information in Canada – securities regulators.

For more information about the Investor *e*.ducation Fund visit the *About Us* section of **www.investorED.ca.**

Media Inquiries: Terri Williams, President
Investor *e*.ducation Fund
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1.3.5 In the Matter of Brian Anderson et al.

FOR IMMEDIATE RELEASE
June 24, 2003

IN THE MATTER OF
BRIAN ANDERSON ET AL

TORONTO – At a hearing held on June 18, 2003, the Commission extended, on the consent of the parties, a temporary cease trade order originally issued on June 5, 2003, as against Brian Anderson, Leslie Brown, Douglas Brown and David Sloan respecting trading in the Flat Electronic Data Interchange (a.k.a. F.E.D.I.). The cease trade order is continued until a hearing to be held on July 11, 2003 at 10:00 a.m., at the offices of the Commission, 20 Queen Street West, Toronto, 17th floor, large hearing room.

Copies of the Temporary Order, Notice of Hearing and Statement of Allegations may be found on the Commission's web-site at **www.gov.on.ca.**

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

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

1.3.6 In the Matter of Discovery Biotech Inc. and Graycliff Resources Inc.

FOR IMMEDIATE RELEASE
June 24, 2003

IN THE MATTER OF
DISCOVERY BIOTECH INC.
AND GRAYCLIFF RESOURCES INC.

TORONTO – At a hearing held June 16, 2003, and on consent of the parties, the Commission extended a temporary cease trade order respecting the common shares of Discovery Biotech Inc. ("Discovery"), previously issued on June 4, 2003 against Discovery, Graycliff Resources Inc., and their respective agents and employees. The hearing will resume on June 26, 2003 at 2:30 p.m., at the offices of the Commission, 20 Queen Street West, Toronto, 17th floor, in the large hearing room.

Copies of the Temporary Order, Notice of Hearing and Statement of Allegations are available on the Commission's web-site at **www.osc.gov.on.ca.**

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

For Investor Inquiries: OSC Contact Centre
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1.3.7 OSC Approves Settlement Between Staff and Dual Capital Management Limited, Warren Wall and Joan Wall

FOR IMMEDIATE RELEASE
June 24, 2003

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

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

ONTARIO SECURITIES COMMISSION APPROVES SETTLEMENT BETWEEN STAFF AND DUAL CAPITAL MANAGEMENT LIMITED, WARREN WALL AND JOAN WALL

TORONTO – Today the Ontario Securities Commission convened a hearing to consider a settlement reached between Staff of the Commission and the respondents Dual Capital Management Limited, Warren Lawrence Wall, and Shirley Joan Wall. The respondents faced allegations that they participated in an illegal distribution of securities of Dual Capital Limited Partnership and engaged in other conduct contrary to the public interest.

The Commission panel approved the settlement. Vice-Chair Moore, in his oral decision approving the settlement, commented that the conduct of the Walls was egregious. The Commission ordered that Dual Capital, Warren Wall and Joan Wall cease trading securities permanently, with the sole exception that after one year Warren Wall and Joan Wall be permitted to trade securities through a registered dealer for their RRSP accounts. As a term of the Order, Warren Wall and Joan Wall each provided to the Commission an undertaking never to apply for registration in any capacity under Ontario securities law. Warren and Joan Wall are each prohibited permanently from becoming or acting as an officer or director of any reporting issuer and from becoming or acting as an officer or director of any issuer which has an interest directly or indirectly in any registrant. The Walls are prohibited also from becoming or acting as an officer or director of an issuer, with the exception that they are permitted to be an officer or director of a company providing services in the construction industry, provided that the issuer remains a private company and does not accept funds from the public.

In a separate proceeding, the Commission prosecuted Dual Capital, Warren Wall and Joan Wall in the Ontario Court of Justice in respect of the illegal distribution and sale of the units of Dual Capital Limited Partnership, resulting in their conviction on several charges. On October 30, 2000, The Honourable Justice J.J. Douglas sentenced Warren Wall to a prison term for a total of 30 months and Joan Wall to a prison term for a total of 22 months. A fine in the amount of $1,000,000 was imposed against Dual Capital Management Limited, the general partner of Dual Capital Limited Partnership.

Copies of the Amended Notice of Hearing, Amended Statement of Allegations of Staff of the Commission, the Reasons for Sentence of the Honourable Mr. Justice J.J. Douglas (published February 2, 2001), Settlement Agreement and Order approving the settlement are available on the Commission's website, **www.osc.gov.on.ca**.

1.3.8 CSA News Release - Reminder: Insiders and Issuers Must File on SEDI

For Immediate Release
June 25, 2003

REMINDER: INSIDERS AND ISSUERS MUST FILE ON SEDI

Toronto – As of June 9, 2003, insiders are required to file insider reports using the System for Electronic Disclosure by Insiders (SEDI). Insiders who do not have an immediate need to file insider reports are encouraged to register a few days in advance of their first anticipated filing. Insiders should no longer file paper reports that do not meet legal reporting obligations and could subject filers to regulatory action.

As well, as of June 9, SEDI issuers are required to file issuer event reports on SEDI within one business day of events such as mergers, amalgamations, stock splits and consolidations, among other events. Issuers who do not file issuer event reports, or who have not registered on SEDI and have not filed issuer profile supplements, have not met their legal obligations and may be subject to regulatory action. SEDI issuers are reporting issuers, other than mutual funds, that are required to file disclosure documents in electronic format through the System for Electronic Document Analysis and Retrieval (SEDAR) - essentially all Canadian public companies.

For information about creating accounts and profiles, and filing issuer event and insider reports, SEDI users should go to www.csa-acvm.ca to download a PDF file of the SEDI User Guide, or see the SEDI online Help.

SEDI is an initiative of the CSA, an umbrella organization of the 13 provincial and territorial securities regulators, that will bring faster and better public access to data on insider trades by making the information available electronically, within moments of it being filed. Following the launch of SEDI on May 5, 2003, issuers were required to register and to file an issuer profile supplement by May 30, 2003. As of June 9, 2003, insiders are required to register and file their reports to regulators on SEDI.

The SEDI system was developed for the CSA by CDS INC., a subsidiary of the Canadian Depository for Securities Limited, which also operates SEDAR and the National Registration Database (NRD).

Media relations contacts:

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Alberta Securities Commission
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www.albertasecurities.com

Andy Poon
B.C. Securities Commission
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www.bcsc.bc.ca

Ainsley Cunningham
Manitoba Securities Commission
204-945-4733
1-800-655-5244 (Manitoba only)
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Eric Pelletier
Ontario Securities Commission
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Barbara Timmins
Commission des valeurs mobilières du Québec
514-940-2176
1-800-361-5072 (Quebec only)
www.cvmq.com

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Paramount Energy Trust - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – distribution of securities by an issuer to its security holders pursuant to a dividend reinvestment plan – exemption required because distributions to be paid to unitholders are royalty income – not a dividend, interest, capital gains or earnings or surplus under Part 1 of 45-502 – aggregate number of securities to be issued greater than 2% of outstanding in that year exceeding number available under the exemption in Part 3 – 45-502.

Applicable Ontario Statutory Provisions

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

Ontario Rules

Rule 45-502 – Dividend or Interest Reinvestment and Stock Dividend Plans.

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

AND

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

AND

IN THE MATTER OF
PARAMOUNT ENERGY TRUST

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Nova Scotia, the Yukon Territory, the Nunavut Territory and the Northwest Territories (the "Jurisdictions") has received an application from Paramount Energy Trust (the "Applicant") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirement contained in the Legislation to be registered to trade in a security and to file and obtain a receipt for a preliminary prospectus and a final prospectus (the "Registration and Prospectus Requirements") shall not apply to the distribution of trust units of the Applicant pursuant to a distribution reinvestment and optional trust unit purchase plan;

2. AND WHEREAS any terms and conditions used herein that are defined in National Instrument 14-101 shall, unless otherwise defined herein, have the meanings as provided in that National Instrument;

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

4. AND WHEREAS the Applicant has represented to the Decision Makers that:

4.1 the Applicant is an unincorporated trust established on June 28, 2002 under the laws of the Province of Alberta pursuant to a trust indenture, as amended (the "PET Trust Indenture"). The Applicant has been a reporting issuer, or the equivalent thereof, in each province and territory in Canada since February 3, 2003. The Applicant is not in default of any requirements of the Legislation. Computershare Trust Company of Canada is the trustee of the Applicant;

4.2 the Applicant finances the operations of Paramount Operating Trust ("POT"), an unincorporated trust established on June 28, 2002 under the laws of the Province of Alberta pursuant to a trust indenture, as amended. POT is an operating oil and gas entity and the Applicant is the sole beneficiary of POT;

4.3 Paramount Energy Operating Corp. (the "Administrator"), a wholly-owned subsidiary of the Applicant incorporated on June 28, 2002 under the Business Corporation Act (Alberta), provides certain operational, executive and financial services and governance functions to the Applicant and is the trustee of POT;

4.4 under the PET Trust Indenture, the Applicant is authorized to issue an unlimited number of transferable redeemable trust units (the "Units") and an unlimited number of special voting units, of which, as at May 8, 2003, there were 39,638,376 Units issued and outstanding. Each holder of Units (a "Unitholder") is entitled to an equal undivided share of any distributions from the Applicant and upon cessation or winding-up of the Applicant, an equal undivided share of any amounts distributed. Each Unit entitles a Unitholder to one vote at meetings of Unitholders. If and when special voting units are issued, they will entitle the trustee thereof to such number of votes at meetings of Unitholders as may be prescribed by the board of directors of the Administrator. The Units are listed and posted for trading on the Toronto Stock Exchange (the "TSX");

4.5 the Applicant has established a Dividend Reinvestment and Optional Trust Unit Purchase Plan (the "DRIP") to enable Unitholders, at their discretion, to automatically reinvest the distributable income of the Applicant paid on their Units (the "Distributable Income") into additional Units ("DRIP Units") as an alternative to receiving cash distributions, and as well, at their discretion, to purchase additional DRIP Units by making optional cash payments ("OCP's");

4.6 distributions due to participants enrolled in the DRIP ("DRIP Participants") will be paid to Computershare Trust Company of Canada in its capacity as agent under the DRIP (the "DRIP Agent") and will be applied to the purchase of DRIP Units. DRIP Participants who elect to purchase additional DRIP Units through OCP's will pay such amounts to the DRIP Agent who will purchase additional DRIP Units;

4.7 no commissions, service charges or brokerage fees will be payable by DRIP Participants in connection with the DRIP;

4.8 the DRIP Agent will purchase DRIP Units directly from the Applicant. In the event that the Administrator determines for whatever reason that DRIP Units will not be available from the Applicant for a particular distribution period, or also in the event of the OCP's the maximum number of Units have been issued for a particular period, then Distributable Income (together with, if applicable, any OCP's received) will be paid to DRIP Participants;

4.9 the acquisition price for DRIP Units purchased directly from the Applicant will be based on the weighted average price of the Units traded on the TSX on the ten trading days prior to a distribution date as described in the DRIP (the "Treasury Purchase Price"). The acquisition price for distribution reinvestments shall be 95% of the Treasury Purchase Price, and in the case of OCP's shall be 100% of the Treasury Purchase Price;

4.10 DRIP Participants may terminate their participation in the DRIP by providing written notice to the DRIP Agent no less than 5 business days prior to the applicable record date. Such notice, if actually received no later than 5 days prior to the applicable record date, will have effect for the distribution associated with that record date, and if not so received will have effect for the next following distribution;

4.11 Legislation in certain of the Jurisdictions provides exemptions from the Registration and Prospectus Requirements for distribution reinvestment plans. Such exemptions are not available to the Applicant in certain of the Jurisdictions because such exemptions are generally with respect to the distribution of one or more of the following: (i) dividends; (ii) interest; (iii) capital gains; or (iv) earnings or surplus. The distributions that are paid to the Unitholders are royalty income in relation to the income that the Applicant receives from POT on oil and gas properties;

4.12 Legislation in certain of the Jurisdictions provides for OCP's to be exempt from the Registration and Prospectus Requirements, however that Legislation places a restriction on such distributions to 2% of the issued and outstanding securities fo the issuer as at the beginning of an issuer's financial year. The Applicant was formed in 2002 and established its financial year as the calendar year in keeping with many of its industry peers. As at January 1, 2003, which was prior to the completion of certain transactions which commenced the Applicant's operations, the Applicant had only one Unit issued and outstanding;

4.13 Legislation in certain of the Jurisdictions provides exemptions from the

Registration and Prospectus Requirements for reinvestment plans of a "mutual fund". The Applicant is not a "mutual fund" under the Legislation as the holders of Units are not entitled t receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the Applicant, as contemplated by the definition of "mutual fund" in the Legislation.

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

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

7. THE DECISION of the Decision Makers under the Legislation is that:

7.1 the Registration and Prospectus Requirements contained in the Legislation shall not apply to distributions by the Applicant of DRIP Units under the DRIP, including pursuant to OCP's, provided that:

7.1.1 no sales charge is payable by DRIP Participants in respect of the distributions;

7.1.2 each DRIP Participant annually receives a notice of his or her right, and instructions on how to exercise such right, to withdraw from the DRIP;

7.1.3 for the 2003 financial year of the Applicant ending December 31, 2003, the aggregate number of DRIP Units issuable under OCP's of the DRIP does not exceed 792,768 Units, and, thereafter, the aggregate number of DRIP Units issuable by the Applicant in any financial year of the Applicant under OCP's of the DRIP does not exceed 2% of the issued and outstanding Units as at the commencement of that financial year; and

7.1.4 at the time of the trade, the Applicant is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation; and

7.2 the first trade in DRIP Units acquired by DRIP Participants shall be a distribution or primary distribution to the public unless:

7.2.1 at the time of the trade, the Applicant is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation;

7.2.2 no unusual effort is made to prepare the market or to create a demand for the DRIP Units;

7.2.3 no extraordinary commission or consideration is paid to a person or company other than the vendor of the DRIP Units in respect of the trade;

7.2.4 the vendor of the DRIP Units, if in a special relationship with the Applicant, has no reasonable grounds to believe that the Applicant is in default of any requirement of the Legislation; and

7.2.5 the trade of the DRIP Units is not a control distribution as defined in the Legislation.

June 9, 2003.

"Glenda A. Campbell" "Stephen R. Murison"

2.1.2 TransAlta Power, L.P. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – related party transactions – relief from valuation requirement in connection with a proposed related party transaction – independent committee of directors formed to review, consider, negotiate and approve the public offering and acquisition – formal valuation of the acquired business and fairness opinion provided – private offering would require a valuation – offering price for private offering determined by arm's length negotiations – full details of transactions included in materials sent to unit holders – applicant exempt from valuation requirement.

Ontario Rule Cited

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

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO AND QUÉBEC

AND

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

AND

IN THE MATTER OF
TRANSALTA POWER, L.P.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario and Québec (the "Jurisdictions") has received an application from TransAlta Power, L.P. ("TA Power") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that certain related party transactions be exempt from the valuation requirements (the "Valuation Requirements") under Ontario Securities Commission Rule 61-501 ("Rule 61-501") and Québec Policy Statement Q-27 ("Q-27");

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

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

AND WHEREAS TA Power has represented to the Decision Makers that:

1. TA Power is a limited partnership formed on December 16, 1997 under the laws of the Province of Ontario.

2. TA Power's principal and head office is located at 110 – 12th Avenue S.W., Calgary, Alberta, T2P 2M1.

3. TA Power is permitted to carry on only activities which are directly or indirectly related to the energy supply industry and to hold investments in other entities which are primarily engaged in the energy supply industry.

4. TA Power is and has been a reporting issuer (or the equivalent) for a period in excess of 12 months in each of the Jurisdictions.

5. The authorized capital of TA Power consists of an unlimited number of limited partnership units (the "TA Power Units"). As at May 31, 2003, 33,987,700 TA Power Units were issued and outstanding.

6. The TA Power Units are listed and posted for trading on the Toronto Stock Exchange (the "TSX").

7. At present, TA Power owns a 49.99% interest in TA Cogen which wholly owns three cogeneration facilities located in Mississauga, Ottawa and Windsor, Ontario and which also owns a 60% interest in a cogeneration facility located in Fort Saskatchewan, Alberta. The remaining 50.01% of TA Cogen is owned by TransAlta Energy Corporation ("TEC") (50.00%) and by TransAlta Cogeneration Ltd. ("TA Cogen GP") (0.01%). TA Cogen GP is the general partner of TA Cogen.

8. The business and affairs of TA Power are managed by TransAlta Power Ltd. ("TA Power GP"). TA Power GP has contracted with TEC to provide TA Power with certain management, administrative and other services. TEC relies on its own resources in providing such services to TA Power.

9. The business and affairs of TA Cogen are managed by TA Cogen GP. TA Cogen CP has contracted with TEC to provide TA Cogen with certain management, administrative, operations and maintenance and other services. TEC relies on its own resources in providing such services to TA Cogen.

10. Each of TEC, TA Power GP, TA Cogen GP and TransAlta Utilities Corporation ("TAU") are wholly owned subsidiaries of TransAlta Corporation.

11. To the knowledge of the directors and officers of TA Power GP, there are no unitholders who own, directly or indirectly, or exercise control or direction over, securities carrying more than 10%

of the votes attached to all of the outstanding voting securities of TA Power.

12. The proposed transaction consists of the acquisition (the "Acquisition") by TA Cogen from TEC of TAU's 50% interest in a 756 MW coal-fired mine mouth thermal electric generating station located near Hanna, Alberta and the related agreements (the "Acquired Business") for approximately $600 million. One week prior to the Acquisition, TAU will sell all of its right, title and interest in and to the Acquired Business to TEC.

13. Under the proposed transaction, TA Power will complete a public offering (the "Public Offering") of subscription receipts (the "Subscription Receipts") of TA Power for gross proceeds of up to approximately $171 million. It is expected that the Subscription Receipts will be listed and posted for trading on the TSX. Each Subscription Receipt will be automatically exchanged for one TA Power Unit and one warrant (a "Warrant") of TA Power without payment of additional consideration on the first business day following the closing of the Acquisition or, if the Acquisition has been completed prior to the closing date of the Public Offering (the "Closing Date"), on the Closing Date. Each Warrant will entitle the holder to acquire one TA Power Unit at a specified price within a period of one year following the Closing Date.

14. Concurrent with such subscription, TEC will subscribe (the "Private Placement") for private placement subscription receipts (the "Private Subscription Receipts") for gross proceeds of up to $190 million. Each Private Subscription Receipt will be automatically exchanged for one TA Power Unit without payment of additional consideration on the first business day following the closing of the Acquisition or, if the Acquisition has been completed prior to the Closing Date, on the Closing Date.

15. Pursuant to a delivery agreement to be dated as of the Closing Date among TA Power, TEC and CIBC Mellon Trust Company, TEC will commit to sell to TA Power, as Warrants are exercised, that number of the TA Power Units issued to it pursuant to the exchange of Private Subscription Receipts equal to the number of TA Power Units issued to Warrantholders by TA Power. The purchase price payable by TA Power for TA Power Units purchased from TEC in this manner will be equal to the exercise price of the Warrants. As this aspect of the proposed transactions is an issuer bid for TA Power Units under the *Securities Act* (Ontario) and the *Securities Act* (Alberta) (the "Issuer Bid Legislation"), the proposed transaction is conditional upon TA Power obtaining relief from the applicable requirements under the Issuer Bid Legislation.

16. The net proceeds from the sale of the Subscription Receipts and the Private Subscription Receipts will be held in escrow by CIBC Mellon Trust Company (the "Escrow Agent"), as escrow agent, pending the closing of the Acquisition. Provided that the Acquisition closes prior to a specified date, such proceeds will be released to TA Power concurrently with the closing of the Acquisition.

17. If the Acquisition fails to close by a specified date, or the agreement governing the terms of the Acquisition is terminated at any earlier time, the Escrow Agent and TA Power will return to holders of the Subscription Receipts and the Private Subscription Receipts an amount equal to the issue price therefor and their *pro rata* entitlement to interest on such amount.

18. TA Power will, concurrent with the closing of the Acquisition, use the net proceeds of the Public Offering and the Private Placement to subscribe for additional limited partnership units in TA Cogen ("TA Cogen Units").

19. After the escrow period, TA Cogen will, in turn, use the funds received from TA Power and TEC to complete the Acquisition. The balance of the purchase price for the Acquired Business will be satisfied by TA Cogen by the issuance to TEC of TA Cogen Units.

20. The directors of TA Power GP have formed an independent committee of directors (the "Independent Committee") to review, consider, negotiate and approve the Public Offering and the Acquisition. In furtherance of its responsibilities, the Independent Committee has:

    (a) retained HSBC Securities (Canada) Inc. to act as independent financial advisor to the Independent Committee and, in particular, to prepare and deliver a formal valuation of the Acquired Business in accordance with Rule 61-501and Q-27, and a written opinion as to the fairness of the transaction from a financial point of view to the holders of TA Power Units (the "Independent Valuation and Fairness Opinion");

    (b) retained independent counsel; and

    (c) retained Nordic Acres Engineering to prepare and deliver an independent engineering report in respect of the Acquired Business.

21. TA Power will hold a special meeting of the holders of TA Power Units (the "Special Meeting") to obtain approval of, *inter alia*, the Acquisition. The approval will constitute minority approval of

the Acquisition as prescribed under Rule 61-501 and Q-27.

22. Each of TransAlta Corporation, TA Cogen, TAU and TEC are related parties to TA Power under Rule 61-501 and Q-27.

23. The Acquisition is a related party transaction of TA Power, as it is acquiring indirectly an asset, the Acquired Business, from a related party, TEC. In addition, a number of steps required to complete the Acquisition are related party transactions. Three aspects of the transaction are subject to the valuation provisions of Rule 61-501 and Q-27:

    (a) the issue of the Private Subscription Receipts to TEC;

    (b) the indirect acquisition of the Acquired Business by TA Power from TEC; and

    (c) the issue of TA Cogen Units to TA Power.

24. The Private Subscription Receipts are not different in substance from a subscription for TA Power Units directly. The Private Subscription Receipts represent, for all practical purposes, TA Power Units and are being utilized for the sole purpose of ensuring that the proceeds of the Private Placement will be held in escrow pending the closing of the Acquisition. Upon the completion of the Acquisition, the Private Subscription Receipts will be automatically exchanged for TA Power Units on a one-for-one basis. In addition, the offering price for the Private Subscription Receipts will be determined at arm's length by negotiation between TA Power GP and CIBC World Markets Inc., on behalf of itself and the other underwriters in the Public Offering.

25. The subscription by TA Power for additional TA Cogen Units will be made concurrently with the issuance of additional TA Cogen Units by TA Cogen to TEC as partial consideration for the Acquired Business at the same price per TA Cogen Unit under the Public Offering, such that the direct and indirect interests (including the voting interests) in TA Cogen held by TA Power, on the one hand, and TA Cogen GP and TEC, on the other hand, will remain unchanged.

26. TA Cogen is a pass-through vehicle. Accordingly, the value of the TA Cogen Units is determined by the value of the TA Power Units.

27. The materials to be sent to holders of the TA Power Units in connection with the Special Meeting will include full details of the proposed transactions, including full disclosure of TA Power and the issuance of additional TA Cogen Units to TA Power and TEC and the effect of the transaction on the direct and indirect voting interests of TA Cogen. In addition, the material will include the Independent Valuation and Fairness Opinion.

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 Decisions Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that the Valuation Requirements shall not apply to (a) the issuance of the Private Subscription Receipts by TA Power to TEC and (b) the issuance of TA Cogen Units to TA Power.

June 13, 2003.

"Ralph Shay"

2.1.3 Georgeson Shareholder Communications Canada Inc. - MRRS Decision

Headnote

MRRS – Relief granted, subject to certain conditions, from the Dealer Registration Requirement set out in clause 25(1)(a) of the Securities Act (Ontario) in respect of certain trades by and to Filer under its "asset reunification program".

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 25(a).

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

AND

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

AND

IN THE MATTER OF
GEORGESON SHAREHOLDER COMMUNICATIONS CANADA INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (collectively, the "Decision Makers") in each of the Provinces of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Saskatchewan, Quebec, Northwest Territories, Nunavut and the Yukon (the "Jurisdictions") has received an application from Georgeson Shareholder Communications Canada Inc. ("Georgeson") for a decision under the securities legislation of each of the Jurisdictions (the "Legislation") that certain trades to and by Georgeson under Georgeson's asset reunification program (the "Program"), as more fully described below, are not subject to the registration requirements of the Legislation;

AND WHEREAS under the Mutual Reliance Review Systems 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 Georgeson has represented to the Decision Makers that:

1. Pursuant to the Program, Georgeson is engaged by issuers ("Issuers") to assist them in locating securityholders ("Securityholders") who either (a) hold securities of entities acquired or merged into, or securities which have by their terms matured or terminated or been redeemed by, such Issuers (or parties related to the Issuers) and, in each case, who failed to tender or submit their securities ("Unexchanged Securities"), or (b) by virtue of their ownership of securities of the Issuer are entitled to receive securities ("Additional Securities") of an entity that has been spun-out by the Issuer, and to facilitate the exchange of Unexchanged Securities or the claiming of Additional Securities, as the case may be;

2. The purpose of the Program is to reunite Securityholders with the consideration (the "Consideration") to which they were entitled under the merger/acquisition transaction, redemption/maturity or spin-out (as the case may be, each a "Transaction"), whether such Consideration consists of cash, non-cash ("New Securities") or both;

3. Securityholders who agree to participate in the Program are charged a fee (the "Fee") by Georgeson on a per security basis equal to a percentage (typically 10%) of the value (at the date of implementation of the Program) of the Consideration to which such Securityholders are entitled under the relevant Transaction. Securityholders are under no obligation to participate in the Program and are free to exchange their Unexchanged Securities or claim their Additional Securities (as the case may be) directly;

4. Where the Consideration consists of sufficient cash to cover the Fee, Securityholder consent is obtained for the deduction of the Fee from the Consideration received under the exchange, with the balance remitted to the Securityholder. Where the Consideration does not include sufficient cash to pay the Fee, the Securityholder is invoiced;

5. Georgeson intends to modify the Program (as so changed, the "Modified Program") to enable Georgeson to recover the Fee without having to invoice Securityholders entitled to non-cash Consideration. Specifically, Securityholders will be asked either to authorize the transfer of 10% of the New Securities to Georgeson in full satisfaction of the Fee (the "Transfer Alternative") or to appoint Georgeson as agent to cause the sale on the Securityholder's behalf through a duly registered dealer of sufficient New Securities to satisfy the Fee (the "Sale Alternative");

6. Where a Modified Program is implemented:

   (a) Securityholders will be mailed a package of documents (an "Information Package") approved by the relevant Issuer informing them of their entitlement to exchange their Unexchanged Securities or claim the Additional Securities, as the case may be;

   (b) the Information Package will describe the services to be provided by Georgeson under the said Modified Program and the Fee payment alternatives;

   (c) Securityholders will be invited to clarify any questions they may have about the Modified Program by contacting Georgeson, but Securityholders with inquiries concerning the Transaction itself or related matters will be encouraged to contact their professional advisors;

   (d) the Information Package will state clearly that participation in the program is voluntary;

   (e) Georgeson will bear all costs of administering the Modified Program, including the cost of all commission fees incurred on behalf of Securityholders in connection with execution of the Sale Alternative; and

   (f) Securityholders will receive a report from Georgeson outlining the details of the administration of the Modified Program, including the number of New Securities transferred or sold, the proceeds of any sale and the Fee.

7. Trades by Securityholders to Georgeson pursuant to the Transfer Alternative are exempt from the registration requirements contained in the securities legislation of the provinces of Alberta, British Columbia and Ontario (collectively, the "Accredited Investor Jurisdictions");

8. To the extent that trades by Securityholders to Georgeson pursuant to the Transfer Alternative are not exempt from the registration requirements in the Legislation (other than the Legislation in the Accredited Investor Jurisdictions, under which exemptions would be available), Securityholders would be prohibited from transferring New Securities to Georgeson in the absence of the ruling hereby requested;

9. Georgeson's activities with respect to the Sale Alternative constitute trades of securities for the purposes of the registration requirements in the Legislation, and consequently Georgeson would be prohibited from engaging in such activities in the absence of the ruling hereby requested;

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

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

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

(a) to the extent that in the Legislation (other than the Accredited Investor Jurisdictions) there are no registration exemptions available in respect of the transfer of New Securities by Securityholders to Georgeson pursuant to the Transfer Alternative, the registration requirements contained in the Legislation shall not apply to such trades or to activities incidental thereto; and

(b) the registration requirements contained in the Legislation shall not apply to trades pursuant to the Sale Alternative or to activities incidental thereto, provided that in the Jurisdictions of Ontario and Newfoundland and Labrador, Georgeson shall have registered under the Legislation of the Jurisdiction as a dealer in the category of "limited market dealer" within six months of the date hereof.

June 11, 2003.

"Paul M. Moore" "Harold P. Hands"

2.1.4 Maxxcom Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – going private transaction by way of plan of arrangement – transaction to be subject to a number of conditions including majority of the minority approval – management information circular will comply with all requirements except for formal valuation – non-cash consideration consists of securities for which there is a liquid market – securities offered as non-cash consideration are freely tradeable – valuator's opinion that formal valuation of the non-cash consideration not required – applicant to state in information circular that it has no knowledge of any material non-public information that has not been generally disclosed – applicant exempt from valuation requirement with respect to non-cash consideration.

Ontario Rule Cited

Rule 61-501 - Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions, ss. 6.3 and 9.1.

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO AND QUEBEC

AND

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

AND

IN THE MATTER OF
MAXXCOM INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of Ontario and Québec (collectively, the "Jurisdictions") has received an application from Maxxcom Inc. ("Maxxcom") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that, in connection with a proposed going private transaction (the "Proposed Transaction") in respect of Maxxcom, to be carried out by way of plan of arrangement pursuant to which Maxxcom's principal shareholder, MDC Corporation Inc. ("MDC"), will acquire all of the issued and outstanding common shares of Maxxcom (the "Maxxcom Shares") held by public shareholders of Maxxcom in exchange for Class A subordinate voting shares of MDC ("MDC Class A Shares"), Maxxcom be exempt from the requirements of the Legislation:

(a) under subsection 6.3(1)(d) of Ontario Securities Commission Rule 61-501 ("Rule 61-501") to obtain a formal valuation of the non-cash consideration being offered pursuant to the Proposed Transaction, provided Maxxcom complies with subsection 6.3(2) of Rule 61-501 other than clause (b)(i) thereof; and

(b) under subsection 6.3(1)(d) of Québec Securities Commission Policy Q-27 ("Policy Q-27") to obtain a formal valuation of the non-cash consideration being offered pursuant to the Proposed Transaction, provided Maxxcom complies with subsection 6.3(2) of Policy Q-27 other than the 10% limitation contained in clause (b) thereof;

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 Maxxcom has represented to the Decision Makers that:

1. MDC is a corporation amalgamated under the *Business Corporations Act* (Ontario) (the "OBCA").

2. MDC is a reporting issuer (or its equivalent) in each of the provinces of Canada and in the United States and is not on the list of defaulting issuers maintained by either of the Decision Makers.

3. The authorized capital of MDC consists of an unlimited number of MDC Class A Shares, an unlimited number of Class B multiple voting shares and an unlimited number of non-voting Preference Shares, issuable in series, in an unlimited number, of which 5,000 Series 1 Preference Shares, 700,000 Series 2 Preference Shares and an unlimited number of Series 3 Preference Shares have been designated. Each outstanding Class B multiple voting share of MDC is convertible into one MDC Class A Share on a one-for-one basis. As at June 5, 2003, there were 16,464,871 MDC Class A Shares, 450,470 Class B multiple voting shares, no Series 1 Preference Shares, no Series 2 Preference Shares and no Series 3 Preference Shares of MDC issued and outstanding.

4. The outstanding MDC Class A Shares are listed and posted for trading on the Toronto Stock Exchange (the "TSX") in Canada under the symbol "MDZ.A" and are quoted for trading on the Nasdaq National Market in the United States under the symbol "MDCA". The outstanding Class B multiple voting shares of MDC are not publicly listed or quoted.

5. During its most recently completed financial year ended December 31, 2002 and during its current

financial year, MDC has made the following dispositions:

5.1 On January 10, 2002, MDC sold an additional 4.54% interest in its Canadian cheque business operated by Davis + Henderson, Limited Partnership ("D+H LP") for gross proceeds of approximately $17.2 million (following a sale of a 45.45% interest in D+H LP through the conversion of same into Davis + Henderson Income Fund in December 2001 for gross proceeds to MDC of approximately $250 million);

5.2 On April 2, 2002, MDC sold its remaining 50.01% interest in D+H LP for gross proceeds of approximately $200 million; and

5.3 On May 29, 2003, MDC sold 80% of its interest in its U.S.-based direct-to-consumer cheque business operated by Custom Direct, Inc. ("CDI") and its affiliated companies through the conversion of same into Custom Direct Income Fund ("CDIF") and the concurrent initial public offering of trust units of Custom Direct Income Fund. The outstanding trust units of CDIF are listed and posted for trading on the TSX under the symbol "CDI.UN". The sale resulted in gross proceeds to MDC of approximately $110 million. On June 13, 2003, pursuant to the exercise of the underwriters' over-allotment option, MDC sold trust units of CDIF for gross proceeds of $16.5 million. MDC currently maintains, directly and indirectly, a 20% interest in CDI and 2,963,804 trust units (or approximately 19%) of the outstanding trust units of CDIF. MDC's direct and indirect interest in CDI is effectively exchangeable in certain circumstances for an aggregate of 3,903,451 trust units of CDIF.

As a result of the transactions referred to in paragraph 5, the core assets of MDC currently essentially consist of its 73.5% interest in Maxxcom and its remaining direct and indirect interest in CDI and CDIF.

6. Maxxcom is a corporation incorporated under the OBCA.

7. Maxxcom is a reporting issuer (or its equivalent) in each of the provinces of Canada and is not on the list of defaulting issuers maintained by either of the Decision Makers.

8. The authorized capital of Maxxcom consists of an unlimited number of Maxxcom Shares and an unlimited number of preference shares, issuable in series, of which, as at June 5, 2003, there were 49,098,962 Maxxcom Shares and no preference shares issued and outstanding.

9. The outstanding Maxxcom Shares are listed and posted for trading on the TSX under the symbol "MXX".

10. MDC owns 36,091,375 Maxxcom Shares, representing 73.5% of the total outstanding Maxxcom Shares. Seventy-one registered holders hold 26.5% of the outstanding Maxxcom Shares.

11. Subject to review of the Proposed Transaction by the Independent Committee (as defined in paragraph 18 below), MDC has requested that Maxxcom call a special shareholders' meeting of the Maxxcom shareholders (the "Meeting") to approve, among other matters, the Proposed Transaction. If the Proposed Transaction receives approval by the requisite shareholder votes at the Meeting (including approval by a majority of the votes cast by minority shareholders as required by Section 4.7 of Rule 61-501 and Section 4.5 of Policy Q-27), it is intended that the Proposed Transaction will be completed and all shareholders of Maxxcom (other than MDC) will exchange their Maxxcom Shares for MDC Class A Shares at the exchange ratio provided pursuant to the Proposed Transaction.

12. The completion of the Proposed Transaction will be subject to a number of conditions including, without limitation, receipt of all applicable regulatory and shareholder approvals. The management information circular (the "Information Circular") to be prepared for the Meeting will comply, subject to receipt of the relief requested hereby, with the requirements of applicable corporate and securities laws and will provide that the holders of Maxxcom Shares may dissent in respect of the Proposed Transaction in accordance with the provisions of the OBCA and be paid the fair value for their Maxxcom Shares (subject to the right of the parties not to proceed with the Proposed Transaction in the event that dissents in respect of more than a certain percentage of the outstanding Maxxcom Shares are filed). The Information Circular will disclose, among other matters, that Maxxcom has no knowledge of any material non-public information concerning Maxxcom or its securities that has not been generally disclosed.

13. As a result of the dispositions noted in paragraph 5 above, the Information Circular will contain (i) a *pro forma* balance sheet of MDC (for the most recent interim period) giving effect to the disposition of CDI in accordance with OSC Rule 54-501 and Sections 6.2 and 13.2 of National Instrument 44-101; and (ii) *pro forma* income

statements (both annual and for the most recent interim period) of MDC giving effect to the dispositions of D+H LP and CDI in accordance with OSC Rule 54-501 and Sections 6.2 and 13.2 of National Instrument 44-101. The balance sheet together with the income statements are collectively referred to herein as the "MDC *Pro Forma* Financial Statements".

14. For the Proposed Transaction to be approved by shareholders in accordance with applicable corporate law, it must be approved by at least 66 2/3% of the votes cast by holders of Maxxcom Shares, present or represented by proxy at the Meeting (including votes cast by MDC).

15. In addition, Section 4.7 of Rule 61-501 and Section 4.5 of Policy Q-27 each require that the Proposed Transaction be approved by a majority of the votes cast by minority shareholders, present or represented by proxy at the Meeting.

16. Upon completion of the Proposed Transaction, Maxxcom will become a wholly-owned subsidiary of MDC.

17. A committee of directors (the "Independent Committee") of Maxxcom independent of MDC has been established by Maxxcom for the purposes of supervising the preparation of a formal valuation of the Maxxcom Shares, reviewing the Proposed Transaction and making a recommendation to the board of directors of Maxxcom in respect of same.

18. The Independent Committee has retained legal counsel and an investment advisor (the "Financial Advisor"), each of which is independent of MDC.

19. The Financial Advisor retained by the Independent Committee will prepare a formal valuation of the Maxxcom Shares under the supervision of the Independent Committee. The Financial Advisor has concluded that a formal valuation of the MDC Class A Shares is not necessary in order to assess the fairness, from a financial point of view, of the consideration being offered to the holders of the Maxxcom Shares other than MDC pursuant to the Proposed Transaction.

20. Under the Proposed Transaction, Maxxcom shareholders (other than MDC) will receive a number of MDC Class A Shares based on the "MDC Share Value", being the volume weighted average trading price of the outstanding MDC Class A Shares on the TSX for the 20 trading days ending on the trading day preceding the date of the special meeting of Maxxcom shareholders to be held to consider the Proposed Transaction, as follows:

    20.1 if the MDC Share Value is above $10.18, Maxxcom shareholders will receive one MDC Class A subordinate voting share for every 5.5 Maxxcom Shares they own;

    20.2 if the MDC Share Value is at or above $9.25 up to and including $10.18, Maxxcom shareholders will receive a number of MDC Class A Shares representing $1.85 for every Maxxcom Share they own; and

    20.3 if the MDC Share Value is below $9.25, Maxxcom shareholders will receive one MDC Class A Share for every 5.0 Maxxcom Shares they own.

At $1.85 per Maxxcom Share, based on the volume weighted average of the trading price of the outstanding Maxxcom Shares for the 20 days immediately prior to the announcement of the Proposed Transaction, the transaction represents a premium of 41%.

21. The MDC Class A Shares to be offered as consideration under the Proposed Transaction will be freely tradeable following their issuance.

22. A "liquid market" for the outstanding MDC Class A Shares exists as defined in Rule 61-501 and Policy Q-27, in that:

    22.1 there is a published market for the outstanding MDC Class A Shares as such shares are listed and posted for trading on the TSX and quoted on the Nasdaq National Market;

    22.2 during the period of 12 month period before the date the Proposed Transaction was publicly announced:

        22.2.1 the number of outstanding MDC Class A Shares was at all times at least 5,000,000 shares (in fact, there were at least 16,400,000 MDC Class A Shares outstanding) excluding MDC Class A Shares beneficially owned, directly or indirectly, or over which control or direction was exercised, by related parties and MDC Class A Shares that were not freely tradeable;

        22.2.2 the aggregate trading volume of the MDC Class A Shares on the TSX was at least 1,000,000 MDC Class A Shares (in fact, the trading volume was at least 12,500,000 MDC Class A Shares as at June 5, 2003);

22.2.3 there were at least 1,000 trades in MDC Class A Shares on the TSX (in fact, there were at least 7,674 trades for the period June 5, 2002 through June 4, 2003); and

22.2.4 the aggregate trading value based on the price of the trades referred to in clause 23.2.4 was at least $15,000,000 (in fact, the trading value was at least $87,000,000); and

22.3 the market value of the outstanding MDC Class A Shares on the TSX, as determined in accordance with Rule 61-501 and Policy Q-27, was at least $75,000,000 for the calendar month of May, 2003 (in fact, the market value was at least $99,800,000 for that month).

23. The MDC Class A Shares to be offered as consideration under the Proposed Transaction will constitute a minimum of approximately 14.4% and a maximum of approximately 15.8% of the aggregate number of MDC Class A Shares currently issued and outstanding, and a minimum of 14.0% and a maximum of 15.4% of the total number of MDC Class A Shares and Class B multiple voting shares of MDC currently issued and outstanding, immediately before the distribution of the MDC Class A Shares in connection with the Proposed Transaction.

24. The Proposed Transaction constitutes a going private transaction under Rule 61-501 and Policy Q-27. Unless discretionary relief is granted, Maxxcom would be subject to the requirement under subsection 6.3(1)(d) of each of Rule 61-501 and Policy Q-27 to obtain a formal valuation in respect of the MDC Class A Shares (the non-cash consideration to be offered under the Proposed Transaction).

25. Maxxcom cannot rely upon the exemption from subsection 6.3(1)(d) of each of Rule 61-501 and Policy Q-27 contained in subsection 6.3(2) of each of Rule 61-501 and Policy Q-27 because the MDC Class A Shares to be issued pursuant to the Proposed Transaction will constitute more than 10% (the "10% Limit") of the aggregate number of MDC Class A Shares issued and outstanding immediately before the distribution of the MDC Class A Shares pursuant to the Proposed Transaction.

26. Although the number of MDC Class A Shares being issued in connection with the Proposed Transaction exceeds the 10% Limit:

26.1 holders of Maxxcom Shares will be receiving securities which are substantially more liquid than their Maxxcom Shares;

26.2 following the recent completion of the transaction noted in clause 5.3 above, the core assets of MDC essentially consist of (i) its 73.5% interest in Maxxcom, the value of which Maxxcom shareholders can assess based on past disclosure and the summary of the formal valuation of Maxxcom Shares to be included in the Information Circular; and (ii) its remaining direct and indirect interest in CDI and CDIF, the value of which can be assessed by Maxxcom Shareholders: (A) via the MDC *Pro Forma* Financial Statements to be included in the Information Circular; and (B) as to the approximately 30% interest in CDIF retained by MDC, through reference to the trading prices of the outstanding trust units of same on the TSX; and

26.3 the Financial Advisor has concluded that a formal valuation of the MDC Class A Shares is not necessary in order to assess the fairness, from a financial point of view, of the consideration being offered to the minority holders of the Maxxcom Shares pursuant to the Proposed Transaction.

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 under the Legislation is that, in connection with the Proposed Transaction, Maxxcom:

(a) is exempt from the requirement under subsection 6.3(I)(d) of Rule 61-501 to obtain a formal valuation of the non-cash consideration being offered pursuant to the Proposed Transaction, provided Maxxcom complies with subsection 6.3(2) of Rule 61-501 other than clause (b)(i) thereof; and

(b) is exempt from the requirement under subsection 6.3(l)(d) of Policy Q-27 to obtain a formal valuation of the non-cash consideration being offered pursuant to the Proposed Transaction, provided Maxxcom complies with subsection 6.3(2) of Policy Q-27 other than the 10% Limit contained in clause (b) thereof.

June 19, 2003.

"Ralph Shay"

2.1.5 Great-West Lifeco Inc. and Canada Life Financial Corporation - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief granted, subject to certain conditions, from the prospectus and registration requirements in respect of trades in connection with a merger transaction pursuant to the Insurance Companies Act (Canada).

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 35(1)15.i., 53, 72(1)(i), 74(1).

Applicable Ontario Rule

Ontario Securities Commission Rule 45-501 Exempt Distributions.

Applicable Multilateral Instrument

Multilateral Instrument 45-102 Resale of Securities.

