

The Ontario Securities Commission

# OSC Bulletin

September 19, 2003

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

**The Ontario Securities Commission**

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## Chapter 1

# Notices / News Releases

### 1.1 Notices

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

SEPTEMBER 19, 2003

#### CURRENT PROCEEDINGS

#### BEFORE

#### ONTARIO SECURITIES COMMISSION

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

The Harry S. Bray Hearing Room  
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Kerry D. Adams, FCA	—	KDA
Paul K. Bates	—	PKB
Derek Brown	—	DB
Robert W. Davis, FCA	—	RWD
Harold P. Hands	—	HPH
Robert W. Korthals	—	RWK
Mary Theresa McLeod	—	MTM
H. Lorne Morphy, Q.C.	—	HLM
Robert L. Shirriff, Q.C.	—	RLS
Suresh Thakrar	—	ST
Wendell S. Wigle, Q. C.	—	WSW

### SCHEDULED OSC HEARINGS

DATE: TBA **Teodosio Vincent Pangia, Agostino Capista and Dallas/North Group Inc.**

s. 127

Y. Chisholm in attendance for Staff

Panel: TBA

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

s. 127

E. Cole in attendance for Staff

Panel: TBA

October 1, 2003 **Marlene Berry et al**

2:00 p.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: HLM/KDA/ST

October 20 to November 7, 2003 **M.C.J.C. Holdings Inc. and Michael Cowpland**

10:00 a.m. s. 127

M. Britton in attendance for Staff

Panel: WSW/PKB/RWD

November 3-10,  
12 and 14-21,  
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: HLM/MTM/ST

\* BMO settled Sept. 23/02  
+ April 29, 2003

February 19, 2004 **ATI Technologies Inc., Kwok Yuen**  
to March 10, 2004 **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

**1.1.2 Notice of Commission Approval –  
Amendments to MFDA Financial  
Questionnaire and Report**

**THE MUTUAL FUND DEALERS ASSOCIATION (MFDA)  
NOTICE OF COMMISSION APPROVAL  
AMENDMENTS TO MFDA  
FINANCIAL QUESTIONNAIRE AND REPORT**

The Ontario Securities Commission approved amendments to MFDA Financial Questionnaire and Report. In addition, the Alberta Securities Commission, Nova Scotia Securities Commission and Saskatchewan Financial Services Commission approved and the British Columbia Securities Commission did not object to the amendments. The proposal provides further explanations to assist MFDA members in completing the Financial Questionnaire and Report, as well as correcting typographical errors. The amendments are housekeeping in nature. The description and a copy of the amendments are contained in Chapter 13 of this Ontario Securities Commission Bulletin.

**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**

**Philip Services Corporation**

**Robert Walter Harris**

**Andrew Keith Lech**

**S. B. McLaughlin**

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

**1.1.3 CSA Staff Notice 33-308 The CSA STP Readiness Assessment Survey Report (Survey Report) is Now Available on the OSC Website**

**CSA STAFF NOTICE 33-308**

**THE CSA STP READINESS ASSESSMENT SURVEY REPORT (SURVEY REPORT) IS NOW AVAILABLE ON THE OSC WEBSITE**

The Canadian Securities Administrators (CSA), a council of the 13 securities regulators of Canada's provinces and territories, believe that straight-through processing (STP) is an extremely important initiative. The CSA provided a STP Readiness Assessment Survey ("Survey") to Canadian registrant and non-registrant firms ("Firms") to assess the preparedness of the industry in Canada for STP.

The Survey was available online from **May 9 to May 30, 2003**. The CSA asked investment dealers, mutual fund dealers, investment counsels and/or portfolio managers, limited market dealers, mutual fund managers, discount brokers (Quebec registrant category), and unrestricted brokers (Quebec registrant category) to complete the Survey. We asked nearly 998 Firms to participate in the Survey and received 732 responses (a 73% response rate). The CSA has tabulated the results and has posted the Survey Report on the OSC website.

To view the Survey Report, please visit the OSC website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

We thank all Firms who have taken the time to complete the voluntary Survey.

For more information on the STP initiative, please visit the OSC website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca) and the Canadian Capital Markets Association (CCMA) website at [www.ccma-acmc.ca](http://www.ccma-acmc.ca).

For further information regarding the Survey Report, please contact:

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**1.1.4 Notice of Commission Approval of Amendments to OSC Rule 13-502 – Fees, Including Forms 13-502F1, 13-502F2, 13-502F3, and 13-502F4, and Companion Policy 13-502CP – Fees**

**NOTICE OF COMMISSION APPROVAL OF**

**AMENDMENTS TO RULE 13-502 – FEES,  
INCLUDING FORMS 13-502F1, 13-502F2, 13-502F3, AND  
13-502F4, AND  
COMPANION POLICY 13-502CP – FEES**

On September 16, 2003, the Commission made Amendment to Rule 13-502 *Fees* (including Forms 13-502F1, 13-502F2, 13-502F3, and 13-502F4) (the Rule) as a rule under the Act and adopted Amendment to Companion Policy 13-502CP *Fees* (the Companion Policy) as a policy under the Act. The Rule and Companion Policy were published for comment on May 16, 2003 at (2003) 26 OSCB 3712.

The Rule was delivered to the Minister of Finance on September 17, 2003 and is published in Chapter 5 of the Bulletin.

**1.1.5 Notice of Commission Approval of OSC Rule 13-503 (Commodity Futures Act) Forms 13-503F1 and 13-503F2 and Companion Policy 13-503CP Fees and Notice of Revocation of Schedule 1 of Regulation 90 Made Under the Commodity Futures Act**

**NOTICE OF COMMISSION APPROVAL OF**

**ONTARIO SECURITIES COMMISSION RULE 13-503  
(COMMODITY FUTURES ACT)  
FORMS 13-503F1 AND 13-503F2 AND  
COMPANION POLICY 13-503CP  
FEES**

**AND**

**NOTICE OF REVOCATION OF SCHEDULE 1 OF  
REGULATION 90  
MADE UNDER THE COMMODITY FUTURES ACT**

On September 16, 2003, the Commission made Rule 13-503 (*Commodity Futures Act*) Fees and Forms 13-503F1 and 13-503F2 as a rule (the Rule) under the *Commodity Futures Act* (CFA) and adopted Companion Policy 13-503CP (the Companion Policy) as a policy under the Act. The Rule and Companion Policy were published for comment on May 16, 2003 at (2003) 26 OSCB 3712.

Concurrently with making the Rule, the Commission has revoked Schedule 1 to Regulation 90 made under the CFA.

The Rule and the amending regulation were delivered to the Minister of Finance on September 17, 2003 and are published in Chapter 5 of the Bulletin.



1.3 News Releases

1.3.1 CPAB Media Release - Audit Oversight Board Proposes Registration Process for Auditors of Public Companies

**AUDIT OVERSIGHT BOARD PROPOSES  
REGISTRATION PROCESS FOR AUDITORS  
OF PUBLIC COMPANIES**

**Toronto, September 11, 2003** - The Canadian Public Accountability Board (CPAB) has released a proposed registration process for auditors of reporting issuers. The draft is available on its new website for a 60-day comment period at [www.cpab-ccrc.ca](http://www.cpab-ccrc.ca). Gordon Thiessen, the Chair of CPAB, is encouraging audit firms and other interested parties to submit comment.

A new rule proposed by the Canadian Securities Administrators (CSA) on June 27, 2003 (Multilateral Instrument 52-108, *Auditor Oversight*) will require auditors of reporting issuers to be participants in good standing with the CPAB when they issue an auditor's report with respect to their clients' financial statements. The CSA rule, which is open to comment until September 25, is expected to take effect in the new year. The two-step registration process proposed by the CPAB requires firms to file a notice of their intent to participate by December 31 and to complete their registration by February 29, 2004.

"This is a very important milestone for the CPAB," said Thiessen. "With the appointment of our CEO and the launch of the registration process, the CPAB is in a good position for us to begin our oversight role this year. I encourage both auditors and those who use audit services to carefully examine the process we are proposing and provide us with comments to ensure that we have captured a process that is fair and transparent."

The CPAB was created in 2002 by Canada's financial and securities regulatory authorities as part of a series of initiatives to restore investor confidence. Its mandate is to promote high quality, independent auditing of public companies in Canada.

**Media contact:**

Eric Pelletier  
(416) 595-8913

1.3.2 Regulator Warns Investors about the Pitfalls of Ponzi Schemes

**FOR IMMEDIATE RELEASE  
September 12, 2003**

**REGULATOR WARNS INVESTORS ABOUT THE  
PITFALLS OF PONZI SCHEMES**

**TORONTO** – The Ontario Securities Commission is warning investors to steer clear of Ponzi-style investment schemes; many con artists use this process to get your money.

The first known Ponzi scheme was operated by Carl Ponzi himself. In 1920's Boston, Ponzi collected \$9.8 million from 10,550 investors, including 75% of the Boston Police force. Ponzi then delivered \$7.8 million to his investors as "return" on their investments and spent the rest of the money. Ponzi's original investors were so pleased with their "returns" that they happily helped him find more investors. The Ponzi scheme thrived until the media took notice; Carl Ponzi was finally arrested and ended up in bankruptcy court. In the end everyone lost money; the bankruptcy trustee sued the individuals who made gains from the Ponzi scheme so Carl Ponzi's debts could be paid to his creditors.

How did Ponzi lure so many people into his scheme? Investors were attracted to Ponzi's plan because he guaranteed high returns over a short period of time - profits of 50% every 45 days. Unfortunately these returns were not from the success of a real investment. Instead, the returns were paid from the investors' own money and the contributions of other investors. The essence of the Ponzi scheme is that money is 'borrowed from Peter to pay Paul'.

Today's Ponzi schemes look like real investment opportunities. These schemes work well because:

- Investors receive "interest" cheques (which are really the return of their own money), and they encourage their friends and family to invest;
- Investors regularly receive account statements that show profits (which are not real);
- Investors rarely research the investment, or check the background of the person offering the investment.
- The Ponzi operator often convinces investors to put their 'profits' back into the Ponzi; ultimately they lose their original investment plus any profits they may have earned.

Ponzi schemes spread by word of mouth. As more people hear of the apparently profitable investment, more investors want to get in on it. Early investors are paid out of money from new investors, at times for many years until the Ponzi collapses. The Ponzi scheme comes to an end when the number of new investors inevitably falls. With fewer new investors, there is no new money to pay the returns. If you

lose your money to a Ponzi scheme, chances are you will not get your money back.