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

AND

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

AND

IN THE MATTER OF
GREAT-WEST LIFECO INC. AND
CANADA LIFE FINANCIAL CORPORATION

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, the Yukon Territory, the Northwest Territories and the Nunavut Territory (collectively, the "Jurisdictions") has received an application from Great-West Lifeco Inc. ("Lifeco") and Canada Life Financial Corporation ("CLFC") (collectively, the "Filer") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the trades of securities contemplated by the proposed securities exchange transaction (the "Transaction") involving Lifeco and CLFC to be effected by way of a reorganization of CLFC's capital structure shall be exempt from the dealer registration and prospectus requirements of

the Legislation (collectively the "Registration and Prospectus Requirements");

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

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

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

1. Lifeco and CLFC entered into a transaction agreement made as of February 14, 2003 (the "Transaction Agreement") providing for the Transaction to be effected by way of a reorganization of CLFC's capital structure involving the change of the common shares of CLFC ("CLFC Common Shares") into a new class of exchangeable shares of CLFC (the "Exchangeable Shares") and the automatic transfer of the Exchangeable Shares to Lifeco for a combination of up to 24,000,000 4.80% Non-Cumulative First Preferred Shares, Series E of Lifeco ("Lifeco Series E Shares"), up to 8,000,000 5.90% Non-Cumulative First Preferred Shares, Series F of Lifeco ("Lifeco Series F Shares" and together with the Lifeco Series E shares, the "Lifeco Preferred Shares") and up to 55,958,505 common shares of Lifeco ("Lifeco Common Shares") to be issued by Lifeco, as well as cash, through a series of transactions to holders of CLFC Common Shares ("CLFC Shareholders") all as more particularly described in paragraphs 6 and 7 below.

2. Lifeco is a company incorporated under the *Canada Business Corporations Act* (the "CBCA") and is a reporting issuer or equivalent under the Legislation. To its knowledge, Lifeco is not in default of any applicable requirement of the Legislation. Lifeco is eligible to use a short form prospectus pursuant to National Instrument 44-101 in each Jurisdiction. Lifeco is a "qualifying issuer" as defined in Multilateral Instrument 45-102 Resale of Securities ("MI 45-102"). Lifeco's registered office is located at 100 Osborne Street North, Winnipeg, Manitoba R3C 3A5.

3. The authorized share capital of Lifeco consists of an unlimited number of Lifeco Common Shares, an unlimited number of first preferred shares, issuable in series ("First Preferred Shares"), an unlimited number of Class A preferred shares, issuable in series ("Class A Preferred Shares"), and an unlimited number of second preferred shares, issuable in series. As at February 17, 2003, there were outstanding, (a) 366,218,412 Lifeco Common Shares; (b) 4,000,000 First Preferred Shares, Series C; (c) 8,000,000 First Preferred Shares, Series D; and (d) 5,192,242 Class A Preferred Shares, Series 1. The Lifeco Common Shares, First Preferred Shares, Series C, First Preferred Shares, Series D and Class A Preferred Shares, Series 1 are traded on the Toronto Stock Exchange (the "TSX").

4. CLFC is an insurance company incorporated under the *Insurance Companies Act* (Canada) (the "ICA") and is a reporting issuer or equivalent under the Legislation. To its knowledge, CLFC is not in default of any applicable requirement of the Legislation. CLFC is eligible to use a short-form prospectus pursuant to National Instrument 44-101 in each Jurisdiction. CLFC's registered office is located at 330 University Avenue, Toronto, Ontario M5G 1R8.

5. The authorized share capital of CLFC consists of an unlimited number of CLFC Common Shares and an unlimited number of non-voting preferred shares, issuable in series ("CLFC Preferred Shares"). As of February 14, 2003, there were no more than 160,400,000 CLFC Common Shares and 6,000,000 CLFC Preferred Shares issued and outstanding. The CLFC Preferred Shares are currently listed and posted for trading on the TSX and the CLFC Common Shares are currently listed and posted for trading on the TSX and the New York Stock Exchange.

6. The reorganization of CLFC's capital structure will consist of the following:

   (a) an amendment to the by-laws of CLFC to create the Exchangeable Shares, which will rank junior to the CLFC Preferred Shares and equal to the CLFC Common Shares and have the following principal conditions:

      (i) each Exchangeable Share, other than those held by CLFC Shareholders who validly exercise their Dissent Right (defined below) and do not subsequently cease to be entitled to exercise such Dissent Right ("Dissenting Shareholders"), will be automatically transferred to Lifeco at the Closing Date (defined below) in exchange for any of $44.50 in cash, 1.78 Lifeco Series E Shares, 1.78 Lifeco Series F Shares, 1.1849 Lifeco Common Shares or a combination of the foregoing (subject in each case to election and proration based on a specified maximum number of shares and amount of cash to

be issued or paid) and subject to customary anti-dilution provisions (the "Elected Consideration"),

(ii) each Exchangeable Share held by a Dissenting Shareholder will be automatically transferred to Lifeco at the Closing Date for the right to receive an amount equal to the fair value in cash of such Exchangeable Share from Lifeco in accordance with the dissent rights agreement dated March 22, 2003 between CLFC, Lifeco and each Dissenting Shareholder (the "Dissent Rights Agreement"), and

(iii) the Exchangeable Shares will become convertible at the option of the holder thereof into CLFC Common Shares; and

(b) an amendment to the by-laws of CLFC to change the CLFC Common Shares, other than those beneficially owned by Lifeco or its subsidiaries that have not been allocated to a segregated or other investment fund established and maintained by any of such subsidiaries, into Exchangeable Shares at the Closing Date on the basis of one Exchangeable Share for each CLFC Common Share.

7. Lifeco and CLFC have entered into the Dissent Rights Agreement to provide CLFC Shareholders with a dissent right (the "Dissent Right") substantially similar to the dissent right provided by section 190 of the CBCA, except that any payment in respect of Exchangeable Shares will be made by Lifeco in cash only and the notice of dissent will be required to be delivered not later than 2:00 p.m. (Toronto time) on the business day before the CLFC Meeting (defined below).

8. At the Closing Date, the reorganization of CLFC's capital structure will be implemented through the occurrence of the following steps in the following order:

(a) each CLFC Common Share, except those beneficially owned by Lifeco or any of its subsidiaries that have not been allocated to a segregated or other investment fund established and maintained by any of such subsidiaries, will be changed into one Exchangeable Share;

(b) each Exchangeable Share will be transferred automatically to Lifeco, in exchange for: (i) in the case of each Exchangeable Share not held by a Dissenting Shareholder, the Elected Consideration; and (ii) in the case of each Exchangeable Share held by a Dissenting Shareholder, the right provided in the Dissent Rights Agreement; and

(c) Lifeco may, at its option, convert the Exchangeable Shares acquired by it as contemplated above into CLFC Common Shares on a share-for-share basis in accordance with the share conditions of the Exchangeable Shares.

9. Steps 8(a) and (b) will occur automatically, without any further action being taken by holders of the CLFC Common Shares, on the later of (a) July 10, 2003; (b) 12 business days after all conditions to the completion of the Transaction have been satisfied or waived; or (c) such earlier or later date as may be agreed to by CLFC and Lifeco (the "Closing Date").

10. No fractional Lifeco Common Shares or Lifeco Preferred Shares will be issued pursuant to the Transaction. In lieu of fractional shares, each holder of CLFC Common Shares who would otherwise be entitled to receive a fraction of a Lifeco Common Share or a Lifeco Preferred Share shall be paid an amount in cash equal to such holder's proportionate share of the proceeds (after deducting fees and expenses) received from aggregating all such fractional interests and selling them in the open market.

11. In the event shareholders receive an amount of Lifeco Common Shares or any series of Lifeco Preferred Shares numbering less than 100 shares, they will be entitled to elect to have those shares sold on their behalf and receive a cash payment equal to such shareholder's proportionate share of the proceeds (after deducting fees and expenses) received on the sale of such shares. The shares will be sold on the TSX as soon as possible following the Closing Date, but in any event no later than three business days following the Closing Date.

12. Options to purchase CLFC Common Shares ("CLFC Options") have been granted to eligible persons pursuant to the Canada Life Financial Corporation Stock Option Plan (the "CLFC Stock Option Plan"). As of the close of business on February 14, 2003, there are no more than 3,100,000 CLFC Common Shares issuable upon the exercise of outstanding CLFC Options.

13. The Transaction Agreement contemplates that, subject to the satisfaction of Lifeco regarding the truth of certain matters relating to holders of the CLFC Options or the receipt of a comfort letter from the Department of Finance to the satisfaction

of Lifeco and subject to the receipt of the approval of the TSX, CLFC will amend the terms of the CLFC Stock Option Plan to, among other things, provide (I) that each unexercised CLFC Option outstanding at the Closing Date will be exchanged for an option to acquire, at the exercise price under the CLFC Option, that number of Lifeco Common Shares as is equal to the product of the number of CLFC Common Shares that were issuable on exercise of such CLFC Option immediately prior to the Closing Date multiplied by 1.1849 and rounded down to the nearest whole number of Lifeco Common Shares (a "New CLFC Option") and (ii) each New CLFC Option will automatically expire 45 days after the Closing Date. Lifeco has agreed under the terms of the Transaction Agreement to issue the appropriate number of Lifeco Common Shares on the exercise of the New CLFC Options. The foregoing exchange of CLFC Options set out above will be made upon consent of each optionholder and in compliance with the rules and regulations of the TSX.

14. The Transaction has been voted on and approved by holders of CLFC Common Shares at a special meeting held on May 5, 2003 (the "CLFC Meeting"). Under the ICA, the Transaction required the favourable vote of at least 66 2/3% of the votes cast by the holders of the CLFC Common Shares voting at the CLFC Meeting. The CLFC Meeting was held in accordance with the ICA.

15. In connection with the CLFC Meeting, CLFC prepared and delivered to the CLFC Shareholders, a management information circular dated March 22, 2003 (the "CLFC Circular"). In addition to containing a detailed description of the Transaction, the CLFC Circular contains prospectus-level disclosure of the business and affairs of each of CLFC and Lifeco.

16. After the Transaction was approved at the CLFC Meeting, CLFC mailed a Letter of Election and Transmittal Form to shareholders whose CLFC Common Shares are represented by physical share certificates or a Letter of Election Form to shareholders whose CLFC Common Shares are registered in the name of the holder and in respect of which no physical share certificate has been issued and the holder has not transferred his or her CLFC Common Shares to a broker, custodian, nominee or other intermediary. The Letter of Election and Transmittal Form and Letter of Election Form enable such shareholders to choose the form(s) of consideration they wish to receive by completing the applicable form.

17. The steps under the Transaction, the amendment to the CLFC Option Plan, the exchange of CLFC Options to New CLFC Options and the exercises of the New CLFC Options, if any, involve or may involve a number of trades of securities (collectively, the "Trades") and there may be no registration or prospectus exemption available under the Legislation for certain of the Trades.

18. A holder of CLFC Common Shares will make one fundamental investment decision at the time when such holder votes in respect of the Transaction and/or determines whether to dissent in respect thereof. As a result of this decision, a holder of CLFC Common Shares will ultimately receive cash, Lifeco Common Shares and/or Lifeco Preferred Shares in exchange for the Exchangeable Shares held by such holder or in payment in cash of the fair value of the CLFC Common Shares formerly held by such holder.

19. The contemplated changes in respect of the CLFC Options have been proposed in order to not disadvantage certain holders of CLFC Options from a tax perspective.

20. Lifeco has applied to list the Lifeco Common Shares and Lifeco Preferred Shares to be issued or made issuable pursuant to the Transaction and the amendment to the CLFC Option Plan (on the exercise of the New CLFC Options) on the TSX.

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 under the Legislation is that the Registration and Prospectus Requirements shall not apply to the Trades provided that the first trade in any security acquired pursuant to this Decision in a Jurisdiction shall be deemed to be a distribution or primary distribution to the public under the Legislation of such Jurisdiction (the "Applicable Legislation") unless in respect of a first trade of Lifeco Common Shares or Lifeco Preferred Shares:

(a) except in Québec,

(i) Lifeco is and has been a reporting issuer in any of Alberta, British Columbia, Manitoba, Nova Scotia, Ontario or Saskatchewan for the 4 months immediately preceding the trade,

(ii) the trade is not a control distribution,

(iii) no unusual effort is made to prepare the market or to create

demand for the securities that are the subject of the trade,

(iv) no extraordinary commission or consideration is paid to a person or company in respect of the trade, and

(v) if the selling shareholder is an insider or officer of Lifeco, the selling shareholder has no reasonable grounds to believe that Lifeco is in default of securities legislation

(b) in Québec,

(i) Lifeco is and has been a reporting issuer in Québec for the 12 months immediately preceding the trade,

(ii) no unusual effort is made to prepare the market or to create demand for the securities that are the subject of the trade,

(iii) no extraordinary commission or consideration is paid to a person or company in respect of the trade, and

(iv) if the selling shareholder is an insider or officer of Lifeco, the selling shareholder has no reasonable grounds to believe that Lifeco is in default of securities legislation.

June 18, 2003.

"Chris Besko"

2.1.6 EnCana Corporation - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Relief granted to certain vice-presidents of a reporting issuer from the insider reporting requirements subject to certain conditions as outlined in CSA Staff Notice 55-306 - Applications for Relief from the Insider Reporting Requirements by Certain Vice Presidents.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 1(1), 107, 108, 121(2)(a)(ii).

Regulations Cited

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

Instrument Cited

National Instrument 55-101 - Exemption From Certain Insider Reporting Requirements.

CSA Staff Notice Cited

CSA Staff Notice 55-306 - Applications for Relief from the Insider Reporting Requirements by Certain Vice Presidents.

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

AND

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

AND

IN THE MATTER OF
ENCANA CORPORATION

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker" or, collectively, the "Decision Makers") in each of Alberta, Saskatchewan, Manitoba, Ontario, Québec, Newfoundland and Nova Scotia (the "Jurisdictions") has received an application from EnCana Corporation (the "Corporation") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirement in the Legislation to file insider reports shall not apply to certain individuals who are insiders of the Corporation or a major subsidiary of the Corporation by reason of having the title Vice-President;

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

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

1. The Corporation is a corporation incorporated under the *Canada Business Corporations Act*. The head office of the Corporation is located in Calgary, Alberta. The Corporation is a leading independent petroleum exploration and production company with approximately 3,600 employees.

2. Effective April 5, 2002, the Corporation and Alberta Energy Company Ltd. ("AEC") participated in a share exchange, whereby AEC became an indirect wholly-owned subsidiary of the Corporation. Holders of common shares of AEC ("AEC Shares") received 1.472 common shares of the Corporation ("EnCana Shares") for each AEC Share that they owned. The transaction was carried out by way of a plan of arrangement involving AEC and its shareholders and optionholders (the "Arrangement") under the *Business Corporations Act* (Alberta). The Corporation amalgamated with AEC and EnCana Midstream Limited effective January 1, 2003 and the amalgamated corporation retained the name "EnCana Corporation".

3. The EnCana Shares are listed and posted for trading on The Toronto Stock Exchange and the New York Stock Exchange.

4. The Corporation is a reporting issuer (or the equivalent thereof) in each of the Provinces and Territories of Canada. The Corporation is not on the list of defaulting reporting issuers maintained under the Legislation.

5. As at May 1, 2003, the Corporation had 14 directors (one of whom is also the President & Chief Executive Officer), 1 Senior Executive Vice-President, 7 Executive Vice-Presidents, 24 Senior Vice-Presidents, 3 Regional Presidents and 72 Vice-Presidents and 80 other senior officers (as defined in the applicable securities legislation) for a total of 201 persons who are insiders of the Corporation by reason of being a director or officer of the Corporation or one of its subsidiaries (the "Insiders").

6. 71 of the Insiders are exempt from the insider reporting requirements contained in the Legislation by reason of an existing exemption such as National Instrument 55-101 ("NI 55-101") or a previous decision or order.

7. The Corporation has developed a policy governing corporate disclosure and insider trading (the "Policy") that applies to all of the Insiders.

8. The objectives of the Policy are to ensure (i) that communications to the investing public about the Corporation are: timely, factual, accurate and broadly disseminated in accordance with all applicable legal and regulatory requirements, and (ii) that the Corporation's directors, officers and designated employees who are "insiders" under the Legislation are aware of their responsibilities under the Legislation and to assist them in complying with the Legislation. The Policy also applies to other employees of the Corporation who have knowledge of material undisclosed information.

9. The Corporation has also established a committee (the "Disclosure Committee") to oversee the Policy practices, to set thresholds for the preliminary assessment of materiality and to determine whether information is deemed material and when events justify public disclosure. The Disclosure Committee reports annually to the board of directors of the Corporation through the Nominating and Corporate Governance Committee of the Board regarding any significant infractions of the Policy or any recommended changes.

10. Under the Policy, the Insiders and other employees with knowledge of material undisclosed information may not trade in securities of the Corporation. In addition, the Insiders may not trade in securities of the Corporation during certain prescribed "black-out" periods around the preparation of financial results or any other "black-out" period as determined by the Disclosure Committee.

11. The Disclosure Committee (comprised of the President & Chief Executive Officer, Executive Vice-President & Chief Financial Officer and Executive Vice-President, Corporate Development (or the Senior Vice-President, Investor Relations when designated) considered the job requirements and principal functions of the Insiders to determine which of them met the definition of "nominal vice president" contained in Canadian Securities Administrators Staff Notice 55-306 (the "Staff Notice") and has caused a list to be compiled of those Insiders who, in the opinion of the Disclosure Committee, meet the criteria set out in the Staff Notice (the "Designated Persons").

12. The Corporation has provided the Decision Makers with a list of Designated Persons (the "Designated Persons List"). Each Designated Person:

    (a) is a Vice-President of the Corporation or one of its major subsidiaries;

    (b) is not in charge of a principal business unit, division or function of the Corporation or a "major subsidiary" of the

Corporation (as such term is defined in NI 55-101);

(c) does not in the ordinary course receive or have access to information as to material facts or material changes concerning the Corporation before the material facts or material changes are generally disclosed; and

(d) is not an insider of the Corporation in any other capacity other than as Vice-President.

13. The Corporation shall:

(a) maintain the Designated Persons List in accordance with the terms of the Decision;

(b) maintain a continuing review of the facts contained in the representations upon which this Decision is made; and

(c) upon the request of any of the Decision Makers or their staff, provide any information necessary to determine whether Designated Persons are or are not exempted by this Decision.

14. The Disclosure Committee will assess any future employee of the Corporation who has the title of Vice-President on the same basis as set out above, and will re-assess all Designated Persons who experience a change in job requirements or functions, to determine if such individuals meet, or continue to meet, the definition of "nominal vice president" contained in the Staff Notice.

15. If an individual who is designated as a Designated Person no longer satisfies the definition of "nominal vice president" contained in the Staff Notice, the Disclosure Committee, or a person designated by the Disclosure Committee, will inform him or her of the renewed obligation to file an insider report in respect of any trades.

16. The Corporation has filed with the Decision Makers in connection with this application a copy of the Policy and the list of Designated Persons.

AND WHEREAS under 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 under the Legislation is that the requirement contained in the Legislation to file insider reports shall not apply to the Designated Persons or to any other employee of the Corporation who hereafter is given the title Vice-President provided that:

(a) they satisfy the definition of "nominal vice president" contained in the Staff Notice;

(b) the Corporation prepares and maintains the Designated Persons List, submits the Designated Persons List on an annual basis to the board of directors of the Corporation for approval, and files the Designated Persons List with the Decision Makers;

(c) the Corporation files with the Decision Makers a copy of its internal policies and procedures, as may be amended from time to time, relating to monitoring and restricting the trading activities of its insiders and other persons whose trading activities are restricted by the Corporation; and

(d) the relief granted will cease to be effective on the date when NI 55-101 is amended.

June 6, 2003.

"Agnes Lau"

2.2 Orders

2.2.1 Lake Shore Asset Management Inc. - ss. 38(1) of the CFA

Headnote

Subsection 38(1) of the Commodity Futures Act (Ontario) (the **CFA**) - relief from the registration requirements of paragraph 22(1)(b) of the CFA granted to an extra-provincial adviser in respect of the provision of discretionary portfolio management services to Ontario clients of a registered adviser under the CFA (the **Registrant**) relating to commodity futures activities in Ontario, subject to Lake Shore Asset Management Inc. agreeing to provide all discretionary portfolio management services pursuant to a written agreement in which the Registrant accepts legal responsibility for the advisory services provided under such exemption.

Statutes Cited

Commodity Futures Act, R.S.O. 1990. c. C.20, as amended, 22(1)(b), 38(1).

IN THE MATTER OF THE
COMMODITY FUTURES ACT, RSO. 1990, c. 20

AND

IN THE MATTER OF
LAKE SHORE ASSET MANAGEMENT INC.

ORDER
(Subsection 38(1))

UPON the application of Lake Shore Asset Management Inc. ("Lake Shore") to the Ontario Securities Commission (the "Commission") for a ruling under subsection 38(1) of the *Commodity Futures Act*, R.S.O. 1990, c.20 (the "CFA") that Lake Shore and its officers are not subject to the requirement of paragraph 22(1)(b) of the CFA;

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

AND UPON Lake Shore having represented to the Commission that:

1. Lake Shore is incorporated under the laws of Illinois and is resident in Illinois. It does not have a place of business in Ontario with partners or officers that are resident in Ontario who act as advisors on its behalf in Ontario;

2. Lake Shore is a commodity trading advisor registered with the Commodity Futures Trading Commission and a member of the National Futures Association in the United States, which permits Lake Shore to advise in respect of future and forward contracts and options on futures and forward contracts in the U.S.;

3. Lake Shore currently acts as an adviser providing discretionary portfolio management services to Ontario clients of a registered adviser under the CFA, and may in the future act as an adviser by providing such portfolio management services to clients of one or more:

   (a) registered advisers under the CFA, or

   (b) registered brokers and dealers acting as a portfolio adviser pursuant to section 44 of the Regulations to the CFA,

   (collectively the "Registrants") in Ontario;

4. Lake Shore has entered into a written agreement with a Registrant which sets out the obligations and duties of Lake Shore, and a similar agreement would be entered into with any other Registrants in the future;

5. Lake Shore now provides, and will in the future only provide, discretionary portfolio management services in circumstances where:

   (a) the Registrant has agreed in a document providing rights to the client of the Registrant to be responsible for any loss that arises out of the failure of Lake Shore to:

      (i) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the client; and

      (ii) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances,

   (the "standard of care"), and in providing portfolio management services to the Registrant's clients this responsibility cannot be waived; and

   (b) disclosure is made to Ontario clients of the Registrant that the Registrant is responsible for any loss that arises out of the failure of Lake Shore to meet the standard of care, that there may be difficulty in enforcing legal rights against Lake Shore, and that all or substantially all of Lake Shore's assets are situated outside of Ontario;

AND WHEREAS paragraph 22(1)(b) of the CFA prohibits a person or company from acting as an adviser unless the person is registered as an adviser, or is registered as a partner or an officer of a registered adviser and is acting on behalf of a registered adviser, and the

registration is in accordance with the CFA and the regulations;

AND UPON the Commission being satisfied that to make this ruling would not be prejudicial to the public interest;

IT IS RULED, pursuant to subsection 38(1) of the CFA, that Lake Shore and its officers are not subject to the requirements of paragraph 22(1)(b) of the CFA in respect of advice provided for the benefit of clients of a Registrant, provided that:

(a) the obligations and duties of Lake Shore are set out in a written agreement with the Registrant in Ontario;

(b) the Registrant agrees in a document providing rights to the client of the Registrant to be responsible for any loss that arises out of the failure of Lake Shore to meet the standard of care in providing advice to the client of the Registrant and this responsibility is not waived; and

(c) a client agreement or offering document discloses that the Registrant is responsible for any loss that arises out of the failure of Lake Shore to meet the standard of care in providing advice to the client of the Registrant and, that there may be difficulty enforcing any legal rights against Lake Shore and all or a substantial portion of Lake Shore's assets are situated outside of Ontario;

and provided that this Order will terminate on September 16, 2003.

June 17, 2003.

"Paul M. Moore" "Robert W. Davis"

2.2.2 WebEngine Corporation - s. 144

Headnote

Section 144 – full revocation of cease trade order upon remedying of defaults.

Statutes Cited

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

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

AND

IN THE MATTER OF
WEBENGINE CORPORATION
(the "CORPORATION")

ORDER
(Section 144)

WHEREAS the securities of the Corporation are subject to a Temporary Order (the "Temporary Order") made by a Director on behalf of the Ontario Securities Commission (the "Commission"), pursuant to paragraph 2 of subsection 127(1) and subsection 127(5) of the Act, on the 27th day of May, 2003 as extended by a further Order (the "Extension Order") of a Director, made on the 6th day of June, 2003 on behalf of the Commission pursuant to subsection 127(8) of the Act, that trading in the securities of the Reporting Issuer cease until the Temporary Order, as extended by the Extension Order, is revoked by a further Order of Revocation;

AND WHEREAS the Corporation has applied to the Ontario Securities Commission (the Commission) for revocation of the Cease Trade Order pursuant to section 144 of the Act.

AND UPON the Corporation having represented to the Commission that:

1. The name of the Corporation is WebEngine Corporation.

2. The Corporation was incorporated by certificate of incorporation issued pursuant to the provisions of the *Business Corporation Act* (Ontario) on March 4, 1983.

3. The authorized capital of the Corporation consists of an unlimited number of common shares of which 24, 809,737 common shares are issued and outstanding as fully paid and non-assessable.

4. The Cease Trade Order was issued as a result of the Corporation's failure to file its annual financial statements for the year ended December 31, 2002 (the "2002 Financial Statements") as required by the Act.

5. The 2002 Financial Statements were not filed with the Commission due to the Corporation's resources being fully applied to an acquisition transaction and raising funds from a private placement to complete all matters relating to such acquisition transaction, including the completion of its audited financial statements, which prevented the Corporation from completing the financial statements within the time prescribed by the Act for filing.

6. On June 12, 2003, the Corporation filed its December 31, 2002 annual financial statements and the interim financial statements for the three-month ended March 31, 2003. The Corporation has now brought its Continuous Disclosure filings up to date.

7. Except for the Cease Trade Order, the Corporation is not otherwise in default of any of the requirements of the Act or Regulation.

AND UPON considering the application and the recommendation of the Staff of the Commission.

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

IT IS ORDERED under section 144 of the Act that the Cease Trade Order be revoked.

June 18, 2003.

"John Hughes"

2.2.3 Can-Banc NT Corp. and BMO Nesbitt Burns Inc. - subcl. 121(2)(a)(ii)

Headnote

Subclause 121(2)(a)(ii) – subdivided offering – relief from section 119 – the prohibition 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 trades with the issuer in securities comprising the issuer's portfolio.

Applicable Ontario Statutes

Securities Act, R.S.O. 1990, c. S.5, as amended, ss.1(1), 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
CAN-BANC NT CORP.

AND

BMO NESBITT BURNS INC.

ORDER
(Subclause 121(2)(a)(ii))

UPON the application of Can-Banc NT Corp. ("Can-Banc") and BMO Nesbitt Burns Inc. ("Nesbitt") to the Ontario Securities Commission (the "Commission") pursuant to subclause 121(2)(a)(ii) of the Act for an order exempting Nesbitt from the applicability of section 119 of the Act in connection with the acquisition by Nesbitt, as principal, of certain portfolio securities owned by Can-Banc in connection with the redemption by Can-Banc of all of its issued and outstanding class A capital shares (the "Capital Shares") and preferred shares (the "Preferred Shares");

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

AND UPON the applicants having represented to the Commission that:

1. Can-Banc was incorporated under the laws of the Province of Ontario on July 10, 1992.

2. Can-Banc is a passive "split share" investment company, the purpose of which is to enable investors, through the holding of Capital Shares or Preferred Shares, to satisfy separately the investment objectives of capital appreciation or dividend income with respect to common shares (the "Portfolio Shares") of Bank of Montreal, Canadian Imperial Bank of Commerce, The Bank

of Nova Scotia, Royal Bank of Canada and The Toronto-Dominion Bank held by Can-Banc.

3. Can-Banc is a reporting issuer within the meaning of the Act and, to the best of its knowledge, is not in default of any requirement of the Act or the regulation or rules made thereunder.

4. Can-Banc is a mutual fund as defined in subsection 1(1) of the Act.

5. The Capital Shares and the Preferred Shares are listed on The Toronto Stock Exchange Inc. (the "TSX").

6. The Portfolio Shares are listed and traded on, among other stock exchanges, the TSX.

7. Nesbitt is the administrator of the ongoing affairs of Can-Banc under an administration agreement, in respect of which it earns a fee for its services.

8. Nesbitt is registered under the Act as a dealer in the categories of "broker" and "investment dealer" and, *inter alia*, is a member of the Investment Dealers Association of Canada and the TSX. Nesbitt acted as promoter and as one of the agents in connection with the initial public offering of capital shares in 1992 which have since either been redeemed or converted into Capital Shares and the offering of Preferred Shares to the public pursuant to the prospectus of Can-Banc dated August 20, 1998 (the "Prospectus").

9. Three of the five directors and all of the officers of Can-Banc are employees of Nesbitt.

10. Nesbitt is not an insider of any issuer of the Portfolio Shares within the meaning of subsection 1(1) of the Act.

11. By virtue of Nesbitt's relationship with Can-Banc, Nesbitt has access to information concerning the investment program of Can-Banc.

12. In accordance with the articles of Can-Banc, and consistent with the disclosure in the Prospectus and therefore the expectation of the holders of the Capital Shares and the Preferred Shares, the Board of Directors of Can-Banc proposes to have Can-Banc redeem all of the Capital Shares and Preferred Shares outstanding on August 31, 2003 (or the first business day thereafter).

13. To fund the redemption, Can-Banc proposes to liquidate its portfolio of Portfolio Shares by:

    (a) selling Portfolio Shares to holders of Capital Shares in accordance with the option described below in paragraph 14; and

    (b) selling remaining Portfolio Shares by way of one or more competitive tenders, or otherwise privately or into the market.

14. As contemplated in the articles of Can-Banc and the Prospectus, at the request of certain holders of Capital Shares who tender their shares together with a certain cash payment, Can-Banc will make payment of the amount due on redemption of the Capital Shares by delivering Portfolio Shares (rounded down to the nearest whole share) having a value equal to the redemption price in respect of such Capital Shares plus the additional cash payment (the "Shareholder Purchases").

15. Can-Banc proposes to dispose of remaining Portfolio Shares by way of one or more competitive tenders to be supervised by the two independent directors of Can-Banc and the legal counsel of Can-Banc and which will involve a request for tenders from Nesbitt and no fewer than two other major investment dealers acting at arm's length to Can-Banc and Nesbitt (the "Tender Process"). Can-Banc is proposing to dispose of Portfolio Shares by way of Tender Process to ensure that the Portfolio Shares will be disposed of in an orderly fashion so that Can-Banc may realize the best reasonably available price therefor, and to preclude any artificial reduction in the market price of the Portfolio Shares which may be caused by selling the significant number of Portfolio Shares required to be sold into the market.

16. Participants in each Tender Process will only have one opportunity to bid for the Portfolio Shares and the persons supervising the Tender Process will not, prior to completion of the Tender Process, disclose to any participant the bid price for the Portfolio Shares submitted by the other participants.

17. With price being the sole determining factor, the Portfolio Shares to be sold under each Tender Process will be sold to the participant bidding the highest price (the "Bid Price") for such Portfolio Shares. Accordingly, it is possible that the Portfolio Shares may be sold to Nesbitt, as principal (the "Tender Process Purchases").

18. In addition to the Shareholder Purchases and the Tender Process or where such methods are not chosen or available, Can-Banc also intends to fund redemptions by selling Portfolio Shares to Nesbitt who may purchase such shares as principal (the "Regular Purchases", and together with the Tender Process Purchases, the "Principal Purchases") either privately or through the market, provided that the price obtained (net of all transaction costs, if any) by Can-Banc from Nesbitt is at least as high as the price that is available (net of all transaction costs, if any)

through the facilities of the applicable stock exchange at the time of the trade.

19. When making a Principal Purchase, Nesbitt will comply with the rules, procedures and policies of the stock exchanges of which it is a member regarding principal transactions.

20. Any Principal Purchases will be approved by the two independent directors of Can-Banc.

21. Nesbitt will not receive any commissions from Can-Banc in connection with Principal Purchases and in carrying out Principal Purchases, Nesbitt will deal fairly, honestly and in good faith with Can-Banc.

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

IT IS ORDERED, pursuant to subclause 121(2)(a)(ii) of the Act, that Nesbitt is exempt from the applicability of section 119 of the Act in respect of the Principal Purchases, provided that such purchases are made in accordance with paragraphs 14 through 21 herein.

June 20, 2003.

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

2.2.4 Sanford C. Bernstein Limited - s. 211 of Reg. 1015

Headnote

Applicant for registration as an international dealer exempted from the requirement in subsection 208(2) of the Regulation that it carry on the business of an underwriter in a country other than Canada where applicant carries on the business of a dealer in another country and will not act as an underwriter in Ontario.

Statutes Cited

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

Regulations Cited

Regulation made under the Securities Act, R.R.O., Reg. 1015, as am., ss. 100(3), 208(2) and 211.

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

AND

IN THE MATTER OF
R.R.O. 1990, REGULATION 1015,
AS AMENDED (the "Regulation")

AND

IN THE MATTER OF
SANFORD C. BERNSTEIN LIMITED

ORDER
(Section 211 of the Regulation)

UPON the application (the "Application") of Sanford C. Bernstein Limited (the "Applicant") to the Ontario Securities Commission (the "Commission") for an order (the "Order"), pursuant to section 211 of the Regulation, exempting the Applicant from the requirement in subsection 208(2) of the Regulation that the Applicant carry on the business of an underwriter in a country other than Canada, in order for the Applicant to be registered under the Act as a dealer in the category of "international dealer";

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is not currently registered in any capacity under the Act and has filed an application for registration under the Act as a dealer in the category of "international dealer".

2. Subsection 208(2) of the Regulation provides that "no person or company may register as an

international dealer unless the person or company carries on the business of a dealer and underwriter in a country other than Canada".

3. The Applicant is a limited liability company incorporated under the laws of the United Kingdom and having its principal place of business in the United Kingdom. The Applicant is an indirect subsidiary of Alliance Capital Management L.P. and an affiliate of Sanford C. Bernstein & Co., LLC. Alliance Capital Management L.P. provides advisory services and Sanford C. Bernstein & Co., LLC provides advisory and trading services principally to institutional and high net worth investors worldwide.

4. The Applicant is registered as a broker-dealer with the U.K. Financial Services Authority ("FSA"). The Applicant also holds a European ISD (Investment Services Directive) Passport to conduct investment services in the following jurisdictions without having to be registered in each such jurisdiction: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Italy, Liechtenstein, Luxembourg, The Netherlands, Norway, Portugal, the Republic of Ireland, Spain and Sweden.

5. The Applicant is not registered with the FSA to carry on underwriting activities and does not carry on the business of an underwriter in the United Kingdom or in any other jurisdiction in the world.

6. The Applicant will not act as an underwriter in Ontario if it is registered under the Act as an "international dealer", despite the fact that subsection 100(3) of the Regulation deems an "international dealer" to have been granted registration as an underwriter for the purposes of a distribution which it is authorized to make by section 208 of the Regulation.

7. In the absence of this Order, the Applicant would not meet the requirements of the Regulation for registration as a dealer in the category of "international dealer" as it does not carry on the business of an underwriter in a country other than Canada.

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

IT IS ORDERED, pursuant to section 211 of the Regulation, that, in connection with the registration of the Applicant as a dealer under the Act in the category of "international dealer", the Applicant is exempt from the provisions of subsection 208(2) of the Regulation requiring that the Applicant carry on the business of an underwriter in a country other than Canada, provided that, so long as the Applicant is registered under the Act as an "international dealer":

(1) the Applicant carries on the business of a dealer in a country other than Canada; and

(2) despite subsection 100(3) of the Regulation, the Applicant does not act as an underwriter in Ontario.

June 20, 2003.

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

2.2.5 Dual Capital Management Limited et al. - ss. 127 and 127.1

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

AND

IN THE MATTER OF
DUAL CAPITAL MANAGEMENT LIMITED,
WARREN LAWRENCE WALL, SHIRLEY JOAN WALL

ORDER
(Sections 127 and 127.1)

WHEREAS on April 30, 2003 the Ontario Securities Commission (the "Commission") issued an amended Notice of Hearing (the "Notice of Hearing") pursuant to sections 127 and 127.1 of the *Securities Act* (the "Act") in respect of Dual Capital Management Limited ("Dual Capital"), Warren Lawrence Wall ("Warren Wall"), and Shirley Joan Wall ("Joan Wall");

AND WHEREAS the respondents entered into a settlement agreement dated June 19, 2003 (the "Settlement Agreement") wherein they agreed to a proposed settlement of the proceedings commenced by the Notice of Hearing, subject to the approval of the Commission, and wherein Warren Wall provided to the Commission a written undertaking never to apply for registration in any capacity under Ontario securities law and Joan Wall 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 Statement 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 June 19, 2003, attached to this Order, is hereby approved;

(2) pursuant to clause 2 of subsection 127(1) of the Act, Dual Capital will cease trading securities permanently effective the date of the Order of the Commission approving the proposed settlement agreement herein;

(3) pursuant to clause 2 of subsection 127(1) of the Act, Warren Wall will cease trading securities permanently effective the date of the Order of the Commission approving the proposed settlement agreement herein, with the sole exception that after one year from the date of the Order approving this settlement, Warren Wall 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)*);

(4) pursuant to clause 2 of subsection 127(1) of the Act, Joan Wall will cease trading securities permanently effective the date of the Order of the Commission approving the proposed settlement agreement herein, with the sole exception that after one year from the date of the Order approving this settlement, Joan Wall is permitted to trade securities through a registered dealer for the account of her registered retirement savings plan (as defined in the *Income Tax Act (Canada)*);

(5) pursuant to clause 7 of subsection 127(1) of the Act, Warren Wall shall resign his position as an officer or director of any reporting issuer. Further, Warren Wall shall resign his position as an officer or director of any issuer, save and except any position Warren Wall may hold as an officer or director with an issuer incorporated by him and/or Joan Wall to provide services in the construction industry, which services are solely related to the construction of a business or residential premise and construction contract administration, provided that such issuer remains a private company within the meaning of section 1(1) of the Act and does not accept funds from the public. Further, Warren Wall 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;

(6) pursuant to clause 7 of subsection 127(1) of the Act, Joan Wall shall resign her position as an officer or director of any reporting issuer. Further, Joan Wall shall resign her position as an officer or director of any issuer, save and except any position Joan Wall may hold as an officer or director with an issuer incorporated by her and/or Warren Wall to provide services in the construction industry, which services are solely related to the construction of a business or residential premise and construction contract administration, provided that such issuer remains a private company within the meaning of section 1(1) of the Act and does not accept funds from the public. Further, Joan Wall shall resign her 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;

(7) pursuant to clause 8 of subsection 127(1) of the Act, Warren Wall is prohibited permanently from becoming or acting as an officer or director of any reporting issuer. Further, Warren Wall is prohibited permanently from becoming or acting as an officer or director of any issuer, save and except any position Warren Wall may hold as an officer or director with an issuer incorporated by

him and/or Joan Wall to provide services in the construction industry, which services are solely related to the construction of a business or residential premise and construction contract administration, provided that such issuer remains a private company within the meaning of section 1(1) of the Act and does not accept funds from the public. Further, Warren Wall is prohibited from becoming or acting 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;

(8) pursuant to clause 8 of subsection 127(1) of the Act, Joan Wall is prohibited permanently from becoming or acting as an officer or director of any reporting issuer. Further, Joan Wall is prohibited permanently from becoming or acting as an officer or director of any issuer, save and except any position Joan Wall may hold as an officer or director with an issuer incorporated by her and/or Warren Wall to provide services in the construction industry, which services are solely related to the construction of a business or residential premise and construction contract administration, provided that such issuer remains a private company within the meaning of section 1(1) of the Act and does not accept funds from the public. Further, Joan Wall is prohibited from becoming or acting 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;

(9) Warren Wall is reprimanded by the Commission under clause 6 of subsection 127(1) of the Act;

(10) Joan Wall is reprimanded by the Commission under clause 6 of subsection 127(1) of the Act;

June 24, 2003.

"Paul Moore" "Wendell S. Wigle"

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

AND

IN THE MATTER OF
DUAL CAPITAL MANAGEMENT LIMITED,
WARREN LAWRENCE WALL, SHIRLEY JOAN WALL

SETTLEMENT AGREEMENT

I INTRODUCTION

1. By Amended Notice of Hearing dated April 30, 2003 (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 that the respondents Dual Capital Management Limited ("Dual Capital"), Warren Lawrence Wall ("Warren Wall") and Shirley Joan Wall ("Joan Wall") cease trading in securities, permanently or for such time as the Commission may direct;

(b) to make an order that any exemptions contained in Ontario securities law do not apply to the respondents Dual Capital, Warren Wall and Joan Wall or any of them permanently, or for such period as specified by the Commission;

(c) to make an order that the respondents Warren Wall and Joan Wall resign one or more positions that the respondents or any of them hold as a director or officer of an issuer;

(d) to make an order that the respondents Warren Wall and Joan Wall be prohibited from becoming or acting as director or officer of any issuer;

(e) to make an order that the respondents Warren Wall and Joan Wall be reprimanded;

(f) to make an order that the respondents Dual Capital, Warren Wall and Joan Wall, or any of them, pay the costs of Staff's investigation in relation to the matters subject to this proceeding;

(g) to make an order that the respondents Dual Capital, Warren Wall and Joan Wall, or any of them, pay the costs of this

proceeding incurred by or on behalf of the Commission; and/or

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

II JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceedings initiated in respect of the respondents by the Notice 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.

3. 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

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

Introduction

5. Dual Capital is incorporated under the laws of Ontario and since October, 1994, carried on business as the general partner of Dual Capital Limited Partnership (the "Limited Partnership"). Dual Capital has not been registered in any capacity pursuant to section 25(1) of Ontario *Securities Act* R.S.O. 1990, c.S.5, as amended (the "Act").

6. Warren Wall is an individual residing in Ontario and at all material times was the President and a director of Dual Capital. Warren Wall has not been registered in any capacity pursuant to section 25(1) of the Act.

7. Joan Wall is an individual residing in Ontario, and at all material times was a director and the secretary/treasurer of Dual Capital. Prior to June 28, 1995, Joan Wall was not registered in any capacity pursuant to section 25(1) of the Act. Joan Wall was registered as a salesperson with Triple A Financial Services Inc. ("Triple A"), a mutual fund dealer and limited market dealer, pursuant to section 26(1) of the Act from June 28, 1995 to October 13, 1998. As at October 20, 1998, Joan Wall was registered as a salesperson with Investment and Tax Counsel Corporation, a mutual fund dealer, and also a limited market dealer (as of May 5, 1999) pursuant to section 26(1) of the Act. Joan Wall has not been registered in any capacity since June 30, 2000.

Trading Without a Prospectus Contrary to the Requirements of Ontario Securities Law

8. During the period from October, 1994 to December, 1996, the general partner, Dual Capital, accepted subscriptions to the Units from investors residing in Ontario.

9. During the material times, the respondents, Dual Capital, Warren Wall, and Joan Wall, traded in securities, namely the 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.

10. The 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.

11. Further, the Offering Memorandum dated October 18, 1994 as amended on December 19, 1994 for the Limited Partnership (the "Offering Memorandum") was not delivered to the Commission as required under Ontario securities law. The Offering Memorandum was also not provided to each investor who purchased the Units.

12. In addition, on or about May 27, 1997, Warren Wall, on behalf of the general partner, Dual Capital, filed with the Commission a Form 20 purporting to report a trade under clause 72(1)(p) of the Act. The Form 20 filed with the Commission did not contain complete and/or accurate information as required under Ontario securities law, including, but not limited to, accurate and complete information concerning the date(s) of the trade(s), the names of the purchaser(s), and the amount or number of securities purchased under the offering of the Units. In addition, the Form 20 filed stated that the promoter, DJL Capital Corporation, received $47,233.85 as compensation, when in fact DJL Capital Corporation received payments in the amount of approximately U.S. $161,525.00.