Although a Ponzi scheme can be difficult to spot, the following tips will help you protect your money from con artists:

- Watch out for investment promotions that offer guaranteed high returns and low risk. If an investment has a high return, you are taking a large risk with your money.
- Check the registration of the investment, and the person or company offering it. Many Ponzi operators are not registered to sell securities, nor is the investment itself registered. To check, call the OSC Contact Centre toll-free at 1-877-785-1555.
- Get a second opinion from your financial adviser, lawyer or accountant.

You can learn more about fraud and other investment topics on-line at [www.InvestorED.ca](http://www.InvestorED.ca).

**For Media Inquiries:** Perry Quinton  
Manager, Investor  
Communications  
416-593-2348

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

## Chapter 2

# Decisions, Orders and Rulings

### 2.1 Decisions

#### 2.1.1 Textron Financial Corporation and Textron Financial Canada Funding Corp. - MRRS Decision

##### Headnote

Mutual Reliance Review System for Exemption Relief Applications - relief for a wholly-owned Canadian subsidiary of an MJDS eligible issuer from the eligibility requirements of National Instrument 71-101 to issue approved rating debt guaranteed by parent. Issuer granted exemption from continuous disclosure requirements and the requirement to file an annual information form in Ontario, Quebec and Saskatchewan, and insiders of the issuer granted relief from insider reporting requirements, subject to conditions, including filing of continuous documents by the parent in accordance with Parts 14 through 18 of NI 71-101.

##### Ontario Statutory Provisions

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

##### National Instruments Cited

National Instrument 71-101 The Multijurisdictional Disclosure System, s. 3.1, 3.2 and Parts 14-18.

##### Ontario Rules Cited

Rule 51-501 AIF and MD&A, s. 5.1.  
Rule 52-501 Financial Statements, s. 4.1.

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

**AND**

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

**AND**

**IN THE MATTER OF  
TEXTRON FINANCIAL CORPORATION AND  
TEXTRON FINANCIAL CANADA FUNDING CORP.**

### MRRS DECISION DOCUMENT

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Prince Edward Island, Nova Scotia, and Newfoundland and Labrador (the "Jurisdictions") has received an application from Textron Financial Corporation ("TFC") and its subsidiary Textron Financial Canada Funding Corp. (the "Issuer", and together with TFC, the "Filer") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirements contained in section 3.2(b) of National Instrument 71-101 – The Multijurisdictional Disclosure System ("NI 71-101") that the Issuer be a "U.S. issuer" (as defined in NI 71-101) shall not apply to the Issuer so that it is eligible to offer certain securities in the Jurisdictions under NI 71-101;

**AND WHEREAS** the Decision Maker in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, and Newfoundland and Labrador (the "Continuous Disclosure Jurisdictions") has received an application from the Filer, for a decision under the Legislation of the Continuous Disclosure Jurisdictions that the requirements contained in the Legislation that:

- (a) the Issuer file with the Decision Makers and send to its security holders audited annual financial statements and an annual report, where applicable;
- (b) the Issuer file with the Decision Makers and send to its security holders unaudited interim financial statements;
- (c) the Issuer issue and file with the Decision Makers press releases and file with the Decision Makers material change reports;
- (d) the Issuer comply with the proxy and proxy solicitation requirements, including filing with the Decision Makers an information circular or report in lieu thereof and, if applicable, sending such documents to applicable securityholders of the Issuer;
- (e) insiders of the Issuer file with the Decision Makers insider reports; and
- (f) in Ontario, Quebec and Saskatchewan, the Issuer file with the applicable Decision Maker an annual information form, and, where applicable, interim and

annual management discussion and analysis;

(collectively the "Continuous Disclosure Requirements"),

shall not apply;

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

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

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

1. TFC was incorporated under the laws of the State of Delaware on February 5, 1962 and is a reporting issuer or its equivalent in all of the Jurisdictions that provide for a reporting issuer regime. TFC is not in default under the Legislation.
2. TFC has been a reporting company under the United States *Securities Exchange Act of 1934*, as amended (the "1934 Act") since 1999 with respect to its debt securities. TFC has filed with the United States Securities and Exchange Commission (the "SEC") all filings required to be made with the SEC under sections 13 and 15 (d) of the 1934 Act since it first became a reporting company.
3. As at December 28, 2002, TFC had approximately US\$3.9 billion in long term debt and US\$916 million in commercial paper and short term debt outstanding. All of TFC's outstanding long-term debt is rated "A-" by Standard & Poor's and "A3" by Moody's Investors Service.
4. The common stock in the capital of TFC is owned by Textron Inc., a publicly owned Delaware corporation. TFC derives a portion of its business from financing the sale and lease of products manufactured and sold by Textron Inc.
5. TFC is a diversified commercial finance company with core operations in aircraft finance, asset-based lending, distribution finance, golf finance, resort finance and structured capital.
6. TFC's total assets as at December 28, 2002 were approximately US\$6.7 billion and its net profit for the year ended December 28, 2002 was approximately US\$60 million.
7. TFC satisfies all the criteria set out in paragraph 3.1(a) of NI 71-101 (the "General Eligibility

Criteria") and, should it choose to do so, would be eligible to use the multi-jurisdictional disclosure system ("MJDS") for the purpose of distributing non-convertible debt having an investment grade rating (as defined in NI 71-101) in Canada based on compliance with United States prospectus requirements with certain additional Canadian disclosure.

8. The Issuer was incorporated under the *Companies Act* (Nova Scotia) as an unlimited liability company on October 31, 2000, and is a wholly-owned subsidiary of TFC.
9. The registered office of the Issuer is in Nova Scotia and the Issuer's principal office is located in Providence, Rhode Island.
10. The Issuer is a reporting issuer or its equivalent in all of the Jurisdictions that provide for a reporting issuer regime and it is reporting company under the 1934 Act. The Issuer is not in default under the Legislation.
11. The Issuer is a financing subsidiary of TFC with no operations, revenues or cash flows other than those related to the issuance, administration and repayment of debt securities that are and will be fully and unconditionally guaranteed by TFC.
12. The Issuer's business activities are limited to financing the business activities of Textron Financial Canada Limited, TFC's Canadian based operating subsidiary, and it will have no other operations.
13. It is proposed that the Issuer will offer, on a continuous basis in Canada and the United States, non-convertible debt having an investment grade rating that are fully and unconditionally guaranteed by TFC (the "Notes"). TFC will offer, on a continuous basis in the United States, non-convertible debt having an investment grade rating.
14. The Issuer is planning to distribute the Notes in each of the Jurisdictions under a MJDS prospectus and prospectus supplements issued thereunder (the "2003 Prospectus"). The 2003 Prospectus will be prepared in accordance with United States securities laws and filed as part of a registration statement with the SEC under the United States *Securities Act of 1933*, as amended.
15. The 2003 Prospectus will be filed with the Decision Makers in accordance with the provisions of NI 71-101, which are available to offerings which meet the alternative eligibility criteria for offerings of guaranteed non-convertible debt that have an investment grade rating as set out in paragraph 3.2 of NI 71-101 (the "Alternative Eligibility Criteria").

16. The Issuer meets all of the requirements of the Alternative Eligibility Criteria except the requirement that it be a "U.S. issuer".

outstanding voting securities of the Issuer.

17. The Issuer distributed Notes under a MJDS prospectus dated November 30, 2001 and prospectus supplement dated November 30, 2001 in each of the Jurisdictions (the "2001 MTN Program").

August 29, 2003.

"R. Scott Peacock"

18. In connection with the 2001 MTN Program, the Issuer obtained from the Decision Makers in the Jurisdictions a MRRS decision document dated November 8, 2001 providing exemptive relief from the eligibility requirement contained in Section 3.2(b) of NI 71-101 that the Issuer be a "U.S. issuer". Also in connection with the 2001 MTN Program, the Issuer obtained from the Decision Makers in the Continuous Disclosure Jurisdictions a MRRS decision document dated December 21, 2001 providing exemptive relief to the Issuer from certain continuous disclosure obligations contained in the Legislation of the Continuous Disclosure Jurisdictions.

**AND THE DECISION** of the Decision Makers in the Continuous Disclosure Jurisdictions pursuant to the Legislation is that the Continuous Disclosure Requirements shall not apply to the Issuer for so long as:

19. The Issuer's continuous disclosure obligations in the United States will be substantially satisfied by TFC's filings with the SEC. TFC's financial reporting includes the financial reports of the Issuer and the Issuer does not report separately.

(a) TFC satisfies the Continuous Disclosure Requirements as a "U.S. issuer" in accordance with the provisions of Parts 14 through 18 of NI 71-101;

(b) TFC maintains a class of securities registered under section 12 of the 1934 Act;

(c) TFC maintains direct or indirect 100% beneficial ownership of the voting securities of the Issuer;

20. The 2003 Prospectus will disclose that the Filer has obtained relief from the Decision Makers from the Continuous Disclosure Requirements and will provide a description of how the Filer will satisfy the Continuous Disclosure Requirements.

(d) TFC continues to fully and unconditionally guarantee the Notes issued under the 2001 MTN Program and the Notes to be issued pursuant to the 2003 Prospectus, and any future issuances of debt securities by the Issuer under a prospectus offering, as to payments required to be made by the Issuer to holders of the Notes or such other debt securities, as the case may be;

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

(e) the Issuer carries on no other business than that set out in paragraphs 11 and 12 of 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.

(f) the Issuer is in compliance with the requirements of the Legislation to issue a press release and file a report with the Decision Makers upon the occurrence of a material change in respect of the affairs of the Issuer that is not also a material change in the affairs of TFC;

**THE DECISION** of the Decision Makers in the Jurisdictions under the Legislation is that the requirement in section 3.2(b) of NI 71-101 that the Issuer be a "U.S. issuer" shall not apply to the Issuer in connection with the offering of the Notes in the Jurisdictions under the 2003 Prospectus, provided that at the time of the offering:

(g) the Issuer does not issue additional securities other than the Notes, or any other series of notes which hereafter may be issued, or debt securities ranking *pari passu* with the Notes;

(a) TFC satisfies the General Eligibility Criteria;

(b) the Issuer complies with all of the filing requirements and procedures set out in NI 71-101, except as varied by the Decision; and

(c) TFC remains the direct or indirect beneficial owner of all the issued and

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

and

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

August 29, 2003.

"H. Leslie O'Brien"

## **2.1.2 Baytex Energy Trust et al. - MRRS Decision**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - relief from registration and prospectus requirements, continuous disclosure requirements and the requirement to have a current AIF filed on SEDAR in connection with an arrangement. Also, corporation deemed to be a reporting issuer.

### **Applicable Ontario Statutory Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74(1), 80(b)(iii), 83.1(1) and 88(2)(b).