Trading in the Units Contrary to Requirements of Ontario Securities Law

13. Dual Capital and Warren Wall between October 13, 1994 and December 4, 1996 traded in securities, namely, limited partnership units of Dual Capital Limited Partnership without being

registered to trade in such securities as required by section 25(1) of the Act.

14. Joan Wall between October 13, 1994 and June 27, 1995 traded in securities, namely, limited partnership units of Dual Capital Limited Partnership without being registered to trade in such securities as required by section 25(1) of the Act.

Misrepresentations to Investors Contrary to the Public Interest

(i) Use of Proceeds

15. The summary of the Offering Memorandum states, in part, the following with respect to "Use of Proceeds":

"The net proceeds of this Offering, after deducting the expenses of the issue, are estimated to be a maximum of $5,000,000.00 and a minimum of $860,000.00. The Limited Partnership will use the net proceeds of this Offering to facilitate trades in financial instruments, such as bank debentures, thereby providing income to the Limited Partnership."

16. The Offering Memorandum represented that the "Trading Partner" (which party is not identified in the Offering Memorandum) would seek to provide an annual rate of return to the Limited Partnership and related parties equal to 30% of the funds placed on deposit. The Offering Memorandum further represented that the "....foregoing will be paid on a monthly basis and is subject to the Trading Partner effecting trades."

17. During the material times, Dual Capital, Warren Wall and Joan Wall failed to disclose to investors that certain funds accepted from investors for the purchase of Units were not used to "facilitate trades in financial instruments", and further failed to disclose that investors' funds instead were used for payments to various companies and persons, including payments to Dual Capital and/or Dual Financial Group Inc., a company owned by Warren Wall and Joan Wall.

(ii) Representations in Promotional Material

18. Further, a brochure (the "Brochure") entitled "International Lending Programme - Investor Information" prepared by Warren Wall 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 misleading to investors and contrary to the public interest.

Conviction of Dual Capital Management Limited, Warren Wall and Joan Wall of Violations of Ontario Securities Law

19. On October 26, 2000, in a related prosecution under section 122 of the Act before the Honourable Mr. Justice Douglas, Dual Capital, Warren Wall and Joan Wall, entered pleas of guilty in relation to the following five charges laid under section 122 of the Act:

(1) Dual Capital and Warren Wall between October 13, 1994 and December 4, 1996 traded in securities, namely limited partnership units of Dual Capital Limited Partnership without being registered to trade in such securities as required by section 25(1) of the Act and did thereby commit an offence contrary to section 122(1)(c) of the Act.

(2) Joan Wall between October 13, 1994 and June 27, 1995 traded in securities, namely, limited partnership units of Dual Capital Limited Partnership without being registered to trade in such securities as required by section 25(1) of the Act and did thereby commit an offence contrary to section 122(c) of the Act.

(3) Warren Wall and Joan Wall between October 13, 1994 and December 4, 1996, being a director or officer of Dual Capital Management Limited, did authorize, permit or acquiesce in the offence committed by Dual Capital described in subparagraph 1 above, and did thereby commit an offence contrary to section 122(3) of the Act.

(4) Dual Capital, Warren Wall and Joan Wall between October 13, 1994 and December 4, 1996 did trade in securities, namely limited partnership units of Dual Capital 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 and did thereby commit an offence contrary to section 122(1)(c) of the Act.

(5) Warren Wall and Joan Wall between October 13, 1994 and December 4, 1996, being a director or officer of Dual Capital, did authorize, permit or acquiesce in the offence committed by Dual Capital described in suparagraph 4

above and did commit an offence contrary to section 122(3) of Act.

20. The guilty pleas were entered following twelve days of trial, after the prosecutor for the Ontario Securities Commission had called its witnesses to testify and closed its case, after the defence had called four witnesses, and during the re-examination of Warren Wall (who had testified on his own behalf and been subject to cross examination by the prosecutor for the Ontario Securities Commission.) Mr. Justice Douglas accepted the pleas, entered convictions and sentenced Warren Wall and Joan Wall to a total of 30 months and 22 months, respectively, and Dual Capital to a total fine of $1,000,000.

21. In the course of delivering his Reasons for Sentence, Mr. Justice Douglas made findings of fact, based on the evidence at trial, including the following findings:

(1) The direct loss to the 56 members or so of the public who relied upon the accused persons can be considered, which (ignoring, for the moment, so-called repayments of interest and principal) is something in the range of 1.5 million dollars U.S., or, at a generous current exchange rate of 66 cents Canadian to the U.S. dollar, approximately $2,265,000.00 Canadian .... It appeared to be the position of the accused that they did not particularly profit from this mis-adventure, but that other more culpable persons did.

(2) Dealing with the conduct of the accused until January 26th, 1995, during this period of time, the accused, with others, conceived and formulated this investment scheme. They in part documented it, and, importantly, sold it to their clients. In this period of time they raised $860,000.00 U.S. or 1.3 million dollars Canadian.

(3) Respecting the conceptualization, formulation and documentation of the investment scheme, Mr. Wall testified that the idea of the investment scheme (referenced under various headings, including the "Roll Programme" and the "International Lending Programme") came to him by way of Dennis Little and D.J.L. Limited, Bob Adams, Mr. Altman of A.A.A. Financial Services, all of which led to Mr. Poirier and Mr. Adams of Dundas and, ultimately, Mr. Huppe of Oakville.

(4) To varying degrees, Mr. Wall pointed to these gentlemen as being to blame for this fiasco, as through counsel, so did Mrs. Wall. I utterly reject the testimony of Mr. Wall in this regard. The evidence supports only the inference of guilty knowledge respecting these events on behalf of both Mr. Wall and Mrs. Wall.

(5) I find that the Roll Programme as conceived, was and remained 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.

(6) Any complete reading of the Investor Lending Programme One or Investor Lending Programme Two will show the nonsensical nature of the proposal. Under cross-examination, Mr. Wall was forced to admit that many of the eight representations numbered and contained in each of these were essentially false throughout the time-frame of the Programme.

(7) Referencing the investment concept provisions of the two Offering Memoranda leads one to a similar conclusion. I reject utterly that Mr. Wall, a seasoned business man, trained in the arcane of insurance contracts and insured investments, and Mrs. Wall, similarly exposed and trained and also licensed, at least from June 1995 to sell mutual funds, did not recognize the significant risks associated with the concept, even as it was described in the Offering Memoranda.

(8) For example, at page five of the First Offering Memorandum, under the heading Investment Concept, the following is stated:

"The business of the limited partnership is to realize profits on trades of financial instruments such as bank debentures and thus provide income for the limited partners. To this end, the net proceeds of the offering will be placed through an intermediatory company on deposit with Canadian or international bank. The trading company; the trading partners will be selected by the general partner will arrange for the purchase and sale by an international bank financial institution or brokerage firm, the financial institution, a

financial instrument such as bank debentures without placing the limited partners' funds at risk. The funds placed on deposit by the limited partnership together with funds from other sources will serve as a guarantee to the other contracting party that the transactions will be effected. The trading partner will seek to provide an annual rate of return to the limited partner and related parties equal to 30 percent of the amount of funds placed on deposit by the partnership. The annual rate of return to the limited partners is expected to be 14 percent. The rate of return ultimately realized will be based on the performance of the trading partner which will be on a best efforts basis. The limited partnership will not buy or sell financial instruments and it is not expected that the funds placed on deposit will be used directly in such transactions, rather the trading partner will seek a potential purchaser of the financial instrument, and at such time as the purchase is confirmed will then identify the seller. The limited partnership's funds on deposit will be combined with funds from other sources and serve as a guarantee to the seller that the financial institution will be able to effect the purchase. The trading party will not arrange for the purchase of a financial instrument unless the ultimate purchaser has been identified and payment effected by that party. The financial institution will realize a profit on the transaction based on the spread between the price at which the financial institution buys the financial instrument and the price at which it immediately thereafter sells the financial instrument. A similar process will be followed when the trading partner first identifies a potential seller of the financial instrument as oposed to a purchase."

(9) I simply reject that Mr. and Mrs. Wall had any belief in the viability of this scheme based on this fundamental contradiction between the assertion of no risk and the assertion of placing these funds on guarantee.

(10) I find that Mr. and Mrs. Wall made a series of misrepresentations designed to mislead investors with respect to this risk, and indeed to take the risk.

(11) Turning to the sale of the investment scheme, to sell this scheme, the Investment Lending Programme and Summaries were prepared either in the Wall's office or forwarded from there. They were forwarded to clients and various brokers. No effort was made to screen the investment so that only sophisticated investors were solicited. No effort was made to ensure that only those who could afford such significant losses were solicited.

(12) Indeed, the evidence is conclusive and nearly complete that all of the investors were neither sophisticated (but naive), nor rich (but poor) or, at least, dependent upon the little money they had.

(13) The Walls told some people that they were themselves investing in this. They were not. Others were told to borrow money to invest in this scheme.

(14) As noted above, the Investment Lending Programme One and Two and Summaries were finally admitted, for the most part, to be misrepresentations.

(15) The short point, here, was that the documentation was prepared, either by the Walls or someone else, but it was accepted by the Walls, reviewed by the Walls and went out on their letterhead. It went to their clients. It was prepared, in my view, quite deliberately to highlight the selling points. Those selling points were false. The Walls knew they were false.

(16) The Programme was not only sold by written falsehoods, but also orally, evidence dramatically points to the equal participation of both Warren and Joan Wall. Mrs. Wall, on that evidence, perhaps played somewhat of an unique role in convincing people, particularly women, to invest in this programme.

(17) What was the conduct after December 17th, 1996, the start of the Ontario Securities investigation?

(18) Well, there is no doubt that there is some bad blood between the secretary, Ms. Alderman and the Walls. I accept her evidence in all essential aspects, notwithstanding the attempts by the Walls, in my view, to seduce, co-op and buy her silence over the years of her employment.

(19) She told us the truth when she said the following. First, that the computer records were deleted to remove them from the grasp of the Ontario Securities Commission. Second, the hard copy records were put into garbage bags so

they could be destroyed. Third, she was told to lie to the Ontario Securities Commission as to what happened to those records. And fourth, Exhibit Two(d) was created to falsely provide the Ontario Securities Commission with the impression there were only 24 investors, and that the Walls through D.F. Group had personally invested $440,000.00.

22. The conduct alleged above, and the conviction of the respondents, Dual Capital, Warren Wall and Joan Wall of the offences outlined above, constitutes conduct contrary to sections 25 and 53 of the Act and conduct contrary to the public interest.

IV TERMS OF SETTLEMENT

23. The respondents, Dual Capital, Warren Wall and Joan Wall, agree to the following terms of settlement:

(a) pursuant to clause 2 of subsection 127(1) of the Act, Dual 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, Warren Wall 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 one year from the date of the Order approving this settlement, Warren Wall 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) pursuant to clause 2 of subsection 127(1) of the Act, Joan Wall 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 one year from the date of the Order approving this settlement, Joan Wall is permitted to trade securities through a registered dealer for the account of her registered retirement savings plan (as defined in the *Income Tax Act (Canada)*);

(d) Warren Wall 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;

(e) Joan Wall 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 "C" to this settlement agreement;

(f) pursuant to clause 7 of subsection 127(1) of the Act, Warren Wall shall resign his position as an officer or director of any reporting issuer. Further, Warren Wall shall resign his position as an officer or director of any issuer, save and except any position Warren Wall may hold as an officer or director with an issuer incorporated by him and/or Joan Wall to provide services in the construction industry, which services are solely related to the construction of a business or residential premise and construction contract administration, provided that such issuer remains a private company within the meaning of section 1(1) of the Act and does not accept funds from the public. Further, Warren Wall 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;

(g) pursuant to clause 7 of subsection 127(1) of the Act, Joan Wall shall resign her position as an officer or director of any reporting issuer. Further, Joan Wall shall resign her position as an officer or director of any issuer, save and except any position Joan Wall may hold as an officer or director with an issuer incorporated by her and/or Warren Wall to provide services in the construction industry, which services are solely related to the construction of a business or residential premise and construction contract administration, provided that such issuer remains a private company within the meaning of section 1(1) of the Act and does not accept funds from the public. Further, Joan Wall shall resign her 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;

(h) pursuant to clause 8 of subsection 127(1) of the Act, Warren Wall is prohibited permanently from becoming or acting as an officer or director of any reporting issuer. Further, Warren Wall is prohibited permanently from becoming or acting as an officer or director of any issuer, save and except any position Warren Wall may hold as an officer or director with an issuer incorporated by him and/or Joan Wall to provide services in the construction industry, which services are solely related to the construction of a business or residential premise and construction contract administration, provided that such issuer remains a private company within the meaning of section 1(1) of the Act and does not accept funds from the public. Further, Warren Wall is prohibited from becoming or acting 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;

(i) pursuant to clause 8 of subsection 127(1) of the Act, Joan Wall is prohibited permanently from becoming or acting as an officer or director of any reporting issuer. Further, Joan Wall is prohibited permanently from becoming or acting as an officer or director of any issuer, save and except any position Joan Wall may hold as an officer or director with an issuer incorporated by her and/or Warren Wall to provide services in the construction industry, which services are solely related to the construction of a business or residential premise and construction contract administration, provided that such issuer remains a private company within the meaning of section 1(1) of the Act and does not accept funds from the public. Further, Joan Wall is prohibited from becoming or acting as an officer or director of any issuer has an interest directly or indirectly in any registrant effective the date of the Order of the Commission approving this settlement;

(j) Warren Wall agrees to be reprimanded by the Commission under clause 6 of subsection 127(1) of the Act;

(k) Joan Wall agrees to be reprimanded by the Commission under clause 6 of subsection 127(1) of the Act;

(l) Warren Wall will attend, in person, at the hearing before the Commission to consider the proposed settlement; and

(m) Joan Wall will attend, in person, at the hearing before the Commission to consider the proposed settlement.

V STAFF COMMITMENT

24. 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 other 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.

VI PROCEDURE FOR APPROVAL OF SETTLEMENT

25. The approval of the settlement as set out in the Settlement Agreement shall be sought at a joint public hearing held before the Commission in accordance with the procedures described in this agreement and the Commission' Rules of Practice.

26. 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.

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

28. 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) This agreement and all negotiations leading up to it shall be without prejudice to Staff and the respondents, and 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.

29. 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 28 in this part will apply as if this Settlement Agreement had not been approved in accordance with the procedures set out herein.

VII DISCLOSURE OF SETTLEMENT AGREEMENT

30. 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.

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

VIII EXECUTION OF SETTLEMENT AGREEMENT

32. 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.

June 19, 2003.

"Dual Capital Management Limited"
Per: Authorized Signing Officer

"Warren Lawrence Wall"
Warren Lawrence Wall

Shirley Joan Wall
"Shirley Joan Wall"

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

SCHEDULE "A"

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

AND

IN THE MATTER OF
DUAL CAPITAL MANAGEMENT LIMITED,
WARREN LAWRENCE WALL, SHIRLEY JOAN WALL

ORDER
(Sections 127 and 127.1)

WHEREAS on April 30, 2003 the Ontario Securities Commission (the "Commission") issued an amended Notice of Hearing (the "Notice of Hearing") pursuant to sections 127 and 127.1 of the *Securities Act* (the "Act") in respect of Dual Capital Management Limited ("Dual Capital"), Warren Lawrence Wall ("Warren Wall"), and Shirley Joan Wall ("Joan Wall");

AND WHEREAS the respondents entered into a settlement agreement dated June , 2003 (the "Settlement Agreement") wherein they agreed to a proposed settlement of the proceedings commenced by the Notice of Hearing, subject to the approval of the Commission, and wherein Warren Wall provided to the Commission a written undertaking never to apply for registration in any capacity under Ontario securities law and Joan Wall 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 Statement 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 June , 2003, attached to this Order, is herebyapproved;

(2) pursuant to clause 2 of subsection 127(1) of the Act, Dual 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;

(3) pursuant to clause 2 of subsection 127(1) of the Act, Warren Wall 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 one year from the date of the Order

approving this settlement, Warren Wall 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)*);

(4) pursuant to clause 2 of subsection 127(1) of the Act, Joan Wall 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 one year from the date of the Order approving this settlement, Joan Wall is permitted to trade securities through a registered dealer for the account of her registered retirement savings plan (as defined in the *Income Tax Act (Canada)*);

(5) pursuant to clause 7 of subsection 127(1) of the Act, Warren Wall shall resign his position as an officer or director of any reporting issuer. Further, Warren Wall shall resign his position as an officer or director of any issuer, save and except any position Warren Wall may hold as an officer or director with an issuer incorporated by him and/or Joan Wall to provide services in the construction industry, which services are solely related to the construction of a business or residential premise and construction contract administration, provided that such issuer remains a private company within the meaning of section 1(1) of the Act and does not accept funds from the public. Further, Warren Wall 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;

(6) pursuant to clause 7 of subsection 127(1) of the Act, Joan Wall shall resign her position as an officer or director of any reporting issuer. Further, Joan Wall shall resign her position as an officer or director of any issuer, save and except any position Joan Wall may hold as an officer or director with an issuer incorporated by her and/or Warren Wall to provide services in the construction industry, which services are solely related to the construction of a business or residential premise and construction contract administration, provided that such issuer remains a private company within the meaning of section 1(1) of the Act and does not accept funds from the public. Further, Joan Wall shall resign her 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;

(7) pursuant to clause 8 of subsection 127(1) of the Act, Warren Wall is prohibited permanently from becoming or acting as an officer or director of any reporting issuer. Further, Warren Wall is prohibited permanently from becoming or acting as an officer or director of any issuer, save and except any position Warren Wall may hold as an officer or director with an issuer incorporated by him and/or Joan Wall to provide services in the construction industry, which services are solely related to the construction of a business or residential premise and construction contract administration, provided that such issuer remains a private company within the meaning of section 1(1) of the Act and does not accept funds from the public. Further, Warren Wall is prohibited from becoming or acting as an officer or director of any issuer has an interest directly or indirectly in any registrant effective the date of the Order of the Commission approving this settlement;

(8) pursuant to clause 8 of subsection 127(1) of the Act, Joan Wall is prohibited permanently from becoming or acting as an officer or director of any reporting issuer. Further, Joan Wall is prohibited permanently from becoming or acting as an officer or director of any issuer, save and except any position Joan Wall may hold as an officer or director with an issuer incorporated by her and/or Warren Wall to provide services in the construction industry, which services are solely related to the construction of a business or residential premise and construction contract administration, provided that such issuer remains a private company within the meaning of section 1(1) of the Act and does not accept funds from the public. Further, Joan Wall is prohibited from becoming or acting as an officer or director of any issuer has an interest directly or indirectly in any registrant effective the date of the Order of the Commission approving this settlement;

(9) Warren Wall is reprimanded by the Commission under clause 6 of subsection 127(1) of the Act;

(10) Joan Wall is reprimanded by the Commission under clause 6 of subsection 127(1) of the Act;

June 24, 2003.

SCHEDULE "B"

IN THE MATTER OF
DUAL CAPITAL MANAGEMENT LIMITED,
WARREN LAWRENCE WALL, SHIRLEY JOAN WALL

UNDERTAKING TO THE
ONTARIO SECURITIES COMMISSION

I, Warren Lawrence Wall, am a Respondent to an Amended Notice of Hearing dated April 30, 2003 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 June , 2003.

_____
Witness:

Date: June , 2003

_____
Warren Lawrence Wall

Date: June , 2003

Acknowledgement as Received by,

_____
John Stevenson
the Secretary to the
Ontario Securities Commission

Date: , 2003

SCHEDULE "C"

IN THE MATTER OF
DUAL CAPITAL MANAGEMENT LIMITED,
WARREN LAWRENCE WALL, SHIRLEY JOAN WALL

UNDERTAKING TO THE
ONTARIO SECURITIES COMMISSION

I, Shirley Joan Wall, am a Respondent to an Amended Notice of Hearing dated April 30, 2003 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 June , 2003.

_____
Witness:

Date: June , 2003

_____
Shirley Joan Wall

Date: June , 2003

Acknowledgement as Received by,

_____
John Stevenson
the Secretary to the
Ontario Securities Commission

Date: , 2003

Chapter 4

Cease Trading Orders

4.1.1 Temporary, Extending & Rescinding Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Extending Order	Date of Lapse/Revoke
Acclaim Energy Inc.	12 Jun 03	24 Jun 03		26 Jun 03
Apiva Ventures Limited	12 Jun 03	24 Jun 03		26 Jun 03
Brazilian Resources Inc.	12 Jun 03	24 Jun 03		26 Jun 03
Camberly Energy Ltd.	12 Jun 03	24 Jun 03	24 Jun 03	
Carbite Gold Inc.	12 Jun 03	24 Jun 03	24 Jun 03	
Cubacan Exploration Inc.	12 Jun 03	24 Jun 03	24 Jun 03	
Eletel Inc.	19 Jun 03	30 Jun 03		
Goran Capital Inc.	17 Jun 03	27 Jun 03		
ISEE3D Inc.	19 Jun 03	30 Jun 03		
Neotel Inc.	23 Jun 03	04 July 03		
NewKidCo International Inc.	12 Jun 03	24 Jun 03	24 Jun 03	
Pangeo Pharma Inc.	24 Jun 03	04 Jul 03		
Telepanel Systems	25 Jun 03	07 Jul 03		
TSI TelSys Corporation	17 Jun 03	27 Jun 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
Afton Food Group Ltd.	21 May 03	03 Jun 03	03 Jun 03		
Aspen Group Resources Corporation	21 May 03	03 Jun 03	03 Jun 03		
Devine Entertainment Corporation	22 May 03	04 Jun 03	04 Jun 03		
Finline Technologies Ltd.	21 May 03	03 Jun 03	03 Jun 03		
Hydromet Environmental Recovery Ltd.	21 May 03	03 Jun 03	03 Jun 03		
Polyphalt Inc.	21 May 03	03 Jun 03	03 Jun 03		
Ivernia West Inc.	22 May 03	04 Jun 03	04 Jun 03		
Slater Steel Inc.	21 May 03	03 Jun 03	03 Jun 03	20 Jun 03	

Chapter 6

Request for Comments

6.1.1 Notice and Request for Comments - Proposed Multilateral Instrument 52-108 Auditor Oversight

NOTICE AND REQUEST FOR COMMENTS

PROPOSED MULTILATERAL INSTRUMENT 52-108
AUDITOR OVERSIGHT

We, the securities regulatory authorities in each jurisdiction other than British Columbia (the Participating Jurisdictions), seek public comment on proposed Multilateral Instrument 52-108 *Auditor Oversight* (the Proposed Instrument). We invite comment on the Proposed Instrument generally. In addition, we have raised a number of questions for your specific consideration.

Introduction

The Proposed Instrument is an initiative of certain members of the Canadian Securities Administrators (CSA). The Proposed Instrument is expected to be adopted as a rule in each of Alberta, Manitoba, Newfoundland and Labrador, Nova Scotia, Ontario, Québec, and the Northwest Territories, as a Commission regulation in Saskatchewan, as a policy in New Brunswick, Prince Edward Island, and the Yukon Territory, and as a code in Nunavut. The British Columbia Securities Commission has not yet determined whether it will adopt the Proposed Instrument.

The purpose of the Proposed Instrument is to contribute to public confidence in the integrity of financial reporting of reporting issuers by promoting high quality, independent auditing. The Proposed Instrument will require reporting issuers to engage auditors that:

- participate in an independent oversight program established by the Canadian Public Accountability Board (CPAB) for public accounting firms that audit the financial statements of public companies (the CPAB Oversight Program), and
- are participants in good standing with the CPAB.

In addition, the Proposed Instrument will require, other than in Alberta and Manitoba, public accounting firms that audit reporting issuers to:

- participate in the CPAB Oversight Program,
- be participants in good standing with the CPAB, and
- provide notice to their audit clients and securities regulators of any sanctions or restrictions imposed by the CPAB.

Background

The U.S. capital market recently suffered an erosion of investors' confidence as a result of several large corporate failures involving accounting irregularities. Following these corporate failures, the U.S. government enacted the *Sarbanes Oxley Act of 2002* (the "SOX Act") in July 2002. The SOX Act introduced numerous accounting, disclosure and corporate governance reforms aimed at restoring public confidence in the U.S. capital markets. One of these reforms was the creation of the Public Company Accounting Oversight Board (PCAOB) to oversee the auditing of public companies that are subject to U.S. securities laws. The PCAOB is mandated, among other things, to establish a registration system for public accounting firms that prepare audit reports for issuers and to conduct inspections of registered public accounting firms. Under the SOX Act, it will be unlawful for any public accounting firm that is not registered with the PCAOB to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to an issuer subject to U.S. securities laws.

Although the corporate scandals that triggered the threat to market confidence took place in the United States, they have revealed the vulnerability of our markets and the need to strengthen existing requirements in our jurisdictions. In response, several initiatives have been introduced to address the issue of investor confidence and to maintain the reputation of our capital markets internationally, including the creation of the CPAB that will oversee the work done by auditors of public companies in Canada.

The CPAB

In July 2002, federal and provincial financial and securities regulators, as well as Canada's chartered accountants announced the creation of the CPAB. The CPAB represents a new independent public oversight system for accountants and accounting firms that audit reporting issuers. It is incorporated as a corporation without share capital under the *Canada Corporations Act*. A copy of its By-laws are attached to this Notice in Appendix A.

The mandate of the CPAB is to promote high quality external audits of reporting issuers. It will be responsible for developing and implementing an oversight program that includes regular and rigorous inspections of the auditors of Canada's public companies.

The Council of Governors

Structurally, the CPAB has a Council of Governors that appoints the Chair and members of the Board. The Council also has the power to remove the Chair and members of the Board.

The five-member Council of Governors is made up of the:

- Chair of the CSA (currently the Chair of the Alberta Securities Commission)
- Chairs of the Ontario Securities Commission and the Commission des valeurs mobilières du Québec
- Superintendent of Financial Institutions Canada
- President and CEO of The Canadian Institute of Chartered Accountants (CICA)

The Council selects its own Chair from among the four non-CICA Governors. Each Governor is entitled to one vote and decisions are made by majority vote.

The Council will periodically review the effectiveness of the new system and take appropriate action, as necessary, to improve its effectiveness.

The Board of Directors

The Board has 11 voting members. Seven members, including the Chair, are from outside the accounting profession. Of the remaining four members, initially three will be the CEOs of the provincial Institutes of Chartered Accountants in Alberta and Ontario and the CEO of the Ordre des comptables agréés du Québec. Board members are appointed for a term of up to 3 years and will be eligible for reappointment, provided that the total tenure does not exceed 6 years. Should a vacancy arise, the Council of Governors will appoint a replacement.

Mandate and Responsibilities

The CPAB will enter into contractual agreements with firms auditing reporting issuers that will permit the CPAB to take actions necessary to carry out its responsibilities.

As part of the CPAB Oversight Program, the CPAB will, among other things:

- Promote, publicly and proactively, high quality external audits of reporting issuers;
- Establish and maintain participation requirements for public accounting firms that audit reporting issuers;
- Conduct inspections of public accounting firms that audit reporting issuers to ensure compliance with professional standards and participation requirements;
- Receive and evaluate reports and recommendations resulting from the inspection process, including, if appropriate, reports from provincial accounting organizations on results of inspections of public accounting firms that audit reporting issuers that are not inspected directly by the CPAB;
- Impose, where appropriate, sanctions and restrictions on public accounting firms that audit reporting issuers and, where necessary require remedial action;
- Maintain a register of public accounting firms that audit reporting issuers;

- Refer matters, as appropriate, to provincial accounting organizations for discipline purposes;
- Refer matters, as appropriate, to securities regulators;
- Provide comments and recommendations on accounting standards, assurance standards and governance practices to relevant standards-setting and oversight bodies; and
- Provide recommendations to securities regulatory authorities.

The Board will report to the public at least annually on the results of its activities. The form and content of this report will be determined by the Board taking into account the need to provide a high degree of transparency.

Funding

The CPAB will establish a fee schedule that is designed to recover its start-up costs and its ongoing operating costs from participating public accounting firms. Annual operating costs have yet to be determined fully but are estimated to be in the range of $3 to $5 million. The structure and amount of the fees to be levied will be determined by the CPAB taking into account the need to ensure an equitable distribution of costs that reflects the extent to which a participating audit firm is involved in auditing reporting issuers. Elements that could be the subject of separate fees include: (i) start-up cost recovery fees, (ii) initial registration fees, (iii) annual participation fees, and (iv) inspection fees.

Registration with the CPAB

Any firm seeking to participate in the CPAB Oversight Program must demonstrate its suitability in its application. The Board will prescribe the form and content of the application. In connection with its review of a public accounting firm's application, the CPAB may examine the books and records of the applicant and make copies in order to ascertain and verify the information contained in the application. Once a public accounting firm's application is approved, it will have to enter into a participation agreement agreeing to abide by all of the provisions of the by-laws and rules and regulations of the CPAB pertaining to the Program. The Board will prescribe the time period within which a public accounting firm will have to enter into a participation agreement with the CPAB.

The CPAB will develop and maintain a publicly accessible register of participating public accounting firms that are in good standing.

The Inspection Program

The CPAB will hire full-time staff, including practice inspectors led by a full-time CEO. The Board of Directors is currently in the process of recruiting the CEO.

It is currently contemplated that CPAB's practice inspectors will inspect the majority of the largest accounting firms that audit reporting issuers to determine whether the firms are complying with professional standards, Rules of Professional Conduct, relevant regulatory requirements and the contractual requirements of the CPAB. In order to maximize efficiency and minimize duplication, it is possible that the CPAB will work with staff of provincial accounting organizations to inspect some public accounting firms that audit a small number of reporting issuers.

The exact scope, nature and frequency of inspections of participating firms will be determined by the CPAB. However, it is expected that the frequency of inspections will be greater for those firms that audit a large number of reporting issuers. The extent of each inspection may include:

- a review of the results of the firm's internal inspection program;
- follow-up on any matters reported in a previous inspection;
- a review of the implementation of any new CPAB requirement; and
- a review of any significant changes in the firm's policies such as changes in the firm's audit methodology.

Each inspection is expected to result in preparation of a report to the Board addressing matters such as:

- the adequacy of the firm's quality control policies and procedures for the public company audit practice;
- comments on compliance with the system of quality control for the public company audit practice and with the requirements of the CPAB; and

- deficiencies relating to the application of generally accepted auditing standards, including compliance with independence standards.

Summary and Discussion of the Proposed Instrument

The Proposed Instrument has five parts.

Part 1

Part 1 contains definitions of terms and phrases used in the Proposed Instrument that are not defined or interpreted under a national definitions instrument in force in a Participating Jurisdiction. National Instrument 14-101 *Definitions* defines commonly used terms and phrases and should be read together with the Proposed Instrument.

Part 1 also stipulates that the sections of the Proposed Instrument that impose requirements directly on auditors do not apply in Alberta and Manitoba. We have carved these jurisdictions out of these sections because they do not have rule-making authority to prescribe requirements respecting qualifications of auditors.

Part 2

Part 2 of the Proposed Instrument will require, in effect, every public accounting firm that audits an issuer that is a reporting issuer in any of the Participating Jurisdictions to participate in the CPAB Oversight Program.

a. Requirement to participate in the CPAB Oversight Program

Section 2.1 imposes a requirement, other than in Alberta and Manitoba, on any public accounting firm that chooses to audit financial statements of a reporting issuer to enter into a participation agreement with the CPAB. It should be emphasized that this requirement is being imposed directly on the auditor of a reporting issuer.

In addition to the requirement imposed on auditors, section 2.3 imposes a requirement on all reporting issuers in the Participating Jurisdictions to file auditor's reports issued by auditors that are participating in the CPAB Oversight Program.

The timing as to when a public accounting firm must enter into a participation agreement will be determined and announced by the Board of Directors of the CPAB. In accordance with its By-laws the CPAB may, until December 31, 2005, restrict the number of public accounting firms that are eligible to participate in the CPAB Oversight Program.

The necessity to participate in the CPAB Oversight Program, either by virtue of section 2.1 or section 2.3, only applies to an accounting firm that issues an auditor's report with respect to the financial statements of a reporting issuer. It does not apply to an accounting firm that participates or assists in the preparation or issuance of an auditor's report. This contrasts with the requirement under the SOX Act that any public accounting firm that participates in the preparation or issuance of an auditor's report to any issuer must register with the PCAOB. We have limited the scope of the Proposed Instrument to audit firms that issue the auditor's reports because we believe there will be relatively few situations in which a public accounting firm participates in the preparation or issuance of an auditor's report with respect to a reporting issuer and is not otherwise required to register with the CPAB. In addition, we note that Canadian generally accepted auditing standards require an auditor that is engaged to express an opinion on financial statements containing financial information audited by another auditor to carry out sufficient procedures to support the opinion given. Unlike in the U.S., the primary auditor assumes sole responsibility for the opinion expressed and may not refer to the work of another auditor except to explain the reason for a reservation of opinion.

We note that if proposed National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (NI 71-102) is implemented in the Participating Jurisdictions, certain foreign issuers that are reporting issuers will not be required to comply with section 2.3. Specifically, a foreign issuer that is defined as a "SEC foreign issuer" or as a "designated foreign issuer" in NI 71-102 will be deemed to comply with section 2.3 provided it complies with the regulations in its home jurisdiction respecting audit reports and financial statements. However, section 2.1 will require the issuer's auditors to enter into a participation agreement with the CPAB. We believe it is important that public accounting firms based outside Canada that audit foreign issuers reporting in the Participating Jurisdictions be subject to oversight by the CPAB. The CPAB will maintain flexibility on how it exercises that oversight, however, and it may choose to consider entering into arrangements with independent oversight bodies in the home jurisdiction of the auditor to share information about the results of inspections of the auditor carried out by that oversight body.

Request for Comments

Do you agree that public accounting firms in foreign jurisdictions should be required to participate in the CPAB Oversight Program? If not, what other alternatives should be considered? For example, should a public accounting firm based outside Canada that is subject to oversight by a comparable body in a foreign jurisdiction, such as the PCAOB, be treated differently?

b. Requirement to be in good standing

Sections 2.2 and 2.3 of the Proposed Instrument have the effect of requiring a participating audit firm to be in good standing at the time it issues an auditor's report relating to the financial statements of an issuer that is reporting in one of the Participating Jurisdictions.

For the accounting firm to be considered "in good standing", its participation agreement with the CPAB must not have been suspended or terminated at the time the auditor's report is issued. In addition, if the participating audit firm is subject to CPAB imposed sanctions or restrictions at the time it issues the auditor's report, it must be in compliance with those sanctions or restrictions. Further, if the accounting firm had been subject to CPAB imposed sanctions or restrictions that expired prior to the time it issues the auditor's report, it must have complied with those sanctions or restrictions to satisfy the good standing requirement.

Part 3

Part 3 does not apply in Alberta or Manitoba.

Section 3.1 requires public accounting firms that are subject to sanctions imposed by the CPAB to give written notice to their reporting issuer audit clients. This means that each audit client that is a reporting issuer in any one of the Participating Jurisdictions, other than Alberta or Manitoba, will have to be provided notice. In addition, the auditor will also have to provide notice to the regulator in each Participating Jurisdiction, other than Alberta and Manitoba, where a client is a reporting issuer.

The notice must provide details of the sanctions and be delivered within five business days. In addition, notice will have to be provided to potential reporting issuer clients if the public accounting firm is proposing to undertake an audit of their financial statements.

If, in the course of carrying out an inspection of a participating audit firm, the CPAB identifies defects with the firm's quality control systems, the board of directors of the CPAB may impose restrictions on the participating audit firm in order to address these deficiencies. In such cases, section 3.3 requires a public accounting firm that is subject to restrictions to give written notice to the regulator in each Participating Jurisdiction, other than Alberta or Manitoba, where a client is a reporting issuer. The public accounting firm, however, will not have to provide notice to its audit clients except when it fails to address the defects in its quality control systems to the satisfaction of the CPAB within the agreed time period.

Section 3.4 recognizes that there are benefits to providing the CPAB and a public accounting firm with the opportunity to address issues respecting a firm's quality control system without having to disclose that it is subject to restrictions. We believe that, by requiring disclosure only in situations where a public accounting firm fails to address the underlying deficiencies in its quality control systems within a reasonable period of time, it will act as an incentive to address deficiencies. Restrictions that will be imposed by the CPAB while the accounting firm addresses the underlying deficiencies will ensure that any auditor's report the firm may issue meets acceptable standards. A similar benefit is reflected in paragraph 2 of subsection 104(g) of the SOX Act that provides that the PCAOB does not have to publicly disclose findings of defects in the quality control systems of a public accounting firm except where those defects are not addressed by the firm within 12 months.

Request for Comments

Do you think that five business days is an appropriate length of time for a public accounting firm to provide notice to its audit clients? Do you agree that an audit firm should only be required to provide notice to its audit clients when it fails to address defects within the time period prescribed by the CPAB? Are there other more effective means of having information about sanctions or restrictions communicated? For example, should the CPAB disclose to the public on a timely basis any sanctions or restrictions it imposes on a public accounting firm?

Part 4

Part 4 provides for exemptive relief from the requirements of the Proposed Instrument.

Part 5

Part 5 sets out the effective date of the Proposed Instrument.

Authority for Proposed Instrument - Ontario

In those jurisdictions in which the Proposed Instrument are to be adopted or made as a rule or regulation, the securities legislation in each of those jurisdictions provides the securities regulatory authority with rule-making or regulation-making authority regarding the subject matter of the Proposed Instrument.

The following provisions of the *Securities Act* (Ontario) provides the Ontario Securities Commission (OSC) with authority to adopt the Proposed Instrument:

Paragraph 143(1)25(iv) authorizes the OSC to make rules prescribing requirements in respect of financial accounting, reporting and auditing, including standards of independence and other qualifications for auditors.

Paragraph 143(1)39(iii) authorizes the OSC to make rules prescribing format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by Ontario securities law.

Alternatives Considered

No alternatives were considered.

Unpublished Materials

In proposing the Proposed Instrument, we did not rely upon any significant unpublished study, report, decision or other written materials.

Anticipated Costs and Benefits

The anticipated costs and benefits of implementing the Proposed Instrument are discussed in the paper entitled *Investor Confidence Initiatives: A Cost Benefit Analysis*, which has been published together with this Notice and is incorporated by reference into this Notice.

Related Instruments

The Proposed Instrument is related to the following instruments: (i) proposed National Instrument 51-102 *Continuous Disclosure Obligations*, which requires auditor's reports to be filed with financial statements; (ii) proposed National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*, which will introduce certain requirements respecting auditor's reports and acceptable auditors; and (iii) proposed National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*, which will exempt certain foreign issuers that are reporting issuers from requirements respecting annual financial statements and auditor's reports filed in Canada.

In Ontario, the Proposed Instrument is related to section 78 of the *Securities Act* (Ontario)(the Act) and section 2 of the Regulation made under the Act (Regulation 1015).

Comments

Interested parties are invited to make written submissions on the Proposed Instrument. Submissions received by September 25, 2003 will be considered. **Due to timing concerns, comments received after the deadline will not be considered.**

Submissions should be sent, in duplicate, to the securities regulatory authorities listed below in care of the OSC and CVMQ:

Ontario Securities Commission
Commission des valeurs mobilières du Québec
Alberta Securities Commission
The Manitoba Securities Commission
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Securities Commission of Newfoundland and Labrador
Nova Scotia Securities Commission
Saskatchewan Financial Services Commission
Office of the Attorney General, Prince Edward Island
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Department of Justice, Securities Administration Branch, New Brunswick

John Stevenson, Secretary
Ontario Securities Commission
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Fax: (416) 593-2318
jstevenson@osc.goc.on.ca

Denise Brosseau, Secretary
Commission des valeurs mobilières du Québec
Stock Exchange Tower
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Fax: (514) 864-6381
Consultation-en-cours@cvmq.com

A diskette containing the submissions (in Windows format, preferably Word) should also be submitted.

Comment letters submitted in response to requests for comments are placed on the public file in certain jurisdictions and form part of the public record, unless confidentiality is requested. Comment letters will be circulated amongst the securities regulatory authorities, whether or not confidentiality is requested. Although comment letters requesting confidentiality will not be placed in the public file, freedom of information legislation in certain jurisdictions may require securities regulatory authorities in those jurisdictions to make comment letters available. Persons submitting comment letters should therefore be aware that the press and members of the public may be able to obtain access to any comment letters.

Questions may be referred to the following people:

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Proposed Instrument

The text of the Proposed Instrument follows.

Dated: June 27, 2003.

APPENDIX A

CANADIAN PUBLIC ACCOUNTABILITY BOARD/

CONSEIL CANADIEN SUR LA REDDITION DE COMPTES

BY–LAW NO. 1

BY–LAW NO. 1

A By–law relating to the affairs of

Canadian Public Accountability Board/Conseil canadien sur la reddition de comptes

BE IT ENACTED as a By–law of Canadian Public Accountability Board/Conseil canadien sur la reddition de comptes as follows:

Article 1
INTERPRETATION

1.1 **Definitions.** In this By–law and in all other By–laws and special resolutions of the Corporation, unless the context otherwise requires:

(a) "Act" means the Canada Corporations Act, and any act that may be substituted therefor, as from time to time amended;

(b) "Board" means the board of directors of the Corporation

(c) "By–laws" means this By–law No. 1 and all other By–laws of the Corporation from time to time in force and effect;

(d) "Chair" means the officer designated as the "Chair" of the Corporation as specified in Section 4.2;

(e) "CICA" means the Canadian Institute of Chartered Accountants, or any successor to such entity;

(f) "Corporation" means Canadian Public Accountability Board/Conseil canadien sur la reddition de comptes, incorporated as a corporation without share capital under the Act by Letters Patent;

(g) "Council of Governors" means the Members of the corporation described in Section 8.1 hereof and "Governor" means any one of such Members;

(h) "CVMQ" means the Commission des valeurs mobilières du Québec, or any successor body to such entity;

(i) "Directors" means the Independent Directors and the Ex-Officio Directors;

(j) "Ex-Officio Directors" means the directors of the Corporation referred to in paragraph 3.2(a) and paragraph 3.2(b) hereof;

(k) "Firm" or "firm" means a partnership of individuals practicing as such and includes, where the context permits, an individual carrying on business as a sole proprietor, and any professional corporation through which either a partner or a sole proprietor carries on its business;

(l) "Independent Directors" means the directors of the Corporation appointed pursuant to paragraph 3.2(c) hereof;

(m) "Industry Members" has the meaning ascribed thereto in Section 9.1 hereof;

(n) "Letters Patent" means the Letters Patent incorporating the Corporation, as from time to time amended and supplemented by supplementary letters patent;

(o) "Members" shall mean the Council of Governors and/or the Industry Members, as the context may require;

(p) "OSC" means the Ontario Securities Commission, or any successor body to such entity;

(q) "OSFI" means the Office of the Superintendent of Financial Institutions of Canada, or any successor body to such entity;

(r) "Participating Audit Firm" or "PAF" means an accounting firm that has entered into a Participation Agreement and has not had its participant status terminated;

(s) "Participation Agreement" means a participation agreement between the Corporation and a PAF contemplated by Article 11 of this By-law No. 1;

(t) "Program" means the Corporation's program applicable to PAFs;

(u) "Relevant Provincial Regulatory Authority" means those accounting oversight bodies which are admitted as Industry Members by the Board;

(v) "Relevant Regulatory Authorities" means the Relevant Provincial Regulatory Authorities together with the CICA; and

(w) "Rules and Regulations" means the rules and regulations contemplated by Section 11.3 hereof.

1.2 Interpretation. In this By–law No. 1 and in all other By–laws hereafter passed, unless the context otherwise requires, words importing the singular number or the masculine gender shall include the plural number or the feminine gender, as the case may be, and vice versa, and references to persons shall include individuals, firms and corporations. The division of this By–law No. 1 into articles, sections and paragraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

Article 2
GENERAL

2.1 Head Office. Until changed in accordance with the Act, the head office of the Corporation shall be in the City of Toronto, in the Province of Ontario.

2.2 Seal. Until changed by resolution of the Board, the seal, an impression whereof is stamped in the margin hereof, shall be the corporate seal of the Corporation.

2.3 Financial Year. The financial year-end of the Corporation shall be as determined by the Board.

2.4 Books and Records. The Board shall ensure that all necessary books and records of the Corporation required by the By–laws or by any applicable statute or law are regularly and properly kept.

2.5 Passage of By–laws. By–laws of the Corporation may be made, repealed or amended by a By–law passed by a majority of the Directors present at a meeting of the Board and sanctioned by at least:

(a) 4 of the votes cast by Governors at a special general meeting of the Council of Governors duly called for the purpose of considering the said By–law, and

(b) a majority of the votes cast by the Industry Members at a special general meeting of the Industry Members duly called for the purpose of considering the said By-law,

provided that any repeal, amendment or substitution of any such By–law relating to the matters referred to in subsection 155(2) of the Act shall not be enforced or acted upon until the approval of the Minister of Industry Canada has been obtained.

2.6 Amendment to Letters Patent. The Letters Patent may be amended by a By-law passed by a majority of the Directors present at a meeting of the Board and sanctioned by at least:

(a) 4 of the votes cast by Governors at a special general meeting of the Council of Governors duly called for the purpose of considering the said By–law, and

(b) a majority of the votes cast by the Industry Members at a special meeting of the Industry Members duly called for the purpose of considering the said By-law.

Article 3
THE BOARD

3.1 Duties. The Board shall manage or supervise the management of the property, activities and affairs of the Corporation in all things and in particular, shall manage or supervise the management to:

(a) promote, publicly and proactively, the importance of high quality external audits of public companies;

(b) oversee the design and implementation of a rigorous program of inspection of PAFs;

(c) establish the terms of reference of the Board;

(d) approve the business plan and budget for the activities of the Corporation, supervise the activities of the Corporation and evaluate the effectiveness of the Corporation in carrying out this mandate;

(e) hire the Chief Executive Officer;

(f) obtain independent technical advice when needed and appropriate;

(g) establish and maintain the membership requirements for PAFs;

(h) establish and maintain a register of firms that have been accepted as PAFs;

(i) receive and evaluate the reports and recommendations of the results of the inspection of PAFs;

(j) when appropriate, refer matters relating to PAFs to the Relevant Provincial Regulatory Authorities for discipline purposes;

(k) impose sanctions directly on PAFs, including conditions and restrictions;

(l) report publicly on the means taken to oversee the audit of public companies and the results achieved;

(m) manage or supervise all other matters which are the proper subject matter of the management of the business and affairs of the Corporation;

(n) ensure appropriate transparency in the conduct of the Corporation's activities;

(o) carry out or cause to be carried out inspections of the audit practices of PAFs, as they relate to public companies;

(p) when appropriate, provide comments and recommendations on accounting standards, assurance standards, rules of professional conduct, and governance practices to Relevant Regulatory Authorities and any other relevant bodies;

(q) make recommendations to the Relevant Regulatory Authorities, other applicable regulatory authorities and other supervisory bodies (including, without limitation, securities regulatory authorities and OSFI) with a view to harmonizing and strengthening the inspection and discipline processes applicable to PAFs; and

(r) when appropriate, notify the Relevant Regulatory Authorities, other applicable regulatory authorities and other supervisory bodies (including, without limitation, securities regulatory authorities and OSFI) whenever the Board has imposed sanctions on or conditions or restrictions pertaining to the participation status of any PAF or any individual working at a PAF.

3.2 Number and Term. The Board shall consist of 11 directors of whom:

(a) two shall be the chief executive officer (or the equivalent) of the Relevant Provincial Regulatory Authority in each of the Provinces of Ontario and Quebec with oversight responsibility for Participating Audit Firms which audit public companies with the highest total market capitalization as at the end of the last completed calendar year and have their principal place of business in such provinces;

(b) one shall be appointed by the Industry Members from among the chief executive officers (or the equivalent) of the two Relevant Provincial Regulatory Authorities in provinces other than Ontario and Quebec with oversight responsibility for Participating Audit Firms which audit public companies with the highest total market capitalization as at the end of the last completed calendar year and have their principal place of business in such provinces; and

(c) eight shall be appointed by the Council of Governors from among individuals who satisfy the criteria specified in Section 3.3 below (such eight directors herein collectively referred to as the "Independent Directors"), provided however that, notwithstanding Subsection 3.3(a) hereof, one of such individuals may (but need not) hold a professional accounting designation (such person holding such designation, a "Professional Director").

3.3 Independent Directors. An Independent Director shall be an individual who is otherwise qualified to be a Director and who, unless otherwise agreed by unanimous resolution of the Council of Governors,

(a) does not hold any professional accounting designation;

(b) is not a sole proprietor carrying on the business of accounting, nor a partner, member, director, officer or employee of any firm of accountants; and

(c) in the three years prior to appointment as an Independent Director, was not a sole proprietor carrying on the business of accounting, nor a partner, member, director, officer or employee of any firm of accountants.

3.4 Qualification. The following individuals are not qualified to stand for election as Directors:

(a) individuals who are less than 18 years of age;

(b) individuals who, pursuant to an order of a court of competent jurisdiction under applicable provincial legislation, are declared to be mentally incompetent persons or incapable of managing their affairs made;

(c) individuals who have the status of bankrupt under the *Bankruptcy and Insolvency Act* (Canada);

(d) individuals who have been convicted of a violation of securities legislation; and

(e) individuals who have been found guilty of violating the rules of professional conduct of the profession (if any) of which such individual was or is a member.

3.5 Election and Term. The first Directors of the Corporation shall be the individuals specified as such in the Application for Letters Patent, such individuals to hold office for a term expiring at the close of the first annual meeting of the Council of Governors, or until their successors are elected or appointed. Thereafter, the Independent Directors shall be appointed by the Council of Governors at each annual meeting of the Council of Governors and the Ex-Officio Director appointed pursuant to Subsection 3.2(b) shall be appointed by the Industry Members at each annual meeting of the Industry Members. Subject to Sections 3.6 and 3.7 below, the Directors so appointed shall hold office until the first annual meeting after such Directors are so appointed, at which time, each such Director shall retire as a Director, but, if qualified, shall be eligible for re-election.

3.6 Removal of Directors. The Council of Governors may, by a resolution approved by at least four of the Governors, remove any Independent Director (but not an Ex-Officio Director) before the expiration of his term of office and may by a resolution approved by at least three Governors, elect any person in his stead for the remainder of the term of the Independent Director so removed. The Directors shall, on the requisition of the Chair of the Corporation or by any two Governors, call a special general meeting of the Council of Governors for the purpose of considering a resolution to remove any Independent Director before the expiration of his term of office. Such requisition shall state its purpose, be signed by the requisitionists and be deposited at the head office of the Corporation. Such requisition may consist of several documents in like form, each signed by one or more requisitionists.

3.7 Vacation of Office. The office of a Director shall be automatically vacated upon the occurrence of any of the following events:

(a) if the Director is adjudged a bankrupt under the *Bankruptcy and Insolvency Act* (Canada);

(b) if an order of a court of competent jurisdiction is made under applicable provincial legislation declaring the Director to be a mentally incompetent person or incapable of managing his affairs;

(c) if the Director is removed from office by resolution of the Council of Governors as provided in Section 3.6 hereof;

(d) if, by notice in writing to the Corporation, the Director resigns his office and if such resignation is not effective immediately, upon such resignation becoming effective in accordance with its terms;

(e) on the death of the Director;

(f) with respect to a Director who is an Independent Director, if such director ceases to satisfy the criteria specified in Section 3.3 (subject to the proviso contained in Subsection 3.2(c)); or

(g) if such Director shall cease to hold the office by virtue of which such Director became a Director.

3.8 Vacancies. Vacancies on the Board, howsoever caused, shall be filled by the Council of Governors.

3.9 Meetings and Quorum.

(a) The powers of the Directors may be exercised by resolution passed at a meeting of the Board at which a quorum is present.

(b) The presence of seven of the Directors shall be necessary to constitute a quorum for the transaction of business at any meeting of the Board. Where there is a vacancy on the Board, the remaining Directors may exercise all the powers of the Board so long as a quorum remains in office.

(c) The Board may hold its meetings either at the head office of the Corporation or at any place within or outside Canada as it may from time to time determine.

(d) Board meetings may be formally called by the Chair, any three Directors, or by resolution of the Council of Governors.

3.10 Notice of Board Meetings. Notice of the time and place of any meeting of the Board shall be telephoned or sent by electronic means (including facsimile and e-mail) to each Director not less than 2 days before the meeting is to take place or shall be mailed to each Director not less than 14 days before the meeting is to take place. The statutory declaration of the Chief Executive Officer or of any other person authorized to give notice of a meeting that notice has been given pursuant to this By–law No. 1 shall be sufficient and conclusive evidence of the giving of such notice. The Board may appoint a day or days in any month or months for regular meetings at an hour to be named and no notice need be sent of such regular meeting. A meeting of the Board may also be held, without notice, immediately following the first general meeting of the Members and any subsequent annual meeting of the Members in each year.

3.11 Meetings Without Notice. A meeting of the Board may be held at any time and place without notice if all Directors are present, or if those who are not present, either before or after the meeting, waive notice or otherwise consent to such meeting being held, and at such meeting any business may be transacted which the Corporation, at a meeting of Directors, may transact, provided that a quorum of the Board is present.

3.12 Adjourned Meetings. Notice of an adjourned meeting of the Board is not required if the time and place of the adjourned meeting is announced at the original meeting.

3.13 Meetings by Telephone. If all the Directors of the Corporation consent thereto generally or in respect of a particular meeting, a Director may participate in a meeting of the Board or of a committee of the Board by means of such conference telephone facilities as permit all persons participating in the meeting to hear or otherwise communicate with each other, and a Director participating in such a meeting by such means is deemed to be present at the meeting. Quorum shall be established and votes shall be recorded by voice or televisual identification of each Director by a roll-call of Directors participating in the meeting.

The Board may also meet by any other electronic means that permits each Director to communicate adequately with each other, provided that the Board has passed a resolution addressing the mechanics of holding such a meeting, including how security issues should be handled, the procedure for establishing quorum and recording votes. Each Director must have equal access to the specific means of communication to be used and each Director must consent in advance to meeting by electronic means using the specific means of communication proposed for the meeting.

3.14 Error or Omission in Notice, Board. No error or omission in giving notice of a meeting of the Board or any adjourned meeting of the Board shall invalidate such meeting or invalidate or make void any proceedings taken or had thereat and any Director may at any time waive notice of any such meeting and may ratify, approve and confirm any or all proceedings taken or had thereat.

3.15 Chair. The Chair or, in his absence, the Vice-Chair, shall act as chair of all meetings of the Board. If no such person is present, the Directors present shall choose one of their number to be chair of the meeting.

3.16 Voting. Subject to the Letters Patent and the By–laws, any question arising at any meeting of the Board shall be decided by a majority of votes. Each Director is entitled to exercise one vote. In the case of an equality of votes, the chair of the meeting shall not have a second or casting vote. All votes at any such meeting shall be taken by a show of hands in the usual manner of assent or dissent. A declaration by the chair of the meeting that a resolution has been carried and an entry to that effect in the minutes shall be admissible in evidence as *prima facie* proof of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

3.17 Powers. The Board shall administer the affairs of the Corporation in all things and may make or cause to be made for the Corporation, in its name, any kind of contract which the Corporation may lawfully enter into and, save as hereinafter provided, generally, may exercise all such powers and do all such other acts and things as the Corporation, by its

Letters Patent or otherwise, is authorized to exercise and do. The Board may appoint such agents and engage such employees as it may deem necessary from time to time and such persons shall have such authority and shall perform such duties as shall be prescribed by the Board at the time of such appointment.

3.18 **Committees.** The Board may from time to time constitute such committee or committees as it deems necessary, and for such purposes and with such powers as may be prescribed by the Board. Any member of any such committee shall be removable from such committee at any time at the discretion of the Board. The members of any such committee or committees shall serve at the pleasure of the Board. Any such committee may formulate its own rules of procedure subject to such regulations and/or directions as the Board may from time to time make in respect thereof.

3.19 **Declaration of Interest.** It shall be the duty of every Director who is in any way, whether directly or indirectly, interested in a contract or arrangement or proposed contract or arrangement with the Corporation to declare such interest and to refrain from voting thereon in accordance with the Act.

3.20 **Remuneration of Independent Directors.** Independent Directors shall be entitled to receive such remuneration, if any, for acting as Directors as the Board may from time to time determine.

3.21 **Expenses.** Directors shall be entitled to be paid their reasonable expenses properly incurred in the performance of their duties, including their travel and other expenses properly incurred by them in attending meetings of the Board, of any committee thereof, or of the Members, or otherwise properly incurred by them in connection with carrying out the activities of the Corporation.

3.22 **Confidentiality.** Each Director shall treat and keep as confidential all information which he becomes possessed of in the course of the execution of the duties of his office as a Director of the Corporation.

Article 4
OFFICERS

4.1 **Officers.** The Council of Governors shall appoint a Chair and a Vice-Chair of the Corporation and the Board shall appoint a Chief Executive Officer. The Board may also from time to time create such other offices of the Corporation and appoint such other individuals from time to time to fill such offices, including one or more assistants to any of the officers so appointed. The Board may specify the duties of all officers and, in accordance with this By–law and subject to the Act, may delegate to such officers powers to manage the business and affairs of the Corporation. Subject to Section 4.4 hereof, an officer may, but need not, be a Director and one person may hold more than one office.

4.2 **Chair.** The Chair shall be chosen by the Council of Governors from among the Independent Directors (but not, if any, a Professional Director) and shall be the Chair of the Corporation. Subject to Section 3.15, the Chair shall act as the chair of all meetings of the Board and shall have such other powers and duties as the Board may determine. The Chair shall receive such remuneration as the Board may from time to time determine. The Chair shall be the custodian of the seal of the Corporation, which the Chair shall deliver only when authorized by a resolution of the Board to do so and to such person or persons as may be named in the resolution.

4.3 **Vice-Chair.** The Vice-Chair shall be chosen by the Council of Governors from among the Independent Directors and shall have such powers and duties as the Council of Governors may determine.

4.4 **Chief Executive Officer.** The Chief Executive Officer shall be appointed by the Board and shall be the chief executive officer of the Corporation. Subject to the authority of the Board, the Chief Executive Officer shall have general supervision of the activities and affairs of the Corporation and such other powers and duties as the Board may specify. The Chief Executive Officer shall not be a member of the Board.

4.5 **Powers and Duties of Other Officers.** The powers and duties of all other officers shall be such as the terms of their engagement call for or as the Board may specify.

4.6 **Variations of Powers and Duties.** The Board may from time to time and subject to the provisions of the Act, vary, add to or limit the powers and duties of any officer, other than the Chair and the Vice-Chair.

4.7 **Term of Office**. The Board, in its discretion, may remove any officer of the Corporation (other than the Chair and the Vice-Chair who shall be removable by the Council of Governors), without prejudice to such officer's rights under any employment contract or in law. Otherwise, each officer appointed by the Board shall hold office until his successor is appointed, or until his earlier resignation.

4.8 **Remuneration of Officers.** The officers shall be paid such remuneration for their services as the Board may from time to time determine. They shall also be entitled to be reimbursed for their travel and other expenses properly incurred by

them in the exercise of the duties of their respective offices. The remuneration of any employees or agents shall be such as the terms of their engagement call for or as the Board may specify.

4.9 Agents and Attorneys. The Corporation, by or under the authority of the Board, shall have power from time to time to appoint agents or attorneys for the Corporation in or outside Canada with such powers (including the power to sub–delegate) of management, administration or otherwise as may be thought fit by the Board.

Article 5
PROTECTION OF DIRECTORS AND OFFICERS

5.1 Limitation of Liability. No Director or officer of the Corporation shall be liable for the acts, neglects or defaults of any other Director or officer or employee, or for joining in any receipt or other act for conformity, or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired by order of the Board for or on behalf of the Corporation, or for the insufficiency or deficiency of any security in or upon which any of the moneys of the Corporation shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, firm or corporation with whom or which any of the monies, securities or effects of the Corporation shall be lodged or deposited, or for any loss occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which may happen in the execution of the duties of his office or in relation thereto unless the same are occasioned by his own willful neglect or default.

5.2 Indemnity. Every Director and officer of the Corporation and his heirs, executors, administrators, and estate and effects, respectively, shall from time to time and at all times, be indemnified and saved harmless out of the funds of the Corporation, from and against:

(a) all costs, charges and expenses whatsoever that such Director or officer sustains or incurs in or about any action, suit or proceeding that is brought, commenced or prosecuted against him or her, for or in respect of any act, deed, matter or thing whatever, made, done or permitted by him or her, in or about the execution of the duties of his office; and

(b) all other costs, charges and expenses that he sustains or incurs, in or about or in relation to the affairs of the Corporation;

except such costs, charges or expenses as are occasioned by his own willful neglect or default.

5.3 Expenses Paid in Advance. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of the action, suit or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on behalf of the Director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Corporation.

5.4 Other Remedies Available. The indemnification provided by this Article 5 shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under the Letters Patent or By–laws or any agreement, vote of the Members or disinterested Directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding any office with the Corporation, and shall continue as to a person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

5.5 Insurance. The Board may purchase such directors' and officers' insurance or any other insurance as it deems necessary or advisable to be paid for out of the funds of the Corporation.

Article 6
EXECUTION OF DEEDS AND BANKING

6.1 Signatories. The following are the only persons authorized to sign any document on behalf of the Corporation, other than in the usual and ordinary course of the Corporation's business:

(a) any person or persons appointed by resolution of the Board to sign a specific document, that type of document, or generally on behalf of the Corporation; or

(b) the Chair together with any other Director.

Any document so signed may, but need not, have the corporate seal applied.

6.2 **Facsimile Signatures.** The signature of any person authorized to sign on behalf of the Corporation, may, if specifically authorized by resolution of the Board, be written, printed, stamped, engraved, lithographed or otherwise mechanically reproduced. Anything so signed shall be as valid as if it had been signed manually, even if that person has ceased to hold office when anything so signed is issued or delivered, until revoked by resolution of the Board.

6.3 **Banking.** The banking business of the Corporation shall be transacted with such banks, trust companies or other financial institutions as may from time to time be designated by or under the authority of the Board. Such banking business or any part of it shall be transacted under such agreements, instructions and delegations of powers as the Board may, from time to time, prescribe or authorize.

Article 7
MEMBERS

7.1 **Membership Classes.** There shall be two classes of Members in the Corporation, namely, the Council of Governors and the Industry Members.

7.2 **Withdrawal.** Members may withdraw from the Corporation by delivering to the Corporation a resignation in writing, which shall be effective upon acceptance thereof by the Board.

Article 8
COUNCIL OF GOVERNORS

8.1 **Council of Governors.** The Council of Governors shall consist of 5 Governors in number and shall be comprised of the individuals who hold the following offices and/or appointments:

(a) the President of CICA;

(b) the Superintendent of Financial Institutions of Canada;

(c) the Chair of the OSC;

(d) the Chair of the CVMQ; and

(e) the Chair of the Canadian Securities Administrators, except where such individual is also the Chair of the OSC or Chair of the CVMQ, in which case, the Canadian Securities Administrators shall select the fifth Governor.

8.2 **Voting.** Each Governor shall have the right to notice of, and attendance at, all meetings of the Members. Subject to the provisions, if any, contained in the Letters Patent, each Governor shall, at all meetings of the Council of Governors, be entitled to one vote in respect of any matter on which such Governor is entitled to vote in accordance with the provisions of the Letters Patent and this By-law No. 1 including, without limitation, the right to vote on proposed amendments to the By-laws, the sole right to vote for the appointment of the Independent Directors and the sole right to appoint the Chair and the Vice-Chair of the Corporation. Except as aforesaid, the Governors shall have no other voting rights as Members of the Corporation.

8.3 **Annual and Special General Meetings.**

(a) An annual meeting of the Council of Governors shall be held not later than 18 months after the incorporation of the Corporation and thereafter, at least once in every calendar year and not more than 15 months after the holding of the last preceding annual meeting. At every annual meeting, in addition to any other business that may be transacted:

(i) the financial statements and the report of the auditors shall be presented to the Council of Governors; and

(ii) Directors shall be elected by the Council of Governors in accordance with the provisions set out in this By-law No. 1.

(b) The Chair of the Council of Governors, or any 2 Governors, shall have the power to call, at any time, any meeting of the Council of Governors.

8.4 **Notice of Council of Governors' Meetings.** Notice of the time and place of any meeting of the Council of Governors shall be telephoned or sent by electronic means (including facsimile and e-mail) to each Governor not less than 2 days before the meeting is to take place or shall be mailed to each Governor not less than 14 days before the meeting is to

take place. Notice of a special general meeting of the Council of Governors shall state the nature of the business to be transacted thereat in sufficient detail to permit the Council of Governors to form a reasoned judgment thereon. The statutory declaration of the Chief Executive Officer or of any other person authorized to give notice of a meeting that notice has been given pursuant to this By–law No. 1 shall be sufficient and conclusive evidence of the giving of such notice. The auditor of the Corporation is entitled to receive all notices and other communications relating to any meetings of the Members.

8.5 **Meetings Without Notice.** A meeting of the Council of Governors may be held at any time and place without notice if all Governors are present and waive notice or otherwise consent to such meeting being held, and at such meeting any business may be transacted which the Governors may transact.

8.6 **Meetings by Telephone.** If all the Governors of the Corporation consent thereto generally or in respect of a particular meeting, a Governor may participate in any annual or special general meeting or any adjourned meeting of the members of the Corporation by such conference telephone facilities as permit all persons participating in the meeting to hear or otherwise communicate with each other, and a Governor participating in such a meeting by such means is deemed to be present at the meeting. Any such consent shall be effective whether given before or after the meeting to which it relates and may be given with respect to all meetings of the Members. Quorum shall be established and votes shall be recorded by voice or televisual identification of each Governor by a roll-call of Governors participating in the meeting.

The Governors may also meet by any other electronic means that permits each Governor to communicate adequately with each other, provided that the Board has passed a resolution addressing the mechanics of holding such a meeting, including how security issues should be handled, the procedure for establishing quorum and recording votes. Each Governor must have equal access to the specific means of communication to be used and each Governor must consent in advance to meeting by electronic means using the specific means of communication proposed for the meeting.

8.7 **Chair of COG.** The Council of Governors shall select from among themselves a Governor to act as the chair of all meetings of the Council of Governors (the "COG Chair"). If the COG Chair is not present within fifteen minutes from the time fixed for holding the meeting, the Governors shall choose some person, who need not be a Governor, to be the chair of the meeting. The Governors shall also appoint some person, who need not be a Governor, to act as secretary of the meeting.

8.8 **Persons Entitled to be Present.** The only persons entitled to attend at meetings of the Council of Governors shall be the Governors, a secretary for the meeting and the auditor of the Corporation and others who, although not entitled to vote, are entitled or required under any provision of the Act, the Letters Patent or the By–laws to be present at the meeting. Any other persons may be admitted only on the invitation of the chair of the meeting or with the consent of the meeting.

8.9 **Error or Omission in Notice.** No error or omission in giving notice of any meeting or any adjourned meeting of the Council of Governors shall invalidate such meeting or make void any resolutions passed or proceedings taken thereat and the Governors may at any time waive notice of any such meeting and may ratify, approve and confirm any or all proceedings taken or had thereat.

8.10 **Adjournments.** Any meeting of the Council of Governors may be adjourned to any time and from time to time and such business may be transacted at such adjourned meeting as might have been transacted at the original meeting from which such adjournment took place. No notice shall be required of any such adjournment. Such adjournment may be made notwithstanding that no quorum is present.

8.11 **Quorum.** The presence of not fewer than 3 Governors shall be necessary for the transaction of business at any meeting of the Council of Governors.

8.12 **Show of Hands.** Any question at a Council of Governor's meeting may be decided by a show of hands. Whenever a vote by show of hands shall have been taken upon a question, a declaration by the chair of the meeting that the vote upon a question has been carried or not carried and an entry to that effect in the minutes of the meeting shall be *prima facie* evidence of the fact.

8.13 **Casting Vote.** In the event of an equality of votes on any question before a meeting of the Council of Governors, the chair of the meeting shall not have a second or casting vote.

8.14 **Location of Meetings.** The Council of Governors may hold its meetings either at the head office of the Corporation or at any place within or outside Canada as they may from time to time determine.

Article 9
INDUSTRY MEMBERS

9.1 Industry Members. Industry Members shall be comprised of a representative of each of the 10 provincial Institutes/Ordre of Chartered Accountants which are, hereby, admitted as Industry Members of the Corporation. Subject to a future by-law amendment, the Board will evaluate how and when to extend eligibility for membership as an Industry Member to a wider group. In so doing, the Board may establish criteria for such admission including, without limitation:

(a) the number or market capitalization of public companies audited by the firms for which the prospective Industry Member has jurisdiction;

(b) the disciplinary process of such prospective Industry Member, if any;

(c) the code of ethics (including auditor independence requirements) implemented by such prospective Industry Member, if any; and

(d) such other criteria as the Board sees fit.

9.2 Voting. Industry Members shall have the right to notice of, and attendance at, all meetings of the Industry Members and shall at all meetings of the Industry Members, be entitled to one vote in respect of any matter on which an Industry Member is entitled to vote in accordance with the provisions of this By-law No. 1. Without limiting the generality of the foregoing, the Industry Members shall have the sole right to vote for the appointment of the auditors of the Corporation and for the appointment of the Ex-Officio Director referred to in Subsection 3.2(b) of this By-law No. 1, and shall also have the right to vote on amendments to the Letters Patent or the By-laws of the Corporation, and in respect of any matter which, at law, under the Act, the Letters Patent or the By-laws require or contemplate an approval or authorization of the members of the Corporation.

9.3 Voting by Proxy. Every Industry Member entitled to vote at a meeting of the Industry Members may appoint a proxyholder, or one or more alternate proxyholders, to attend and act as its representative at the meeting in the manner and to the extent authorized and with the authority conferred by the proxy. A proxy shall be in writing and executed by the Industry Member or its attorney. Any such proxyholder or representative need not be an Industry Member.

9.4 Annual and Special General Meetings.

(a) An annual meeting of the Industry Members shall be held not later than 18 months after the incorporation of the Corporation and thereafter, at least once in every calendar year and not more than 15 months after the holding of the last preceding annual meeting. At every annual meeting, in addition to any other business that may be transacted:

(i) the financial statements and the report of the auditors shall be presented to the Industry Members; and

(ii) auditors shall be appointed by the Industry Members for the ensuing year and the remuneration of the auditors shall be fixed or the Board shall be authorized to fix such remuneration.

(b) (i) The Board; or

(ii) the greater of (A) two Industry Members and (B) 10% of the Industry Members,

shall have the power to call, at any time, any meeting of the Industry Members.

9.5 Notice of Industry Members' Meetings. Notice of the time and place of any meeting of the Industry Members shall be telephoned or sent by electronic means (including facsimile and e-mail) to each Industry Member not less than 20 days before the meeting is to take place or shall be mailed to each Industry Member not less than 20 days before the meeting is to take place. Notice of a special general meeting of the Industry Members shall state the nature of the business to be transacted thereat in sufficient detail to permit the Industry Members to form a reasoned judgment thereon and shall have attached thereto a form of proxy. The statutory declaration of the Chief Executive Officer or of any person authorized to give notice of a meeting that notice has been given pursuant to this By-law No. 1 shall be sufficient and conclusive evidence of the giving of such notice.

9.6 Meetings by Telephone. If all the Industry Members of the Corporation consent thereto generally or in respect of a particular meeting, an Industry Member may participate in any annual or special general meeting or any adjourned

meeting of the members of the Corporation by such conference telephone facilities as permit all persons participating in the meeting to hear or otherwise communicate with each other, and an Industry Member participating in such a meeting by such means is deemed to be present at the meeting. Any such consent shall be effective whether given before or after the meeting to which it relates and may be given with respect to all meetings of the Members. Quorum shall be established and votes shall be recorded by voice or televisual identification of each Industry Member by a roll-call of Industry Members participating in the meeting.

The Industry Members may also meet by any other electronic means that permits each Industry Member to communicate adequately with each other, provided that the Board has passed a resolution addressing the mechanics of holding such a meeting, including how security issues should be handled, the procedure for establishing quorum and recording votes. Each Industry Member must have equal access to the specific means of communication to be used and each Industry Member must consent in advance to meeting by electronic means using the specific means of communication proposed for the meeting.

9.7 **Meetings Without Notice.** A meeting of the Industry Members may be held at any time and place without notice if all Industry Members are present and waive notice or otherwise consent to such meeting being held, and at such meeting any business may be transacted which the Industry Members may transact.

9.8 **Chair.** The Chair or, in his absence, the Vice-Chair, shall be the chair of all meetings of the Industry Members. If no such officer be present within fifteen minutes from the time fixed for holding the meeting, the Industry Members shall choose some person, who need not be an Industry Member, to be the chair of the meeting. If the Secretary of the Corporation is absent or if he shall be presiding as the chair of the meeting in the absence of the Chair, the Industry Members shall also appoint some person, who need not be an Industry Member, to act as secretary of the meeting.

9.9 **Persons Entitled to be Present.** The only persons entitled to attend Industry Members' meetings shall be the Industry Members, any person holding a proxy duly executed in accordance with Section 9.3, the Chair, a secretary for the meeting and the auditor of the Corporation and others who, although not entitled to vote, are entitled or required under any provision of the Act or the Letters Patent or By–laws to be present at the meeting. Any other persons may be admitted only on the invitation of the chair of the meeting or with the consent of the meeting.

9.10 **Error or Omission in Notice.** No error or omission in giving notice of any meeting or any adjourned meeting of the Industry Members shall invalidate such meeting or make void any resolutions passed or proceedings taken thereat and the Industry Members may at any time waive notice of any such meeting and may ratify, approve and confirm any or all proceedings taken or had thereat.

9.11 **Adjournments.** Any meeting of the Industry Members may be adjourned to any time and from time to time and such business may be transacted at such adjourned meeting as might have been transacted at the original meeting from which such adjournment took place. No notice shall be required of any such adjournment. Such adjournment may be made notwithstanding that no quorum is present.

9.12 **Quorum.** The presence of not less than a majority of the Industry Members, in person or represented by proxy, shall be necessary for the transaction of business at any meeting of the Industry Members.

9.13 **Show of Hands.** Any question at an Industry Members' meeting may be decided by a show of hands. Whenever a vote by show of hands shall have been taken upon a question, a declaration by the chair of the meeting that the vote upon a question has been carried or not carried and an entry to that effect in the minutes of the meeting shall be *prima facie* evidence of the fact.

9.14 **Casting Vote.** In the event of an equality of votes on any question before a meeting of Industry Members, the chair of the meeting shall not have a second or casting vote.

9.15 **Location of Meetings.** The Industry Members may hold their meetings either at the head office of the Corporation or at any place within or outside Canada as they may from time to time determine.

Article 10
AUDITOR

10.1 **Auditor.**

(a) At the first meeting of the Industry Members following incorporation, the Industry Members shall appoint one or more auditors to audit the financial statements of the Corporation, and to report thereon at each annual meeting of the Industry Members, and if the Industry Members fail to do so, the Board shall forthwith make such appointment. Such auditors shall hold office until the close of the first annual meeting and thereafter, the Industry Members, at each annual meeting, shall appoint an auditor or firm of auditors to hold office until the

close of the next annual meeting of the Industry Members, and, if an appointment is not so made, the auditor in office will continue in office until a successor is appointed. The Board may fill any casual vacancy in the office of auditor, but while any vacancy continues, the surviving or continuing auditor, if any, may act. A person other than a retiring auditor is not capable of being appointed auditor at such a meeting unless the notice requirements of the Act have been met.

(b) The auditor shall not be a director, officer or employee of the Corporation or an affiliated corporation unless all of the Industry Members have unanimously consented thereto.

10.2 Remuneration. The remuneration of an auditor appointed by the Industry Members shall be fixed by the Industry Members or by the Board if it is authorized to do so by the Industry Members, and the remuneration of an auditor appointed by the Board shall be fixed by the Board.

Article 11
PARTICIPATING AUDIT FIRMS

11.1 Eligibility. Subject to Section 11.2 hereof, all accountants and accounting firms that are authorized to audit public companies in Canada shall be eligible to participate in the Program.

11.2 Transitional Eligibility. The Board may, until December 31, 2005, restrict the number of firms eligible to participate in the Program in accordance with criteria to be established by the Board from time to time.

11.3 Rules and Regulations.

(a) The Board may prescribe rules and regulations respecting participation by PAFs in the Program, and may amend such Rules and Regulations as it may see fit from time to time.

(b) The Board shall not prescribe new Rules and Regulations in final form and shall not make any material amendments to any, existing Rules and Regulations unless and until it has given not less than 60 days prior written notice of such new Rules and Regulations contemporaneously to:

(i) all Members and PAFs; and

(ii) the public in a form to be determined by the Board;

(c) The Board shall establish the initial Rules and Regulations by December 31, 2004.

11.4 Application Process.

(a) Any audit firm seeking to participate in the Program shall demonstrate its suitability for participation in an application, which shall be in such form and contain such information as the Board may from time to time prescribe.

(b) In connection with reviewing an applicant's application, the Corporation may examine the books and records of the applicant and make copies thereof, and take such evidence as may be desirable or appropriate to ascertain relevant facts bearing upon the applicant's qualifications and the veracity of the information contained in the applicant's application.

11.5 Participation Agreement. Upon the approval of an applicant's application, the applicant shall sign a Participation Agreement agreeing to abide by all of the provisions of the By-laws and Rules and Regulations of the Corporation pertaining to participation in the Program.

11.6 Register of Firms. The Corporation shall maintain a register of all audit firms which are participants in the Program. Such register shall be made accessible to the public in a form to be determined by the Board.

11.7 Continuing Qualifications. Each PAF shall comply with all By-laws and Rules and Regulations, shall co-operate with the Corporation, and shall comply with any sanctions and restrictions that may be imposed by the Board.

11.8 Termination of Participant Status. The participant status of a PAF may be terminated upon resolution of the Board:

(a) by submission by the PAF to the Corporation of a resignation which is accepted by the Board; or

(b) for failure of the PAF to adhere to the requirements for participation in the Program, after following the appropriate procedure established by the Board from time to time with respect thereto.

11.9 Reinstatement of Participant Status. Where an audit firm has had its participant status terminated, the firm may be reinstated:

(a) by complying with the admission requirements, if termination occurred by resignation; or

(b) by complying with the admission requirements for new firms and obtaining the approval of the Board, if termination was imposed pursuant to Section 11.8 above.

Article 12
BORROWING

12.1 Borrowing. The Board may from time to time:

(a) borrow money upon the credit of the Corporation;

(b) limit or increase the amount to be borrowed;

(c) issue debentures or other securities of the Corporation;

(d) pledge or sell such debentures or other securities for such sums and at such prices as may be deemed expedient;

(e) secure any such debentures, or other securities, or any other present or future borrowing or liability of the Corporation, by mortgage, hypothec, charge or pledge of all or any currently owned or subsequently acquired real and personal, movable and immovable, property of the Corporation, and the undertaking and rights of the Corporation; and

(f) delegate to such one or more of the Directors or officers of the Corporation as may be designated by the Board all or any of the powers conferred by the foregoing paragraphs (a), (b), (c), (d) and (e) of this Section 12.1 of this By–law No. 1 to such extent and in such manner as the Board shall determine at the time of each delegation.

12.2 Arrangements for Borrowing. From time to time, the Board may authorize any Director or officer of the Corporation to make arrangements with reference to the monies borrowed or to be borrowed as aforesaid and as to the terms and conditions of the loan thereof, and as to the security to be given therefor, with power to vary or modify such arrangements, terms and conditions and to give such additional security for any monies borrowed or remaining due by the Corporation as the Board may authorize, and generally to manage, transact and settle the borrowing of money by the Corporation.

Article 13
NOTICE

13.1 Procedure for Sending Notices. Notice shall be deemed to have been sufficiently sent to a Member, a Director or a PAF if sent in writing to the address of the addressee on the books and records of the Corporation and delivered in person, sent by prepaid first class mail or sent by any electronic means of sending messages (including facsimile or e-mail. Notice shall not be sent by mail if there is any general interruption of postal services in the municipality from which or to which it is mailed. Each notice so sent shall be deemed to have been received on the day it was delivered or sent by electronic means or on the fifth day after it was mailed. A notice shall be deemed to be properly given to a PAF if it is given in the manner provided in this Section 13.1 to any individual who is a partner, officer or employee of such PAF.

13.2 Undelivered Notices. If any notice given to any Member, Director or PAF pursuant to Section 13.1 hereof is returned on two consecutive occasions because the addressee cannot be found, the Corporation shall not be required to give any further notice to the addressee until the Corporation is informed in writing of the new address of such Member, Director or PAF.

13.3 Computation of Time. In computing the date when notice must be given under any provision requiring a specified number of days' notice of any meeting or other event, the date of giving the notice shall be excluded and the date of the meeting or other event shall be included.

13.4 **Waiver of Notice.** Any of the Members, Directors, PAFs, officers and the auditor may waive any notice required to be given to him under any provision of the Act, the Letters Patent, this By–law No. 1 or otherwise and such waiver, whether given before or after the meeting or other event of which notice is required to be given, shall cure any default in giving such notice.

WITNESS the corporate seal of the Corporation as of the <*> day of <*>, 2003.

_____
Chair

_____c/s
Vice Chair

AND AS REGARDS Article 12 of this By-law No. 1, unanimously passed by the Directors and sealed with the corporate seal of the Corporation as of the <*> day of <*>, 2003.

_____
Chair

_____c/s
Vice Chair

Unanimously approved, sanctioned and confirmed by the Council of Governors on the <*> day of <*>, 2003.

_____c/s
Chair

Unanimously approved, sanctioned and confirmed by the Industry Members on the <*> day of <*>, 2003.

_____c/s
Chair

6.1.2 Multilateral Instrument 52-108 Auditor Oversight

MULTILATERAL INSTRUMENT 52-108
AUDITOR OVERSIGHT

PART 1 DEFINITIONS AND APPLICATION

1.1 Definitions - In this Instrument

"CPAB" means the Canadian Public Accountability Board/Conseil canadien sur la reddition de comptes, incorporated as a corporation without share capital under the *Canada Corporations Act* by Letters Patent dated April 15, 2003, and any of its successors;

"participant in good standing" means a participating audit firm that meets the following conditions: (a) its participation agreement is not suspended or terminated by the CPAB, and (b) it has complied with, and, if applicable, continues to comply with, any sanctions or restrictions imposed by the board of directors of the CPAB;

"participation agreement" means an agreement between the CPAB and a public accounting firm in connection with an oversight program of public accounting firms established by the CPAB;

"participating audit firm" means a public accounting firm that has entered into a participation agreement; and

"public accounting firm" means a partnership of individuals engaged in the business of providing services as public accountants and includes, where the context permits, an individual carrying on business as a sole proprietor and any professional corporation through which either a partner or a sole proprietor carries on its business;

1.2 Application - Sections 2.1, 2.2 and Part 3 do not apply in Alberta or Manitoba.

PART 2 AUDITOR OVERSIGHT

2.1 Participation Agreement with the CPAB - A public accounting firm that issues an auditor's report with respect to the financial statements of a reporting issuer must enter into a participation agreement within the time period prescribed by the CPAB.

2.2 Participant in Good Standing - A participating audit firm must be a participant in good standing when it issues an auditor's report with respect to the financial statements of a reporting issuer.

2.3 Auditor's report filed with Financial Statements -

(1) A reporting issuer that files an auditor's report with financial statements may only file an auditor's report issued by a participating audit firm that is a participant in good standing at the time the auditor's report is issued.

(2) A reporting issuer is exempt from the requirement in subsection (1) if, at the date on which an auditor's report is issued with respect to the issuer's financial statements by a public accounting firm, the time period prescribed by the CPAB within which that public accounting firm must enter into a participation agreement has not expired.

PART 3 NOTICE

3.1 Notice of Sanctions -

(1) A participating audit firm must, if the board of directors of the CPAB imposes sanctions on it, notify (a) the audit committee of a reporting issuer for which it has been engaged to issue an auditor's report and (b) the regulator if the issuer is a reporting issuer in the local jurisdiction.

(2) The notice required under subsection (1) must be in writing and include a complete description of the sanctions imposed by the board of directors of the CPAB, including the date the sanctions were imposed.

(3) The notice required under subsection (1) must be delivered within 5 business days of the sanctions being imposed.

3.2 Idem - A participating audit firm must, if it is making a proposal to undertake an audit of a reporting issuer, advise the reporting issuer's audit committee of any sanctions that have been imposed by the board of directors of the CPAB within the preceding 12 months.

3.3 Notice of Restrictions -

(1) A participating audit firm must, if the board of directors of the CPAB imposes restrictions on it in order to address defects in the participating audit firm's quality control systems, notify the regulator if it has been engaged to issue an auditor's report with respect to the financial statements of a reporting issuer in the local jurisdiction.

(2) The notice required under subsection (1) must be in writing and include a complete description of (a) the defects in the quality control systems identified by the CPAB and (b) the restrictions imposed by the board of directors of the CPAB, including the date the restrictions were imposed and the time period within which the participating audit firm agreed to address the defects.

(3) The notice required under subsection (1) must be delivered within 2 business days of the restrictions being imposed.

3.4 Idem -

(1) If a participating audit firm is informed by the CPAB that it failed to address, to the satisfaction of the CPAB, the defects in its quality control systems within the time period agreed to between the participating audit firm and the CPAB, it must notify (a) the audit committee of a reporting issuer for which it has been engaged to issue an auditor's report with respect to the issuer's financial statements, and (b) the regulator if it has been engaged to issue an auditor's report with respect to the financial statements of a reporting issuer in the local jurisdiction.

(2) The notice required under subsection (1) must be in writing and include a complete description of (a) the defects in the quality control systems identified by the CPAB, (b) the restrictions imposed by the board of directors of the CPAB, including the date the restrictions were imposed and the time period within which the participating audit firm agreed to address the defects, and (c) the reasons it was unable to address the defects to the satisfaction of the CPAB.

(3) The notice required under subsection (1) must be delivered within 5 business days of the public accounting firm being informed by the CPAB that it has failed to address the defects in its quality control systems.

PART 4 EXEMPTION

4.1 Exemption -

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

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

PART 5 EFFECTIVE DATE

5.1 Effective Date of Instrument - This Instrument comes into force on **[January 1, 2004]**.

6.1.3 Request for Comment - Notice of Proposed Multilateral Instrument 52-109, Companion Policy 52-109CP, and Forms 52-109F1 and 52-109F2 Certification of Disclosure in Companies' Annual and Interim Filings

REQUEST FOR COMMENT
NOTICE OF PROPOSED MULTILATERAL INSTRUMENT 52-109, COMPANION POLICY 52-109CP, AND FORMS 52-109F1 AND 52-109F2

CERTIFICATION OF DISCLOSURE IN COMPANIES' ANNUAL AND INTERIM FILINGS

This Notice accompanies proposed Multilateral Instrument 52-109 *Certification of Disclosure in Companies' Annual and Interim Filings* (the Proposed Instrument), Forms 52-109F1 and 52-109F2 (collectively, the Forms), and Companion Policy 52-109CP (the CP), all of which are being published for comment. We invite comment on these materials generally. In addition, we have raised a number of questions for your specific consideration.

Introduction

The Proposed Instrument, Forms and CP are initiatives of certain members of the Canadian Securities Administrators. The Proposed Instrument and Forms are expected to be adopted as a rule in each of Québec, Alberta, Manitoba, Ontario, Nova Scotia and Newfoundland and Labrador, as a Commission regulation in Saskatchewan, as a policy in New Brunswick, Prince Edward Island and in the Yukon Territory, and as a code in the Northwest Territories and Nunavut; it is expected that the CP will be implemented as a policy in Québec, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, Newfoundland and Labrador, New Brunswick, Prince Edward Island, Nunavut, the Yukon Territory and the Northwest Territories (the adopting jurisdictions).

The purpose of the Proposed Instrument is to improve the quality and reliability of reporting issuers annual and interim disclosures. This, in turn, will help to maintain and enhance investor confidence in the integrity of our capital markets. The Proposed Instrument requires chief executive officers (CEOs) and chief financial officers (CFOs) to personally certify that their issuers' annual and interim filings do not contain any misrepresentations and that the financial statements and other financial information in the annual and interim filings of their issuers fairly present the financial condition, results of operations and cash flows of the issuers for the relevant time period. The filings required to be certified by CEOs and CFOs include issuers' annual information forms, annual financial statements, annual MD&A, interim financial statements and interim MD&A.