### **Applicable Ontario Rules**

Ontario Securities Commission Rule 51-501 Annual Information Form and Management Discussion & Analysis.

### **Applicable Multilateral Instruments**

Multilateral Instrument 45-102 - Resale of Securities.

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

**AND**

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

**AND**

**IN THE MATTER OF  
BAYTEX ENERGY TRUST,  
BAYTEX ENERGY LTD.,  
BAYTEX ACQUISITION CORP.,  
CREW ENERGY INC.,  
BAYTEX EXCHANGECO LTD.,  
BAYTEX RESOURCES LTD.  
AND BAYTEX EXPLORATION LTD.**

### **MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (collectively, the "Decision Makers") in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions") has received an application from Baytex Energy Trust (the "Trust"), Baytex Energy Ltd. ("Baytex"), Baytex Acquisition Corp. ("AcquisitionCo"), Crew Energy Inc. ("Crew"), Baytex ExchangeCo Ltd. ("ExchangeCo"), Baytex Resources Ltd. ("Baytex Resources") and Baytex Exploration Ltd. ("Baytex Exploration") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that:

- 1.1 the requirements contained in the Legislation to be registered to trade in a security (the "Registration Requirements") and to file a preliminary prospectus and a prospectus, and to receive receipts therefor to distribute a security (the "Prospectus Requirements"), in Ontario and Québec, shall not apply to certain trades of securities to be made in connection with a proposed plan of arrangement (the "Arrangement") under section 193 of the *Business Corporations Act* (Alberta) (the "ABCA") involving the Trust, AcquisitionCo, Baytex, Crew, ExchangeCo, Baytex Resources and Baytex Exploration and the security holders of Baytex;
  - 1.2 the requirements contained in the Legislation with respect to AcquisitionCo (or its successor on amalgamation with Baytex ("AmalgamationCo")), in those Jurisdictions in which it becomes a reporting issuer or the equivalent under the Legislation, to issue a news release and file a report with the Jurisdictions upon the occurrence of a material change, file an annual report, where applicable, file interim financial statements and audited annual financial statements with the Jurisdictions and deliver such statements to security holders of AcquisitionCo and AmalgamationCo, file and deliver an information circular or make an annual filing with the Jurisdictions in lieu of filing an information circular, file an annual information form and provide management's discussion and analysis of financial condition and results of operations (the "Continuous Disclosure Requirements"), shall not apply to AcquisitionCo or AmalgamationCo; and
  - 1.3 the requirement of Crew to have a "current AIF" filed on SEDAR under Multilateral Instrument 45-102 Resale of Securities ("MI 45-102") not apply.
2. AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System") the Alberta Securities Commission is the principal regulator for this application;
3. AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or Québec Commission Notice 14-101;
4. AND WHEREAS the Trust, Baytex, AcquisitionCo, Crew, ExchangeCo, Baytex Resources and Baytex Exploration have represented to the Decision Makers that:
  - 4.1 Baytex is a corporation amalgamated and subsisting pursuant to the provisions of the ABCA;
  - 4.2 the head and principal office of Baytex is located at 2200, 205 – 5<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 2V7, and its registered office is located at 1400, 350 – 7<sup>th</sup> Avenue S.W., Calgary, Alberta T2P 3N9;
  - 4.3 Baytex is actively engaged in the exploration for, and the acquisition, development and production of, oil and natural gas in the Provinces of Alberta, Saskatchewan and British Columbia;
  - 4.4 the authorized capital of Baytex consists of an unlimited number of common shares ("Common Shares");
  - 4.5 as at July 23, 2003, 53,611,083 Common Shares were issued and outstanding. Baytex has also reserved a total of 4,426,103 Common Shares for issuance pursuant to outstanding options ("Options") to purchase Common Shares;
  - 4.6 the Common Shares are listed on the Toronto Stock Exchange (the "TSX");
  - 4.7 Baytex is a reporting issuer in the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and has been for more than 12 months;
  - 4.8 Baytex has filed all the information that it has been required to file as a reporting issuer in each of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, Newfoundland and is not in default of the securities legislation in any of these jurisdictions;
  - 4.9 the Trust is an open end unincorporated investment trust governed by the laws of the Province of Alberta and created pursuant to a trust indenture dated July 24, 2003 between Baytex and Valiant Trust Company, as trustee;
  - 4.10 the Trust was established for the purpose of, among other things:
    - 4.10.1 investing in shares of AcquisitionCo and acquiring the Common Shares and the unsecured, subordinate promissory notes issuable by AcquisitionCo (the "Notes") pursuant to the Arrangement;
    - 4.10.2 acquiring a net profits interest pursuant to a net profits interest agreement to be entered into between AmalgamationCo and the Trust; and
    - 4.10.3 acquiring or investing in other securities of AmalgamationCo and in the securities of any other entity

- including without limitation bodies corporate, partnerships or trusts, and borrowing funds or otherwise obtaining credit for that purpose;
- 4.11 the head and principal office of the Trust is located at located at 2200, 205 – 5<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 2V7;
- 4.12 the Trust was established with nominal capitalization and currently has only nominal assets and no liabilities. The only activity which will initially be carried on by the Trust will be the holding of securities of AcquisitionCo and AmalgamationCo;
- 4.13 the Trust is authorized to issue an unlimited number of trust units ("Trust Units") and an unlimited number of special voting rights ("Special Voting Rights");
- 4.14 as of the date hereof, there is one Trust Unit issued and outstanding, which is owned by Baytex, and no Special Voting Rights are outstanding;
- 4.15 the Trust has received conditional approval from the TSX for the listing on the TSX of the Trust Units to be issued in connection with the Arrangement subject to, among other things, completion of the Arrangement. The Trust Units issuable from time to time in exchange for exchangeable shares ("Exchangeable Shares") of AcquisitionCo will also be listed on the TSX, subject to receipt of final approval from the TSX;
- 4.16 the Trust is not a reporting issuer in any of the Jurisdictions;
- 4.17 AcquisitionCo is a wholly-owned subsidiary of the Trust and was incorporated pursuant to the ABCA on June 12, 2003. AcquisitionCo was incorporated to participate in the Arrangement by acquiring Common Shares of Baytex (other than those held by dissenting Shareholders);
- 4.18 the head and principal office of AcquisitionCo is located at 2200, 205 – 5<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 2V7 and its registered office is located at 1400, 350 – 7<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 3N9;
- 4.19 the authorized capital of AcquisitionCo currently consists of an unlimited number of common shares. Prior to the Arrangement, the articles of AcquisitionCo will be amended to create the Exchangeable Shares;
- 4.20 as of the date hereof there is one (1) common share of AcquisitionCo issued and outstanding, which is owned by the Trust. All common shares of AcquisitionCo will be owned beneficially (directly or indirectly) by the Trust, for as long as
- any outstanding Exchangeable Shares are owned by any person other than the Trust or any of the Trust's subsidiaries and other affiliates;
- 4.21 AcquisitionCo is not a reporting issuer in any of the Jurisdictions;
- 4.22 Crew was incorporated pursuant to the ABCA on May 12, 2003. Crew has not carried on any active business since incorporation;
- 4.23 the head and principal office of Crew will be located at 1920, 205 – 5<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 2V7, and its registered office is located at 1400, 350 – 7<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 3N9;
- 4.24 pursuant to the Arrangement, Crew will acquire, directly and indirectly, certain oil and gas assets from Baytex. Upon completion of the Arrangement, Crew will be engaged in the exploration for, and acquisition, development and production of, oil and natural gas reserves, primarily in the Provinces of Alberta and British Columbia;
- 4.25 the authorized capital of Crew consists of an unlimited number of Crew Common Shares. Prior to the Arrangement becoming effective, the authorized capital of Crew will consist of an unlimited number of Crew Common Shares, an unlimited number of class B non-voting shares and an unlimited number of class C performance shares;
- 4.26 as of the date hereof, one (1) Crew Common Share is issued and outstanding;
- 4.27 Crew has made application for conditional approval from the TSX for the listing on the TSX of the Crew Common Shares to be issued in connection with the Arrangement subject to, among other things, completion of the Arrangement. The Crew Common Shares issuable from time to time will also be listed on the TSX, subject to receipt of final approval from the TSX;
- 4.28 Crew is not a reporting issuer in any of the Jurisdictions;
- 4.29 ExchangeCo was incorporated pursuant to the ABCA on June 12, 2003. ExchangeCo has not carried on any active business since incorporation;
- 4.30 the head and principal office of ExchangeCo is located at 2200, 205 – 5<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 2V7, and its registered office is located at 1400, 350 – 7<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 3N9;



- 4.31 the authorized capital of ExchangeCo consists of an unlimited number of common shares;
- 4.32 as of the date hereof, one (1) common share was issued and outstanding and owned by the Trust;
- 4.33 Baytex Resources was incorporated pursuant to the ABCA. Baytex Resources is a wholly-owned subsidiary of Baytex and is engaged in the oil and natural gas business;
- 4.34 the head and principal office of Baytex Resources is located at 2200, 205 – 5<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 2V7, and its registered office is located at 1400, 350 – 7<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 3N9;
- 4.35 Baytex Exploration was incorporated pursuant to the ABCA. Baytex Exploration is a wholly-owned subsidiary of Baytex and is engaged in the oil and natural gas business;
- 4.36 the head and principal office of Baytex Exploration is located at 2200, 205 – 5<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 2V7, and its registered office is located at 1400, 350 – 7<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 3N9;
- 4.37 the Arrangement will be effected by way of plan of arrangement (the "Plan") pursuant to section 193 of the ABCA. The Arrangement will require: (i) approval by not less than two-thirds of the votes cast by the shareholders (the "Shareholders") and the optionholders of Baytex (collectively, the "Securityholders") (present in person or represented by proxy), voting together as a single class, at the special meeting (the "Meeting") of Securityholders to be held for the purpose of approving the Arrangement, and thereafter; (ii) approval of the Court of Queen's Bench of Alberta;
- 4.38 Baytex's information circular dated July 25, 2003 (the "Information Circular") contains prospectus-level disclosure concerning the respective business and affairs of Baytex, Crew, the Trust and AmalgamationCo and a detailed description of the Arrangement, and has been mailed to Securityholders in connection with the Meeting. The Information Circular has been prepared in conformity with the provisions of the ABCA and applicable securities laws and policies;
- 4.39 the assets that will make up the business of Crew have been the subject of continuous disclosure on an ongoing basis for more than 12 months, in accordance with Baytex's responsibilities as a reporting issuer subject to the Continuous Disclosure Requirements;
- 4.40 the Arrangement provides for a transaction where, commencing at the time the Arrangement takes effect (the "Effective Time"), the events set out below shall be deemed to occur in the following order:
- 4.40.1 the Common Shares and Options held by dissenting Securityholders who have exercised dissent rights which remain valid immediately prior to the Effective Time shall, as of the Effective Time, be deemed to have been transferred to Baytex and be cancelled and cease to be outstanding, and as of the Effective Time, such dissenting Securityholders shall cease to have any rights as securityholders of Baytex other than the right to be paid the fair value of their Common Shares or Options;
- 4.40.2 the class A preferred shares ("Class A Preferred Shares"), the class D common shares ("New Common Shares"), the class B non-voting shares ("Class B Non-Voting Shares") and the class C preferred shares ("Class C Preferred Shares") shall be created as new classes of shares of Baytex and each Common Share, other than Common Shares held by non-resident Shareholders ("Non Residents"), will be exchanged pursuant to a reorganization of the capital of Baytex for one (1) Class A Preferred Share, one (1) New Common Share and 0.333333 Class B Non-Voting Share and the stated value of each:
- 4.40.2.1 Class A Preferred Share shall be set at the paid up capital of each Common Share exchanged less: (A) 0.333333 multiplied by the Class B Non-Voting Share Stated Value, as adjusted; less (B) \$0.01;
- 4.40.2.2 New Common Share shall be set at \$0.01; and
- 4.40.2.3 whole Class B Non-Voting Share shall initially be set at \$1.65 subject to adjustment, to the Weighted Average Trading Price of the Crew Common Shares (the "Class B Non-Voting Share Stated Value");