The requirement that senior executives certify that they have designed and implemented internal and disclosure controls is intended to ensure that an issuer's senior management is aware of material information that is filed with securities regulators and released to investors and is held accountable for the fairness and accuracy of this information.

The Proposed Instrument does not require auditor attestation to, and reporting on, management's assessment of internal controls as envisaged by subsections 404(a) and (b) of the Sarbanes-Oxley Act. The SEC recently adopted rules to implement the requirements of section 404. We are studying these rules.

Background

In July of 2002, the Sarbanes-Oxley Act (SOX) was enacted in the United States. Replete with accounting, disclosure and corporate governance reforms, this statute aims to restore the public's faith in the U.S. capital markets in the wake of several U.S. financial reporting scandals. SOX prescribes a number of new corporate governance requirements, including CEO and CFO certification of financial and other disclosure. Since our markets are connected to and affected by the U.S. markets, they are not immune from real or perceived erosion of investor confidence in the U.S. Therefore, we have initiated domestic measures, including the certification requirements set out in the Proposed Instrument, to address the issue of investor confidence and to maintain the reputation of our markets internationally.

The Proposed Instrument closely parallels the Securities and Exchange Commission's (SEC) current[1] and proposed[2] certification requirements implementing section 302 of SOX (the U.S. rules) and will require CEOs and CFOs of all reporting issuers in Canada, other than investment funds, to certify their issuers' annual and interim filings in the manner prescribed by Forms 52-109F1 and F2. As discussed below, the Proposed Instrument will also contain a number of exemptions.

Summary and Discussion of Proposed Instrument

The Proposed Instrument has five parts.

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1 See SEC Release 33-8124: Final Rule: Certification of Disclosure in Companies' Quarterly and Annual Reports (published August 29, 2002).

2 See SEC Release 33-8138: Proposed Rule: Disclosure required by Sections 404, 406 and 407 of the Sarbanes-Oxley Act 2002 (published October 22, 2002).

Part 1

Part 1 contains the definitions of terms and phrases used in the Proposed Instrument that are not defined in or interpreted under a national definitions instrument in force in an adopting jurisdiction. National Instrument 14-101 *Definitions* sets out definitions for commonly used terms and should be read together with the Proposed Instrument.

Part 1 also contains a transition period. We believe that all reporting issuers should, and most typically already have, a reasonable process of internal and disclosure controls in place. However, we appreciate that some issuers may not yet have controls that their CEOs and CFOs believe are appropriate for the purpose of making all of the representations required of them in the annual and interim certificates. In addition, we do not think it is appropriate to require certification of matters relating to financial periods ending prior to the implementation of the Proposed Instrument. Therefore, we propose a one-year transition period for all issuers. During this transition period, issuers will be required to provide only a "bare" version of the annual and interim certificate containing the first three representations rather than all six. This transition period is set out in section 1.3 of the Proposed Instrument.

- ***Request for Comment***

Do you agree that the proposed one-year transition period is appropriate?

A bare certificate will only be accepted on a transitional basis because we believe it is important that CEOs and CFOs make all of the representations in the annual and interim certificates. The elements of representation four (design, implementation and evaluation of internal and disclosure controls), establish that the informational foundation exists upon which to credibly support representations two and three, both of which are qualified as being to the best of the CEO and CFO's knowledge. The fifth and sixth representations complement the fourth and are designed to ensure greater transparency of the internal controls of an issuer by requiring any deficiencies in those controls to be disclosed to the auditors as well as being publicly disclosed in the annual MD&A.

In formulating our proposals for comment we considered whether it was necessary to mandate the representations in paragraphs 4 through 6 as the CEO and CFO will, of necessity, establish appropriate controls to provide the second and third representations. We also considered whether the requirement to provide the representations in paragraphs 4 through 6 would be too onerous for smaller issuers. For the reasons stated above, we are proposing that paragraphs 4 through 6 form part of the certification requirements.

- ***Request for Comment***

In our view, because the second and third representations are knowledge-based, it is necessary not only to require CEOs and CFOs to certify (i) the accuracy and fairness of their issuer's filings (representations 2 and 3) but also to require them to certify (ii) as to the informational foundation upon which these representations are based (representations 4 through 6). Do you believe it is appropriate to include representations 4 through 6?

Do you think that there is reason to differentiate between smaller and larger issuers? For example, is there any reason to exclude representations 4 through 6 with regard to smaller issuers?

Parts 2 and 3

Parts 2 and 3 address the certification of annual and interim filings. The Proposed Instrument will require reporting issuers to file annual and interim certificates in which their CEOs and CFOs personally certify that, based on their knowledge, their issuer's annual and interim filings do not contain a misrepresentation and their issuer's annual and interim financial statements fairly present the financial condition of their issuer. Because those representations are knowledge-based, in order to eliminate the defense of ignorance, CEOs and CFOs will also be required to personally certify that they are responsible for designing, or supervising the design of, and implementing internal controls and disclosure controls and procedures. Specifically, CEOs and CFOs will be required to certify that: (i) they have designed, or supervised the design of, internal controls and implemented those controls to provide reasonable assurances that the issuer's financial statements are fairly presented in accordance with generally accepted accounting principles; and (ii) they have designed, or supervised the design of, disclosure controls and procedures and implemented those controls to provide reasonable assurances that material information relating to the issuer, including its consolidated subsidiaries, is made known to them by others within those entities.

The Proposed Instrument also requires CEOs and CFOs to certify annually that they have evaluated the effectiveness of their internal controls and disclosure controls and procedures and presented their conclusions regarding the effectiveness of those controls in the annual MD&A. In addition, the Proposed Instrument requires CEOs and CFOs to disclose to their issuers' audit committee and independent auditors any significant control deficiencies, material weaknesses, and acts of fraud that involve management or other employees who have a significant role in the internal controls. Any significant changes to the controls must be publicly disclosed in the issuer's annual and interim MD&A.

The Proposed Instrument does not prescribe the degree of complexity or any specific policies or procedures that must make up an issuer's internal controls or its disclosure controls and procedures. Rather, it will be left to the judgment of the issuer's CEO and CFO to design, or supervise the design of, reasonable controls in the context of, among other things, the issuer's size, the nature of its business, and the complexity of its operations.

Form of reporting

Generally, the U.S. rules require certification in a company's annual report on Form 10-K and quarterly report on Form 10-Q. However, with the exception of Québec, Canadian securities legislation does not prescribe annual and quarterly reports *per se*. Therefore, the Proposed Instrument prescribes the annual and interim disclosure documents that CEOs and CFOs will be required to certify, and when the annual and interim certificates must be filed.

Rather than the one all-encompassing annual report on Form 10-K that is required in the U.S., under Canadian securities legislation a reporting issuer is generally required to file, on an annual basis, more than one disclosure document relating to its most recent fiscal year. While those documents, when considered as a whole, approximate the line-item requirements of an annual report on Form 10-K, the various Canadian disclosure documents are not required to be filed at the same time. Therefore, the Proposed Instrument (in Part 2) requires annual CEO and CFO certification of "annual filings". This is a new definition that encompasses an issuer's AIF, and its annual financial statements and MD&A. Under the Proposed Instrument the annual certificate relates to the disclosure in the annual filings because the objective of the annual certificate is for the CEO and CFO to certify the accuracy of the annual filings as a whole. The annual certificate must be filed at the same time as the issuer files the *last* of its AIF and its annual financial statements and MD&A.

- ***Request for Comment***

If the AIF and annual financial statements and MD&A are not all filed at the same time, there will be a gap between the time that the earliest of those documents is filed and the time the annual certificate is filed. Is this timing gap problematic?

Certification of Executive Compensation

The annual information form, annual financial statements and annual MD&A grouped together are generally equivalent to the annual report filed in the U.S. on Form 10-K. One notable exception, however, is that the Form 10-K typically includes details of executive compensation. In certain jurisdictions, primary disclosure on executive compensation is contained in Form 40. The Form 40 information is typically contained in an issuer's proxy circular, which is filed in advance of its annual general meeting but may be filed subsequent to the documents forming the annual filings. We did consider including Form 40 disclosure in the definition of annual filings and requiring the annual certificate to capture this disclosure "as and when" the Form 40 was filed. However, we considered that this approach may be unfair to the certifying officers who would have personal liability for the information and would be called upon to certify this information in advance, in some instances, of when it would be available or filed. In order to avoid delays in the filing of the annual certificate we have decided not to require certification of Form 40 and thus have not included it in the definition of annual filings.

- ***Request for Comment***

Should the annual certificate in the Proposed Instrument cover certification of Form 40 executive compensation disclosure? If yes, how should this be done? For example, should the annual certificate cover subsequently filed material in the Form 40 as and when that information is filed?

Interim evaluation of internal controls and disclosure controls and procedures

The U.S. rules require an issuer's CEO and CFO to certify annually and quarterly that they have evaluated, and disclosed their conclusions about, the effectiveness of their issuer's internal controls and disclosure controls and procedures. While the Proposed Instrument maintains this requirement in the annual certificate, it does *not* impose this requirement for the certification of interim filings. In our view, maintaining those controls will necessarily require some form of on-going evaluation process, otherwise those controls will become less effective over time due to regulatory changes, changes to generally accepted accounting principles (GAAP), or changes in, among other things, the size or nature of the issuer's business. However, we acknowledge that a formal interim evaluation that is subject to certification will likely be costlier than an informal evaluation. Therefore, we have concluded that from a cost-benefit standpoint, a formal interim evaluation is unnecessary.

- ***Request for Comment***

Do you agree with this approach?

Part 4

Part 4 provides for a number of exemptions from the Proposed Instrument.

Part 4 includes an exemption for issuers that comply with U.S. federal securities laws implementing section 302(a) of SOX. We believe that issuers that comply with the annual and quarterly certification requirements in SOX should be exempt from the Proposed Instrument because the investor confidence benefits of requiring them to also comply with the Proposed Instrument will be minimal. Moreover, because our certification requirements are slightly different than the SOX certification requirements (in order to accommodate language and legal differences between our respective regimes), we would be imposing a double requirement on interlisted issuers with minimal additional benefits from an investor confidence standpoint.

We note that proposed National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* will allow certain Canadian issuers to satisfy their requirements to file financial statements prepared in accordance with Canadian GAAP by filing statements prepared in accordance with U.S. GAAP. However, it is possible that some Canadian companies may still continue to prepare two sets of financial statements and continue to file their Canadian GAAP statements in the applicable jurisdictions. In order to ensure that the Canadian GAAP financial statements are certified (pursuant to either SOX or the Instrument) those issuers will not have recourse to the exemptions in subsections 4.1(1) and (2).

- ***Request for Comment***

Do you think that the exemption in section 4.1, as currently drafted, will have the effect of discouraging issuers that prepare their financial statements in accordance with U.S. GAAP from preparing and filing Canadian GAAP financial statements?

Part 4 includes an exemption for certain foreign issuers. We have included this exemption in order to be consistent with the basic scheme contemplated by proposed National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

Part 4 includes an exemption for issuers of exchangeable securities. This is consistent with proposed National Instrument 51-102 *Continuous Disclosure Obligations*.

Part 4 also includes an exemption for issuers of certain guaranteed debt securities.

Part 5

Part 5 sets out the effective date for the Proposed Instrument.

The Concept of Fair Presentation

As noted above, the Proposed Instrument will require CEOs and CFOs to certify, annually and on an interim basis, that their issuer's financial statements "fairly present" the financial condition of the issuer for the relevant time period. This representation is not qualified by the phrase "in accordance with generally accepted accounting principles" which Canadian auditors typically include in their financial statement audit reports. This qualification has been specifically excluded from the annual and interim certificates to prevent management from relying entirely upon compliance with GAAP procedures in this representation, particularly where the results of a GAAP audit may not fairly reflect the overall financial condition of a company.

In our view, fair presentation includes but is not necessarily limited to the selection and application of appropriate accounting policies and disclosure of financial information that is informative and reasonably reflects the underlying transactions. To achieve fair presentation, inclusion of additional disclosure may also be necessary to provide investors with a materially accurate and complete picture of an issuer's financial condition, results of operations and cash flows.

Application of the Proposed Instrument to Certain Classes of Reporting Issuers

As presently drafted, the Proposed Instrument will apply to every reporting issuer in adopting jurisdictions, other than an investment fund. Consequently, under the Proposed Instrument, every reporting issuer other than an investment fund will be required to file an annual certificate and interim certificates personally signed by each CEO and CFO of the reporting issuer or, in the case of an issuer that does not have a CEO or CFO, those individuals who perform similar functions to the functions of a CEO or CFO.

We believe that for certain types of issuers, such as issuers that are income trusts, it may be the case that the certificate filing requirement should apply to more than one issuer, or to an issuer other than the reporting issuer.

In the case of an income trust, for example, it may be the case that the certificate filing requirement should apply to the underlying business entity (Opco) in the place of, or in addition to, the income trust. In respect of an entity structured as an income trust, in many cases, the investment ultimately represents an investment in Opco and the investors' return can be entirely dependent on the operations and assets of Opco. Requiring certificates only from the CEO and CFO of the income trust may not be sufficient. For example, the CEO and CFO of Opco may not be the same as the CEO and the CFO (or their equivalents) of the income trust. Also, in some jurisdictions it may be unclear in certain circumstances whether Opco is a "subsidiary" of the income trust for the purposes of the Proposed Instrument. It may be arguable that the "business" of the income trust – to act as a passive holding/distributing entity – is different from the business of Opco. Consequently, if certificates were required only from the CEO and CFO of the income trust, the controls being certified might be those of a "passive" investor rather than the controls that would be necessary in relation to Opco.

- ***Request for Comment***

Should an issuer that is structured such that all or majority of its business is operated through a subsidiary or another issuer of which it materially affects control or direction such as an income trust, be subject to the same certification filing requirements as issuers that offer securities directly to the public?

Summary of Forms

The Proposed Instrument will require the annual certificate to be filed in accordance with Form 52-109F1 and each interim certificate to be filed in accordance with Form 52-109F2. By signing those certificates, CEOs and CFOs will be personally certifying that their issuer's annual and interim filings do not contain a misrepresentation and that their issuer's annual and interim financial statements fairly present the financial condition, results of operations and cash flows of their issuer. In addition, those certificates will require CEOs and CFOs to personally certify that they:

- are responsible for internal controls and disclosure controls and procedures;
- have designed or supervised the design of, internal controls and implemented those internal controls to provide reasonable assurances that the issuer's financial statements are fairly presented in accordance with generally accepted accounting principles;
- have designed or supervised the design of, disclosure controls and procedures and implemented those disclosure controls and procedures to provide reasonable assurances that material information relating to the issuer, including its consolidated subsidiaries, is made known to them by others within those entities;
- have evaluated the effectiveness of those controls (52-109F1 only);
- have presented their conclusions regarding the effectiveness of those controls (52-109F1 only);
- have disclosed to the audit committee and the independent auditors any significant control deficiencies, material weaknesses, and acts of fraud that involve management or other employees who have a significant role in the internal controls; and
- have indicated in their issuers' annual and interim filings any significant changes to the controls

Internal Controls, and Disclosure Controls and Procedures

A key aspect of management's responsibility for the preparation of financial information is its responsibility to establish and maintain internal controls. While internal controls has been defined in U.S. securities legislation for a number of years, Canadian legislation has no similar legal requirement. The Proposed Instrument does not contain an express definition of "internal controls". We believe a formal definition is unnecessary since representation 4(b) of the annual and interim certificates in effect defines the *outcome* that internal controls are designed to achieve. This representation requires the CEO and CFO to state that they have designed and implemented internal controls "...to provide reasonable assurances that the issuer's financial statements are fairly presented in accordance with generally accepted accounting principles." As discussed in the commentary under "Parts 2 and 3", how issuers' achieve this outcome is best left to the judgment of their CEOs and CFOs.

Unlike internal controls, "disclosure controls and procedures" is a term that was newly introduced by the SEC following enactment of SOX. "Disclosure controls and procedures" is currently defined by the SEC as controls "designed to ensure that material information required to be disclosed by a company under the Exchange Act is recorded, processed and summarized, and reported within the time periods specified by the SEC."[3]

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3 SEC Release 33-8124: Final Rule: Certification of Disclosure in Companies Quarterly and Annual Financial Statements.

This concept generally refers to the non-financial aspects of an issuer's release of information to the public. Disclosure controls and procedures, for example, not only include procedures that aid in reaching the correct accounting numbers, but also encompass the procedures involved in reporting the significance of those numbers to the public. Some examples of non-financial disclosure include the signing of a significant contract, developments regarding intellectual property, changes in union relationships, termination of a strategic relationship and legal proceedings.

Like internal controls, the term "disclosure controls and procedures" is not expressly defined in the Proposed Instrument. However, representation 4(a) of the annual and interim certificate does, in effect, define the *outcome* that disclosure controls are designed to achieve because the CEO and CFO must certify that they have designed and implemented those disclosure controls and procedures "...to provide reasonable assurances that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities...and that such material information is disclosed within the time periods specified under applicable provincial and territorial securities legislation". Again, we will leave it to management's judgment how to best effect this outcome.

- ***Request for Comment***

Should we formally define: (i) internal controls and (ii) disclosure controls and procedures? If so, what should the appropriate definitions be?

Summary of the CP

The purpose of the CP is to provide information relating to the manner in which the provisions of the Proposed Instrument are intended to be interpreted or applied. The CP includes a discussion of the concept of fair presentation, commentary and guidance on how to file the annual and interim certificates on SEDAR, a discussion of internal and disclosure controls, and the consequences of filing false certificates, from a liability perspective.

The Ontario Securities Commission (the OSC) plans to amend OSC Policy 51-601 *Reporting Issuer Defaults* and OSC Policy 57-603 *Defaults by Reporting Issuers in Complying with Financial Statement Filing Requirements* to indicate that failure to file an annual or interim certificate will be considered an act of default with all the consequences of default discussed in those policies.

Authority for the Instrument – Ontario

In those adopting jurisdictions in which the Proposed Instrument and Forms are to be adopted or made as a rule or regulation, the securities legislation in each of those jurisdictions provides the securities regulatory authority with rule-making or regulation-making authority regarding the subject matter of the Proposed Instrument and Forms.

The following provisions of the *Securities Act* (Ontario) (the Act) provide the OSC with authority to adopt the Proposed Instrument and Forms.

Paragraphs 143(1) 58 and 59 authorize the OSC to make rules requiring reporting issuers to devise and maintain systems of disclosure controls and procedures and internal controls, the effectiveness and efficiency of their operations, including financial reporting and assets control.

Paragraphs 143(1) 60 and 61 authorize the OSC to make rules requiring chief executive officers and chief financial officers of reporting issuers to provide certification relating to the establishment, maintenance and evaluation of the systems of disclosure controls and procedures and internal controls.

Paragraph 143(1) 22 authorizes the OSC to make rules prescribing requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to requirements under the Act.

Paragraph 143(1) 25 authorizes the OSC to prescribe requirements in respect of financial accounting, reporting and auditing for the purposes of the Act, the regulations and the rules.

Paragraph 143(1) 39 authorizes the OSC to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Act, the regulations or the rules and all documents determined by the regulations or the rules to be ancillary to the documents, including financial statements, proxies and information circulars.

Related Instruments

The Proposed Instrument is related to proposed National Instrument 51-102 *Continuous Disclosure Obligations,* proposed National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*, and proposed National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency.*

Anticipated Costs and Benefits

The anticipated costs and benefits of implementing the Proposed Instrument and the CP are discussed in the paper entitled, *Investor Confidence Initiatives: A Cost-Benefit Analysis*, which has been published together with this Notice, and is incorporated by reference into this Notice.

Alternatives Considered

We did consider proposing an instrument or policy which would contain less onerous requirements than those found in the Proposed Instrument; however, because an aim of the Proposed Instrument is to help foster and maintain investor confidence in Canada's capital markets, we determined that it was necessary to propose requirements that closely parallel the U.S. rules.

Reliance on Unpublished Studies, Etc.

In developing the Proposed Instrument, we did not rely upon any significant unpublished study, report or other written materials.

Comments

Interested parties are invited to make written submissions on the Proposed Instrument, Forms and CP. We will consider submissions received by September 25, 2003. **Due to timing concerns, comments received after the deadline will not be considered.**

Submissions should be addressed to the securities regulatory authorities listed below:

Ontario Securities Commission
Alberta Securities Commission
Manitoba Securities Commission
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Securities Commission of Newfoundland and Labrador
Nova Scotia Securities Commission
Commission des valeurs mobilières du Québec
Saskatchewan Financial Services Commission
Office of the Attorney General, Prince Edward Island
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Department of Justice, Securities Administration Branch, New Brunswick

Please deliver your submissions to the addresses below. Your submissions will be distributed to the other CSA member jurisdictions.

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
e-mail: jstevenson@osc.gov.on.ca

Denise Brosseau, Secretary
Commission des valeurs mobilières du Québec
Tour de la Bourse
800, square Victoria
C.O. 246, 22e étage
Montréal, Québec
H4Z 1G3
Fax: (514) 864-6381
e-mail: consultation-en-cours@cvmq.com

A diskette containing the submissions (in Windows format, preferably Word) should also be submitted to the OSC.

Comment letters submitted in response to requests for comments are placed on the public file in certain jurisdictions and form part of the public record, unless confidentiality is requested. Comment letters will be circulated amongst the securities regulatory authorities, whether or not confidentiality is requested. Although comment letters requesting confidentiality will not be placed in the public file, freedom of information legislation in certain jurisdictions may require securities regulatory authorities in those jurisdictions to make comment letters available. Persons submitting comment letters should therefore be aware that the press and members of the public may be able to obtain access to any comment letters.

Questions may be referred to the following people:

Erez Blumberger
Ontario Securities Commission
20 Queen Street West, Suite 1900, Box 55
Toronto, Ontario M5H 3S8
Telephone: (416) 593-3662
e-mail: eblumberger@osc.gov.on.ca

Denise Hendrickson
Alberta Securities Commission
400, 300-5th Avenue S.W.
Stock Exchange Tower
Calgary, Alberta
T2P 3C4
Telephone: (403) 297-2648
e-mail: denise.hendrickson@seccom.ab.ca

Sylvie Anctil-Bavas, CA
Commission des valeurs mobilières du Québec
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, (Québec) H4Z 1G3
Téléphone: (514) 940-2199, poste 4556
Télécopieur: (514) 873-7455
e-mail: sylvie.anctil-bavas@cvmq.com

Instrument and Policy

The text of the Proposed Instrument and CP follow, together with footnotes that are not part of the Proposed Instrument and CP, but have been included to provide background and explanation.

June 27, 2003.

6.1.4 Multilateral Instrument 52-109 Certification of Disclosure in Companies' Annual and Interim Filings

MULTILATERAL INSTRUMENT 52-109
CERTIFICATION OF DISCLOSURE IN COMPANIES' ANNUAL AND INTERIM FILINGS

Part 1 – Definitions, Application and Transition

1.1 Definitions[1] - In this Instrument,

"annual certificate" means the certificate required to be filed pursuant to Part 2 of this Instrument;

"annual filings" means the issuer's annual information form, and annual financial statements and annual MD&A, that have been most recently filed under provincial and territorial securities legislation, including for greater certainty all documents and information that are incorporated by reference in the annual information form;

"annual financial statements" means the annual financial statements required to be filed under National Instrument 51-102 *Continuous Disclosure Obligation*[2];

"annual information form" means the AIF as defined under National Instrument 51-102 *Continuous Disclosure Obligations*[3];

"filings" means annual filings and interim filings;

"interim certificate" means the certificate required to be filed pursuant to Part 3 of this Instrument;

"interim filings" means the issuer's interim financial statements and interim MD&A, that have been most recently filed under provincial and territorial securities legislation;

"interim financial statements" means the interim financial statements required to be filed under National Instrument 51-102 *Continuous Disclosure Obligations*[4];

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1 National Instrument 14-101 *Definitions* defines certain terms that are used in more than one national or multilateral Instrument.

2 Section 4.1 of NI 51-102 states:

4.1- Annual Financial Statements and Auditor's Report

(1) Subject to subsection 4.8(6), a reporting issuer must file annual financial statements that include:

(a) an income statement, a statement of retained earnings, and a cash flow statement for:

(i) the most recently completed financial year; and

(ii) the period covered by the financial year immediately preceding the most recently completed financial year, if any;

(b) a balance sheet as at the end of each of the periods referred to in paragraph (a); and

(c) notes to the financial statements.

(2) Comparative annual financial statements filed under subsection (1) must be accompanied by an auditor's report.

3 In NI 51-102, "AIF" means a completed Form 51-102F1 *Annual Information Form* or, in the case of an SEC issuer, either a completed Form 51-102F1 or an annual report or transition report under the 1934 Act on Form 10-K, Form 10-KSB or on Form 20-F

4 NI 51-102 states:

4.3 - Interim Financial Statements

(1) A reporting issuer must file:

(a) if it has not completed its first financial year, interim financial statements for the interim periods of the reporting issuer's current financial year other than a period that is less than three months in length; or

(b) if it has completed its first financial year, interim financial statements for the interim periods of the reporting issuer's current financial year.

(2) Subject to subsections 4.7(4), 4.8(7) and (8), the interim financial statements required to be filed under subsection (1) must include:

(a) a balance sheet as at the end of the interim period and a balance sheet as at the end of the immediately preceding financial year, if any;

(b) an income statement, a statement of retained earnings and a cash flow statement, all for the year-to-date interim period and comparative financial information for the corresponding interim period in the immediately preceding financial year, if any;

"interim period" has the meaning ascribed to it in the definition of interim period under National Instrument 51-102 *Continuous Disclosure Obligations*[5];

"investment fund"[6] means a mutual fund, a non-redeemable investment fund or a scholarship plan;

"MD&A" has the meaning ascribed to it in the definition of MD&A under National Instrument 51-102 *Continuous Disclosure Obligations*[7];

"non-redeemable investment fund"[8] means an issuer:

(a) whose primary purpose is to invest money provided by its securityholders;

(b) that does not invest for the purpose of exercising effective control, seeking to exercise effective control, or being actively involved in the management of the issuers in which it invests, other than other mutual funds or non-redeemable investment funds; and

(c) that is not a mutual fund;

"Sarbanes-Oxley Act" means the Sarbanes-Oxley Act of 2002, Pub.L. 107-204, 116 Stat. 745 (2002); and

"SEDAR" means the computer system for the transmission, receipt, acceptance, review and dissemination of documents filed in electronic format known as the System for Electronic Document Analysis and Retrieval.

1.2 Application – This Instrument applies to all reporting issuers other than investment funds.

1.3 Transition Period – Notwithstanding Parts 2 and 3 of this Instrument, issuers may exclude paragraphs 4, 5 and 6 from any annual and interim certificates required to be filed prior to **[January 1, 2005]**.

Part 2 – Certification of Annual Filings

2.1 Every issuer must file a separate annual certificate, in the form specified in Form 52-109F1, in respect of and personally signed by each of the following persons:

1. each chief executive officer;

2. each chief financial officer; and

3. in the case of an issuer that does not have a chief executive officer or chief financial officer, each person who performs similar functions to a chief executive officer or a chief financial officer, as the case may be.

2.2 The annual certificate must be filed by the issuer at the same time as it files the last of the following annual filings:

1. its annual information form; and

(c) for interim periods other than the first interim period in a reporting issuer's financial year, an income statement and cash flow statement for the three month period ending on the last day of the interim period and comparative financial information for the corresponding period in the preceding financial year, if any; and

(d) notes to the financial statements.

5 In NI 51-102, "interim period" means:

(a) a period commencing on the first day of a financial year and ending nine, six or three months before the end of a financial year, or

(b) in the case of a reporting issuer's transition year, a period commencing on the first day of the transition year and ending either:

(i) three, six, nine or twelve months, if applicable, after the end of its old financial year, or

(ii) twelve, nine, six or three months, if applicable, before the end of the transition year,

and in the case of (b)(ii), the first interim period must not exceed four months

6 This definition is taken from subsection 1.1 of proposed National Instrument 81-106 *Investment Fund Continuous Disclosure.*

7 In NI 51-102, "MD&A" means a completed Form 51-102F2 *Management's Discussion & Analysis* or, in the case of an SEC issuer, either a completed Form 51-102F2 or management's discussion and analysis prepared in accordance with Item 303 of Regulation S-K or item 303 of Regulation S-B under the 1934 Act

8 This definition is taken from OSC Rule 14-501 *Definitions*.

2. its annual financial statements and annual MD&A.

Part 3 - Certification of Interim Filings

3.1 Every issuer must file a separate interim certificate, in the form specified in Form 52-109F2, in respect of and personally signed by each of the following persons:

1. each chief executive officer;

2. each chief financial officer; and

3. in the case of an issuer that does not have a chief executive officer or chief financial officer, each person who performs similar functions to a chief executive officer or a chief financial officer, as the case may be.

3.2 The interim certificate must be filed by the issuer at the same time as it files its interim filings.

Part 4 - Exemptions

4.1 Exemption for Issuers that comply with U.S. laws –

(1) Subject to subsection (4), an issuer is exempt from Part 2 of this Instrument with respect to the relevant period if:

(a) the issuer is in compliance with U.S. federal securities laws[9] implementing the annual report certification requirements in section 302(a) of the Sarbanes-Oxley Act; and

(b) the issuer's most recent annual report and signed certificates are filed on SEDAR as soon as reasonably practicable after they are filed with the SEC.

(2) Subject to subsection (5), an issuer is exempt from Part 3 of this Instrument with respect to the relevant interim period if:

(a) the issuer is in compliance with U.S. federal securities laws implementing the quarterly report certification requirements in section 302(a) of the Sarbanes-Oxley Act; and

(b) the issuer's most recent quarterly report and signed certificates are filed on SEDAR as soon as reasonably practicable after they are filed with the SEC.

(3) An issuer is exempt from Part 3 of this Instrument with respect to the relevant interim period if:

(a) the issuer furnishes to the SEC a current report on Form 6-K containing the issuer's quarterly financial statements and MD&A;

(b) the Form 6-K is accompanied by signed certificates that are furnished to the SEC in the same form required by U.S. federal securities laws implementing the quarterly report certification requirements in section 302(a) of the Sarbanes-Oxley Act; and

(c) the Form 6-K and signed certificates are filed on SEDAR as soon as reasonably practicable after they are furnished to the SEC.

(4) Notwithstanding subsection 4.1(1), Part 2 of this Instrument applies to an issuer with respect to the relevant period if the issuer files annual financial statements prepared in accordance with Canadian generally accepted accounting principles, unless the issuer files those statements with the SEC in compliance with U.S. federal securities laws implementing the annual report certification requirements in section 302(a) of the Sarbanes-Oxley Act.

(5) Notwithstanding subsection 4.1(2), Part 3 of this Instrument applies to an issuer with respect to the relevant interim period if the issuer files interim financial statements prepared in accordance with Canadian generally accepted accounting principles, unless the issuer files those statements with the SEC in compliance with U.S. federal securities laws implementing the quarterly report certification requirements in section 302(a) of the Sarbanes-Oxley Act.

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9 "U.S. federal securities laws" is defined in National Instrument 14-101 *Definitions*.

4.2 Exemption for Foreign Issuers – An issuer is exempt from the requirements in this Instrument so long as it qualifies for the relief contemplated by, and is in compliance with the requirements and conditions set out in, sections 5.4[10] and 5.5[11] of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers.*

4.3 Exemption for Issuers of Exchangeable Securities – An issuer is exempt from the requirements in this Instrument so long as it qualifies for the relief contemplated by, and is in compliance with the requirements and conditions set out in, section 13.3[12] of National Instrument 51-102 *Continuous Disclosure Obligations.*

4.4 Exemption for Issuers of Guaranteed Securities – An issuer is exempt, in a jurisdiction, from the requirements in this Instrument if:

(a) it does not have any securities outstanding other than debt securities or preferred shares, and all payments to be made in respect of those securities are fully and unconditionally guaranteed by another issuer (the guarantor issuer); and

(b) it has been granted an exemption in that jurisdiction (the exemption order) from filing its annual financial statements, annual MD&A, interim financial statements, and interim MD&A on the condition that, among other things, the equivalent annual and interim disclosure documents of the guarantor issuer be filed;

so long as at the time that the issuer would otherwise be required to comply with this Instrument the exemption order is in effect and the parties to the exemption order are in compliance with its requirements and conditions.

4.5 General Exemption –

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

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

Part 5 - Effective Date

5.1 This Instrument comes into force on **[January 1, 2004].**

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10 NI 71-102 states:

5.4 - Financial Statements

A designated foreign issuer satisfies securities legislation requirements relating to the preparation, filing and delivery of its interim financial statements, annual financial statements and auditor's reports on annual financial statements if it:

(a) complies with the foreign disclosure requirements relating to interim financial statements, annual financial statements and auditor's reports on annual financial statements;

(b) files the interim financial statements, annual financial statements and auditor's reports on annual financial statements required to be filed with or furnished to the foreign regulatory authority;

(c) sends each document filed under paragraph (b) to securityholders in the local jurisdiction, in the manner and at the time such documents are required to be sent to securityholders of the issuer by the foreign disclosure requirements; and

(d) complies with NI 52-107 as it relates to financial statements of the issuer that are included in any documents specified in paragraph (b).

11 NI 71-102 states:

5.5 - Annual Reports, AIFs, Business Acquisition Reports & MD&A

A designated foreign issuer satisfies securities legislation requirements relating to the preparation, filing and delivery of annual reports, AIFs, business acquisition reports and MD&A if it:

(a) complies with the foreign disclosure requirements relating to annual reports, quarterly reports, business acquisitions and management's discussion and analysis;

(b) files each annual report, quarterly report, report in respect of a business acquisition and management's discussion and analysis required to be filed with the foreign regulatory authority;

(c) sends each document filed under paragraph (b) to securityholders in the local jurisdiction, in the manner and at the time such documents are required to be sent to securityholders of the issuer by the foreign disclosure requirements; and

(d) complies with NI 52-107 as it relates to financial statements of the issuer that are included in any documents specified in paragraph (b).

12 Section 13.3 of NI 51-102 provides relief for certain exchangeable security issuers.

FORM 52-109F1 - CERTIFICATION OF ANNUAL FILINGS

I, ***‹identify the certifying officer, the issuer, and his or her position at the issuer›***, certify that:

1. I have reviewed the annual filings (as this term is defined in Multilateral Instrument 52-109 Certification of Disclosure in Companies' Annual and Interim Filings) of ***‹identify issuer›*** (the issuer) for the period ending ***‹state the reporting period covered by the annual filings›***;

2. Based on my knowledge, the annual filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, with respect to the period covered by the annual filings;

3. Based on my knowledge, the annual financial statements together with the other financial information included in the annual filings fairly present in all material respects the financial condition, results of operations and cash flows of the issuer as of the date and for the periods presented in the annual filings;

4. The issuer's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal controls for the issuer, and we have:

   (a) designed those disclosure controls and procedures, or caused them to be designed under our supervision, and implemented those disclosure controls and procedures, to provide reasonable assurances that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which the annual filings are being prepared, and that such material information is disclosed within the time periods specified under applicable provincial and territorial securities legislation;

   (b) designed those internal controls, or caused them to be designed under our supervision, and implemented those internal controls, to provide reasonable assurances that the issuer's financial statements are fairly presented in accordance with generally accepted accounting principles;

   (c) evaluated the effectiveness of the issuer's disclosure controls and procedures and internal controls as of the end of the period covered by the annual filings; and

   (d) disclosed in the annual MD&A our conclusions about the effectiveness of the disclosure controls and procedures and internal controls, in each case based on our evaluation as of the end of the period covered by the annual filings;

5. I have disclosed, based on my most recent evaluation, to the issuer's auditors and the audit committee of the issuer's board of directors or persons performing the equivalent function:

   (a) all significant deficiencies and material weaknesses in the design or operation of internal controls that could adversely affect the issuer's ability to disclose information required to be disclosed by the issuer under applicable provincial and territorial securities legislation, within the time periods specified under applicable provincial and territorial securities legislation; and

   (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and

6. I have disclosed in the annual MD&A whether there were significant changes in the issuer's internal controls or in other factors that could significantly affect internal controls, made during the period covered by the annual filings, including any actions taken to correct significant deficiencies and material weaknesses in the issuer's internal controls.

Date:.....

_____

[Signature]
[Title]

FORM 52-109F2 - CERTIFICATION OF INTERIM FILINGS

I ***‹identify the certifying officer, the issuer, and his or her position at the issuer›***, certify that:

1. I have reviewed the interim filings (as this term is defined in Multilateral Instrument 52-109 Certification of Disclosure in Companies' Annual and Interim Filings) of ***‹identify the issuer›***, (the issuer) for the interim period ending ***‹state the reporting period covered by the interim filings›***;

2. Based on my knowledge, the interim filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, with respect to the period covered by the interim filings;

3. Based on my knowledge, the interim financial statements together with the other financial information included in the interim filings fairly present in all material respects the financial condition, results of operations and cash flows of the issuer as of the date and for the periods presented in the interim filings;

4. The issuer's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal controls for the issuer, and we have:

   (a) designed those disclosure controls and procedures, or caused them to be designed under our supervision, and implemented those disclosure controls and procedures, to provide reasonable assurances that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which the interim filings are being prepared, and that such material information is disclosed within the time periods specified under applicable provincial and territorial securities legislation; and

   (b) designed those internal controls, or caused them to be designed under our supervision, and implement those internal controls, to provide reasonable assurances that the issuer's financial statements are fairly presented in accordance with generally accepted accounting principles;

5. I have disclosed, based on my most recent evaluation, to the issuer's auditors and the audit committee of the issuer's board of directors or persons performing the equivalent function:

   (a) all significant deficiencies and material weaknesses in the design or operation of internal controls that could adversely affect the issuer's ability to disclose information required to be disclosed by the issuer under applicable provincial and territorial securities legislation, within the time periods specified under applicable provincial and territorial securities legislation; and

   (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and

6. I have disclosed in the interim MD&A whether there were significant changes in the issuer's internal controls or in other factors that could significantly affect internal controls, made during the period covered by the interim filings, including any actions taken to correct significant deficiencies and material weaknesses in the issuer's internal controls.

Date:.....

_____

[Signature]
[Title]

COMPANION POLICY 52-109CP – TO MULTILATERAL INSTRUMENT 52-109 CERTIFICATION OF DISCLOSURE IN COMPANIES' ANNUAL AND INTERIM FILINGS

Part 1 – General

This Companion Policy provides information about how the Canadian securities regulatory authorities interpret Multilateral Instrument 52-109, and should be read in conjunction with it.

Part 2 – Form and Filing of Certificates

The annual and interim certificates must be filed in the exact language prescribed in Forms 52-109F1 and F2. Each certificate must be separately filed on SEDAR under the issuer's profile in the appropriate annual or interim certificate filing type:

Category of Filing - Continuous Disclosure
Folder for Filing Type - General

Filing Type - Annual Certificates
Document Type:
Form 52-109F1 - Certification of Annual Filings - CEO
Form 52-109F1 - Certification of Annual Filings - CFO

or

Filing Type - Interim Certificates
Document Type:
Form 52-109F2 - Certification of Interim Filings - CEO
Form 52-109F2 - Certification of Interim Filings - CFO

An issuer that is in compliance with U.S. federal securities laws implementing the certification requirements in section 302(a) of the Sarbanes-Oxley Act and that uses the exemption in section 4.1 of the Instrument, must file on SEDAR the CEO and CFO certificates that it filed with SEC with respect to the relevant reporting period. Where those certificates are "in" the annual or quarterly report filed with the SEC ("in" as opposed to being attached as "exhibits"), the issuer should file the report containing the certificates in the appropriate filing type described above. Where the officers' certificates are attached as exhibits to the issuer's annual or quarterly report, the issuer should file the report, together with the attached certificates, in the appropriate filing type described above.

An issuer relying on the exemption in section 4.1 of the Instrument need not file the signed paper copies of the reports and certificates that it filed with, or furnished to, the SEC.

Part 3 – Internal and Disclosure Controls

The Canadian securities regulatory authorities believe that CEOs and CFOs should be required to certify that their issuers have adequate internal and disclosure controls. We believe that this is an important factor in maintaining integrity in our capital markets and thereby enhancing investor confidence in our capital markets. The Instrument does not, however, formally define those controls nor does it prescribe the degree of complexity or any specific policies or procedures that must make up those controls. This is intentional. In our view, these considerations are best left to management's judgement based on various factors that may be particular to their issuer, including its size and the nature of its business.

Part 4 – Fair Presentation

Pursuant to the third paragraph in each of the annual and interim certificates, the CEO and CFO must each certify that their issuer's financial statements "fairly present" the financial condition of the issuer for the relevant time period. Those representations are not qualified by the phrase "in accordance with generally accepted accounting principles" (GAAP) which Canadian auditors typically include in their financial statement audit reports. This qualification has been specifically excluded from the Instrument to prevent management from relying entirely upon compliance with GAAP procedures in this representation, particularly where the results of a GAAP audit may not reflect the financial condition of a company (since GAAP may not always define all the components of an overall fair presentation).

At page 7 of its adopting release,[13] the SEC states:

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[13] SEC Release No. 33-8124 *Final Rule: Certification of Disclosure in Companies' Quarterly and Annual Reports* dated August 29, 2002.

> The certification statement regarding fair presentation of financial statements and other financial information is not limited to a representation that the financial statements and other financial information have been presented in accordance with "generally accepted accounting principles" (GAAP) and is not otherwise limited by reference to GAAP. We believe that Congress intended this statement to provide assurances that the financial information disclosed in a report, viewed in its entirety, meets a standard of overall material accuracy and completeness that is broader than financial reporting requirements under GAAP. ... Presenting financial information in conformity with generally accepted principles may not necessarily satisfy obligations under the antifraud provisions of the federal securities law.

In our view, fair presentation includes but is not necessarily limited to:

- the selection of appropriate accounting policies
- proper application of appropriate accounting policies
- disclosure of financial information that is informative and reasonably reflects the underlying transactions
- inclusion of additional disclosure necessary to provide investors with a materially accurate and complete picture of financial conditions, results of operations and cash flows

For additional commentary on what constitutes fair presentation we refer you to case law in this area. The leading U.S. case in this area is *U.S. v. Simon* (425 F.2d 796); the leading Canadian case in this area is the B.C. Court of Appeal decision in *Kripps v. Touche Ross and Co.* [1997] B.C.J. No. 968.

Part 5 – Exemptions

The exemptions in section 4.1 of the Instrument are based on our view that the investor confidence aims of the Instrument do not justify requiring issuers to comply with the certification requirements in the Instrument if such issuers already comply with substantially similar requirements in the U.S.

As a condition to being exempt from the annual certificate and interim certificate requirements in subsections 4.1(1) and (2) respectively, issuers must file on SEDAR the CEO and CFO certificates that they filed with the SEC in compliance with its rules implementing the certification requirements prescribed in section 302(a) of the Sarbanes-Oxley Act.

Pursuant to National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* certain Canadian issuers are able to satisfy their requirements to file financial statements prepared in accordance with Canadian GAAP by filing statements prepared in accordance with U.S. GAAP. However, it is possible that some Canadian companies may still continue to prepare two sets of financial statements and continue to file their Canadian GAAP statements in the applicable jurisdictions. In order to ensure that the Canadian GAAP financial statements are certified (pursuant to either SOX or the Instrument) those issuers will not have recourse to the exemptions in subsections 4.1(1) and (2).

Part 6 – Liability for False Certification

An officer providing a false certification potentially could be subject to quasi-criminal, administrative or civil proceedings under securities law.

Officers providing a false certification could also potentially be subject to private actions for damages either at common law or under the *Securities Act* (Ontario) when amendments which create statutory civil liability for misrepresentations in continuous disclosure are proclaimed in force.[14] The liability standard applicable to a document required to be filed with the Ontario Securities Commission, including an annual or interim certificate, will depend on whether the document is a "core" document as defined under Part XXIII.1.[15] Annual and interim certificates are currently not included in the definition of "core document" but would be caught by the definition of "document".

In any action commenced under Part XXIII.1 of the *Securities Act* (Ontario) a court has the discretion to treat multiple misrepresentations having common subject matter or content as a single misrepresentation.[16] This provision would permit a

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14 These amendments were enacted on December 9, 2002.

15 Where an action is brought for a misrepresentation contained in a non-core document, a defendant is not liable unless the plaintiff proves that the defendant: (i) knew of the misrepresentation; (ii) deliberately avoided acquiring knowledge of the misrepresentation; or (iii) by acting or failing to act, was guilty of gross misconduct in connection with the release of the document containing the misrepresentation. Where an action is brought for a misrepresentation contained in a core document, the onus is on the defendant to show that he or she was duly diligent.

16 Subsection 138.3(6) of the *Securities Act* (Ontario).

court in appropriate cases to treat a misrepresentation in a company's financial statements and a misrepresentation made by an officer in an annual or interim certificate that relate to the underlying financial statements as a single misrepresentation.

6.1.5 Request for Comments - Notice of Proposed Multilateral Instrument 52-110, Forms 52-110F1 and 52-110F2 and Companion Policy 52-110CP, Audit Committees

REQUEST FOR COMMENTS

NOTICE OF PROPOSED MULTILATERAL INSTRUMENT 52-110, FORMS 52-110F1 AND 52-110F2 AND COMPANION POLICY 52-110CP

AUDIT COMMITTEES

This Notice accompanies proposed Multilateral Instrument 52-110 *Audit Committees* (the Proposed Instrument), Forms 52-110F1 and 52-110F2 (together, the Forms) and proposed Companion Policy 52-110CP (the Proposed Policy), each of which are being published for comment. We invite comment on these materials generally. In addition, we have raised a number of questions for your specific consideration.

Introduction

The Proposed Instrument, the Forms and the Proposed Policy are initiatives of certain members of the Canadian Securities Administrators. The Proposed Instrument and Forms are expected to be adopted as a rule in each of Québec, Alberta, Manitoba, Ontario, Nova Scotia and Newfoundland and Labrador, as a Commission regulation in Saskatchewan, as a policy in New Brunswick, Prince Edward Island and the Yukon Territory, and as a code in the Northwest Territories and Nunavut. It is expected that the Proposed Policy will be implemented as a policy in Québec, Alberta, Manitoba, Ontario, Nova Scotia, Newfoundland and Labrador, Saskatchewan, New Brunswick, Prince Edward Island and the Yukon Territory, the Northwest Territories and Nunavut (the Adopting Jurisdictions).

The purpose of the Proposed Instrument is to encourage reporting issuers to establish and maintain strong, effective and independent audit committees. We believe that such audit committees enhance the quality of financial disclosure made by reporting issuers, and ultimately foster investor confidence in Canada's capital markets.

Background

In July of 2002, the *Sarbanes-Oxley Act* (SOX) was enacted in the United States. SOX prescribes a broad range of measures designed to restore the public's faith in the U.S. capital markets in the wake of several U.S. financial reporting scandals. These measures include requirements regarding the responsibilities and composition of audit committees. Since our markets are largely integrated with and affected by the U.S. markets, they are not immune from real or perceived erosion of investor confidence in the United States. Therefore, we have initiated measures, including the audit committee requirements set out in the Proposed Instrument, to address the issue of investor confidence and to maintain the reputation of our markets internationally.

The Proposed Instrument is based on the audit committee requirements currently being implemented in the United States. In particular, it is derived from the audit committee requirements in SOX, certain requirements of the U.S. Securities and Exchange Commission[1] (the SEC) and proposed listing requirements of the New York Stock Exchange and Nasdaq.[2]

Recent U.S. financial scandals have demonstrated that a conflict of interest may arise when management assumes the role of overseeing the relationship between an issuer and its external auditor. In particular, a conflict arises when the external auditor begins to consider management, and not the issuer and its shareholders, as its client. As a result, U.S. listed issuers will now be required to have an independent audit committee which is directly responsible for the appointment, compensation, retention and oversight of the work of the external auditor and to whom the external auditor must report directly. By barring management from any oversight role with respect to the external auditor, the U.S. audit committee requirements facilitate the independent review and oversight of a company's financial reporting processes and the work of the external auditors.

The Proposed Instrument requires certain reporting issuers to comply with provisions similar to those in the United States. The Proposed Instrument differs from the U.S. audit committee requirements to the extent required by Canadian corporate law and certain realities of the Canadian markets (*ie.*, the high number of public junior issuers and controlled companies).

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1 See Exchange Act Rule 10A-3 and SEC Release No. 33-8220 *Standards Relating to Listed Company Audit Committees*, as am.; see also SEC Release No. 33-8177 *Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002* dated January 24, 2003, as am. and SEC Release No. 33-8183 *Strengthening the Commission's Requirements Regarding Auditor Independence* dated January 28, 2003, as am.

2 New York Stock Exchange amended and restated proposal filed with the SEC on April 4, 2003; Nasdaq proposal filed with the SEC on October 9, 2002, as amended by Amendment No. 1 filed on March 11, 2003.

Summary and Discussion of the Proposed Instrument and Forms

The Proposed Instrument has nine parts.

Part 1

The definition of certain terms and phrases that are used in the Proposed Instrument are contained in Part 1. National Instrument 14-101 *Definitions* also sets out definitions for commonly used terms and should be read together with the Proposed Instrument.

In addition, Part 1 establishes the scope of the Proposed Instrument. It applies to all reporting issuers other than investment funds, issuers of asset-backed securities, designated foreign issuers and certain subsidiary entities of reporting issuers.[3]

Part 2

Part 2 requires every issuer to have an audit committee to which the external auditors must directly report. In addition, Part 2 provides that each audit committee must be responsible for, among other things:

- overseeing the work of the external auditors engaged for the purpose of preparing or issuing an audit report or related work (*subsection 2.3(3)*);
- pre-approving all non-audit services to be provided to the issuer or its subsidiary entities by its external auditors or the external auditors of the issuer's subsidiary entities (*subsection 2.3(4)*); and
- reviewing the issuer's financial statements, MD&A and earnings press releases before they are publicly disclosed by the issuer (*subsection 2.3(5)*).

Subsection 2.3(2) also requires that an audit committee recommend to the board of directors the external auditors to be nominated for the purpose of preparing or issuing an audit report (or any related work), as well as the compensation to be paid to such auditors. This necessarily differs from the U.S. audit committee requirements because under Canadian corporate law, an audit committee cannot appoint, compensate or retain the external auditors.[4] Nevertheless, this provision, together with paragraph 5 of Form 52-110F1 (which requires an issuer to disclose in its AIF if the board of directors has not adopted a nomination or compensation recommendation of the audit committee), will ensure that the independent audit committee's recommendations are discernible to the shareholders.

Section 2.4 provides an exemption from the requirement that an audit committee pre-approve non-audit services provided by the external auditors, so long as the non-audit services in question are *de minimis*. Section 2.5 permits the audit committee to delegate its pre-approval responsibilities to one or more of its independent members.

Part 3

Part 3 of the Proposed Instrument sets out the audit committee composition requirements. Every audit committee must have a minimum of three members, and each member must be independent and financially literate. The Proposed Instrument does not, however, require an issuer to appoint an audit committee financial expert to its audit committee.[5]

The requirement that each audit committee member be independent lies at the heart of the Proposed Instrument. Subsection 1.4(1) provides that a member of an audit committee is independent if the member has no direct or indirect material relationship with the issuer. A material relationship is defined as a relationship that could, in the view of the issuer's board of directors, reasonably interfere with the exercise of a member's independent judgement. Subsection 1.4(3) identifies certain categories of persons that are considered to have a material relationship with the issuer.

For an audit committee member to competently discharge his or her duties, we believe that the member must be financially literate. Section 1.1 defines financial literacy as the ability to read and understand a set of financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of the issues that can reasonably be expected to be raised by the issuer's financial statements. An individual's financial literacy must therefore be determined in relation to the issuer in question.

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3 In addition, the Proposed Instrument provides certain exemptions for issuers that are venture issuers and for issuers that are subject to the U.S. audit committee requirements. See Parts 6 and 7 of the Proposed Instrument.

4 The external auditors must generally be elected by, and report to, the shareholders. See, for example, section 162 of the *Canada Business Corporations Act* (Canada).

5 But see section 5.1 of the Proposed Instrument and paragraph 3 of Form 51-110F1, which require an issuer to disclose whether it has an audit committee financial expert serving on its audit committee, and if not, why not.

Part 3 provides certain exemptions from the requirement that each audit committee member must be independent:

- *Initial Public Offerings* — section 3.2 provides exemptions for a period of up to one year following an issuer's initial public offering.

- *Controlled Companies* — section 3.3 provides an exemption for audit committee members who sit on the board of directors of affiliated entities of the issuer.

- *Events Outside Member's Control* — section 3.4 provides that where an audit committee member ceases to be independent for reasons outside that member's reasonable control, the member may continue to sit on the audit committee until the later of (i) the next annual meeting and (ii) the date six months from the day the member ceased to be independent.

In addition, section 3.5 provides that where the death, disability or resignation of an audit committee member has resulted in a vacancy that the board of directors is required to fill, the member appointed to fill the vacancy is exempt from the independence and financial literacy requirements until the later of (i) the next annual meeting and (ii) the date six months from the day the vacancy was created.

Specific Request for Comment

1. Independence is defined in subsection 1.4(1) of the Proposed Instrument as the absence of a material relationship between the issuer and the director. Subsection 1.4(2) provides that a material relationship is one that that could, in the view of the board of directors, reasonably interfere with the exercise of a member's independent judgement. Do you consider this definition of independence appropriate?

2. Notwithstanding the definition of material relationship in subsection 1.4(2), subsection 1.4(3) deems certain categories of persons to have a material relationship with the issuer. As a result, these individuals are precluded from serving on the issuer's audit committee.

   (a) Do you think that the categories of precluded persons are appropriate? Are there other categories that should be added?

   (b) Certain of the categories reference a "cooling off" period (or a "prescribed period") of up to three years. Is this period appropriate? Is it too long? Too short?

   (c) Certain individuals may be precluded from serving on an audit committee as a result of their employment, or the employment of an immediate family member. Should these categories be restricted to individuals earning a minimum monetary amount (*e.g.*, $75,000)?

   (d) Some categories contained in subsection 1.4(3) were derived from U.S. legislation (*i.e.*, SOX), while others were based upon the listing requirements of the New York Stock Exchange. Do you believe that all of these categories should be incorporated into the Proposed Instrument, given their differing levels of authority in the United States?

3. Do you believe that the exemption in section 3.3 appropriately addresses the concerns of controlling shareholders?

4. Section 1.4 provides that a person who is an affiliated entity of the issuer is not independent of the issuer. Section 1.3 defines an "affiliated entity" in terms of its ability to control, or be controlled by, the issuer, and specifically includes a director of an affiliated entity who is also an employee of the affiliated entity. In light of this, do you believe that the exemption for controlled companies in section 3.3 is necessary?

5. In your view, does the definition of financial literacy provide sufficient guidance to allow an issuer to adequately assess a member's compliance with the Proposed Instrument?

6. The exemptions in sections 3.2, 3.4 and 3.5 are designed to address certain transitory circumstances where issuers may find it difficult to comply with the independence and, in some cases, the financial literacy requirements contained in the Proposed Instrument. Do you believe these exemptions are appropriate? Are there additional exemptions that you believe are necessary?

Part 4

Part 4 provides that every audit committee must be provided with the authority to engage and compensate independent counsel and other advisers which the committee determines are necessary to carry out its duties. Every audit committee must also have

the authority to communicate directly with the internal and external auditors. In our view, these powers are essential to enable an independent audit committee to perform its role without reliance on management.

Part 5 and Form 52-110F1

Part 5 provides that an issuer must include in its AIF the information required by Form 52-110F1. Among other matters, Form 52-110F1 requires an issuer to disclose:

- the composition of its audit committee;
- whether an audit committee financial expert is serving on its audit committee;
- if it is relying on certain exemptions contained in the Proposed Instrument;
- if an audit committee recommendation regarding the nomination or compensation of the external auditors has not been adopted by the board of directors; and
- the service fees (by category) that the issuer has paid its external auditors.

If management of an issuer solicits proxies from the security holders of the issuer for the purpose of electing directors to the issuer's board of directors, the management information circular must also include a cross-reference to those sections in the issuer's AIF which contain the required audit committee disclosure.

Specific Request for Comment

1. An audit committee financial expert, with his or her enhanced level of financial sophistication and expertise, can serve as an important resource for the audit committee as a whole in carrying out its duties. However, because certain issuers may find it difficult to appoint audit committee financial experts to their audit committees, the Proposed Instrument does not require that every audit committee have an audit committee financial expert. Instead, paragraph 3 of Form 52-110F1 requires that an issuer disclose the identity of the audit committee financial expert(s), if any, that are serving on its audit committee. If the audit committee does not have an audit committee financial expert, an issuer must disclose that fact and explain why.

   The disclosure required by Form 52-110F1 encourages issuers to appoint audit committee financial experts to their audit committees. It is not our intention that the designation of the audit committee financial expert should impose on that member any duties, obligations or liability that are greater than the duties, obligations and liability imposed on that member in the absence of the designation. Conversely, we do not intend that the designation of an audit committee financial expert should affect the duties and obligations of other audit committee members or the board of directors. Nevertheless, some concern has been expressed that merely identifying an individual as an audit committee financial expert may result in increased legal liability for that individual.

   In light of the foregoing, do you believe this disclosure requirement is an appropriate alternative to requiring every audit committee to have an audit committee financial expert? Can you suggest other meaningful ways to encourage issuers to appoint audit committee financial experts to their audit committees?

2. Section 5.1 requires that an issuer include in its AIF the information required by Form 52-110F1. Do you think the AIF is the most appropriate location for this disclosure? If not, why not?

Part 6 and Form 52-110F2

An exemption for venture issuers is contained in Part 6. By creating this exemption, we are acknowledging that it may be difficult or impossible for many small issuers to comply with the independence and financial literacy requirements in the Proposed Instrument.

A venture issuer is defined in section 1.1 of the Proposed Instrument as an issuer that does not have any of its securities listed or quoted on any of the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the Nasdaq National Market, the Nasdaq SmallCap Market, the Pacific Exchange or a marketplace outside of Canada or the United States.

Part 6 exempts venture issuers from the Parts 3 (*Composition of the Audit Committee*) of the Proposed Instrument. Consequently, the members of a venture issuer's audit committee are not required to be either independent or financially literate. Venture issuers relying on this exemption are also exempt from Part 5 (*Disclosure Obligations*); however, venture issuers must provide, on an annual basis, the alternative disclosure required by Form 52-110F2. Among other matters, Form 52-110F2 requires a venture issuer to disclose:

- the composition of its audit committee and whether each member is (i) independent, and (ii) financially literate;
- if an audit committee recommendation regarding the nomination or compensation of the external auditors has not been adopted by the board of directors;
- the service fees (by category) that the venture issuer has paid its external auditors; and
- that the venture issuer is relying upon the exemption.

This disclosure must be provided in the venture issuer's management information circular or in its AIF or management's discussion and analysis.

Specific Request for Comment

1. Do you believe this exemption is appropriate? Should audit committee composition requirements (*e.g.,* independence, financial literacy) be imposed on venture issuers? If so, should these requirements be the same as for other issuers?

Part 7

Section 7.1 provides that an issuer whose securities are listed on a national securities exchange or listed in a automated inter-dealer quotation system of a national securities association registered pursuant to the 1934 Act is exempt from the requirements of the Proposed Instrument. The exemption is conditional upon compliance with U.S. audit committee requirements and, where applicable, the disclosure requirement in paragraph 5 of Form 52-110F1.[6]

Notwithstanding this exemption, Canadian investors should have access to disclosure regarding audit committees as a result of proposed National Instrument 51-102 *Continuous Disclosure Obligations*, which will require issuers registered with the SEC to make reciprocal filings with the appropriate Canadian securities regulatory authorities or regulators.

Part 8

Part 8 provides that the securities regulatory authority or regulator may grant an exemption from the Instrument.

Part 9

Part 9 sets out the effective date for the Proposed Instrument. The Proposed Instrument will only apply to issuers commencing on the earlier of (i) the first annual meeting of the issuer after January 1, 2004, and (ii) June 30, 2004.

Summary of the Proposed Policy

The purpose of the Proposed Policy is to provide information relating to how we intend to interpret and apply the Proposed Instrument. The Proposed Policy includes a discussion regarding

- the role of the audit committee,
- the meaning of independence,
- audit committee financial experts, and
- the pre-approval of certain non-audit services.

Authority for the Instrument – Ontario

In those Adopting Jurisdictions in which the Proposed Instrument is to be adopted or made as a rule or regulation, securities legislation provides the securities regulatory authority with rule-making or regulation-making authority regarding the subject matter of the Proposed Instrument.

Paragraph 143(1)57 of the *Securities Act* (Ontario) authorizes the Ontario Securities Commission to make rules requiring reporting issuers to appoint audit committees and prescribing requirements relating to the functioning and responsibilities of

6 Some issuers relying on the exemption in Part 7 of the Proposed Instrument will be companies governed by Canadian corporate law. Because Canadian corporate law may not permit an audit committee to appoint, compensate or retain the issuer's external auditors, we believe that the issuer should disclose if the board of directors has not adopted a nomination or compensation recommendation of the audit committee. See paragraph 5 of Form 52-110F1.

audit committees, including requirements in respect of the composition of audit committees and the qualifications of audit committee members, including independence requirements.

Related Instruments

The Proposed Instrument is related to proposed National Instrument *51-102 Continuous Disclosure Obligations* and National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

Anticipated Costs and Benefits

The anticipated costs and benefits of implementing the Proposed Instrument and Proposed Policy are discussed in the paper entitled *Investor Confidence Initiatives: A Cost Benefit Analysis*, which has been published together with this notice. The anticipated costs and benefits identified in that paper are incorporated by reference into this notice.

Alternatives Considered

As noted above, the Proposed Instrument is largely derived from the audit committee requirements currently being implemented in the United States. The U.S. requirements are being adopted to restore the public's faith in the U.S. capital markets. Because our markets are largely integrated with and affected by the U.S. markets, we determined it appropriate to propose similar requirements. We did consider proposing an instrument or policy which would contain less onerous requirements than those found in the Proposed Instrument; however, because an aim of the Proposed Instrument is to foster investor confidence in Canada's capital markets, we determined that it was necessary to propose requirements that are as robust as those proposed in the United States.

Reliance on Unpublished Studies, Etc.

In developing the Proposed Instrument, we did not rely upon any significant unpublished study, report or other written materials.

Comments

Interested parties are invited to make written submissions on the Proposed Instrument and Proposed Policy. Submissions received by September 25, 2003 will be considered. **Due to timing concerns, comments received after the deadline will not be considered.**

Submissions should be addressed to the following securities regulatory authorities:

Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
Commission des valeurs mobilières du Québec
Nova Scotia Securities Commission
Securities Administration Branch, New Brunswick
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

Please deliver your comments to the addresses below. Your comments will be distributed to the other participating CSA members.

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
Fax: (416) 593-2318
E-mail: jstevenson@osc.gov.on.ca

Denise Brosseau, Secretary
Commission des valeurs mobilières du Québec
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800, square Victoria
C.P. 246, 22e étage
Montréal, Québec, H4Z 1G3
Fax: (514) 864-6381
E-mail: consultation-en-cours@cvmq.com

A diskette containing the submissions (in Windows format, preferably Word) should also be submitted.

Comment letters submitted in response to requests for comments are placed on the public file in certain jurisdictions and form part of the public record, unless confidentiality is requested. Comment letters will be circulated among the securities regulatory authorities, whether or not confidentiality is requested. Although comment letters requesting confidentiality will not be placed in the public file, freedom of information legislation in certain jurisdictions may require securities regulatory authorities in those jurisdictions to make comment letters available. Persons submitting comment letters should therefore be aware that the press and members of the public may be able to obtain access to any comment letters.

Questions may be referred to the following people:

Rick Whiler
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Frank Madder
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Richard Squires
Securities Commission of Newfoundland and Labrador
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Instrument, Forms and Policy

The text of the Proposed Instrument, Forms and Proposed Policy follow, together with footnotes that are not part of the Proposed Instrument, but have been included to provide background and explanation.

June 27, 2003.

6.1.6 Multilateral Instrument 52-110 Audit Committees

MULTILATERAL INSTRUMENT 52-110
AUDIT COMMITTEES

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MULTILATERAL INSTRUMENT 52-110
AUDIT COMMITTEES

PART 1
DEFINITIONS AND APPLICATION

1.1 Definitions – In this Instrument,

"accounting principles" mean a body of accounting principles that are generally accepted in a jurisdiction of Canada or a foreign jurisdiction and include, without limitation, Canadian GAAP, U.S. GAAP and International Financial Reporting Standards;[1]

"AIF" has the meaning set out in National Instrument 51-102 *Continuous Disclosure Obligations*;

"asset-backed security" means a security that is primarily serviced by the cash flows of a discrete pool of mortgages, receivables or other financial assets, fixed or revolving, that by their terms convert into cash within a finite period and any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders;[2]

"audit committee" means a committee (or an equivalent body) established by and among the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer, and, if no such committee exists, the entire board of directors of the issuer;

"audit committee financial expert" means, with respect to an issuer, a person who has:

(a) an understanding of financial statements and the accounting principles used by the issuer to prepare its financial statements;

(b) the ability to assess the general application of such accounting principles in connection with the accounting for estimates, accruals and reserves;

(c) experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the issuer's financial statements, or experience actively supervising one or more persons engaged in such activities;

(d) an understanding of internal controls and procedures for financial reporting; and

(e) an understanding of audit committee functions;

"designated foreign issuer" has the meaning set out in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;

"executive officer" of an entity means a person who is:

(a) a chair of the entity, if that person performs the functions of the office on a full-time basis;

(b) a vice-chair of the entity, if that person performs the functions of the office on a full-time basis;

(c) the president of the entity;

(d) a vice-president of the entity in charge of a principal business unit, division or function including sales, finance or production;

(e) an officer of the entity or any of its subsidiary entities who performs a policy-making function in respect of the entity; or

(f) any other person who performs a policy-making function in respect of the entity;[3]

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1 This definition has been adopted from proposed National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currencies.*

2 This definition has been adopted from National Instrument 44-101 *Short Form Prospectus Distributions* and proposed National Instrument 51-102 *Continuous Disclosure Obligations.*

"financially literate" means the ability to read and understand a set of financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of the issues that can reasonably be expected to be raised by the issuer's financial statements;

"immediate family member" means an individual's spouse, parent, child, sibling, mother or father-in-law, son or daughter-in-law, brother or sister-in-law, and anyone (other than an employee of the individual or immediate family member) who shares the individual's home;

"investment fund" has the meaning set out in National Instrument 51-102 *Continuous Disclosure Obligations*;

"marketplace" has the meaning set out in National Instrument 21-101 *Marketplace Operation*;

"MD&A" has the meaning set out in National Instrument 51-102 *Continuous Disclosure Obligations*;

"non-audit services" means any services provided to an issuer by its external auditor, other than those provided to the issuer in connection with an audit or review of the financial statements of the issuer;

"venture issuer" means an issuer that does not have any of its securities listed or quoted on any of the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the Nasdaq National Market, the Nasdaq SmallCap Market, the Pacific Exchange or a marketplace outside of Canada or the United States.[4]

1.2 Application – This Instrument applies to all reporting issuers other than:

(a) investment funds;

(b) issuers of asset-backed securities;

(c) designated foreign issuers; and

(d) reporting issuers that are subsidiary entities if

(i) the subsidiary entity does not have equity securities displayed for trading on a marketplace, and

(ii) the parent of the subsidiary entity is subject to the requirements of this Instrument.

1.3 Meaning of Affiliated Entity, Subsidiary Entity and Control –

(1) For the purposes of this Instrument, a person or company is considered to be an affiliated entity of another person or company if

(a) one of them controls or is controlled by the other or if both persons or companies are controlled by the same person or company, or

(b) the person or company is

(i) both a director and an employee of an affiliated entity, or

(ii) an executive officer, general partner or managing member of an affiliated entity.

(2) For the purposes of this Instrument, a person or company is considered to be a subsidiary entity of another person or company if

(a) it is controlled by,

(i) that other, or

(ii) that other and one or more persons or companies each of which is controlled by that other, or

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3 This definition is derived from proposed National Instrument 51-102 and Ontario Securities Commission Rule 14-501 *Definitions*.

4 This definition is derived from proposed National Instrument 51-102.

(iii) two or more persons or companies, each of which is controlled by that other; or

(b) it is a subsidiary entity of a person or company that is the other's subsidiary entity.

(3) For the purpose of this Instrument, "control" means the direct or indirect power to direct or cause the direction of the management and policies of a person or company, whether through ownership of voting securities or otherwise.

(4) Despite subsection (1), a person will not be considered to be an affiliated entity of an issuer for the purposes of this Instrument if the person:

(a) owns, directly or indirectly, ten per cent or less of any class of voting equity securities of the issuer; and

(b) is not an executive officer of the issuer.

1.4 Meaning of Independence –

(1) A member of an audit committee is independent if the member has no direct or indirect material relationship with the issuer.

(2) For the purposes of subsection (1), a material relationship means a relationship which could, in the view of the issuer's board of directors, reasonably interfere with the exercise of a member's independent judgement.

(3) Despite subsection (2), the following persons are considered to have a material relationship with an issuer:

(a) a person who is, or whose immediate family member is, or at any time during the prescribed period has been, an officer or employee of the issuer, its parent, or of any of its subsidiary entities or affiliated entities;

(b) a person who is, or has been, an affiliated entity of, a partner of, or employed by, a current or former internal or external auditor of the issuer, unless the prescribed period has elapsed since the person's relationship with the internal or external auditor, or the auditing relationship, has ended;

(c) a person whose immediate family member is, or has been, an affiliated entity of, a partner of, or employed in a professional capacity by, a current or former internal or external auditor of the issuer, unless the prescribed period has elapsed since the person's relationship with the internal or external auditor, or the auditing relationship, has ended;

(d) a person who is, or has been, or whose immediate family member is or has been, employed as an executive officer of an entity if any of the issuer's current executives serve on the entity's compensation committee, unless the prescribed period has elapsed since the end of the service or employment;

(e) a person who accepts, or has accepted at any time during the prescribed period, directly or indirectly, any consulting, advisory or other compensatory fee from the issuer or any subsidiary entity of the issuer, other than as remuneration for acting in his or her capacity as a member of the audit committee, the board of directors, or any other board committee; and

(f) a person who is an affiliated entity of the issuer or any of its subsidiary entities.

(4) For the purposes of subsection (3), the prescribed period is the shorter of

(a) the period commencing on **[January 1, 2004]** and ending immediately prior to the determination required by subsection (3); and

(b) the three year period ending immediately prior to the determination required by subsection (3).

(5) For the purposes of clauses (3)(b) and (3)(c), a partner does not include a limited partner whose interest in the internal or external auditor is limited to the receipt of fixed amounts of compensation (including deferred compensation) for prior service with an internal or external auditor if the compensation is not contingent in any way on continued service.

(6) For the purposes of clause (3)(e), compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the issuer if the compensation is not contingent in any way on continued service.

(7) For the purposes of clause 3(e), the indirect acceptance by a person of any consulting, advisory or other compensatory fee includes acceptance of a fee by

(a) an immediate family member, or

(b) a partner, member or executive officer of, or a person who occupies a similar position with, an entity that provides accounting, consulting, legal, investment banking or financial advisory services to the issuer or any subsidiary entity of the issuer, other than limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the entity.

PART 2
AUDIT COMMITTEE RESPONSIBILITIES

2.1 Audit Committee – Every issuer must have an audit committee that complies with the requirements of the Instrument.

2.2 Relationship with External Auditor – An external auditor must report directly to the audit committee.

2.3 Audit Committee Responsibilities –

(1) An audit committee must have a written charter that sets out its mandate and responsibilities.

(2) An audit committee must recommend to the board of directors:

(a) the external auditors to be nominated for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer; and

(b) the compensation of the external auditors.

(3) An audit committee must be directly responsible for overseeing the work of the external auditors engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer, including the resolution of disagreements between management and the external auditors regarding financial reporting.

(4) An audit committee must pre-approve all non-audit services to be provided to the issuer or its subsidiary entities by its external auditors or the external auditors of the issuer's subsidiary entities.

(5) An audit committee must review the issuer's financial statements, MD&A and earnings press releases before the issuer publicly discloses this information.

(6) An audit committee must be satisfied that adequate procedures are in place for the review of the issuer's disclosure of financial information extracted or derived from the issuer's financial statements, other than the disclosure referred to in subsection (5), and must periodically assess the adequacy of those procedures.

(7) An audit committee must establish procedures for:

(a) the receipt, retention and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters; and

(b) the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters.

(8) An audit committee must review and approve the issuer's hiring policies regarding employees and former employees of the present and former external auditors of the issuer.

2.4 ***De Minimis* Non-Audit Services –** An audit committee may satisfy the pre-approval requirement in subsection 2.3(4) if:

(a) the aggregate amount of all the non-audit services that were not pre-approved constitutes no more than five per cent of the total amount of revenues paid by the issuer to its external auditors during the fiscal year in which the services are provided;

(b) the services were not recognized by the issuer at the time of the engagement to be non-audit services; and

(c) the services are promptly brought to the attention of the audit committee of the issuer and approved, prior to the completion of the audit, by the audit committee or by one or more members of the audit committee to whom authority to grant such approvals has been delegated by the audit committee.

2.5 Delegation of Pre-Approval Function –

(1) An audit committee may delegate to one or more independent members the authority to pre-approve non-audit services in satisfaction of the requirement in subsection 2.3(4).

(2) The pre-approval of non-audit services by any member to whom authority has been delegated pursuant to subsection (1) must be presented to the full audit committee at its first scheduled meeting following such pre-approval.

PART 3
COMPOSITION OF THE AUDIT COMMITTEE

3.1 Composition –

(1) An audit committee must be composed of a minimum of three members.

(2) Every audit committee member must be a director of the issuer.

(3) Subject to sections 3.2, 3.3, 3.4 and 3.5, every audit committee member must be independent.

(4) Subject to section 3.5, every audit committee member must be financially literate.

3.2 Initial Public Offerings –

(1) If an issuer has filed a prospectus to qualify the distribution of securities that constitutes its initial public offering, subsection 3.1(3) does not apply for a period of up to 90 days commencing on the date of the receipt for the prospectus, provided that one member of the audit committee is independent.

(2) If an issuer has filed a prospectus to qualify the distribution of securities that constitutes its initial public offering, subsection 3.1(3) does not apply for a period of up to one year commencing on the date of the receipt for the prospectus, provided that a majority of the audit committee members are independent.

3.3 Controlled Companies – An audit committee member that sits on the board of directors of an affiliated entity is exempt from the requirement in subsection 3.1(3) if that member, except for being a director (or member of the audit committee or any other board committee) of the issuer and the affiliated entity, is otherwise independent of the issuer and the affiliated entity.

3.4 Events Outside Control of Member – If an audit committee member ceases to be independent for reasons outside that member's reasonable control, that member is exempt from the requirement in subsection 3.1(3) for a period ending on the later of:

(a) the next annual meeting of the issuer, and

(b) the date that is six months from the occurrence of the event which caused the member to not be independent.

3.5 Death, Disability or Resignation of Member – Where the death, disability or resignation of an audit committee member has resulted in a vacancy on the audit committee that the board of directors is required to fill, an audit committee member appointed to fill such vacancy is exempt from the requirements in subsections 3.1(3) and (4) for a period ending on the later of:

(a) the next annual meeting of the issuer, and

(b) the date that is six months from the day the vacancy was created.

PART 4
AUTHORITY OF THE AUDIT COMMITTEE

4.1 Authority – An audit committee must have the authority

(a) to engage independent counsel and other advisors as it determines necessary to carry out its duties,

(b) to set and pay the compensation for any advisors employed by the audit committee, and

(c) to communicate directly with the internal and external auditors.

PART 5
REPORTING OBLIGATIONS

5.1 Required Disclosure – Every issuer must include in its AIF the disclosure required by Form 52-110F1.

5.2 Management Information Circular – If management of an issuer solicits proxies from the security holders of the issuer for the purpose of electing directors to the issuer's board of directors, the issuer must include in its management information circular a cross-reference to the sections in the issuer's AIF that contain the information required by section 5.1.

PART 6
VENTURE ISSUERS

6.1 Venture Issuers – Venture issuers are exempt from the requirements of Parts 3 (*Composition of the Audit Committee*) and 5 (*Reporting Obligations*).

6.2 Required Disclosure –

(1) Subject to subsection (2), every venture issuer that relies on the exemption in section 6.1 must annually disclose in its management information circular the disclosure required by Form 52-110F2.

(2) If a venture issuer does not have a management information circular, the annual disclosure required by subsection (1) must be provided in the venture issuer's AIF or MD&A.

PART 7
U.S. LISTED ISSUERS

7.1 U.S. Listed Issuers – An issuer that has securities listed on a national securities exchange registered pursuant to section 6 of the 1934 Act or in an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A of the 1934 Act is exempt from the requirements of Parts 2 (*Audit Committee Responsibilities*), 3 (*Composition of the Audit Committee*), 4 (*Authority of the Audit Committee*), and 5 (*Reporting Obligations*), provided that:

(a) the issuer is in compliance with the requirements of that exchange or quotation system regarding the role and composition of audit committees; and

(b) the issuer includes in its AIF the disclosure, if any, required by paragraph 5 of Form 52-110F1.

PART 8
EXEMPTIONS

8.1 Exemptions –

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

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

PART 9
EFFECTIVE DATE

9.1 Effective Date –

(1) This Instrument comes into force on **[January 1, 2004]**.

(2) Despite subsection (1), this Instrument applies to an issuer commencing on the earlier of:

(a) the first annual meeting of the issuer after **[January 1, 2004]**, and

(b) **[June 30, 2004]**.

FORM 52-110F1
INFORMATION REQUIRED IN AN AIF

1. The audit committee's charter

Disclose the text of the audit committee's charter.

2. Composition of audit committee

Disclose the name of each audit committee member. If a member is not independent, state that fact and explain why.

3. Audit Committee Financial Expert

(a) Disclose the identity of any audit committee financial expert(s) serving on the audit committee.

If the audit committee does not have an audit committee financial expert serving on the audit committee, state that fact and explain why.

(b) If an audit committee financial expert's qualifications were acquired other than as a result of:

(i) education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;

(ii) experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions; or

(iii) experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements,

provide a brief listing of the audit committee financial expert's relevant experience.

4. Reliance on Certain Exemptions from the Instrument

If, at any time since the commencement of the issuer's most recently completed financial year, the issuer has relied on sections 2.4 *(De Minimis Non-audit Services)*, 3.2 *(Initial Public Offerings)*, 3.3 *(Controlled Companies)*, 3.4 *(Events Outside Control of Member)*, 3.5 *(Death, Disability or Resignation of Audit Committee Member)* or an exemption from this Instrument, in whole or in part, granted under Part 7 *(Exemptions)*, disclose that fact and provide an assessment of whether, and if so, how, such reliance could materially adversely affect the ability of the audit committee to act independently and to satisfy the other requirements of the Instrument.

5. Audit Committee Oversight

If, at any time since the commencement of the issuer's most recently completed financial year, a recommendation of the audit committee to nominate or compensate an external auditor was not adopted by the board of directors, disclose that fact and explain why.

6. Pre-Approval Policies and Procedures

If the audit committee has adopted specific policies and procedures for the engagement of non-audit services, describe those policies and procedures.

7. External Auditor Service Fees (By Category)

(a) Disclose, under the caption "Audit Fees", the aggregate fees billed for each of the last two fiscal years for professional services rendered by an external auditor for the audit and review of the issuer's financial statements or services that are normally provided by the external auditor in connection with statutory and regulatory filings or engagements.

(b) Disclose, under the caption "Audit-Related Fees", the aggregate fees billed in each of the last two fiscal years for assurance and related services by an external auditor that are reasonably related to the performance of the audit or review of the issuer's financial statements and are not reported under clause (a) above. Include a description of the nature of the services comprising the fees disclosed under this category.

(c) Disclose, under the caption "Tax Fees", the aggregate fees billed in each of the last two fiscal years for professional services rendered by an external auditor for tax compliance, tax advice, and tax planning. Include a description of the nature of the services comprising the fees disclosed under this category.

(d) Disclose, under the caption "All Other Fees", the aggregate fees billed in each of the last two fiscal years for products and services provided by an external auditor, other than the services reported under clauses (a), (b) and (c), above. Include a description of the nature of the services comprising the fees disclosed under this category.

FORM 52-110F2
DISCLOSURE BY VENTURE ISSUERS

1. The audit committee's charter

Disclose the text of the audit committee's charter.

2. Composition of audit committee

Disclose the name of each audit committee member and state whether or not the member is (i) independent and (ii) financially literate.

3. Audit Committee Oversight

If, at any time since the commencement of the venture issuer's most recently completed financial year, a recommendation of the audit committee to nominate or compensate an external auditor was not adopted by the board of directors, disclose that fact and explain why.

4. Pre-Approval Policies and Procedures

If the audit committee has adopted specific policies and procedures for the engagement of non-audit services, describe those policies and procedures.

5. External Auditor Service Fees (By Category)

(a) Disclose, under the caption "Audit Fees", the aggregate fees billed for each of the last two fiscal years for professional services rendered by an external auditor for the audit and review of the venture issuer's financial statements or services that are normally provided by the external auditor in connection with statutory and regulatory filings or engagements.

(b) Disclose, under the caption "Audit-Related Fees", the aggregate fees billed in each of the last two fiscal years for assurance and related services by an external auditor that are reasonably related to the performance of the audit or review of the venture issuer's financial statements and are not reported under clause (a) above. Include a description of the nature of the services comprising the fees disclosed under this category.

(c) Disclose, under the caption "Tax Fees", the aggregate fees billed in each of the last two fiscal years for professional services rendered by an external auditor for tax compliance, tax advice, and tax planning. Include a description of the nature of the services comprising the fees disclosed under this category.

(d) Disclose, under the caption "All Other Fees", the aggregate fees billed in each of the last two fiscal years for products and services provided by an external auditor, other than the services reported under clauses (a), (b) and (c), above. Include a description of the nature of the services comprising the fees disclosed under this category.

6. Exemption

Disclose that the venture issuer is relying upon the exemption in section 6.1 of the Instrument.

COMPANION POLICY 52-110CP
TO MULTILATERAL INSTRUMENT 52-110
AUDIT COMMITTEES

Part One
General

1.1 **Purpose** – Multilateral Instrument 52-110 *Audit Committees* (the Instrument) is a rule in each of Québec, Alberta, Manitoba, Ontario, Nova Scotia and Newfoundland and Labrador, a Commission regulation in Saskatchewan, a policy in New Brunswick, Prince Edward Island and the Yukon Territory, and a code in the Northwest Territories and Nunavut. We, the securities regulatory authorities in each of the foregoing jurisdictions (the Jurisdictions), have implemented the Instrument to encourage reporting issuers to establish and maintain strong, effective and independent audit committees. We believe that such audit committees enhance the quality of financial disclosure made by reporting issuers, and ultimately foster increased investor confidence in Canada's capital markets.

This companion policy (the Policy) provides information regarding the interpretation and application of the Instrument.

1.2 **Application to Non-Corporate Entities –** The Instrument applies to all reporting issuers other than investment funds, issuers of asset-backed securities, designated foreign issuers and certain subsidiary entities of reporting issuers. Consequently, the Instrument applies to issuers that are both corporate and non-corporate entities. Where the Instrument or this Policy refers to a particular corporate characteristic, such as a board of directors, the reference should be read to also include any equivalent characteristic of a non-corporate entity.

Part Two
The Role of the Audit Committee

2.1 **The Role of the Audit Committee.** An audit committee is a committee of a board of directors to which the board delegates its responsibility for oversight of the financial reporting process. Traditionally, the audit committee has performed a number of roles, including

- helping directors meet their responsibilities,
- providing better communication between directors and the external auditors,
- enhancing the independence of the external auditors,
- increasing the credibility and objectivity of financial reports, and
- strengthening the role of the directors by facilitating in depth discussions among directors, management and external auditors.

The Instrument requires that the audit committee also be responsible for managing, on behalf of the shareholders, the relationship between the issuer and the external auditors. In particular, it provides that an audit committee must have responsibility for:

(i) overseeing the work of the external auditors engaged for the purpose of preparing or issuing an audit report or related work; and

(ii) recommending to the board of directors the nomination and compensation of the external auditors.

Although under corporate law an issuer's external auditors are responsible to the shareholders, in practice, shareholders have often been too dispersed to effectively exercise meaningful oversight of the external auditors. As a result, management has typically assumed this oversight role. However, the auditing process may be compromised if the external auditors view their main responsibility as serving management rather than the shareholders. By assigning these responsibilities to an independent audit committee, the Instrument ensures that the external audit will be conducted independently of the issuer's management.

2.2 **Review of Financial Statements by Parent's Audit Committee**. Subsection 2.3(5) of the Instrument provides that an audit committee must review financial statements, MD&A and earnings press releases before the issuer publicly discloses this information. Where a subsidiary entity is also subject to the Instrument, we believe that the parent company's audit committee can perform the review function for the subsidiary entity with respect to this information.

2.3 Public Disclosure of Financial Information. Issuers are reminded that, in our view, the extraction of information from financial statements that have not previously been reviewed by the audit committee and the release of that information into the marketplace is inconsistent with the issuer's obligation to have its audit committee review the financial statements. See also National Policy 51-201 *Disclosure Standards*.

Part Three
Independence

3.1 Meaning of Independence. The Instrument generally requires every member of an audit committee to be independent. Subsection 1.4(1) of the Instrument defines independence to mean the absence of any direct or indirect material relationship between the director and the issuer. In our view, this relationship may include commercial, charitable, industrial, banking, consulting, legal, accounting or familial relationships. However, only those relationships which could, in the view of the issuer's board of directors, reasonably interfere with the exercise of a member's independent judgement should be considered material relationships within the meaning of section 1.4.

Subsection 1.4(3) of the Instrument sets out a list of persons that we believe have a relationship with an issuer that would reasonably interfere with the exercise of the person's independent judgement. Consequently, these persons are not considered independent for the purposes of the Instrument and are therefore precluded from serving on the issuer's audit committee. Directors and their counsel should therefore consider the nature of the relationships outlined in subsection 1.4(3) as guidance in applying the general independence test set out in subsection 1.4(1).

3.2 Safe Harbour – Subsection 1.3(1) of the Instrument provides, in part, that a person or company is an affiliated entity of another entity if the person or company controls the other entity. Subsection 1.3(4), however, provides that a person will not be considered to be an affiliated entity of an issuer if the person:

(a) owns, directly or indirectly, ten per cent or less of any class of voting equity securities of the issuer; and

(b) is not an executive officer of the issuer.

Subsection 1.3(4) is intended only to identify those persons who are not considered affiliated entities of an issuer. The provision is not intended to suggest that a person who owns more than ten percent of an issuer's voting equity securities is automatically an affiliated entity of the issuer. Instead, a person who owns more than ten percent of an issuer's voting equity securities should examine all relevant facts and circumstances to determine if he or she is an affiliated entity within the meaning of subsection 1.3(1).

Part Four
Audit Committee Financial Experts

4.1 Definition of Audit Committee Financial Expert.

(1) Subsection (a) of the definition of audit committee financial expert requires the individual to have an understanding of financial statements and the accounting principles used by the issuer to prepare its financial statements. Where an issuer prepares its financial statements in accordance with Canadian GAAP, the audit committee financial expert must therefore have an understanding of Canadian GAAP. However, in our view, an individual needs a detailed understanding of only those principles of Canadian GAAP which might reasonably be applicable to the issuer in question. For example, an individual would not be required to have a detailed understanding of the Canadian GAAP treatment of complex derivatives transactions if the issuer in question would not reasonably be involved in such transactions.