- 4.40.3 each whole Class B Non-Voting Share held by a Shareholder who acquired Common Shares on the exercise of an employee stock option in circumstances that subsection 1(1.1) or (8) of the *Income Tax Act* (Canada) (the "Tax Act") apply and such Shareholder has elected to receive common shares ("Baytex Resources Common Shares") of Baytex Resources (an "Option Shareholder") will be transferred to Baytex Resources, for delivery to Baytex for cancellation in consideration of the repayment of inter-company indebtedness of Baytex Resources to Baytex, in exchange for one (1) Baytex Resources Common Share;
- 4.40.4 Baytex and Baytex Resources will convey certain oil and natural gas assets (the "Crew Assets") to Baytex Resources and Baytex Resources will convey its interest in the Baytex Energy Partnership (the "Baytex Partnership") and all of the oil and gas assets of Baytex Resources to Baytex;
- 4.40.5 each remaining whole Class B Non-Voting Share will be transferred to Crew in exchange for one (1) Crew Common Share;
- 4.40.6 each Baytex Resources Common Share held by Baytex will be transferred to Crew in exchange for one (1) unsecured, subordinate promissory note of Crew (the "Crew Note");
- 4.40.7 each Baytex Resources Common Share held by an Option Shareholder will be transferred to Crew in exchange for one (1) Crew Common Share with a stated capital equal to the Class B Non-Voting Share Stated Value;
- 4.40.8 each Class B Non-Voting Share will be exchanged pursuant to a reorganization of the capital of Baytex for one (1) Class C Preferred Share;
- 4.40.9 all of the Crew Notes shall be satisfied by the return by Crew to Baytex of all of the Class C Preferred Shares and the issuance of Crew Common Shares;
- 4.40.10 each Crew Class B Non-Voting Share will be exchanged pursuant to a reorganization of the capital of Crew for one (1) Crew Common Share;
- 4.40.11 subject to the Plan, each New Common Share and each Class A Preferred Share, other than New Common Shares and Class A Preferred Shares held by Shareholders exempt from tax under Part 1 of the Tax Act ("Tax Exempt Shareholders") and Option Shareholders will be transferred to AcquisitionCo in accordance with the election or deemed election of the holder of such New Common Shares and Class A Preferred Shares for one (1) Trust Unit or one (1) Exchangeable Share (together with the ancillary rights associated with the Exchangeable Shares);
- 4.40.12 each New Common Share and each Class A Preferred Share held by Tax-Exempt Shareholders and Option Shareholders will be transferred to AcquisitionCo in exchange for one (1) Trust Unit;
- 4.40.13 each Common Share held by Non Residents will be transferred to AcquisitionCo in exchange for one (1) Trust Unit and the right to receive one (1) Crew Common Share;
- 4.40.14 AcquisitionCo will issue one (1) unsecured, subordinate promissory note ("Note") to the Trust for each Trust Unit issued pursuant to sections 3.1(k), (l) and (m) of the Plan;
- 4.40.15 any outstanding Options shall cease to represent the right to acquire Common Shares and shall only entitle the holder to acquire one (1) Trust Unit for each Common Share which the holder was previously entitled to acquire under the Option at a price per Trust Unit equal to the existing price less an amount equal to the Class B Non-Voting Share Stated Value;
- 4.40.16 Baytex and AcquisitionCo shall be amalgamated and continued as one corporation, AmalgamationCo, in accordance with the following:
  - 4.40.16.1 the shares of Baytex, all of which are owned by AcquisitionCo, shall be cancelled without any repayment of capital;
  - 4.40.16.2 the articles of AmalgamationCo shall be the same as the articles of AcquisitionCo, and the

- name of AmalgamationCo shall be "Baytex Energy Ltd.";
- 4.40.16.3 no securities shall be issued by AmalgamationCo in connection with the amalgamation and for greater certainty, the common shares, Notes and Exchangeable Shares of AcquisitionCo shall survive and continue to be common shares, Notes and Exchangeable Shares of AmalgamationCo without amendment;
- 4.40.16.4 the property of each of the amalgamating corporations shall continue to be the property of AmalgamationCo;
- 4.40.16.5 AmalgamationCo shall continue to be liable for the obligations of each of the amalgamating corporations;
- 4.40.16.6 any existing cause of action, claim or liability to prosecution of either of the amalgamating corporations shall be unaffected;
- 4.40.16.7 any civil, criminal or administrative action or proceeding pending by or against either of the amalgamating corporations may be continued to be prosecuted by or against AmalgamationCo;
- 4.40.16.8 a conviction against, or ruling, order or judgment in favour of or against, either of the amalgamating corporations may be enforced by or against AmalgamationCo;
- 4.40.16.9 the Articles of Amalgamation of AcquisitionCo shall be deemed to be the Articles of Incorporation of AmalgamationCo and the Certificate of Amalgamation of AcquisitionCo shall be deemed to be the Certificate of Incorporation of AmalgamationCo;
- 4.40.16.10 the by-laws of AmalgamationCo shall be the by-laws of AcquisitionCo;
- 4.40.16.11 the first directors of AmalgamationCo shall be the directors of AcquisitionCo;
- 4.40.16.12 the first officers of AmalgamationCo shall be the officers of AcquisitionCo; and
- 4.40.16.13 the registered office of AmalgamationCo shall be the registered office of AcquisitionCo;
- 4.40.17 Baytex Partnership shall be dissolved in accordance with the following:
- 4.40.17.1 all of the property of the Baytex Partnership shall be transferred to AmalgamationCo and Baytex Exploration in accordance with their respective partnership interest; and
- 4.40.17.2 AmalgamationCo and Baytex Exploration shall be liable for the obligations of the Baytex Partnership in accordance with their respective partnership interest;
- 4.40.18 Baytex Exploration shall be dissolved, in accordance with the following:
- 4.40.18.1 all of the property of Baytex Exploration shall be transferred to AmalgamationCo; and
- 4.40.18.2 AmalgamationCo shall be liable for all of the obligations of Baytex Exploration;
- 4.40.19 AmalgamationCo will grant a net profits interest (the "NPI") pursuant to a net profits interest agreement to be entered into between AmalgamationCo and the Trust to the Trust in consideration of return of Notes in an amount equal to the fair market value of the NPI as determined by AmalgamationCo; and

- 4.40.20 AmalgamationCo shall deliver the Crew Common Shares to the Non Residents entitled to such Crew Common Shares referred to in section 3.1(m) of the Plan.
- 4.41 AmalgamationCo will become a reporting issuer under the Legislation in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland, and will be subject to the Continuous Disclosure Requirements in such Jurisdictions;
- 4.42 the Trust will become a reporting issuer under the Legislation in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and will be subject to the Continuous Disclosure Requirements in such Jurisdictions;
- 4.43 Crew will not be a reporting issuer within the definitions of all of the applicable Jurisdictions at the Effective Time;
- 4.44 following the completion of the Arrangement, Crew anticipates the need to carry out one or more private placements of Crew Common Shares in order to fund its exploration and production activities;
- 4.45 the Exchangeable Shares provide a holder with a security having economic and voting rights which are, as nearly as practicable, equivalent to those of the Trust Units;
- 4.46 under the terms of the Exchangeable Shares and certain rights to be granted in connection with the Arrangement, holders of Exchangeable Shares will be able to exchange them at their option for Trust Units;
- 4.47 under the terms of the Exchangeable Shares and certain rights to be granted in connection with the Arrangement, the Trust, ExchangeCo or AmalgamationCo will redeem, retract or otherwise acquire Exchangeable Shares in exchange for Trust Units in certain circumstances;
- 4.48 in order to ensure that the Exchangeable Shares remain the voting and economic equivalent of the Trust Units prior to their exchange, the Arrangement provides for:
- 4.48.1 a voting and exchange trust agreement to be entered into among the Trust, AcquisitionCo, ExchangeCo and Valiant Trust Company (the "Voting and Exchange Agreement Trustee") which will, among other things, (i) grant to the Voting and Exchange Agreement Trustee, for the benefit of holders of Exchangeable Shares, the right to require the Trust or ExchangeCo to exchange the Exchangeable Shares for Trust Units, and (ii) trigger automatically the exchange of the Exchangeable Shares for Trust Units upon the occurrence of certain specified events;
- 4.48.2 the deposit by the Trust of a Special Voting Right with the Voting and Exchange Agreement Trustee which will effectively provide the holders of Exchangeable Shares with voting rights equivalent to those attached to the Trust Units; and
- 4.48.3 a support agreement to be entered into between the Trust, AcquisitionCo, ExchangeCo and the Voting and Exchange Agreement Trustee which will, among other things, restrict the Trust from issuing or distributing to the holders of all or substantially all of the outstanding Trust Units:
- 4.48.3.1 additional Trust Units or securities convertible into Trust Units;
- 4.48.3.2 rights, options or warrants for the purchase of Trust Units; or
- 4.48.3.3 units or securities of the Trust other than Trust Units, evidence of indebtedness of the Trust or other assets of the Trust;
- unless the same or an equivalent distribution is made to holders of Exchangeable Shares, an equivalent change is made to the Exchangeable Shares, such issuance or distribution is made in connection with a distribution reinvestment plan instituted for holders of Trust Units or a unitholder rights protection plan approved for holders of Trust Units by the board of directors of AcquisitionCo, or the approval of holders of Exchangeable Shares has been obtained;
- 4.49 the steps under the Arrangement and the terms of the Exchangeable Shares and the exercise of certain rights provided for in connection with the Arrangement involve a number of trades or potential trades of securities, including Common Shares, Class A Preferred Shares, New Common Shares, Class B Non-Voting Shares, Class C Preferred Shares, Baytex Resources Common Shares, Crew Common Shares, Crew Notes, Notes, Exchangeable Shares, Trust

- Units, Options, the Special Voting Right and certain rights to acquire Trust Units, Exchangeable Shares and Crew Common Shares under the Arrangement, and rights to otherwise make a trade of a security that was derived from the Arrangement (collectively, the "Trades");
- 4.50 there are no exemptions from the Registration Requirement or the Prospectus Requirement available under the Legislation of Ontario and Québec for certain of the Trades;
- 4.51 the Information Circular discloses that the securities that are the subject of the Trades will be issued in reliance on exemptions, including discretionary exemptions, from the Registration Requirement and the Prospectus Requirement and discloses that application will be made to relieve AmalgamationCo from the Continuous Disclosure Requirements; and
- 4.52 the Trust will concurrently send to holders of Exchangeable Shares resident in the Jurisdictions all disclosure material it sends to holders of Trust Units pursuant to the Legislation;
5. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");
6. AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;
7. THE DECISION of the Decision Makers under the Legislation is that:
- 7.1 the Registration Requirement and the Prospectus Requirement contained in the Legislation of Ontario and Québec shall not apply to the Trades, provided that the first trade in securities acquired pursuant to the Arrangement shall be deemed to be a distribution or a primary distribution to the public;
- 7.2 the Prospectus Requirement contained in the Legislation of Ontario and Québec shall not apply to the first trade in securities acquired by Shareholders under the Arrangement and the first trade of securities acquired on the exercise of all rights, automatic or otherwise, under such securities, provided that:
- 7.2.1 in Ontario, the conditions in subsection (3) or (4), as applicable, of section 2.6 of MI 45-102 are satisfied and, for the purposes of determining the period of time that the Trust or Crew has been a reporting issuer under section 2.6 of MI 45-102, the period of time that Baytex was a reporting issuer in at least one of the jurisdictions listed in Appendix B of MI 45-102 immediately before the Arrangement may be included; and
- 7.2.2 in Québec:
- 7.2.2.1 the Trust is and has been a reporting issuer in Québec for the 12 months immediately preceding the trade, including the period of time that Baytex was a reporting issuer in Québec immediately before the Arrangement;
- 7.2.2.2 no unusual effort is made to prepare the market or create a demand for the securities that are the subject of the trade;
- 7.2.2.3 no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
- 7.2.2.4 if the selling securityholder is an insider or officer of the Trust, the selling securityholder has no reasonable grounds to believe that the Trust is in default of securities legislation;
- 7.3 the Continuous Disclosure Requirements of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador shall not apply to AmalgamationCo for so long as:
- 7.3.1 the Trust is a reporting issuer in Québec and at least one of the jurisdictions listed in Appendix B of MI 45-102 and is an electronic filer under National Instrument 13-101;
- 7.3.2 the Trust sends to all holders of Exchangeable Shares resident in the Jurisdictions all disclosure material furnished to holders of Trust Units under the Continuous Disclosure Requirements;
- 7.3.3 the Trust complies with the requirements of the TSX, or such other market or exchange on which the Trust Units may be quoted or listed, in

- respect of making public disclosure of material information on a timely basis;
- 7.3.4 AmalgamationCo is in compliance with the requirements of the Legislation to issue a press release and file a report with the Jurisdictions upon the occurrence of a material change in respect of the affairs of AmalgamationCo that is not also a material change in the affairs of the Trust;
- 7.3.5 the Trust includes in all future mailings of proxy solicitation materials to holders of Exchangeable Shares a clear and concise insert explaining the reason for the mailed material being solely in relation to the Trust and not to AmalgamationCo, such insert to include a reference to the economic equivalency between the Exchangeable Shares and Trust Units and the right to direct voting at meetings of Unitholders;
- 7.3.6 the Trust remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of AmalgamationCo; and
- 7.3.7 AmalgamationCo does not issue any preferred shares or debt obligations other than debt obligations issued to its affiliates or to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions;
- 7.4 upon the completion of the Arrangement:
- 7.4.1 in British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland and Labrador the requirement contained in the Legislation to have a "current AIF" filed on SEDAR in order to be a "Qualifying Issuer" under MI 45-102 shall not apply to Crew provided that:
- 7.4.1.1 Crew files a notice on SEDAR advising that the Information Circular has been filed as an alternate form of annual information form and identifying the SEDAR Project Number under which the Information Circular was filed and Appendix H to the Information Circular containing disclosure specific to Crew; and
- 7.4.1.2 Crew files a copy of Appendix H of the Information Circular under Crew's SEDAR profile; and
- 7.4.1.3 Crew files a Form 45-102F2 on or before the tenth day after the distribution day of any securities certifying that it is a Qualifying Issuer except for the requirement to have a current AIF;
- this exemption to expire 140 days after Crew's financial year ended December 31, 2003; and
- 7.4.2 in Québec, Crew will be exempt from the requirements of subparagraph 1(e) of decision no. 2003-C-0016 of the Commission des valeurs mobilières du Québec given that the Information Circular in connection with the Arrangement contains prospectus level disclosure including financial statements for the three months ended March 31, 2003 and the year ended December 31, 2002, for the purpose of Crew qualifying for the shortened hold period. This exemption will expire on May 20, 2004.
- August 29, 2003.
- "Glenda A. Campbell" "Stephen R. Murison"

**2.1.3 General Electric Capital Corporation and  
GE Capital Canada Funding Company  
- MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – Subsidiary of U.S. corporation where U.S. parent is credit supporter exempt from GAAP reconciliation requirements and eligibility requirements of NI 44-101 and AIF requirement for proposed and future offerings - Financing subsidiary further exempt from interim and annual financial statement requirements (including MD&A requirements), material change requirements, proxy requirements and insider reporting requirements - Relief subject to conditions, including filing, under issuer's SEDAR profile, of documents filed by the credit support of the issuer with the Securities and Exchange Commission.

**Applicable Ontario Statutory Provisions**

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

**Ontario Regulations**

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

**Ontario Rules**

National Instrument 44-101 Short Form Prospectus Distributions.  
National Instrument 44-102 Shelf Distributions.  
National Instrument 71-101 Multijurisdictional Disclosure System.  
Rule 51-501 AIF and MD&A.

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

**AND**

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

**AND**

**IN THE MATTER OF  
GENERAL ELECTRIC CAPITAL CORPORATION AND  
GE CAPITAL CANADA FUNDING COMPANY**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the Decision Maker) in each of Alberta, British Columbia, Manitoba, New Brunswick,

Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan (collectively, the Jurisdictions) has received an application (the Application) from General Electric Capital Corporation (GE Capital) and its indirect wholly-owned subsidiary, GE Capital Canada Funding Company (the Issuer, and together with GE Capital, the Filer), for a decision pursuant to the securities legislation of the Jurisdictions (the Legislation) that:

- A. the Filer be exempted from the following requirements contained in the Legislation:
  - (i) the requirements in section 2.5(1) of National Instrument 44-101 (NI 44-101) that a person or company guaranteeing non-convertible debt issued by an issuer be a reporting issuer with a 12-month reporting history in a Canadian province or territory and have a current annual information form (an AIF) (the Eligibility Requirement) in order to permit the Issuer to issue non-convertible debt securities, in particular medium term notes (the Notes), with an approved rating (as defined in NI 44-101) which will be fully and unconditionally guaranteed by GE Capital (any issue of the Notes being referred to as an Offering);
  - (ii) the requirement in NI 44-101 that a short form prospectus filed by the Issuer in connection with an Offering include a reconciliation (the Reconciliation Requirement) to Canadian generally accepted accounting principles (GAAP) of the consolidated financial statements of GE Capital included in or incorporated by reference into the prospectus which have been prepared in accordance with foreign GAAP and that, where such financial statements are audited in accordance with foreign generally accepted auditing standards (GAAS), the Issuer provide a statement by the auditor disclosing any material differences in the auditor's report and confirming that the auditing standards of the foreign jurisdiction are substantially similar to Canadian GAAS;
  - (iii) the requirement in NI 44-101 and under the Legislation of Ontario, Quebec and Saskatchewan that the Issuer have a current AIF and file renewal AIFs (the AIF Requirement) with the Decision Makers;
  - (iv) the requirement that the Issuer file with the Decision Makers and send, where applicable, to its securityholders audited annual financial statements or annual reports, including without limitation, management's discussion and analysis

thereon (the Annual Financial Statement Requirement);

- (v) the requirement that the Issuer file with the Decision Makers and send, where applicable, to its securityholders unaudited interim financial statements, including without limitation, management's discussion and analysis thereon (the Interim Financial Statement Requirement);
- (vi) the requirement that the Issuer issue and file with the Decision Makers press releases and file material change reports (the Material Change Requirement);
- (vii) the requirement that the insiders of the Issuer file with the Decision Makers insider reports (the Insider Reporting Requirement); and
- (viii) the requirement that the Issuer comply with the proxy and proxy solicitation requirements, including filing an information circular or report in lieu thereof (the Proxy Requirement and together with the Annual Financial Statement Requirement, the Interim Financial Statement Requirement, the Material Change Requirement and the Insider Reporting Requirement, the Continuous Disclosure and Reporting Requirements); and); and

B. the Application and the Decision, as defined below, be held in confidence by the Decision Makers subject to certain conditions.

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

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

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

- 1. GE Capital was incorporated in 1943 in the State of New York under the provisions of the New York Banking Law relating to investment companies, as successor to General Electric Contracts Corporation, which was formed in 1932. Until 1987, the name of GE Capital was General Electric Credit Corporation. GE Capital was reincorporated in 2001 in the State of Delaware.
- 2. All outstanding common stock of GE Capital is owned by General Electric Capital Services, Inc.,

the common stock of which is in turn wholly owned directly or indirectly by General Electric Company (GEC). GEC is a diversified industrial company whose common stock is listed and posted for trading on the facilities of the New York Stock Exchange.