(2) Clause (c) of the definition of audit committee financial expert allows an individual to meet the definition as a consequence of the active supervision of persons engaged in the specified conduct. The phrase active supervision means more than the mere existence of a traditional hierarchical reporting relationship between supervisor and those being supervised. A person engaged in active supervision participates in, and contributes to, the process of addressing (albeit at a supervisory level) the same general types of issues regarding preparation, auditing, analysis or evaluation of financial statements as those addressed by the person or persons being supervised. The supervisor should also have experience that has contributed to the general expertise necessary to prepare, audit, analyze or evaluate financial statements that is at least comparable to the general expertise of those being supervised. An executive officer should not be presumed to qualify. An executive officer with considerable operations involvement, but little financial or accounting involvement, likely would not be exercising the necessary active supervision. Active participation in, and contribution to, the process, albeit at a supervisory level, of addressing financial and accounting issues that demonstrate a general expertise in the area would be necessary.

(3) In addition to determining that a person possesses an adequate degree of knowledge and experience to qualify as an audit committee financial expert, an issuer should also ensure that the candidate embodies the highest standards of personal and professional integrity. In this regard, an issuer should consider any disciplinary actions to which a potential expert is, or has been, subject in determining whether that person would be a suitable audit committee financial expert.

4.2 Liability of Audit Committee Financial Expert.

(1) The primary benefit of having an audit committee financial expert serve on an issuer's audit committee is that the person, with his or her enhanced level of financial sophistication or expertise, can serve as a resource for the audit committee as a whole in carrying out its functions. The role of the audit committee financial expert is therefore to assist the audit committee in overseeing the audit process, not to audit the issuer.

The Instrument requires an issuer to disclose whether or not an audit committee financial expert is serving on its audit committee. In our view, the mere designation or identification of a person as an audit committee financial expert in compliance with the disclosure obligation does not impose on such person any duties, obligations or liability that are greater than the duties, obligations and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification. Conversely, the designation or identification of a person as an audit committee financial expert does not affect the duties, obligations or liability of any other member of the audit committee or board of directors. The purpose of the disclosure requirement is to encourage issuers to appoint audit committee financial experts to their audit committees. As a result, we believe that it would adversely affect the operation of the audit committee and its vital role in our financial reporting and public disclosure system, and systems of corporate governance more generally, if courts were to conclude that the designation and public identification of an audit committee financial expert affected such person's duties, obligations or liability as an audit committee member or board member. We believe that it would be adverse to the interests of investors and to the operation of markets and therefore would not be in the public interest, if the designation and identification affected the duties, obligations or liabilities to which any member of the issuer's audit committee or board is subject.

(2) A person who is designated or identified as an audit committee financial expert is not deemed to be an expert for any other purpose, including, without limitation, for the purpose of filing a consent pursuant to section 10.4 of National Instrument 44-101 *Short Form Distributions*.

Part Five
Non-Audit Services

5.1 Pre-Approval of Non-Audit Services. Subsection 2.3(4) of the Instrument requires an audit committee to pre-approve certain non-audit services. In our view, it may be sufficient for an audit committee to adopt specific policies and procedures for the engagement of non-audit services where

- the pre-approval policies and procedures are detailed,
- the audit committee is informed of each non-audit service, and
- the procedures do not include delegation of the audit committee's responsibilities to management.

5.2 Pre-Approval By Parent Company's Audit Committee. Subsection 2.3(4) of the Instrument requires an audit committee to pre-approve certain non-audit services that are provided to the issuer or its subsidiary entities. Where a subsidiary entity is also subject to the Instrument, the audit committee of the parent company may pre-approve the services on behalf of the subsidiary entity's audit committee. However, the parent company and subsidiary entity should first examine all relevant facts and circumstances surrounding the engagement or relationship to determine which audit committee, that of the parent or subsidiary entity, is in the best position to review the impact of the service on the external auditor's independence.

6.1.7 Investor Confidence Initiatives: A Cost-Benefit Analysis (Summary Document)

INVESTOR CONFIDENCE INITIATIVES: A COST-BENEFIT ANALYSIS (SUMMARY DOCUMENT)

The Investor Confidence Initiatives are comprised of three separate Proposed Instruments: *Proposed Multilateral Instrument 52-108 Auditor Oversight, Proposed Multilateral Instrument 52-109, Certification Of Disclosure In Companies' Annual And Interim Filings* and *Proposed Multilateral Instrument 52-110 Audit Committees.* While each of the Proposed Instruments are being published separately, the benefits of these initiatives are wide ranging and, to a significant extent, overlapping. As a result, the analysis of these initiatives has been combined into one document.

Consultants Charles River Associates and LECG Economics Finance performed analysis on Certification and the Multi-Jurisdictional Disclosure System (MJDS), respectively.

The expected net benefits of the Investor Confidence Initiatives (ICI) are expected to be greater than the sum of the parts. The Cost-Benefit Analysis (CBA) was conducted by a combination of external consultants, the Office of the Chief Economist and the Office of the Chief Accountant. Costs have been as rigorously determined as possible and, for the most part, represent high-end estimates. As is always the case, quantifiable benefits represent a greater challenge. In each case, the benefits presented are incomplete and the probable benefits realized should be substantially greater than the numbers presented here.

A positive overall impact on investor confidence could be assumed based on the very evident result of the loss of confidence over the past three years. There is, however, no degree of certainty on how investors will respond to the initiatives or any possible guarantee that financial misstatements or restatements will be eliminated from the capital markets through the implementation of these measures. Instead, we have taken an empirical approach to measuring the benefits accruing to issuers, and their investors, from the experience of firms who have already adopted a governance regime matching the requirements of the Proposed Instruments. We have also relied on survey data of the issuers and market participants to value the benefits in other areas.

The parts contributing to the CBA sum include an analysis of CEO/CFO certification, the audit committee requirements and the requirement for auditor oversight by the Canadian Public Accountability Board. We have also considered, but not included in the overall aggregate, the benefits of MJDS as well as the potential benefits if MJDS users were exempted from Sarbanes-Oxley provisions by the SEC where similar Canadian provisions are implemented.

While we have employed techniques to quantify costs and benefits, it is very important to recognize several important *caveats* to our analysis. Our estimates and techniques, while sufficiently rigorous as to be preferable to boilerplate statements or minimalist estimates of costs, should not be interpreted as precise or exact. The primary goal is to determine whether the benefits likely exceed the costs, and not to determine the exact value of any net benefit.

The aggregate benefits of the Proposed Instruments for Certification, Audit Committees and Auditor Oversight are in the range of $1.0-10.1 billion. All figures are expressed as a net present value (NPV) over ten years discounted at a rate of 7%. The wide range represents the normal uncertainties associated with estimating the benefits of new policies and the length of the term over which the NPV is calculated. In addition, the significant benefits in a number of areas not easily quantifiable would suggest that the bias is toward the top end. Normally, efforts would have been made to further narrow this range. However, the lower end of the estimated benefits range significantly outweighs the high end of the aggregate cost estimates, which totalled $163-308 million[1]. With a very low probability of overlap between the low end of the benefits and the high end on costs, no further effort was needed to narrow the ranges based on established CBA methodology.

The potential impact of the ICI on MJDS[2] has not been included in these results given that there is no way to assess the probability that the future of MJDS will be affected by the introduction (or lack thereof) of the Proposed Instruments. We find that the main savings of MJDS remain intact despite Canadian MJDS Eligible Issuers being required to comply with SOX.

If there is a negative impact from not introducing provisions in line with the Sarbanes-Oxley Act (SOX), then the estimated benefits of MJDS of US$1.6-3.0 billion could become a cost to MJDS issuers. If MJDS issuers were permitted to comply with the requirements set out in the Proposed Instruments instead of the comparable provisions of SOX, there would be a potential benefit of approximately US$273 million[3].

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1 For cost methodology on the Certification CBA, please see pages 3-4 of this document. Methodology for the Audit Committee CBA is described on pages 9-10 of the Summary. Complete methodologies are available in the background papers cited at the beginning of each section, available on the OSC web site.

2 LECG Economics Finance, Professor Poonam Puri, Professor Anindya Sen, May 23, 2003

3 The Net Present Value of the external professional fees paid by Canadian issuers listed in the U.S. to comply with SOX is estimated at US$683 million over a ten-year period, using a discount rate of seven percent. If Canadian issuers listed in the U.S. were exempted

CEO/CFO Certification[45]

One of the regulatory changes that is being considered in Canada is the requirement that the chief executive officer (CEO) and chief financial officer (CFO) certify the material accuracy of financial information, including the management discussion and analysis (MD&A) related to the financial statements. Section 302 is the relevant section of SOX containing these certification requirement. Apart from some minor differences related to how information is disclosed in Canada, the proposed national instrument for Canada is very similar to s.302 of SOX, both in form and implementation.[6]

This section provides an analysis of the potential costs and benefits of these new certification requirements to Canadians. The potential costs from these requirements are relatively clear – there are added internal costs to the firms and additional costs paid to outside advisors. In order to estimate these costs, we interviewed various industry participants, including interlisted Canadian companies that have had to comply with s.302 of SOX, and collected public data. Using the information collected, we estimate the added time that CFOs and CEOs must take to review financial reports and the increased external costs that will be spent on auditors and lawyers. We then use publicly available data to calculate industry-wide costs from these estimates.

There are three components to our cost calculations:

- An increase in internal hours spent by the CEO and CFO;
- A small increase in CFO salaries; and,
- Increased expenditures on auditors and lawyers.

We value CEO and CFO time based on salaries without bonuses since the opportunity cost of the time spent on disclosure is unlikely the forgone time spent on activities generating high value for the firm that justify the bonuses.

As central estimates we assume CEOs and CFOs of small firms (those listed on the Venture Exchange) spend an additional four hours per quarter reviewing quarterly disclosure filings plus an additional four hours to review year-end disclosure filings. In the initial year we assume an expenditure of 10% of current audit fees on additional audit and legal advice.[7] We assume a further 5% more in audit fees per year for ongoing advice.[8] Finally, we assume an increase of 0.5% in CFO salaries.[9] Not all small firms are likely to require expenditures at this level. Our interviews suggested that some CEOs and CFOs of small firms would feel comfortable signing the disclosure documents without any additional internal effort or expenditure on outside experts.

For TSX-listed companies we assume that CEOs and CFOs devote the same 20 hours a year of additional time to review filings prior to their release. We assume a smaller salary increase for the CFO of 0.2%. (The representatives of larger firms did not generally feel that salaries would change at all in response to the legislation.) Based on our interviews, most large firms should not face substantial set-up costs or increased ongoing audit costs. We estimate a set-up cost of 5% of existing external audit fees and an ongoing cost of 1% of audit fees.

By using shares of existing audit costs, our cost estimates are appropriately scaled for the size and complexity of the firm. This is consistent with the notion that the new regulations are not intended to prescribe what internal controls are needed, only the outcomes that need to be achieved. To translate the above percentage increases into actual dollar amounts, we first estimate salaries and audit costs and then apply the percentage increases. We do this for a sample of firms and then extrapolate to all firms listed on the TSX or Venture Exchange but that are not interlisted.[10]

To estimate salaries and audit fees we undertook the following steps:

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from compliance with SOX by the SEC and could instead comply with Canadian rules that conform to SOX, this amount would drop to approximately US$410 million, resulting in savings of approximately US$273 million.

4 Multilateral Instrument 52-109, Certification Of Disclosure In Companies' Annual And Interim Filings

5 The Cost and Benefits of Management Certification of Financial Reports, Charles River Associates Canada Ltd., May 23, 2003

6 Certification of Disclosures in Companies' Quarterly and Annual Reports, Release no. 33-8124.

7 By contrast, to set up auditable internal controls as per s.404 of SOX would require expenditures on the order of 100% to 300% of existing audit fees.

8 As compared with 15 to 100% expected ongoing costs to comply with s.404 of SOX.

9 This increase is very small, but the incidence of reporting fraud we estimate to be only 0.36%. The CFO can mitigate his or her exposure to risk through better internal controls and attention to financial reporting as implied in the other cost assumptions. Thus a 0.5% increase in salary is likely on the high side even for a risk adverse CFO. (The increase in the CFO salary is a real economic cost in the sense that the CFO is exposed to additional regulatory risk that cannot be reduced to zero.)

10 We have assumed that all interlisted firms are listed on a U.S. exchange and are therefore subject to SEC regulation and exempt from the proposed Canadian certification requirements.

1. We hand collected data on CEO salaries, audit fees and assets for a random sample of TSX and Venture Exchange companies from their proxy circulars available on SEDAR. With this information, we estimated the relationship between firm size and audit fees and the relationship between firm size and CEO salary. (A log-linear regression is used in both cases. The details of the estimation are provided in the appendix.)

2. We use the regression coefficients to predict salaries and audit fees based on asset values for all firms for which we were able to collect asset data from Bloomberg. The Bloomberg data represents about 50% of the TSX non-interlisted company population and about 10% of the Venture Exchange company population. We tested to see if there was a selection bias in Bloomberg in the companies reported using our random sample of hand-collected data and found that after controlling for exchange there was no bias.

3. We calculated costs based on the assumed percentage increases above, using a real discount rate of 5% to compute the net present value of costs over a 10 year horizon.[11]

We grossed up to industry level costs using the ratio of the size to the total population to the Bloomberg size.

The potential benefits from the certification requirements are improved investor confidence leading to an improved financial system. In the extreme, a financial market with a reputation for widespread accounting irregularities will reduce the number of investors thereby raising the cost of capital to those firms seeking equity financing. While clear in principle, these benefits are inherently difficult to measure.[12] Given their intangible nature, we are only able to quantify some portion of the potential benefits. For this exercise, we estimate the potential reduction in the incidence of financial misstatements and the value that this reduction would have for honest companies from reduced costs of capital.

Quantifying costs or benefits of a regulatory policy aimed at reducing the incidence of errors (intentional or otherwise) in financial reporting is difficult for several reasons. First, the proposed instrument is designed to allow firms to choose the appropriate level of controls that the CEO and CFO (and the Board and audit committee) feel is appropriate to provide the new certificates.[13] While we believe such a flexible regulatory approach is very useful for minimizing the regulatory burden[14], it makes it more difficult to predict the operational steps that companies will take to implement the regulations—and hence the costs are more difficult to quantify.

Second, the quantitative analysis of benefits is partially based on Ontario Securities Commission (OSC) data from continuous disclosure reviews. It also implicitly assumes a level of enforcement that engenders the type of response exhibited by firms that must meet U.S. regulations. Section 906 of SOX imposes significant new criminal penalties including up to 20 years in prison. This has motivated CEOs and CFOs to take actions in response to s.302. The level of response to OSC and other Canadian securities regulators will depend on CEOs and CFOs' expectations of enforcement and the size of penalties.

The interviews did not suggest that market participants view enforcement in Canada to be significantly weaker than in the U.S. such that the firm responses to OSC certification requirements would be different from their response to SEC certification requirements. Nevertheless, the response may be more significant in the U.S. than in Canada due to s.906. The effectiveness of the certification requirements in either country will ultimately depend on how the regulations are enforced.

Below, we summarize our findings.

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11 We assume a 7% nominal discount rate based on the average long bond rate over the past decade and a 2% inflation rate (the middle of the Bank of Canada's target inflation range of 1 to 3%). In terms of benefits, one might argue that the payoffs are proportional to the value of equity and thus the discount rate should be higher than that applied to costs. However, the COSO study of fraudulent reporting found that frauds were more likely to occur when a firm was performing poorly. This would suggest that reducing fraudulent reporting adds value most when the market overall is performing poorly. This in turn implies a low, potentially negative correlation in the payoffs from reduced fraudulent reporting and thus suggests a lower discount rate is appropriate. We thus use a 5% real discount rate for both costs and benefits.

12 The SEC discusses at a very high level possible benefits and costs of the certification requirements in their final rules (Final Rule: Release No33-8124). The SEC maintains that there are likely significant benefits from the certification requirements. The apparent difficulty the SEC had in quantifying costs and benefits is not unique to the U.S. situation and we face similar difficulties. On the other hand, we do have the benefit of discussions with Canadian firms interlisted in the U.S. on how they have responded to the SEC regulations (s.302 of SOX) and their perceptions of likely benefits.

13 While we scale our cost estimates for firm size, we cannot account for other differences across firms, such as the sophistication of existing internal controls, which would result in different costs. Thus, our cost estimate range is based on expected average firm costs.

14 Indeed, one of the benefits of a less prescriptive approach is that it allows the firm to determine how to best meet the regulations based on the firm's particular circumstances. Firms have generally much more information about their individual circumstances than the regulator and therefore have an information advantage.

Interview Findings:

- Certification requirements would motivate many firms to undertake additional actions to meet such requirements, including increased attention by the CEO and CFO to financial disclosures, enhancing disclosure controls and procedures, and, especially for smaller firms, increased consultation with external auditors and lawyers. Still, most of the firms and industry representatives we interviewed do not view the certification requirements as unnecessarily onerous.

- Large Canadian interlisted firms viewed the certification requirements positively. The increased costs are modest, while firms could realize benefits by having better information for senior executives to make decisions and by passing on any more accurate information to shareholders.

- Smaller firms will face larger proportionate costs than large firms, as the CEO and CFO may need to consult outside expertise. However, small firms generally have simpler business models and more compact organizational structures that should allow most CEOs and CFOs to certify financial information without the need to make significant additional expenditures on internal controls—assuming such controls do not have to be auditable.

- There is considerable variation between firms of the same size and industry as to the sophistication of internal controls that are in place. Some firms may decide to use the certification requirements as justification to upgrade internal controls, which would likely be at least a marginally profitable investment.

The interview findings were based on a relatively small sample primarily due to a low response rate on inquiries. Many of those contacted were unwilling or unable to participate in the survey because they did not have sufficient time to evaluate SOX or the Proposed Instruments in Canada. As a result, the interview findings were not used in estimating the costs and benefits and the views expressed may not be representative of the Canadian capital markets.

Academic Literature Findings:

- When firms choose to submit to more onerous disclosure requirements they experience an increase in stock prices, reduced bid-ask spreads and greater share turnover. However, when regulations are imposed, some firms may find the costs outweigh the benefits.

- Erroneous financial reporting is especially prevalent among smaller firms and the size of misstatements and misappropriations are proportionally larger for smaller firms. However, problems in financial reporting occur at all firm sizes, as the WorldCom and Enron scandals confirm, and the costs are significant for large firms. Better internal controls as well as setting the "tone at the top" are effective at reducing flawed reporting, though they are not a panacea.

Cost/Benefit Findings:

- Costs are likely to be relatively higher for smaller firms (Venture Exchange-listed) than larger firms (TSX-listed) relative to firm size (measured by assets). This is largely the result of economies of scale in auditing and governance that benefits larger firms.

- There may also be modest increases in the salaries of CFOs and CEOs of smaller-firms and some increase in the cost of Directors and Officers (D&O) insurance, to reflect the greater personal risks associated with new regulations.

- We estimate the net present value (NPV) of industry-wide costs over a 10 year horizon to be $120 million to $143 million. The upper cost estimate is less than 0.015% of total assets.

- Due to the nature of benefits and data limitations there is considerable uncertainty in our benefit estimates. Nonetheless, we estimate the certification requirements could reduce the net present value of the expected amount of misstatements by anywhere from $10 million to $907 million. Given the limited range of the benefits quantified, the expected impact would be, at the very least, at the upper end of this range.

- The benefits of reduced financial misstatements are proportionately larger for smaller firms since the size of misstatements are generally proportionately larger. While the cost of misstatements cannot be directly inferred from the size of misstatements, the limited evidence we have suggests that they are of a similar order of magnitude. The costs and reduction in the amount of misstatements are of a similar order of magnitude whether the firm is large or small.

We find that reasonable parameter estimates for the probability of financial misstatements, the effect of certification and the size of misstatements (and their cost) put estimated benefits at a similar order of magnitude to estimated costs. In light of the fact

that there are also other benefits, such as greater liquidity, lower market risk, and better allocation of resources that we are unable to quantify, we find that the benefits likely exceed the costs.

Audit Committees[15]

Background and Academic Literature

Dozens of studies have been published seeking a connection between firm governance and performance. The results have been mixed with some finding a significant relationship and others a small or insignificant connection.

Champions of good governance may be surprised at this, but they should also be aware that a board's primary duties are expected to focus on longer-term vision and the protection of investors rather than on short-term price movements or day-to-day operations. The loss of investor confidence experienced over the past two years, and the regulatory response, has been based on aggressive accounting. More specifically, the Proposed Multilateral Instrument 52-110 Audit Committees (52-110), which requires an independent audit committee, is designed to enhance the quality of financial reporting.

One of the most significant issues that tends to degrade market efficiency is information asymmetry. Insiders, in both the issuers and the intermediaries, have access to information not available to the retail investor. While some degree of information asymmetry is unavoidable, the damage to the investor, investor confidence and market integrity is most substantial when the investor is provided with misleading information. This can lead to investors making ill-informed investment decisions to their financial detriment and detracting from overall market efficiency.

A substantial number of studies internationally have found a link between governance and accounting choices[16]. With audit committee composition, auditor reporting and certification at the forefront of the investor confidence initiatives, we have chosen to focus this part of the CBA on the relationship between the existence of an independent audit committee and evidence of aggressive accounting.

Measuring the degree and frequency of aggressive accounting activity is the first challenge. A number of methods have been proposed, depending on the type of behaviour to be estimated. Some firms may seek to avoid reporting negative earnings in a quarter. Others may wish to show consistent growth over a period of a few years or longer. Earnings may also be managed to generate an earnings "surprise" relative to the consensus of the analysts following the stock. This type of behaviour may precede an offering in the market. There is also a demonstrated managerial incentive to understate earnings, or report a loss, in order to set options prices at a favourable level. By shifting earnings forward, managers can price options at a favourable level and move the stock price higher at a later date to improve the profitability of the options granted.

A number of methods have been proposed and evaluated to examine the frequency and impact of each of these methods of earnings management. However, all of these approaches would tend to increase the variability of the deviation between cash flow and earnings. As a result, we have chosen to focus on the differences between the two, relative to measures of the quality of governance. While earnings management comes in many forms and each of those forms may have a significant impact on shareholder value, the most common variety appears to be earnings smoothing. Firms may use accruals and other adjustments in order to report a string of unbroken earnings growth. Following the work of studies done in the U.S. market, we have used the average volatility in cash flow over twelve quarters divided by the average volatility in earnings. If no earnings management has taken place, this ratio should be close to one.

Methodology

Over all firms in the sample, cash flows were more than 2.5 times as volatile as earnings on average, suggesting a significant and widespread practice of earnings smoothing. Similar studies in the U.S. have found a ratio of just under four times. One-quarter of the sample firms had a mean ratio of almost six times while 44% exhibited a mean of over four times. While in any given quarter, there may be a justifiable and legitimate reason for a deviation between cash flow and earnings, persistent differences in volatility of four to six times is highly indicative of earnings management. The high percentage of the sample showing this persistence confirms our choice of this variable as a focus. With the very widespread nature of this activity, efforts to reduce it should show the greatest benefit for the overall market.

The proxies chosen for the quality of governance are based on the measurable components of 52-110, an audit committee composed solely of independent directors with the auditors reporting directly to the audit committee.

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15 Proposed Multilateral Instrument 52-110 Audit Committees, Analysis by The Office of the Chief Economist, Ontario Securities Commission, May, 2003.

16 Bowen, Rajgopal and Venkatchalam (2002), Chtourou, Bedard and Couteau (2001), Xie, Davidson and Dadalt (2002), Ching, Firth and Rui (2002), Pincus and Rajgopal (2002), Becker and DeFond (1995), Warfield and Wild (2002), See References in detailed paper, *CBA: Audit Committees*

Our first hypothesis was that firms with a better governance regime would show a lower incidence of earnings smoothing (a volatility ratio closer to one) and that the governance variables would be significant.

Assuming that governance has an impact on the decision to manipulate earnings, we then looked for a connection to shareholder value in order to estimate the benefits of improved governance. This link is also well supported in the studies noted above among others. There are a number of possible measures of shareholder value including equity price movements, market value-added, return on capital, return on equity and total return. Based on recent studies, we chose to focus on economic value added (EVA®)[17]. EVA® is defined as the rate of return less the cost of capital multiplied by the capital employed. In other words, is the company generating a sufficient return to cover the cost of obtaining capital and, for the total value, how much capital has been employed?

In addition to the governance factors, other variables found to have a significant impact on EVA® were added in order to ensure a robust and fully specified model. These variables included net income, total assets and the weighted average cost of capital.

A sample of 306 publicly listed firms on the TSX was used, approximately one-quarter of the total number of firms listed on the TSX. This is almost double the normal sample size expected to show statistical significance. Governance data for these firms, analogous to requirements of 52-110, was compiled in conjunction with the Rotman School of Business at the University of Toronto through publicly available documents and, where public documents were incomplete for the purposes of the analysis, direct interviews with firm representatives.

Costs and Benefits

An independent audit committee was found to have a very significant impact on the incidence of earnings smoothing. The Chair-CEO split and the auditor reporting to the audit committee were not found to be significant. Other studies have found that any management influence in the auditor-audit committee relationship negates the impact of independence. In our study, the lack of significance in the auditor report variable may be related to data problems. This variable was based on verbal reports from the issuers and may not conform to the requirements of 52-110. More specifically, while the auditor may be reporting to the audit committee, there may also be significant management influence in the relationship.

In turn, the earnings smoothing variable was found to have a substantial and robust impact on EVA®. Given that half of the sample already has an independent audit committee, the net impact of independence was applied to half of the firms in the TSX. Given that having the auditor report to the audit committee has been found to be significant in other studies, not to mention the other requirements of 52-110, this is very likely to represent an understatement of the total benefits from the implementation of 52-110. In addition, there are other forms of earnings manipulation that would not be accurately captured in our measure.

There may be a significant benefit related to having a financial expert on the audit committee deriving from improved results and investor perception. Conversely, firms without a financial expert may experience lower investor confidence and a higher cost of capital. With no requirement to have a financial expert in 52-110, these costs and benefits were not built into the analysis.

Through the impact of reduced earnings smoothing and other manipulation as measured by this variable, we would expect benefits in the range of $1.0-9.2 billion or 0.05-0.4% of total assets, discounted over ten years at a 7% discount rate.

From a cost perspective, the sample of 306 TSX-listed companies was broken down into firms that currently meet the criteria, firms that could meet the criteria with independent directors currently serving on the board but not on the audit committee, and firms that would need to hire additional independent directors. 154 companies already meet the requirements of audit committee independence. 102 companies could fulfil the requirements by replacing inside directors on the audit committee with independent directors already on the board. In terms of additional cost as a result of 52-110, we focused on the 50 remaining companies that would have to hire 71 additional independent directors.

Cost information was based on a report by Patrick O'Callaghan & Associates[18]. Using low and high end estimates for the additional cost of search fees, meeting fees, committee retainers and director fees, the additional cost range was estimated at $43-165 million on a present discounted value basis over ten years.

It was assumed that the new directors would be covered under the current directors and officers (D&O) insurance policies and that there would be no increase in costs resulting from the introduction of 52-110. A survey of the major insurance companies in Canada confirmed this assumption. A substantial increase in D&O costs in the U.S. based on a survey by Foley Lardner[19] has been cited on this topic. That study makes the erroneous assumption that increasing D&O costs are a function of the

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17 Hall (2002), Davidson (2001)

18 "Corporate Board Governance and Director Compensation in Canada: A Review of 2001", by Patrick O'Callaghan and Associates, December 2001

19 Foley Lardner, The Increased Financial And Non-Financial Cost Of Staying Public, April, 2003

implementation of the SOX Act. The costs of D&O insurance were on the rise well before SOX was introduced and are a result of a number of factors. The losses associated with the problems at Enron, Worldcom and others would have figured prominently among these factors. Improved governance, with the possible exception of certification as noted above, should reduce the cost of insurance if there is any positive impact at all resulting from these initiatives.

One area that presented a significant problem in the cost estimation process was the option of naming a financial expert on the audit committee. While financial expertise does not necessarily imply an accounting or other financial designation (and vice versa), we used these designations as a proxy for additional costs that firms may incur. Since it will be left up to the board to determine the need for a financial expert and how that expert would be qualified, these additional costs may be zero. However, using the professional designations (C.A., C.M.A, C.G.A., C.F.A.) as a proxy, we estimated potential additional costs of $37-143 million. Given that this is an option, not a requirement, these costs have not been included in the totals.

It was also assumed that additional administrative costs for an additional director or two would be minimal compared to the other costs noted above.

The Canadian Public Accounting Oversight Board[20]

The benefits provided by Proposed Multilateral Instrument 52-108 Auditor Oversight include improvements in the quality of audits and reliability of the financial statements filed by reporting issuers. This will improve investors' confidence in our market and, as a result, help reduce the cost of capital for reporting issuers. These advantages will also harmonize our regulatory regime with the U.S. system.

The CPAB will be self-funding and operating costs will be recovered through fees levied on the participating public accounting firms that are inspected by the CPAB. The exact fee structure and amounts have not yet been determined but fees are likely to include three elements: (i) start-up cost recovery fees, (ii) initial registration fees, and (iii) annual/recurring fees.

Start-up Cost Recovery Fees - It is expected that the largest four or six public accounting firms will pay the bulk of the start-up cost recovery fees over a two or three year period. The amount to be paid by each firm may vary to reflect relative size of each firm.

Initial Registration Fees - This fee will cover the administrative costs of maintaining a register of public accounting firms that have decided to participate in the CPAB Oversight Program. This fee is likely to reflect each firm's ability to pay and may vary depending upon the number of reporting issuers that each firm audits.

Annual/Recurring Fees - It is estimated that the CPAB will have an annual budget in the range of $3 to $5 million, on top of the approximately $3 million that is currently spent on practice inspection by the accounting profession through provincial CA Institutes/Ordre.

Indirect costs related to requirements placed on auditors by the CPAB can not be estimated at this time, as the requirements have not been proposed or determined.

Summary

For the most part, the CBA Summary focuses on the quantifiable aspects of the ICI. There will almost certainly be qualitative improvements in investor confidence that would translate into higher firm valuations and reduced cost of capital. If we had assumed that the loss of market value over the last few years was solely related to a loss of investor confidence, then even a partial reversal of that decline would cover the costs of the ICI many times over. However, there were many other factors involved in the market sell-off including an overvaluation of equities going into this period, the terrorist attack on the World Trade Center, the war in Iraq and other issues. It is not possible to separate out the impact of the market frauds and conflicts which have damaged investor confidence.

Instead, we relied on demonstrable improvements in firm valuations, reduced capital costs and other cost reductions that could be linked to improved firm governance regimes. These estimates contain a degree of uncertainty that is reflected in the wide ranges for both costs and benefits reported. In aggregate, though, even the lower end of the range of quantifiable benefits outweighs the high end of estimated costs by a substantial margin. The currently unquantifiable benefits could extend that margin dramatically.

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20 Proposed Multilateral Instrument 52-108 Auditor Oversight, Analysis by The Office of the Chief Accountant, Ontario Securities Commission, May 29, 2003.

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
03-Jun-2003	Ralph Robb	Acuity Pooled Canadian Small Cap Fund - Trust Units	150,000.00	11,605.00
30-May-2003	5 Purchasers	Acuity Pooled High Income Fund - Trust Units	692,100.00	45,239.00
27-May-2003	3 Purchasers	Acuity Pooled High Income Fund - Trust Units	325,000.00	21,416.00
06-Jun-2003 10-Jun-2003	3 Purchasers	Acuity Pooled High Income Fund - Trust Units	311,535.95	20,309.00
02-Jun-2003	David Guest	Acuity Pooled High Income Fund - Trust Units	39,513.23	2,586.00
11-Jun-2003 13-Jun-2003	829805 Ontario Ltd., Emilana Rodrigues	Acuity Pooled Income Trust Fund - Trust Units	350,000.00	30,925.00
29-May-2003	Warren Fenton	Acuity Pooled Social Values Canadian Fund - Trust Units	15,755.29	1,461.00
18-Jun-2003	4 Purchasers	Alegro Health Corp. - Common Shares	451,819.00	2,259,095.00
17-Jun-2003	40 Purchasers	Alternum Capital Hedge Facility LP - Units	679,919.81	59,130.00
04-Jan-2002 20-Dec-2002	1236 Purchasers	BluMont Canadian Opportunities Fund - Units	50,531,699.56	376,713.00
04-Jan-2002	61 Purchasers	BluMont Gabelli Global Fund - Units	3,585,300.77	40,685.00
02-Aug-2002 20-Dec-2002	208 Purchasers	BluMont Hirsch Long/Short Fund - Series A - Units	11,666,399.30	111,667.00
13-Sep-2002 13-Dec-2002	3 Purchasers	BluMont Hirsch Long/Short Fund - Series F - Units	138,605.69	1,327.00
01-Jan-2002	18 Purchasers	BluMont Hirsch Performance Fund - Units	1,012,944.78	74,527.00

11-Apr-2002 20-Dec.2002	301 Purchasers	BluMont Market Neutral Fund - Units	18,807,489.13	185,541.00
04-Jan-2002 27-Dec-2003	106 Purchasers	BluMont Select Leaders Fund - Units	1,682,608.89	17,269.00
30-May-2003	Mario Bon	BPI American Opportunities Fund - Units	118,255.53	1,026.00
06-Jun-2003	9 Purchasers	BPI American Opportunities Fund - Units	406,983.52	3,530.00
06-Jun-2003	Karen Simone, Stephen Pope	BPI American Opportunities RSP Fund - Units	62,456.65	648.00
23-May-2003	George Tso	BPI Canadian Opportunities RSP Fund - Units	25,478.47	266.00
23-May-2003	Kai-Fu Au	BPI Global Opportunites III Fund - Units	152,785.09	1,719.00
30-May-2003	7 Purchasers	BPI Global Opportunites III Fund - Units	328,706.59	3,671.00
06-Jun-2003	Lymand Bowen, Mario Poce	BPI Global Opportunites III Fund - Units	73,766.60	822.00
06-Jun-2003	Bernice Pringle, Barbara Hanson	BPI Global Opportunites III RSP Fund - Units	55,868.26	584.00
10-Jun-2003	3 Purchasers	Canadian Shield Resources Inc. - Units	50,000.00	1,000,000.00
16-Jun-2003	Credit Risk Advisors;T.A.L. Investment Counsel;Ltd.	Centennial Communications Corp. - Notes	2,014,800.00	20.00
30-May-2003	Lloyd Chisholm	CI Multi-Manager Opportunites Fund - Units	11,910.58	125.00
13-Jun-2003	The Canada Life Assurance Company	Commisso's Properties Inc. - Bonds	9,050,000.00	2.00
06-May-2003	Tchelebon Foods Inc.	Discovery Drilling Funds 2003 Development Limited Partnership - Units	40,000.00	40.00
06-Jun-2003	25 Purchasers	Drilcorp Energy Ltd. - Common Shares	1,704,484.65	3,991,077.00
11-Jun-2003	6 Purchasers	Duvernay Oil Corp. - Common Shares	1,202,500.00	192,400.00
11-Jun-2003	Mary Tomljenovic;Josip Tomljenovic	Duvernay Oil Corp. - Common Shares	187,500.00	30,000.00
11-Jun-2003	4 Purchasers	Esterline Technologies Corporation - Notes	5,000,000.00	7.00
18-Jun-2003	13 Purchasers	Euston Capital Corp. - Common Shares	42,450.00	14,150.00
17-Jun-2003	Bank of Montreal;AGF Management Limited	Federative Republic of Brazil - Bonds	1,959,860.00	2,000,000.00

10-Jun-2003	3 Purchasers	Geocan Energy Inc. - Units	684,600.00	652,000.00
04-Feb-2002 21-Jun-2002	26 Purchasers	iPerform American Focus Fund - Units	1,359,762.17	13,716.00
04-Jan-2002 26-Apr-2002	10 Purchasers	iPerform Silicon Valley Fund - Units	568,024.07	6,423.00
24-Apr-2003	David Kaufman	Icelfoe Technologies Inc. - Units	10,200.00	3,400.00
09-May-2003	Ronnie Strasser	Icelfoe Technologies Inc. - Units	30,000.00	10,000.00
05-Jun-2003	Northern Rivers Innovation Fund LLP	Icelfoe Technologies Inc. - Units	120,000.00	40,000.00
17-Jun-2003	Front Street Investment Management	Icelfoe Technologies Inc. - Units	150,000.00	50,000.00
12-Jun-2003 18-Jun-2003	5 Purchasers	IMAGIN Diagnostics, Inc. - Common Shares	46,500.00	15,500.00
30-May-2003	8 Purchasers	Jaguar Mining Inc. - Special Warrants	550,000.00	550,000.00
13-Jun-2003	Heather McFarland	KBSH Private - Canadian Equity Fund - Units	66,825.00	5,146.00
13-Jun-2003	David McFarland	KBSH Private - Canadian Equity Fund - Units	62,400.00	4,805.00
13-Jun-2003	Heather & David McFarland	KBSH Private - Canadian Equity Fund - Units	66,800.00	5,144.00
09-Jun-2003	9 Purchasers	Majescor Resources Inc. - Common Shares	789,840.10	2,910,418.00
02-Jun-2003	I.C.I. Construction Ltd.	MCAN Performance Strategies - Limited Partnership Units	51,410.10	355.00
26-May-2003	3 Purchasers	Melkior Resources Inc. - Units	310,000.00	3,100,000.00
18-Jun-2003	Francesco C. Labriciossa and Fulvio Zannette	Navaho Networks Inc. - Common Shares	209,000.00	209,000.00
16-Jun-2003	T.A.L. Investment Counsel, Ltd.	Nextel Partners, Inc. - Notes	134,320.00	8.00
12-Jun-2003	JVX Ltd.	NFX Gold Inc. - Common Shares	15,000.00	150,000.00
12-Jun-2003	12 Purchasers	Northern Orion Explorations Ltd. - Special Warrants	2,253,550.00	17,335,000.00
11-Jun-2003	Gardiner Group Capital Limited	OPTI Canada Inc. - Common Shares	7,280,000.00	455,000.00
16-Jun-2003	Angela/Roberto D'Alessandro	Oxford Software Developers Inc. - Common Shares	2,000.00	2,000.00
16-Jun-2003	CMP 2003 Resource Limited	Pele Mountain Resources Inc. - Flow-Through Shares	500,000.00	2,000,000.00

11-Jun-2003	5 Purchasers	Queenstake Resources Ltd. - Units	720,000.02	4,000,000.00
18-Jun-2003	3 Purchasers	Radcliffe Systems Inc. - Debentures	500,002.00	594,865.00
13-Jun-2003	7 Purchasers	Rally Energy Corp. - Notes	4,786,000.00	4,786.00
13-Jun-2003	6 Purchasers	Rally Energy Corp. - Units	1,782,750.00	2,097,235.00
05-Jun-2003 06-Jun-2003	7 Purchasers	Recognia Inc. - Notes	295,000.00	295,000.00
18-Jun-2003	Seth Homayoon	Recognia Inc. - Notes	15,000.00	1.00
13-Jun-2003	Sentient GP I;L.P., Sentient (Aust) Pty Limited	Regis Resources Inc. - Convertible Debentures	500,000.00	500,000.00
11-Jun-2003	Octagon Capital Corporation	Savaria Corporation - Warrants	0.00	177,800.00
04-Jun-2003	59 Purchasers	Second World Trader Inc. - Units	40,772.00	205.00
16-Jun-2003	AGF Management Limited;Laketon Investment Management	Seiko Epson Corporation - Shares	206,915.80	7,000.00
10-Jun-2003	16 Purchasers	Simon Fraser University - Debentures	82,500,000.00	82,500.00
17-Jun-2003	6 Purchasers	Terraquest Energy Corporation - Common Shares	2,750,000.10	9,166,667.00
09-Jun-2003	5 Purchasers	TicketOps Corporation - Units	700,000.00	28.00
17-Jun-2003	Major Drilling Group International Inc.	Tribute Minerals Inc. - Units	150,000.00	500,000.00
30-Jun-2003	Francesca Lobo	Trident Global Opportunities RSP Fund - Units	101,154.41	1,058.00
06-Jun-2003	Canadian Dominion Resources;CMP 2003 Resource Limited Partnership	UEX Corporation - Flow-Through Shares	700,000.00	700,000.00
13-Jun-2003	NCE Flow Through (2003) Limited Partnership	Veteran Resources Inc. - Flow-Through Shares	500,002.50	666,670.00
10-Jun-2003	Celtic House Venture	ViXS Systems Inc. - Preferred Shares	5,549,200.00	5,714,285.00
17-Jun-2003	Comerica Bank	VSM MedTech Ltd. - Common Shares	0.00	201,258.00
10-Jun-2003	Priscilla Weinberg	Watch This Inc. - Common Shares	5,000.00	25,000.00
20-Jun-2003	Peter J. Besler	WebEngine Corporation - Common Shares	7,500.00	150,000.00
09-Jun-2003	9 Purchasers	Workbrain Corporation - Common Shares	523,612.57	306,665.00

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
Terrier Investments Limited	Brampton Brick Limited - Shares	50,000.00
Terrier Investments Limited	Brampton Brick Limited - Shares	59,625.00
John Buhler	Buhler Industries Inc. - Common Shares	283,200.00
Larry Melnick	Champion Natural Health.com Inc. - Shares	29,900.00
Helen Moore	Grey Island Systems International Inc. - Common Shares	6,551,132.00
Paros Enterprises Limited	Morguard Corporation - Common Shares	2,000,000.00
The Geral Schwartz and Heather Reisman Foundation	Onex Corporation - Shares	20,000.00
ONCAN	Onex Corporation - Shares	1,000,000.00
Cambrelco Inc.	Polyair Inter Pack Inc. - Common Shares	100,000.00

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Advantage Energy Income Fund
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated June 19, 2003
Mutual Reliance Review System Receipt dated June 19, 2003
Offering Price and Description:
$30,000,000.00 - 9.00% Convertible Unsecured Subordinated Debentures19
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
CIBC World Markets Inc.
FirstEnergy Capital Corp.
Promoter(s):
Advantage Investment Management Ltd.
Project #552032

Issuer Name:
APF Energy Trust
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated June 19, 2003
Mutual Reliance Review System Receipt dated June 19, 2003
Offering Price and Description:
$50,000,000.00 - 50,000, 9.40% Convertible Unsecured Subordinated Debentures $1,000 Per Debenture
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 #552253

Issuer Name:
Citigroup Finance Canada Inc. (formerly Associates Capital Corporation of Canada)
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated June 17, 2003
Mutual Reliance Review System Receipt dated June 18, 2003
Offering Price and Description:
$4,000,000,000.00 - Medium Term Notes (2001 Series) (unsecured)
Underwriter(s) or Distributor(s):
TD Securities Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
Promoter(s):
-
Project #551894

Issuer Name:
First Quantum Minerals Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated June 18, 2003
Mutual Reliance Review System Receipt dated June 18, 2003
Offering Price and Description:
$26,750,000.00 - 5,000,000 Common Shares Price: $5.35 per Common Share
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Haywood Securities Inc.
Promoter(s):
-
Project #551949

Issuer Name:
FNX Mining Company Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated June 19, 2003
Mutual Reliance Review System Receipt dated June 19, 2003
Offering Price and Description:
$40,054,500.00 - 6,210,000 Common Shares Price: $6.45 per Share
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Griffiths McBurney & Partners
Dundee Securities Corporation
CIBC World Markets Inc.
Promoter(s):
-
Project #552259

Issuer Name:
IPC US Income Commercial Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated June 19, 2003
Mutual Reliance Review System Receipt dated June 19, 2003
Offering Price and Description:
U.S. $25,245,000.00 - (Cdn. $33,825,000) 3,300,000 Units Price: US$7.65 (Cdn. $10.25) per Offered Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Scotia Capital Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
TD Securities Inc.
Desjardins Securities Inc.
Raymond James Ltd.
HSBC Securities (Canada) Inc.
Promoter(s):
-
Project #552242

Issuer Name:
Kingsway Financial Services Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated June 18, 2003
Mutual Reliance Review System Receipt dated June 18, 2003
Offering Price and Description:
$101,870,000.00 - 6,100,000 Common Shares Price: $16.70 per Share
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Sprott Securities Inc.
Desjardins Securities Inc.
Griffiths McBurney & Partners
HSBC Securities (Canada) Inc.
Promoter(s):
-
Project #551928