- 3. GE Capital provides a variety of consumer services, mid-market financing, specialized financing, specialty insurance, equipment management and other specialized services to businesses and individuals around the world. As at December 31, 2002, GE Capital had total assets of more than US\$439 billion.
- 4. GE Capital is not a reporting issuer or the equivalent in any of the Jurisdictions.
- 5. GE Capital has been a reporting company under the 1934 Act for more than 15 years.
- 6. GE Capital has filed with the SEC all filings required to be made with the SEC under the 1934 Act during the last 12 months.
- 7. GE Capital's outstanding long term debt is rated AAA by both Standard & Poor's and Moody's Investors Services. As at December 31, 2002, GE Capital had more than US\$138 billion in long term debt outstanding. GE Capital also had more than US\$76 billion outstanding in the commercial paper markets as at December 31, 2002.
- 8. The Issuer was incorporated as an unlimited liability company under the laws of Nova Scotia on September 17, 1998 and is an indirect wholly-owned subsidiary of GE Capital. The head office of the Issuer is in Mississauga, Ontario.
- 9. The Issuer is a reporting issuer or the equivalent in each of the Jurisdictions.
- 10. The Issuer's primary business is to obtain financing in public markets to fund the operations of affiliated companies in Canada, and will have no other operations.
- 11. *In the Matter of General Electric Capital Corporation and GE Capital Canada Funding Company* dated June 21, 2002 (the Previous Decision), the Decision Makers ruled pursuant to the Legislation that the Eligibility Requirement, the Reconciliation Requirement, the AIF Requirement and the Continuous Disclosure and Reporting Requirements be waived in connection with an offering of Notes by the Issuer (the Previous Offering).
- 12. In reliance on the Previous Decision, the Issuer filed and received a receipt for a short form base shelf prospectus in each of the Jurisdictions on July 18, 2002 for Notes in an aggregate principal amount of up to \$6,000,000,000 (the Previous



- Prospectus). As at July 1, 2003, Notes in an aggregate principal amount of \$5,483,000,000 have been offered under the Previous Prospectus.
13. As at December 31, 2002, the Issuer had more than \$10.2 billion in non-convertible debt securities outstanding (the Existing Debt). The Existing Debt was issued in the Eurobond market, the Canadian commercial paper market and pursuant to the Previous Prospectus and has been fully and unconditionally guaranteed by GE Capital. The Issuer expects to continue to obtain financing on the same basis from time to time.
  14. The Issuer proposes to file another short form base shelf prospectus in each of the Jurisdictions for Notes in an aggregate principal amount of up to \$6,000,000,000 (the Proposed Offering) and may in the future file additional short form prospectuses in each of the Jurisdictions for Notes (the Future Offerings).
  15. GE Capital satisfies the criteria set forth in paragraph 3.1(a) of National Instrument 71-101 (NI 71-101) and is eligible to use the multi-jurisdictional disclosure system (MJDS), as set out in NI 71-101, for the purpose of distributing approved rating non-convertible debt in Canada based on compliance with United States prospectus requirements with certain additional Canadian disclosure.
  16. Except for the fact that the Issuer is not incorporated under United States law, an Offering would comply with the alternative eligibility criteria for offerings of non-convertible debt having an approved rating under the MJDS as set forth in Section 3.2 of NI 71-101.
  17. The Issuer is ineligible to issue the Notes by way of a prospectus in the form of a short form prospectus under NI 44-101 as GE Capital, as credit supporter for the payments to be made by the Issuer under the Notes, is not a reporting issuer in any province or territory of Canada and does not have a current AIF.
  18. In connection with any Offering (which, for greater certainty, includes the Proposed Offering and any Future Offerings):
    - (i) each prospectus will be prepared pursuant to the short form prospectus requirements contained in NI 44-101 and will comply with the requirements set out in Form 44-101F3 of NI 44-101 with the disclosure required by items 12 (documents incorporated by reference) and 13 (issues of guaranteed securities) of Form 44-101F3 of NI 44-101 being addressed by incorporating by reference GE Capital's public disclosure documents, including GE Capital's most recently filed Form 10-K (as filed under the 1934 Act) and with the disclosure required by item 7 (earnings coverage ratios) of Form 44-101F3 of NI 44-101 and section 8.4 (requirement to update earnings coverage ratios) of National Instrument 44-102 (NI 44-102) being addressed by disclosure with respect to GE Capital in accordance with United States requirements;
    - (ii) each prospectus will include or incorporate by reference all material disclosure concerning the Issuer;
    - (iii) each prospectus will incorporate by reference GE Capital's most recently filed Form 10-K (as filed under the 1934 Act) together with all Form 10-Qs and Form 8-Ks of GE Capital filed under the 1934 Act in respect of the financial year following the year that is the subject of GE Capital's most recently filed Form 10-K, as would be required were GE Capital to file a registration statement on Form S-4 in the United States, and will incorporate by reference any documents of the foregoing type filed after the date of the prospectus and prior to termination of the particular Offering and will state that purchasers of the Notes will not receive separate continuous disclosure information regarding the Issuer;
    - (iv) the consolidated annual and interim financial statements of GE Capital that will be included in or incorporated by reference into the short form prospectus are prepared in accordance with U.S. GAAP and otherwise comply with the requirements of U.S. law, and in the case of audited annual financial statements, such financial statements are audited in accordance with U.S. GAAS;
    - (v) GE Capital will fully and unconditionally guarantee the payments to be made by the Issuer as stipulated in the terms of the Notes or in an agreement governing the rights of holders of Notes (the Noteholders) such that the Noteholders shall be entitled to receive payment from GE Capital within 15 days of any failure by the Issuer to make a payment as stipulated;
    - (vi) the Notes will have an approved rating;
    - (vii) the Notes will rank *pari passu* to the Existing Debt;
    - (viii) GE Capital will sign each prospectus as credit supporter; and

- (ix) GE Capital will undertake to file with the Commissions, in electronic format through SEDAR (as defined in National Instrument 13-101) under the Issuer's SEDAR profile, all documents that it files under Sections 13 (other than sections 13(d), (f) and (g) which relate, *inter alia*, to holdings by GE Capital of securities of other public companies) and 15(d) of the 1934 Act, together with the appropriate filing fees, until such time as the Notes are no longer outstanding.

19. In the circumstances, were GE Capital to effect an Offering of the Notes under the MJDS it would be unnecessary for it to reconcile to Canadian GAAP its financial statements included in or incorporated by reference into the short form prospectus in connection with the issuance of the Notes.

20. Part 7 of NI 44-101 and Item 20.1 of Form 44-101F3 of NI 44-101 require the reconciliation to Canadian GAAP of financial statements prepared in accordance with foreign GAAP that are included in a short form prospectus.

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

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

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the Filer be exempted from the Eligibility Requirement and the Reconciliation Requirement in connection with any Offering (which, for greater certainty, includes the Proposed Offering and any Future Offerings) provided that:

- (i) each of the Issuer and GE Capital complies with paragraph 18 above;
- (ii) the Issuer complies with all of the filing requirements and procedures set out in NI 44-101 except as varied by the Decision or as permitted by NI 44-102;
- (iii) GE Capital remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of the Issuer; and
- (iv) GE Capital continues to satisfy the criteria set forth in paragraph 3.1 of NI 71-101 (or any successor provision) and remains eligible to use MJDS (or any successor instrument) for the purposes of distributing approved rating non-convertible debt in Canada based on compliance with United States

prospectus requirements with certain additional Canadian disclosure.

**THE FURTHER DECISION** of the Decision Makers in Ontario, Quebec and Saskatchewan pursuant to the Legislation is that, in connection with any Offering (which, for greater certainty, includes the Proposed Offering and any Future Offerings), the AIF Requirement shall not apply to the Issuer, provided that (i) GE Capital complies with the AIF requirements of NI 44-101 as if it is the issuer by filing an AIF in the form of GE Capital's most recently filed Form 10-K (as filed under the 1934 Act) and (ii) the Filer complies with all of the conditions in the Decisions above and below.

July 31, 2003.

"Iva Vranic"

**THE FURTHER DECISION** of the Decision Makers pursuant to the Legislation is that, in connection with any Offering (which, for greater certainty, includes the Proposed Offering and any Future Offerings):

- A. the Annual Financial Statement Requirement shall not apply to the Issuer, provided that (i) the Issuer files with the Commissions the annual reports on Form 10-K filed by GE Capital with the SEC within one business day after they are filed with the SEC; and (ii) such documents are provided to Noteholders whose last address as shown on the books of the Issuer is in Canada in the manner and at the time required by applicable United States law;
- B. the Interim Financial Statement Requirement shall not apply to the Issuer, provided that (i) the Issuer files with the Commissions the quarterly reports on Form 10-Q filed by GE Capital with the SEC within one business day after they are filed with the SEC; and (ii) such documents are provided to Noteholders whose last address as shown on the books of the Issuer is in Canada in the manner and at the time required by applicable United States law;
- C. the Material Change Requirement shall not apply to the Issuer, provided that (i) the Issuer files with the Commissions the mandatory reports on Form 8-K (including press releases) filed by GE Capital with the SEC forthwith after the earlier of the date the report is filed with the SEC and the date it is required to be filed with the SEC; (ii) GE Capital forthwith issues in each Jurisdiction and the Issuer files with the Commissions any press release that discloses material information and which is required to be issued in connection with the mandatory Form 8-K requirements applicable to GE Capital; and (iii) if there is a material change in respect of the business, operations or capital of the Issuer that is not a material change in respect of GE Capital, the Issuer will comply with the requirements of the Legislation to issue a press

release and file a material change report notwithstanding that the change may not be material in respect of GE Capital;

in connection with the Proposed Offering and August 31, 2003.

July 31, 2003.

D. the Insider Reporting Requirement shall not apply to insiders of the Issuer, provided that such insiders file with the SEC on a timely basis the reports, if any, required to be filed with the SEC pursuant to section 16(a) of the 1934 Act and the rules and regulations thereunder; and

"Robert W. Korthals"

"H. Lorne Morphy"

E. the Proxy Requirements shall not apply to the Issuer, provided that (i) GE Capital complies with the requirements of the 1934 Act and the rules and regulations thereunder relating to proxy statements, proxies and proxy solicitations in connection with any meetings of its noteholders (if any); (ii) the Issuer files with the Commissions the materials relating to any such meeting filed by GE Capital with the SEC within one business day after they are filed by GE Capital with the SEC; and (iii) such documents are provided to Noteholders whose last address as shown on the books of the Issuer is in Canada in the manner, at the time and if required by applicable United States law;

for so long as (i) GE Capital maintains an approved rating in respect of the Notes; (ii) GE Capital maintains direct or indirect beneficial ownership of all of the issued and outstanding voting securities of the Issuer; (iii) GE Capital maintains a class of securities registered pursuant to section 12(b) or 12(g) of the 1934 Act or is required to file reports under Section 15(d) of the 1934 Act; (iv) GE Capital continues to satisfy the criteria set forth in paragraph 3.1 of NI 71-101 (or any successor provision) and remains eligible to use MJDS (or any successor instrument) for the purpose of distributing approved rating non-convertible debt in Canada based on compliance with United States prospectus requirements with certain additional Canadian disclosure; (v) the Issuer carries on no other business than that set out in paragraph 10 of the Decision; (vi) GE Capital continues to fully and unconditionally guarantee the Notes as to the payments required to be made by the Issuer to the Noteholders; (vii) the Issuer does not issue additional securities other than (a) the Notes, debt securities ranking *pari passu* to the Notes, any debentures issued in connection with the security granted by the Issuer to the Noteholders or the holders of the Existing Debt or debt ranking *pari passu* with the Notes, or (b) to GE Capital or to, direct or indirect, wholly-owned subsidiaries of GE Capital; and (viii) if debt securities ranking *pari passu* with the Notes are hereinafter issued by the Issuer, GE Capital shall fully and unconditionally guarantee such debt securities as to the payments required to be made by the Issuer to holders of such debt securities.

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

the Application and the Decision shall be held in confidence by the Decision Makers until the earlier of the date that the preliminary prospectus is filed

## 2.1.4 Merck & Co., Inc. - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from prospectus and registration requirements for spin-off by a publicly traded US company to investors by issuing shares of spun off entity as dividends - reorganization technically not covered by prescribed reorganization exemptions - technical relief - no policy issues.

### Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 35(1)12(ii), 35(1)15, 53, 72(1)(f)(ii), 72(1)(i), 74(1).

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

**AND**

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

**AND**

**IN THE MATTER OF  
MERCK & CO., INC.**

### MRRS DECISION DOCUMENT

**WHEREAS** the securities regulatory authority or regulator (collectively, the “**Decision Makers**”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Prince Edward Island, Nunavut, Nova Scotia and Newfoundland and Labrador (collectively, the “**Jurisdictions**”) has received an application from Merck & Co., Inc. (“**Merck**”) for a decision, pursuant to the securities legislation (the “**Legislation**”) of each of the Jurisdictions that the prospectus and dealer registration requirements (respectively, the “**Prospectus Requirements**” and the “**Registration Requirements**”) shall not apply to the proposed distribution of all issued and outstanding common shares (the “**Medco Shares**”) of Medco Health Solutions Inc. (“**Medco**”) to holders of common shares of Merck (the “**Merck Shareholders**”) resident in Canada (the “**Merck Canadian Shareholders**”) by way of pro rata dividend in kind, provided that the first trade of Medco Shares shall be deemed to be a distribution or primary distribution to the public unless certain conditions are met;

**AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Application (the “**System**”), the Commission des valeurs mobilières du Québec (the “**CVMQ**”) 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 CVMQ Notice 14-101;

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

1. Merck is a corporation constituted pursuant to the law of the State of New Jersey. Merck discovers, develops, manufactures and markets a broad range of products to improve human and animal health, directly and through its joint ventures. Its headquarters are located in Whitehouse Station, New Jersey.
2. Medco, a wholly-owned subsidiary of Merck, is the largest U.S. provider of pharmacy benefit management services based on 2002 revenues.
3. Merck’s direct or indirect wholly-owned Canadian subsidiaries are Merck Frosst Canada & Co., Merck Enterprises Canada, Ltd. and Merck Frosst Canada Ltd., which collectively carry on business through offices located in Québec, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, and Nova Scotia.
4. Merck is not a reporting issuer under the securities laws of any province or territory of Canada and Merck has no intention of becoming a reporting issuer under the securities laws of any province or territory of Canada.
5. The common shares of Merck (the “**Merck Shares**”) are listed on the New York and Philadelphia stock exchanges. The Merck Shares are not listed on any Canadian stock exchange and Merck has no intention of listing its securities on any Canadian stock exchange.
6. As of June 15, 2003, Merck had 1,353 Merck Canadian Shareholders of record (584 in Ontario, 323 in Québec, 94 in Alberta, 232 in British Columbia, 23 in Manitoba, 50 in Nova Scotia, 17 in New Brunswick, 22 in Saskatchewan, 3 in Newfoundland, 4 in Prince Edward Island and 1 in Nunavut), which constituted approximately 0.557% of the approximately 242,692 holders of record of Merck Shares worldwide on June 6, 2003. As of June 15, 2003, persons resident in Canada collectively held 832,663 Merck Shares, constituting approximately 0.0371% of the approximately 2,239,647,140 issued and outstanding Merck Shares on June 6, 2003. As such, the proportion of issued and outstanding Merck Shares held by Canadian residents is *de minimis*.
7. Subject to obtaining necessary approvals, on a distribution date to be fixed by Merck’s board of directors, the separation of Medco from Merck will be accomplished through a pro rata distribution of all of Medco Shares to Merck Shareholders (the

- “Spin-Off”**). The Spin-Off consists of the following steps:
- (a) the general terms and conditions relating to the distribution will be set forth in a master separation and distribution agreement between Merck and Medco.
  - (b) as a result of the distribution, each Merck Shareholder will receive one Medco Share for a number of Merck Shares to be fixed by Merck’s board of directors.
  - (c) Merck Shareholders will not be required to pay for Medco Shares received in the distribution or to surrender or exchange Merck Shares in order to receive Medco Shares or to take any other action in connection with the distribution.
  - (d) fractional shares of a Medco Share will not be issued to Merck Shareholders as part of the distribution nor credited to book-entry accounts. Instead, Medco’s distribution agent will aggregate Medco fractional shares into whole shares, sell them into the open market at the prevailing market prices and then distribute the aggregate sale proceeds ratably to Merck Shareholders who would otherwise be entitled to receive fractional shares.
8. The board of directors of Merck has determined that the spin-off of Medco from Merck will enhance the success of both Merck and Medco, and thereby maximize stockholder value over the long term for each company, by:
    - enabling each company to continue to pursue its unique and focused strategy; and
    - enabling investors to evaluate the financial performance, strategies and other characteristics of each of Merck and Medco separately in comparison to companies within their respective industries.
  9. After the Spin-Off, Merck Shares will continue to be listed and traded on the New York Stock Exchange (the **“NYSE”**) and Medco Shares will be a separately-traded public company listed and traded on the NYSE.
  10. It is not intended that Medco will list its shares on any stock exchange in Canada.
  11. It is not intended that Medco will become a reporting issuer in any province of Canada.
  12. Medco has no and will, immediately after the Spin-Off, have no employees in Canada.
  13. The dividend and Spin-Off will be effected in compliance with the laws of the State of New Jersey.
  14. In May 2003, Medco filed a Form 10 Registration Statement with the *United States Securities and Exchange Commission* (the **“SEC”**) detailing the planned Spin-Off.
  15. After the SEC has completed its review, Merck Shareholders will receive a copy of the information statement included in the Form 10 (the **“Information Statement”**).
  16. Because the Spin-Off of Medco Shares will be by way of dividend to the Merck Shareholders, no shareholder approval of the proposed transaction is required under the law of the State of New Jersey.
  17. All materials relating to the Spin-Off and the dividend sent by or on behalf of Merck or Medco in the United States (including the Information Statement) have and will be sent, concurrently to the Merck Canadian Shareholders.
  18. Following the Spin-Off, each of Medco and Merck respectively will send, concurrently to the Merck Canadian Shareholders, the same disclosure materials that it sends to holders of Medco Shares and Merck Shares with addresses, as shown on its books to be, in the United States.
  19. The Merck Canadian Shareholders who receive Medco Shares as a dividend pursuant to the Spin-Off will have the benefit of the same rights and remedies in respect of the disclosure documentation received in connection with the dividend and Spin-Off that are available under the laws of the United States to Medco and Merck Shareholders with addresses in the United States.
  20. The proposed distribution of Medco Shares pursuant to the Spin-Off to the Merck Canadian Shareholders would be exempt from the Prospectus Requirements and Registration Requirements (in all Jurisdictions except Québec where exemptions would be available upon the filing of the prescribed information and the non-objection of the CVMQ within 15 days of filing such information) but for the fact that Medco is not a reporting issuer or equivalent under the Legislation.

**AND WHEREAS** under the System, this MRRS Decision document evidences the decision of each of Decision Makers (collectively, the **“Decision”**);

**AND WHEREAS** each of the Decision Makers is satisfied that the test contained in the Legislation that

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

**THE DECISION** of the Decision Makers under the Legislation is that the Prospectus Requirements and Registration Requirements shall not apply to trades by Merck of Medco Shares in connection with the Spin-Off provided that the first trade of Medco Shares acquired under this Decision in a Jurisdiction shall be deemed to be a distribution or primary distribution to the public under the Legislation of such Jurisdiction unless:

- (a) except in Québec, the conditions in section 2.14(1) of Multilateral Instrument 45-102 Resale of Securities are satisfied; or
- (b) in Québec, the alienation is made through an exchange, or a market, outside of Canada or to a person or company outside of Canada.

August 15, 2003.

"Daniel Laurion"

## **2.1.5 Kontron Canada Inc. - MRRS Decision**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Reporting issuer deemed to have ceased to be reporting issuers - only one security holder remaining.

### **Applicable Ontario Statutory Provisions**

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

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

### **AND**

### **IN THE MATTER OF KONTRON CANADA INC.**

### **MRRS DECISION DOCUMENT**

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

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

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

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

1. The Filer resulted from the amalgamation under the *Canada Business Corporations Act* of Memotec Communications Inc. ("Memotec"), Teknor Applicom Inc. And Kontron Communications Inc. ("Kontron Communications") on January 1, 2002 (the "Amalgamation").
2. The Filer's head office is located in Montreal, Québec.
3. The authorized capital of the Filer consists of an unlimited number of common shares, of which 50,000,200 were issued and outstanding as of April 15, 2003
4. Pursuant to a plan of arrangement that became effective on July 1st, 2001, the common shares of

Memotec were exchanged for non-voting exchangeable shares of Kontron Communications which were later acquired by Kontron Holdings Inc. ("Holding"), a wholly owned subsidiary of Kontron Embedded Computers AG, a publicly listed company in Germany (the "Plan of Arrangement"). Following the Plan of Arrangement, Memotec became a subsidiary of Kontron Communications.