Issuer Name:
Merrill Lynch Financial Assets Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form PREP Prospectus dated June 17, 2003
Mutual Reliance Review System Receipt dated June 18, 2003
Offering Price and Description:
$438,498,000.00 (Approximate) - Commercial Mortgage Pass-Through Certificates, Series 2003-Canada 10
Underwriter(s) or Distributor(s):
Merrill Lynch Canada Inc.
Promoter(s):
-
Project #551717

Issuer Name:
Sentry Select Money Market Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated June 19, 2003
Mutual Reliance Review System Receipt dated June 20, 2003
Offering Price and Description:
Mutual Fund Securities Net Asset Value
Underwriter(s) or Distributor(s):
Sentry Select Capital Corp.
Sentry Select Capital Corp.
NCE Financial Corporation
Promoter(s):
Sentry Select Capital Corp.
Project #552413

Issuer Name:
TransAlta Power, L.P.
Principal Regulator - Alberta
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated June 17, 2003
Mutual Reliance Review System Receipt dated June 18, 2003
Offering Price and Description:
$151,125,000.00 - 16,250,000 Subscription Receipts, each representing the right to receive one Unit and one Warrant
Price: $9.30 per Subscription Receipt
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
TD Securities Inc.
FirstEnergy Capital Corp.
Canaccord Capital Corporation
Jennings Capital Inc.
Promoter(s):
-
Project #551000

Issuer Name:
Altamira T-Bill Fund
Altamira Income Fund
Altamira Bond Fund
Altamira Short Term Canadian Income Fund
Altamira Short Term Government Bond Fund
Altamira Government Bond Fund
Altamira Short Term Global Income Fund
Altamira Balanced Fund
Altamira Growth & Income Fund
Altamira Global Diversified Fund
Altamira European Equity Fund
Altamira Global Value Fund
Altamira Asia Pacific Fund
Altamira Japanese Opportunity Fund
Altamira Global Discovery Fund
Principal Regulator - Ontario
Type and Date:
- **Amendment No. 3** dated **June 12, 2003** to the **Simplified Prospectuses** of the above Issuers dated **August 28, 2002**; and
- **Amendment No. 4** dated **June 12, 2003** to the **Annual Information Forms** of the above Issuers dated **August 28, 2002**;

Mutual Reliance Review System Receipt dated June 18, 2003
Offering Price and Description:
Mutual Fund Securities Net Asset Value
Underwriter(s) or Distributor(s):
Altamira Financial Services Ltd.
Altamira Financial Services Ltd.
Promoter(s):
Altamira Investment Services Inc.
Project #466648

Issuer Name:
Capital Alliance Ventures Inc.
Type and Date:
Amendment #3 dated June 13, 2003 to the Final Prospectus dated October 23, 2002
Receipted on June 18, 2003
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #482810

Issuer Name:
CI Diversified Fund
CI Mid-Term Bond Fund
CI Dividend Fund
CI International Bond RSP Fund
CI Global Telecommunications Sector Fund
CI Global Telecommunications RSP Fund
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated June 17, 2003 to the Simplified Prospectuses and Annual Information Forms dated August 28, 2002
Mutual Reliance Review System Receipt dated June 20, 2003
Offering Price and Description:
Mutual Fund Securities Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
CI Mutual Fund Inc.
Project #474409

Issuer Name:
Column Canada Issuer Corporation
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated June 20, 2003
Mutual Reliance Review System Receipt dated June 23, 2003
Offering Price and Description:
$335,000,000.00 - MULTICLASS PASS-THROUGH CERTIFICATES, SERIES 2003-WEM
Underwriter(s) or Distributor(s):
Credit Suisse First Boston Canada Inc.
RBC Dominion Securities Inc.
Promoter(s):
Column Canada Financial Corporation
Project #549647

Issuer Name:
Enbridge Income Fund
Principal Regulator - Alberta
Type and Date:
Final Prospectus dated June 23, 2003
Mutual Reliance Review System Receipt dated June 23, 2003
Offering Price and Description:
Enbridge Income Trust 17,500,000 Ordinary Units @ $10.00/Ordinary Unit = $175,000,000
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.
HSBC Securities (Canada) Inc.
Promoter(s):
Enbridge Inc.
Project #544448

Issuer Name:
Insight Canadian Value Pool
Insight Canadian Growth Pool
Insight Canadian Dividend Growth Pool
Insight Canadian Small Cap Pool
Insight U.S. Value Pool
Insight U.S. Growth Pool
Insight International Value Pool
Insight International Growth Pool
Insight Global Equity Pool
Insight Global Equity RSP Pool
Insight Global Small Cap Pool
Insight Canadian High Yield Income Pool
Insight Canadian Fixed Income Pool
Insight Global Fixed Income Pool
Insight Money Market Pool
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated June 17, 2003 to the Simplified Prospectuses and Annual Information Forms dated August 22, 2002
Mutual Reliance Review System Receipt dated June 20, 2003
Offering Price and Description:
Mutual Fund Securities Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
CI Mutual Funds Inc.
Project #466772

Issuer Name:
Manitoba Telecom Services Inc.
Principal Regulator - Manitoba
Type and Date:
Final Shelf Prospectus dated June 20, 2003
Mutual Reliance Review System Receipt dated June 23, 2003
Offering Price and Description:
$350,000,000.00 - Medium Term Notes (unsecured)
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
Promoter(s):
-
Project #545855

Issuer Name:
Clarica Short Term Bond Fund
Clarica Bond Fund
Clarica Global Science & Technology Fund
Clarica Growth Fund
Clarica Diversifund 40
Clarica Conservative Balanced Fund
Clarica Income Fund
Clarica US Growth Equity Fund
Clarica Premier American Fund
Clarica Amerifund
Clarica Asia and Pacific Rim Equity Fund
Clarica Alpine Asian Fund
Clarica Equifund
Clarica Money Market Fund
Clarica Premier Emerging Markets Fund
Clarica European Equity Fund
Clarica RSP U.S. Equity Index Fund
Clarica RSP International Index Fund
Clarica RSP European Index Fund
Clarica RSP U.S. Technology Index Fund
Clarica RSP Japanese Index Fund
Clarica Canadian Equity Index Fund
Clarica Bond Index Fund
Principal Regulator - Ontario
Type and Date:
Amendment #5 dated June 17, 2003 to the Simplified Prospectuses and Annual Information Forms dated August 28, 2002
Mutual Reliance Review System Receipt dated June 20, 2003
Offering Price and Description:
Mutual Fund Securities Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
CI Mutual Funds Inc.
Project #465930

Issuer Name:
Signature Dividend Income Fund
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated June 17, 2003 to the Simplified Prospectus and Annual Information Form dated August 28, 2002
Mutual Reliance Review System Receipt dated June 20, 2003
Offering Price and Description:
Mutual Fund Securities Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
CI Mutual Funds Inc.
Project #471171

Issuer Name:
Tengtu International Corp.
Type and Date:
Final Prospectus dated June 18, 2003
Receipted on June 19, 2003
Offering Price and Description:
US$5,671,800.00 - 12,004,366 COMMON SHARES AND 6,002,183 SHARE PURCHASE WARRANTS ISSUABLE UPON THE EXERCISE OF PREVIOUSLY ISSUED SPECIAL WARRANTS
Underwriter(s) or Distributor(s):
Dundee Securities Corporation
Promoter(s):
-
Project #487772

Issuer Name:
The GS+A RRSP Fund
Type and Date:
Final Simplified Prospectus dated June 20, 2003
Receipted on June 24, 2003
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Gluskin Sheff & Associates Inc.
Promoter(s):
-
Project #544577

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Brean Murray & Co. Inc. Attention: Vincent P. Sarnatora Senior Vice President/Director of Compliance 570 Lexington Avenue New York NY 10022-6822 USA	International Dealer	Jun 25/03
Change of Name	USC Education Savings Plans Inc. 50 Burnhamthorpe Road West Suite 1000 Mississauga ON L5B4A5	From: Scholarship Consultants of North America Ltd. To: USC Education Savings Plans Inc.	Apr 22/03
Change of Name	UBS Investment Services Canada Inc. 154 University Avenue Suite 780 Toronto ON M5H3Z4	From: UBS Securities (Canada) Inc. To: UBS Investment Services Canada Inc.	Apr 14/03
Change of Name	Insight Investment Management (Global) Limited 33 Old Broad Street London EC4N 1HZ United Kingdom	From: Rothschild Asset Management Limited To: Insight Investment Management (Global) Limited	Apr 30/03
Change of Name	Orion Securities Inc./Valeurs Mobilieres Orion Inc. 181 Bay Street BCE Place Suite 3100, P.O. Box 830 Toronto ON M5J2T3	From: Yorkton Securities Inc. To: Orion Securities Inc./Valeurs Mobilieres Orion Inc.	Jun 25/03
Suspension of Registration	Peter Watson Investments Limited 220 Randall Street Oakville ON L6J1P7	Mutual Fund Dealer	Jun 13/03
Suspension of Registration	Montgomery Asset Management, LLC 101 California Street San Francisco CA 94111 USA	International Adviser Investment Counsel & Portfolio Manager	Jun 13/03

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 Housekeeping Amendment to IDA By-Law 10.7

INVESTMENT DEALERS ASSOCIATION OF CANADA – HOUSEKEEPING AMENDMENT TO BY-LAW 10.7

I OVERVIEW

A -- Current Rules

By-law 10.7 outlines the composition of the National Advisory Committee. Currently the composition consists of Chairs of District Councils, Regional Directors and the Senior Vice-President of Industry Relations and Representation. Voting members of the Committee include the former or their representatives as outlined in By-law 10.10 excluding Regional Directors.

B -- The Issue

Amendment of By-law 10.7 to include the immediate Past Chair of the National Advisory Committee as a voting member.

C -- Objective

This change will add additional continuity to the National Advisory Committee by extending the participation of the Chair for an additional year after expiry of their term.

D -- Effect of Proposed Rules

The Association has determined that the entry into force of the proposed amendment will have no substantive impact on the rule.

II -- DETAILED ANALYSIS

The National Advisory Committee approved the proposed change. District Councils were also notified.

III -- COMMENTARY

A – Filing in Other Jurisdictions

This proposed amendment will be filed for approval in Alberta, British Columbia, Saskatchewan and Ontario, and will be filed for information in Nova Scotia.

IV -- SOURCES

IDA By-law 10.
Questions may be referred to:
Name: Kenneth A. Nason
Title: Association Secretary
Investment Dealers Association of Canada
(416) 865-3046
knason@ida.ca

V -- OSC REQUIREMENT TO PUBLISH FOR COMMENT

The Association has determined that the entry into force of the proposed amendment is housekeeping in nature. As a result, a determination has been made that this proposed rule amendment need not be published for comment.

AMENDMENT TO THE COMPOSITION OF THE NATIONAL ADVISORY COMMITTEE

THE BOARD OF DIRECTORS of the Investment Dealers Association of Canada hereby makes the following amendments to the By-laws, Regulations, Forms and Policies of the Association:

1. **By-law 10.7 is amended by adding the following words as highlighted and underlined below:**

   10.7. There shall be a National Advisory Committee of the Association composed of the Chairs of the District Councils, **the immediate Past Chair of the National Advisory Committee,** the Regional Directors and the Senior Vice-President, Industry Relations & Representation. Only the District Council Chairs, or their representative, as set out in By-law 10.10, below, **the immediate Past Chair of the National Advisory Committee,** and the Senior Vice-President, Industry Relations & Representation or his or her representative, as set out in By-law 10.10, below, shall be voting members of the National Advisory Committee. The National Advisory Committee shall act as a forum for consultation and co-operation among the District Councils and consideration of District Council initiatives.

PASSED AND ENACTED BY THE Board of Directors this 15th day of April 2003, to be effective on a date to be determined by Association staff.

13.1.2 IDA Discipline Penalties Imposed on Mark Julian Klyman – Violation of Regulation 1300.4

Contact:
Kathryn Andrews
Enforcement Counsel
(416) 865-3048

BULLETIN #3163
June 20, 2003

DISCIPLINE

DISCIPLINE PENALTIES IMPOSED ON MARK JULIAN KLYMAN – VIOLATION OF REGULATION 1300.4

Person Disciplined

The Ontario District Council of the Investment Dealers Association of Canada (the "Association") has imposed discipline penalties on Mark Julian Klyman, at all material times a Registered Representative Options with the Ottawa office of Scotia McLeod Inc. (now Scotia Capital Inc.), a Member of the Association.

By-laws, Regulations, Policies Violated

On May 13, 2003 the Ontario District Council considered and reviewed a Settlement Agreement negotiated between Mr. Klyman and Association staff, and amended it by reducing the amount of the fine and the costs that were originally negotiated.

Pursuant to the Settlement Agreement, Mr. Klyman admitted that:

- Between August 1999 to October 1999, he exercised discretion in effecting trades for a client in accounts in respect of which the client had not given written authorization and the Member firm had not accepted as discretionary accounts, contrary to Association Regulation 1300.4.

Penalty Assessed

The discipline penalty assessed against Mr. Klyman includes:

- a fine in the amount of $5,000; and
- disgorgement of commission in the amount of $858.34.

The Settlement Agreement as originally negotiated provided for a fine of $15,000; disgorgement of commission in the amount of $858.34 and costs of $5,000. District Council found that the penalty was excessive and reduced the fine to $5,000 given their view that the infractions were at the extreme low end of the disciplinary spectrum. District Council also ordered that no costs be paid to the Association. Disgorgement of commission in the amount of $858.34 was left unchanged.

Summary of Facts

In 1999, Mr. Klyman was employed as a Registered Representative Options with Scotia McLeod Inc., now Scotia Capital Inc. ("Scotia"). A UTN was provided to the Association by Scotia on February 24, 2000. The UTN indicated that there were complaints of discretionary trading and that Mr. Klyman was placed under close supervision by Scotia in January 2000. Mr. Klyman left Scotia in February 2000.

RL had been a client of Mr. Klyman's since 1995. He had 4 accounts. From August 30, 1999 to October 13, 1999, Mr. Klyman exercised his discretion in effecting 7 trades in two of RL's accounts, without the client's written authorization and without the accounts having been accepted and approved as discretionary accounts by Scotia.

Trade confirmation slips and monthly statements were sent to the client. There were no speculative trades and the client did not experience any losses as a result of the trades.

Mr. Klyman is currently approved as a Registered Representative Options and Officer with TD Waterhouse Canada Inc.

Kenneth A. Nason
Association Secretary

13.1.3 IDA Discipline Penalties Imposed on John James Illidge – Violations of By-law 29.1 and Regulation 1300.4

Contact:
Kathryn Andrews
Ricardo Codina
Enforcement Counsel
(416) 364-6133

BULLETIN #3165
June 23, 2003

DISCIPLINE

DISCIPLINE PENALTIES IMPOSED ON JOHN JAMES ILLIDGE – VIOLATIONS OF BY-LAW 29.1 AND REGULATION 1300.4

Person Disciplined

The Ontario District Council of the Investment Dealers Association of Canada (the "Association") has imposed discipline penalties on John James Illidge, at all material times Chairman, Director, Alternate Designated Person and a Registered Representative ("RR") of St. James Securities Inc. ("SJS"), a former Member of the Association.

By-laws, Regulations, Policies Violated

On June 17, 2003 the Ontario District Council considered, reviewed and accepted a Settlement Agreement negotiated between Mr. Illidge and Association staff.

Pursuant to the Settlement Agreement, Mr. Illidge admitted that between 1997 and 1999 he:

- Opened an account in the name of a fictitious corporate client for the purpose of concealing his own trading activities;
- Operated a client account in the name of a trust that had been terminated and used the account to carry out his personal trading;
- Directed client correspondence to various addresses, including his personal address;
- Engaged in unauthorized trading in a client's account;
- Failed to disclose his interest in a number of client accounts;
- Carried out transactions without benefit to the trading parties, and which had the result of overstating SJS's capital position;
- Fixed prices for four securities that were not fair market prices for those securities;
- Effected transactions between SJS inventory accounts and corporations controlled by him that were not within the bounds of good business practice and which unduly prejudiced SJS's capital position;
- Failed to exercise due diligence to ensure that all necessary account documents were obtained and complete;
- Traded in registered debentures between client and non-client accounts while the debentures were not in a tradable form;
- Conducted trading in client accounts without funds and allowed accounts to trade for a prolonged period of time without adequate margin;
- Traded in a corporate client's account for several months prior to the client's incorporation; and
- Failed to question documents purportedly signed by clients that appeared, on their face, to be forgeries.

All of which constitute conduct unbecoming or detrimental to the public interest, contrary to By-law 29.1.

Mr. Illidge also carried out discretionary trades in a client's account, from 1997 to 1999, contrary to Regulation 1300.4.

Penalty Assessed

The discipline penalty assessed against Mr. Illidge is:

- permanent prohibition from approval in any capacity with any Member of the Association;
- a fine of $300,000; and
- costs of $125,000.

Summary of Facts

In addition to his multiple roles at SJS, Mr. Illidge was a major shareholder of St. James Holdings Inc. ("SJH"), the parent company of SJS. In November 1999, SJS became inactive after transferring all of its client accounts to Northern Securities Inc. Following the demise of SJS in November 1999, Mr. Illidge became a Director of Rampart Mercantile Inc., the parent company of the now bankrupt firm Rampart Securities Inc. Mr. Illidge was also a former Chief Executive Officer of Hucamp Mines Inc., a CDNX listed company. He was also the majority shareholder of St. James Capital Corporation ("SJC"), which company declared bankruptcy in December 2001.

Use of fictitious client accounts for personal trading:

In February 1998 Mr. Illidge opened fictitious corporate client accounts in the name of Provident United, listing a particular individual as being the client contact. Neither that individual, nor any corporation controlled by him, had ever opened an account at SJS.

From January 1998 to October 1999, Mr. Illidge effected numerous trades in the Provident United accounts, thereby using the accounts for his own trading.

Mr. Illidge also was the RR for an estate trust client called Saints Trust. Mr. Illidge learnt that Saints Trust had been terminated as a trust in June 1998. Rather than closing the accounts at that time, Mr. Illidge traded in Saints Trust's accounts, thereby using the accounts for his own personal trading, from July 1998 to June 1999.

Mr. Illidge also directed client correspondence for both Provident United and Saints Trust to various addresses, from 1997 to 1999, including addresses controlled by him.

Encouraged a culture of non-compliance:

During 1998 and 1999, Mr. Illidge created and encouraged a culture of non-compliance at SJS, both by personally engaging in conduct unbecoming as an RR and also by failing to take appropriate steps as Chairman, Director and Alternate Designated Person, to ensure that SJS was managed in a reasonable and prudent manner in compliance with Association requirements. The following are examples of this conduct:

- He conducted transactions in personal and client accounts, without benefit to the clients or SJS, and with the only effect of moving account debit positions between accounts, thereby unduly delaying settlement of those transactions and overstating SJS's capital position;
- He fixed prices for four securities which did not represent a fair market price. He then cross traded these securities between client, non-client and SJS inventory accounts. The effect of these contrived prices was, at times, to overstate SJS's capital position and/or to unduly favour one party to the cross trade;
- He traded in registered debentures between several client and non-client accounts while the debentures were not in a tradable form;
- He effected transactions between SJS inventory accounts and the accounts of corporations controlled by him, which were not within the bounds of good business practice and which unduly prejudiced SJS's capital position;
- He failed to obtain and complete necessary account documents for many client accounts;
- He failed to question documents purportedly signed by clients that appeared, on their face, to be forgeries;
- He failed to properly designate client accounts from other non-client accounts. This had the effect

of obscuring the lines between his personal trading activity and SJS client activity;

- He indicated his personal address, or other addresses, in client account documentation, as being the client's address;
- He traded in a company client account for several months before the company was incorporated;
- He purchased securities for many cash accounts that did not have any funds; and
- He traded in many accounts for a prolonged period of time without adequate or any margin.

Unauthorized and discretionary trading:

Mr. Illidge was the RR for a corporate client named MYO. MYO had opened an account at SJS to facilitate a private placement. The account was not intended to be used as an active trading account.

From September 1998 to April 1999, Mr. Illidge effected various trades in MYO's account, without the client's knowledge or consent. When the client complained, Mr. Illidge advised that the trades would be corrected. The trades were not actually corrected until some months later.

Mr. Illidge had been the RR for a client named BS since the early 1990's. From 1997 to 1999, while BS was an SJS client, Mr. Illidge used his discretion in effecting various transactions in her accounts, without the accounts having been approved and accepted as discretionary accounts by the Member.

Mr. Illidge has been previously disciplined by the Association – see bulletin # 2390, dated August 7, 1997.

Mr. Illidge has not been registered in any capacity with the Association since January 2000.

Kenneth A. Nason
Association Secretary

13.1.4 RS Request for Comments - Definition of "Access Person"

MARKET REGULATION SERVICES INC.

REQUEST FOR COMMENTS

DEFINITION OF "ACCESS PERSON"

Summary

The Board of Directors of Market Regulation Services Inc. ("RS") has approved an amendment to the Universal Market Integrity Rules ("UMIR") to expand the definition of an "Access Person" to include a person who has been granted access rights to the trading system of a recognized exchange ("Exchange") or a recognized quotation and trade reporting system ("QTRS") either directly or by means of an electronic connection to the order routing system of a member or user. With the expansion of the definition of "Access Person", persons with "direct access" to the trading system of an Exchange or QTRS will be required to comply with certain of the integrity rules contained in UMIR (principally related to open and fair practices, manipulative or deceptive methods of trade and short selling) and will be subject to disciplinary proceedings for any breach of these UMIR provisions.

Rule-Making Process

Market Regulation Services Inc. ("RS") has been recognized as a self-regulatory organization by the Alberta Securities Commission, British Columbia Securities Commission, Manitoba Securities Commission, Ontario Securities Commission and the Commission des valeurs mobilières du Québec (the "Recognizing Regulators") and, as such, is authorized to be a regulation services provider for the purposes of the National Instrument 21-101 ("Marketplace Operation Instrument") and National Instrument 23-101 ("CSA Trading Rules").

As a regulation services provider, RS will administer and enforce trading rules for the marketplaces that retain the services of RS. RS has adopted, and the Recognizing Regulators have approved, UMIR as the integrity trading rules that will apply in any marketplace that retains RS as its regulation services provider. Presently, RS has been retained to be the regulation services provider for the Toronto Stock Exchange ("TSX") and TSX Venture Exchange ("TSX VE"), as Exchanges, and for Bloomberg Tradebook Canada Company ("Bloomberg"), as an alternative trading system ("ATS"). RS has entered into an agreement to be the regulation services provider for the Canadian Trading and Quotation System ("CNQ") upon CNQ commencing operation as a QTRS.

The Rules Advisory Committee of RS ("RAC") reviewed the proposed amendment to the definition of "Access Person" and recommended its adoption by the Board of Directors. RAC is an advisory committee comprised of representatives of each of: the marketplaces for which RS acts as a regulation services provider; Participants; institutional investors and subscribers; and the legal and compliance community. The amendment to UMIR as adopted by the Board of Directors will be effective upon approval of the changes by the Recognizing Regulators following public notice and comment. Comments on the changes to UMIR should be in writing and delivered within 30 days of the date of publication of this notice by the Recognizing Regulators to:

James E. Twiss,
Senior Counsel,
Market Surveillance,
Market Regulation Services Inc.,
Suite 900,
P.O. Box 939,
145 King Street West,
Toronto, Ontario. M5H 1J8

Fax: 416.646.7265
e-mail: james.twiss@regulationservices.com

A copy should also be provided to Recognizing Regulators by forwarding a copy to:

Cindy Petlock
Manager, Market Regulation
Capital Markets Branch
Ontario Securities Commission
Suite 800, Box 55,
20 Queen Street West
Toronto, Ontario. M5H 3S8

Fax: (416) 593-8240
e-mail: cpetlock@osc.gov.on.ca

Background to the Proposed Amendments

Presently, UMIR imposes compliance obligations on Participants and Access Persons. Generally, a Participant is registered as a securities dealer in a Canadian jurisdiction and is a member of an Exchange, a user of a QTRS or a subscriber to an ATS. An "Access Person" is presently defined as a person, other than a Participant, who is a user of a QTRS or a subscriber to an ATS. The Marketplace Operation Instrument does not require that subscribers to an ATS system be limited to persons who are registered dealers under securities legislation. When an ATS applies for registration with a securities commission, the ATS must indicate the "classes of subscribers (e.g. dealer, institution or retail)".

The Toronto Stock Exchange Act permits the TSX to establish categories of persons other than dealers that are permitted to trade on the TSX. Presently, the TSX provides access to "independent traders", essentially derivatives market makers on the Bourse de Montréal that are not registered as dealers for the purposes of securities legislation but who are considered to be "Participants" for the purposes of UMIR. TSX Policy 2-501 allows a Participant to grant access to its order routing system to various domestic and foreign institutional clients and to retail clients through Order-Execution Accounts (essentially accounts in respect of which the Participant is not required to review orders for suitability). If a client of a Participant that is a TSX member enters orders to the TSX trading system under a Policy 2-501 inter-connection agreement, that client is not subject to the provisions of UMIR and, in particular, is not subject to disciplinary or enforcement action under UMIR. On the other hand, if the institution or person is a subscriber to an ATS, the institution or person would be considered an "Access Person" under the current definition in UMIR and would be subject to a limited subset of UMIR provisions including:

- the requirement to use open and fair practices;
- the prohibition on use of manipulative or deceptive methods of trade; and
- the restrictions on short selling.

Appendix "C" to this Market Integrity Notice is a summary of the obligations imposed by UMIR on various market players, including Participants and Access Persons.

In accordance with the recognition order of CNQ as a QTRS, persons who may become users of CNQ are limited registered dealers that are members of a recognized self-regulatory organization. As such, all users of CNQ will qualify as a "Participant" for the purposes of UMIR. In accordance with the Mutual Reliance Review System Decision regarding Bloomberg dated September 6, 2002 (the "Bloomberg MRRS Decision"), the Bloomberg Tradebook System may be made available to an "institutional investor" in Ontario, British Columbia, Quebec and Alberta. The definition of "institutional investor" set out as Schedule "A" of the Bloomberg MRRS Decision includes a person registered as a dealer under securities legislation and such dealer is a "Participant" for the purposes of UMIR. All other institutional investors (including qualified banks, trust companies, insurance companies, pension fund and mutual funds) who are subscribers of Bloomberg are presently considered an "Access Person" for the purposes of UMIR. The rules of the TSX VE do not provide for access to the trading system of the TSX VE except by members and participating organizations, all of which fall within the current definition of "Participant" for the purposes of UMIR.

Impact of the Proposed Amendments

The extension of the definition of Access Person to include clients given access to an Exchange or QTRS by means of a systems inter-connection provided by the Participant would result in such clients being subject to the same obligations under UMIR as they would have if they accessed the market as a subscriber to an ATS.

The extension of the definition of Access Person would have the effect of making UMIR applicable to various persons connected to the Access Person. Under Rule 10.4 of UMIR, a related entity of an Access Person (being a Canadian dealer that is not a member of Exchange, user of a QTRS or subscriber to an ATS) or a director, officers, partner or employee of the Access Person or the related entity is subject to the UMIR provisions requiring the use open and fair practices, prohibiting the use of manipulative or deceptive methods of trade and restricting short selling. Rule 10.3 of UMIR has the effect of extending

responsibility for conduct. In particular, any officer or employee who supervises or is responsible for an employee may be liable for the conduct of the supervised employee. Similarly, a partner or director of an Access Person may be liable for the conduct of the Access Person. These various persons would currently be covered by UMIR if the access to the market was obtained as a result of the Access Person being a subscriber to an ATS or a user of a QTRS.

The fact that persons with "direct access" to an Exchange or QTRS will be subject to UMIR does not relieve Participants from any of their obligations with respect to supervision of trading activities. A Participant will retain full responsibility for any order entered by an Access Person on a marketplace by means of an electronic connection to the order routing system of the Participant. The supervision policies and procedures of a Participant should continue to adequately address the additional exposure which the Participant has for orders that are not directly handled by staff of the Participant. The adoption of the amendment will not have an effect on Participants or their compliance functions or costs. However, in accordance with subsection 7.2(2) of UMIR, the Exchange or QTRS that granted access would have the obligation to ensure that the Access Person is trained in such of the UMIR provisions as are applicable to that Access Person. Since UMIR is incorporated into the TSX Rules by TSX Rule 4-201, the TSX would be expected to meet this obligation by ensuring that Participants train eligible clients that have Policy 2-501 access to the TSX in connection with applicable rules as required by the training requirements set out in paragraph 2 of subsection (2) of TSX Policy 2-502.

Appendices

The text of the amendment to UMIR to expand the definition of "Access Person" is set out in Appendix "A". Appendix "B" is a marked version of the current definition of "Access Person" to highlight the changes being introduced by the amendment. The provisions of UMIR that apply to an Access Person and a Participant are set out in Appendix "C".

Questions

Questions concerning this notice may be directed to:

James E. Twiss,
Senior Counsel,
Market Surveillance,
Market Regulation Services Inc.,
Suite 900,
P.O. Box 939,
145 King Street West,
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Fax: 416.646.7265
e-mail: james.twiss@regulationservices.com

APPENDIX "A"

Universal Market Integrity Rules

Definition of "Access Person"

The Universal Market Integrity Rules are amended as follows:

1. Rule 1.1 is amended by deleting the definition of "Access Person" and substituting the following:

"Access Person" means a person other than a Participant who:

(a) is a subscriber;

(b) is a user; or

(c) has been granted access rights to the trading system of an Exchange or QTRS either directly or by means of an electronic connection to the order routing system of a member or user.

APPENDIX "B"

Universal Market Integrity Rules

Current Definition of "Access Person" Marked to Reflect the Amendment

"Access Person" means a person other than a Participant who ~~is~~:

(a) is a subscriber; ~~or~~

(b) is a user.; or

(c) has been granted access rights to the trading system of an Exchange or QTRS either directly or by means of an electronic connection to the order routing system of a member or user.

APPENDIX "C"

Universal Market Integrity Rules

SUMMARY OF OBLIGATIONS

Definitions

For the purposes of the Universal Market Integrity Rules:

"Access Person" means a person, other than a Participant, who is a subscriber of an ATS or a user of a QTRS. Subject to regulatory approval, the definition of "Access Person" will be expanded to include a person who has been granted access rights to the trading system of an Exchange or QTRS either directly or by means of an electronic connection to the order routing system of a member or user. Upon this amendment coming into effect, a person who has a Policy 2-501 connection to the Toronto Stock Exchange ("TSX") will be considered to be an "Access Person". A client of a Participating Organization of the TSX who has access to the TSX through an "Order-Execution Account" would be considered an "Access Person".

"Participant" means:

(a) a dealer registered in accordance with securities legislation of any jurisdiction and who is:

  (i) a member of an Exchange,

  (ii) a user of a QTRS, or

  (iii) a subscriber of an ATS; or

(b) a person who has been granted trading access to a marketplace and who performs the functions of a derivatives market maker.

"Regulated Person" means, in respect of the jurisdiction of a Market Regulator in connection with the conduct of a person:

(a) any marketplace for which the Market Regulator is the regulation service provider or was the regulation service provider at the time of the conduct;

(b) any Participant or Access Person of a marketplace for which the Market Regulator is the regulation service provider or was the regulation service provider at the time of the conduct;

(c) any person to whom responsibility for compliance with the Rules by other persons are extended in accordance with Rule 10.3 or to whom responsibility had been extended at the time of the conduct; and

(d) any person to whom the application of the Rules are extended in accordance with Rule 10.4 or to whom the Rules had been extended at the time of the conduct.

Subject to regulatory approval, the definition of "Regulated Person" will be expanded to include as clause (e) "any person subject to a Marketplace Rule of a marketplace for which the Market Regulator is the regulation services provider or was the regulation services provider at the time of the conduct".

UMIR Section	Rule Description	Marketplaces		Regulated Person	Category of Access	
		Exchange/QTRS	ATS		Participant	Access Person
Part 1	**Definitions and Interpretation**					
1.1	*Definitions* – definition of terms used in the rules and any policy	√	√		√	√
1.2	*Interpretation* – adoption of definitions used in other applicable instruments and general rules to determining prices.	√	√		√	√
Part 2	**Manipulative or Deceptive Method of Trade**					
2.1	*Just and Equitable Principles* – requirement to conduct business on a marketplace openly and fairly and in accordance with just and equitable principles of trade.				√	√ **1**
2.2	*Manipulative or Deceptive Method of Trading* – prohibition on certain practices when trading on a marketplace				√	√
Part 3	**Short Selling**					
3.1	*Restrictions on Short Selling* – restrictions on selling securities short at a price below the last sale price				√	√
Part 4	**Frontrunning**					
4.1	*Frontrunning* – prohibition on frontrunning client orders				√	
Part 5	**Best Execution Obligation**					
5.1	*Best Execution of Client Orders* – general obligation to ensure a client order is executed on most advantageous terms				√	
5.2	*Best Price Obligation* – obligation to ensure a client order could not be executed on another marketplace at a better price				√	
5.3	*Client Priority* – priority for client orders over principal and non-client orders				√	
Part 6	**Order Entry and Exposure**					
6.1	*Entry of Orders to a Marketplace* – establishment of standard trading increments for orders and all orders to be subject to special trading rules issued by an exchange or recognized quotation and trade reporting system	√	√		√	√
6.2	*Designations and Identifiers* – requirement for standard designations and identifiers to be on each order entered on a marketplace	√	√		√	√ **2**
6.3	*Exposure of Client Orders* – requires client orders below specified size to be immediately entered on a marketplace				√	
6.4	*Trades to be on a Marketplace* – general requirement that trades by dealers and related entities be on a marketplace				√	

UMIR Section	Rule Description	Marketplaces		Regulated Person	Category of Access	
		Exchange/QTRS	ATS		Participant	Access Person
Part 7	**Trading in a Marketplace**					
7.1	*Trading Supervision Obligations* – requirement to have written trading policies and procedures, appointment of supervisory staff and review of orders prior to entry to a marketplace				√	
7.2	*Proficiency Obligations* – requirement that persons entering orders to a marketplace have demonstrated proficiency in trading rules and the ATS to have the obligation to ensure Access Persons are trained in the rules		√ **3**		√	
7.3	*Liability for Bids, Offers and Trades* – provides that all bids and offers accepted on marketplace become binding contracts and the responsibility for the order and contracts by a Participant or ATS where the order has been entered on the ATS by an Access Person		√ **4**		√	
7.4	*Contract Record and Official Transaction Record* – contract record of marketplace to govern settlement and disputes – obligation of marketplace to provide information on trades to the information processor or information vendor	√	√			
7.5	*Recorded Prices* – limits negative commissions on trades with clients				√	
7.6	*Cancelled Trades* – provides that a cancelled trade does not effect validity of subsequent trades	√	√		√	√
7.7	*Restrictions on Trading by a Participant Involved in a Distribution* – restricts trading in a listed security or quoted security on a marketplace by an underwriter				√	
7.8	*Restrictions on Trading During a Securities Exchange Take-over Bid* – restricts transactions by a dealer-manager on a marketplace in a security offered as consideration under a take-over bid				√	
7.9	*Trading in Listed or Quoted Securities by a Derivative Market Maker* – requires compliance with additional requirements of any exchange or recognized quotation and trade reporting system				√	
Part 8	**Principal Trading**					
8.1	*Client-Principal Trading* – general obligation of a dealer when trading a client order against a principal or non-client order				√	

UMIR Section	Rule Description	Marketplaces		Regulated Person	Category of Access	
		Exchange/QTRS	ATS		Participant	Access Person
Part 9	**Trading Halts, Delays and Suspensions**					
9.1	*Regulatory Halts, Delays and Suspensions of Trading* – establishes uniform provisions for halts, delays and suspensions to be observed on all marketplaces	√	√		√	√
Part 10	**Compliance**					
10.1	*Compliance Requirement* – general requirement to comply with UMIR and framework for enforcement proceedings	√	√		√	√
10.2	*Investigations* – general power of the Market Regulator to require information in connection with an investigation			√		
10.3	*Extension of Responsibility* – makes Participants and Access Persons liable for conduct of their directors, officers, partners and employees and supervisors liable for actions of employees that they supervise				√	√
10.4	*Extension of Restrictions* – extends the application of certain rules to related entities of persons with market access and to directors, officers, partners and employees of the person with access and related entities				√	√
10.5	*Powers and Remedies* – sets out penalties and remedies which the Market Regulator may impose for a breach of UMIR			√		
10.6	*Exercise of Authority* – establishes the power of Hearing Panels to impose the remedies and penalties and the ability to appeal orders of Hearing Panels to the applicable securities regulatory authority	√	√	√	√	√
10.7	*Assessment of Expenses* – power of the Market Regulator to assess expenses in connection with an order	√	√	√	√	√
10.8	*Practice and Procedure* – provides the ability of the Market Regulator to adopt practice and procedures related to hearings	√	√	√	√	√
10.9	*Power of Market Integrity Officials* – provides the general power required to administer UMIR and regulate the marketplaces	√	√		√	√
10.10	*Report of Short Positions* – requirement to provide information on short positions to the Market Regulator				√	√

UMIR Section	Rule Description	Marketplaces		Regulated Person	Category of Access	
		Exchange/QTRS	ATS		Participant	Access Person
10.11	*Audit Trail Requirements* – requirement that each dealer record and provide information on each order entered to a marketplace to the Market Regulator and for each dealer and Access Person to provide such additional information as may be required regarding the trade or prior or subsequent orders for the same security or a related security				√	√ **5**
10.12	*Retention and Inspection of Records and Instructions* – requirement that dealers retain records of orders and that dealers and Access Persons allow an appropriate Market Regulator to inspect the records				√	√ **6**
10.13	*Exchange and Provision of Information by Market Regulators* – requires Market Regulators to provide information and assistance to other regulatory entities for the administration and enforcement of the rules	√	√			
10.14	*Synchronization of Clocks* – requires all marketplaces and participants to synchronize clocks for the recording of data	√	√		√	
10.15	*Assignment of Identifiers and Symbols* – provides a mechanism for the assignment of unique identifiers to marketplaces and dealers and for unique symbols to securities which are eligible to trade on a marketplace	√	√		√	√
Part 11	**Administration of Rules**					
11.1	*General Exemptive Relief* – provides each Market Regulator with the power to exempt a particular person or transaction from the application of a rule	√	√	√	√	√
11.2	*General Prescriptive Power* – provides each Market Regulator with the power to make a policy or a designation to aid in the administration of a rule	√	√	√	√	√
11.3	*Review or Appeal of Market Regulator Decisions* – any decision of a Market Regulator or Market Integrity Official may be reviewed by or appealed to a securities regulatory authority	√	√	√	√	√
11.4	*Method of Giving Notice* – general requirement for the provision of notice to any person	√	√	√	√	√
11.5	*Computation of Time* – general rule respecting the calculation of time periods	√	√	√	√	√
11.6	*Waiver of Notice* – ability to waive any notice requirement	√	√	√	√	√

UMIR Section	Rule Description	Marketplaces		Regulated Person	Category of Access	
		Exchange/QTRS	ATS		Participant	Access Person
11.7	*Omissions or Errors in Giving Notice* – saving provision when notice is improperly given	√	√	√	√	√
11.8	*Transitional Provisions* – provides a mechanism for the transition of marketplace rules and disciplinary proceedings to the Market Regulator retained by the marketplace as its regulation service provider	√	√	√	√	√
11.9	*Non-Application of Rules* – limits the application of UMIR	√	√	√	√	√
11.10	*Indemnification and Limited Liability of the Market Regulator* – provides for the indemnification and limited liability of the Market Regulator and directors, officers and employees of the Market Regulator	√	√	√	√	√
11.11	*Status of Rules and Policies* – Rules and Policies apply in the event of a conflict with a marketplace rule or the functionality of a trading system of a marketplace unless a specific exemption has been granted by securities regulatory authority	√	√	√	√	√

Notes:

Certain provisions of UMIR have a limited application to either ATSs or Access Persons. In particular:

1. Rule 2.1 – An Access Person is required to transact business "openly and fairly" but will not be subject to the "just and equitable principles of trade" which are generally considered applicable to persons with fiduciary obligations.

2. Rule 6.2 – Certain order designations are applicable to dealers only (such as the requirement to mark a principal order, non-client order, jitney order etc.). Access Persons are required to mark orders as to type, including whether the order is a short sale, and whether the Access Person is an insider or significant shareholder of the security subject to the order.

3. Rule 7.2 – An ATS is under an obligation to ensure that an Access Person has been trained in the Rules.

4. Rule 7.3 – An ATS has responsibility for all trades arising from orders entered through the ATS subject to the obligation of an Access Person for compliance with the requirements of the Rules and each Policy. In marketplaces other than an ATS, this obligation is imposed on Participants, the registered intermediaries between the client and the marketplace.

5. Rule 10.11 – An Access Person is not required to maintain or to transmit an electronic record of an order to a Market Regulator. An Access Person is under an obligation to provide to the Market Regulator of the marketplace on which an order was entered or executed certain information respecting that order or trade or other prior or subsequent orders or trades in the same security or a related security.

6. Rule 10.12 – An Access Person is not required to maintain specific records of each order. However, the Market Regulator of the marketplace on which an order was entered or executed may inspect any records that are maintained by the Access Person regarding an order or trade.

13.1.5 Adjournment of RS Hearing in the Matter of Donald Greco

June 25, 2003 **2003-010**

NOTICE TO PUBLIC

Subject: **Adjournment of Market Regulation Services Inc. hearing *In the Matter of Donald Greco***

The hearing *In the Matter of Donald Greco* scheduled to begin on June 19, 2003 has been adjourned. A Panel of the Hearing Committee (the "Hearing Panel") of Market Regulation Services Inc. ("RS") will hear this matter commencing on July 15, 2003 at 9:30 a.m., or as soon thereafter as the Hearing can be held, at the offices of RS, 145 King Street West, 9th floor, Toronto, Ontario. The Hearing is open to the public.

For further details, please refer to RS Notice to Public number 2003-005 published May 2, 2003 and RS Notice to Public number 2003-008 published June 11, 2003.

The decision of the Hearing Panel and the terms of any discipline imposed will be published by RS as a Disciplinary Notice.

Reference:

Jane P. Ratchford
Chief Counsel
Investigations and Enforcement
Market Regulation Services Inc.

Telephone: 416-646-7229

13.1.6 Continuation of RS Hearing in the Matter of Taylor Shambleau

June 25, 2003 **2003-011**

NOTICE TO PUBLIC

Subject: **Continuation of Market Regulation Services Inc. hearing *In the Matter of Taylor Shambleau***

TAKE NOTICE that the Hearing *In the Matter of Taylor Shambleau* will continue before a Panel of the Hearing Committee of the Toronto Stock Exchange on July 3, 2003 commencing at 1:00 p.m., or as soon thereafter as the Hearing can be held, at the offices of Market Regulation Services Inc., 145 King Street West, 9th floor, Toronto, Ontario. The Hearing is open to the public.

Reference:

Jane P. Ratchford
Chief Counsel
Investigations and Enforcement
Market Regulation Services Inc.

Telephone: 416-646-7229

Chapter 25

Other Information

25.1 Approvals

25.1.1 Morgan Meighen & Associates Limited - cl. 213(3)(b) of the LTCA

Headnote

Clause 213(3)(b) of the Loan and Trust Corporations Act - application for approval to act as trustee.

Statutes Cited

Loan and Trust Corporations Act, R.S.O. 1990, c. L.25, as am., clause 213(3)(b).

June 17, 2003

Blake, Cassels & Graydon LLP
Box 25, Commerce Court West
199 Bay Street
Toronto, Ontario
M5L 1A9

Dear John Bursic:

Re: Application by Morgan Meighen & Associates Limited ("MMA") for approval of MMA to act as Trustee of the MMA Income Portfolio and certain other mutual funds established from time to time under the same trust agreement (collectively, the "Funds")
Application No. 358/03

Further to the application dated June 3, 2003 (the "Application") filed on behalf of MMA and based on the facts set out in the Application, pursuant to the authority conferred on the Ontario Securities Commission (the "Commission") in clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves MMA to act as trustee of the Funds which it manages.

"Paul M. Moore" "Robert W. Davis"

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