5. The common shares of Memotec were delisted from the Toronto Stock Exchange on July 4, 2001.
6. Pursuant to the Plan of Arrangement, Kontron Communications became a reporting issuer in Québec. Memotec was a reporting issuer in all the jurisdictions, except in Manitoba and in British Columbia.
7. Because of the Amalgamation, the Filer is deemed to be a reporting issuer in all the jurisdictions, except in Manitoba and in British Columbia.
8. Memotec omitted to disclose the Amalgamation to the jurisdictions, where required.
9. Holding is the sole beneficial security holder, directly or indirectly, of the Filer as a result of the Plan of Arrangement and the Amalgamation. Holding's head office is located in Vancouver, British Columbia.
10. On September 27, 2002, the Filer amended its articles of incorporation to become a private company.
11. No securities of the Filer are traded on a marketplace as defined in National Instrument 21-101.
12. Other than the shares held by Holding, the Filer has no other securities, including debt securities, outstanding.
13. The Filer is not in default of any of its obligations pursuant to the legislation in Québec and Ontario. However, the Filer may be in default of obligations resulting from its deemed status as a reporting issuer in provinces other than Québec and Ontario.
14. The Filer will not be a reporting issuer or the equivalent in any jurisdiction in Canada immediately following this decision.
15. The Filer does not intend to seek public financing by way of an offering of securities.

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

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

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

August 21, 2003.

"Stéphanie Lachance"

**2.1.6 BLC – Edmond de Rothschild Asset Management Inc. - MRRS Decision**

**Headnote**

Exemption from the requirement to deliver comparative annual financial statements for the year ending December 31, 2003 to registered securityholders of certain mutual funds.

**Statutes Cited**

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

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

**AND**

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

**AND**

**IN THE MATTER OF  
R MONEY MARKET FUND, R CORPORATE TREASURY  
FUND, R BOND FUND, R NORTH AMERICAN HIGH  
YIELD BOND FUND, R DIVIDEND FUND, R MONTHLY  
INCOME BALANCED FUND, R BALANCED FUND, R  
CANADIAN EQUITY FUND, R CANADIAN LEADERS  
FUND, R LIFE & HEALTH FUND, R GLOBAL EQUITY  
FUND, R WORLD LEADERS FUND, R AMERICAN  
FUND, R EUROPEAN FUND, R SMALL CAP CANADIAN  
EQUITY FUND, R ASIAN FUND, R TECHNO-MEDIA  
FUND, R LIFE & HEALTH RSP FUND, R WORLD  
LEADERS RSP FUND, R AMERICAN RSP FUND, R  
EUROPEAN RSP FUND, R ASIAN RSP FUND, R  
TECHNO-MEDIA RSP FUND, R PRUDENT DISTINCTION  
PORTFOLIO, R CONSERVATIVE DISTINCTION  
PORTFOLIO, R BALANCED DISTINCTION PORTFOLIO,  
R DYNAMIC DISTINCTION PORTFOLIO AND R BOLD  
DISTINCTION PORTFOLIO  
(collectively, the "Existing Funds")**

**MRRS DECISION DOCUMENT**

**WHEREAS** the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of the Provinces of Alberta, Ontario, Nova Scotia and Newfoundland and Labrador (collectively, the "Jurisdictions") has received an application (the "Application") from BLC – Edmond de Rothschild Asset Management Inc. (the "Manager"), the Existing Funds and any other similar mutual funds created by the Manager subsequent to the date hereof which is managed by same and offered by way of simplified prospectus (collectively, the "Future Funds" and, together with the Existing Funds, the "Funds") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") for relief

from the requirement to deliver comparative annual financial statements of the Funds to certain securityholders of the Funds unless they have requested to receive them;

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

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

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

1. The Existing Funds are open-ended mutual fund trusts established under the laws of Ontario.
2. The Manager, a majority-owned subsidiary of Laurentian Bank of Canada, is a joint-venture created with La Compagnie Financière Edmond de Rothschild Banque with its head office located in Montréal, Québec. It is the trustee, the manager and the investment manager of each of the Existing Funds.
3. Each of the Existing Funds is a reporting issuer, or its equivalent, under the securities legislation of all the provinces of Canada, except Prince Edward Island, which provide for a reporting issuer regime and, to the best of the Manager's knowledge, is not in default of any requirements of such legislation relating thereto.
4. Units of the Existing Funds are currently offered for sale in all of the provinces of Canada, except Prince Edward Island, pursuant to a simplified prospectus dated October 1, 2002 and November 20, 2002.
5. Each of the Existing Funds is required under the Legislation to deliver annually, within 140 days of its financial year-end, to each registered securityholder comparative financial statements in the prescribed form.
6. The Manager proposes to send to securityholders who hold securities of the Funds registered in their names (the "Direct Securityholders"), on an annual basis, either together with the relevant account statements or otherwise, a notice advising them that they will not receive the annual financial statements of the Fund(s) for the year ending December 31, 2003 (the "Financial Statements"), unless they complete and return a request form accompanying the notice (the "Financial Statements Request"). The securityholders will have the choice of returning the Financial Statements Request either by pre-paid mail or facsimile. The Direct Securityholders will also be advised that the Financial Statements will be made available on-line as well as free of



charge by calling a toll-free number or by requesting them from their dealer.

7. Securityholders who hold their units in the Funds through a nominee will be dealt with pursuant to National Instrument 54-101 – *Communication with Beneficial Owners of Securities of a Reporting Issuer*.
8. Securityholders will be able to access the Financial Statements either on the SEDAR website or on-line at the Manager's website.
9. There would be substantial cost savings if the Funds are not required to print and mail the Financial Statements to those Direct Securityholders who do not want them.
10. The Canadian Securities Administrators have published for comments proposed National Instrument 81-106 – *Investment Fund Continuous Disclosure* which, among other things, would permit mutual funds not to deliver annual financial statements to those of its securityholders who do not request them, if the funds provide each securityholder with a request form under which the securityholder may request, at no cost to the securityholder, to receive the mutual fund's annual financial statements for that financial year.
11. Proposed National Instrument 81-106 would also require a mutual fund to have a toll-free telephone number for, or accept collect calls from, persons or companies that want to receive a copy of, among other things, the annual financial statements of the mutual fund.

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

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

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the Funds shall not be required to deliver their Financial Statements to their Direct Securityholders, other than those who have requested to receive them, provided that:

- (a) the Manager shall file on SEDAR, under the annual financial statements category, confirmation of mailing of the request forms that have been sent to applicable Direct Securityholders, as described in paragraph 8 of the above representations, within 90 days of mailing the request forms;
- (b) the Manager shall file on SEDAR, under the annual financial statements category,

information regarding the number and percentage of requests for annual financial statements made by the return of the request forms, on a province-by-province basis within 30 days after the end of each quarterly period beginning from the date of mailing the request forms and ending 12 months from the date of mailing;

- (c) the Manager shall record the number and a summary of complaints received from Direct Securityholders about not receiving the annual financial statements and shall file on SEDAR, under the annual financial statements category, this information within 30 days after the end of each quarterly period beginning from the date of mailing the request forms and ending 12 months from the date of mailing;
- (d) the Manager shall, if possible, measure the number of "hits" on the annual financial statements of the Funds on the Manager's website and shall file on SEDAR, under the annual financial statements category, this information within 30 days after the end of each quarterly period beginning from the date of mailing the request forms and ending 12 months from the date of mailing; and
- (e) the Manager shall file on SEDAR, under the annual financial statements category, estimates of the cost savings resulting from the granting of this Decision within 90 days of mailing the request forms.

September 10, 2003.

"Wendell S. Wigle"

"H. Lorne Morphy"

## 2.1.7 Amco Corporation PLC - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Issuer has 72 beneficial security holders resident in Ontario and 1 beneficial security holder resident in Nova Scotia holding in total a *de minimis* number of securities - Issuer's ordinary shares listed on a foreign exchange - Issuer deemed to have ceased to be a reporting issuer.

### Applicable Ontario Statutes

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

### IN THE MATTER OF THE SECURITIES LEGISLATION OF NOVA SCOTIA AND ONTARIO

AND

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

AND

### IN THE MATTER OF AMCO CORPORATION PLC

### MRRS DECISION DOCUMENT

**WHEREAS** the local securities regulatory authority or regulator (the **Decision Maker**) in each of the Provinces of Nova Scotia and Ontario (the **Jurisdictions**) has received an application (the **Application**) from Amco Corporation Plc (the **Filer**) for a decision under the securities legislation of each of the Jurisdictions (the **Legislation**) that the Filer be deemed to have ceased to be a reporting issuer;

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

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

1. The Filer was incorporated under the Companies Act of the United Kingdom on July 10, 1989. It became a public limited company on September 12, 1989. It is a successor corporation to International Amco Corporation.
2. International Amco Corporation was originally incorporated under the laws of the Province of Ontario on January 28, 1954. By Order of the Supreme Court of Ontario (Court file No. Re 2140/89) dated November 7, 1989, a plan of arrangement under the Business Corporations Act, 1982, was approved under which the Class A

Common Shares of International Amco Corporation were exchanged for ordinary shares of the Filer. Articles of Arrangement were filed November 10, 1989.

3. The Filer became a reporting issuer in Ontario on November 10, 1989, through the listing of its shares on The Toronto Stock Exchange. The Filer became a reporting issuer in Nova Scotia on September 28, 1989, as the result of a Ruling made by the Nova Scotia Securities Commission.
4. The management, operations and principal office of the Filer are located in the United Kingdom.
5. The Filer is a reporting issuer in Ontario and in Nova Scotia, is not a reporting issuer in any other Canadian jurisdiction, and is not in default of any of the requirements of the Legislation.
6. The Filer is a British holding company for a British based group of contracting companies specialising in niche areas of the construction industry.
7. The Filer's ordinary shares (the **Ordinary Shares**) were listed on the Toronto Stock Exchange (the **TSX**) on November 10, 1989. The Filer surrendered its TSX listing effective September 23, 1994. No securities of the Filer are listed or quoted on an exchange or market in Canada.
8. The Ordinary Shares are listed only on The Alternative Investment Market (**AIM**) regulated by the London Stock Exchange.
9. The major shareholder is Amco Investments Limited (P.O. Box 33, Maison Trinity, Trinity Square, St. Peter Port, Guernsey GY1 4AT). It holds fifty-one percent (51%) of the issued and outstanding Ordinary Shares.
10. The Filer has an authorized capital of 27,500,000 Ordinary Shares, and an issued capital of 12,934,327 Ordinary Shares. The Filer does not have a management share incentive plan.
11. The Filer has, to the best of its knowledge, information and belief, after having made reasonable enquiry, 72 beneficial security holders resident in Ontario, holding 26,078 Ordinary Shares (0.20% of the total outstanding Ordinary Shares) and 1 beneficial security holder resident in Nova Scotia holding 50 Ordinary Shares. There are a further 63,918 Ordinary Shares (a further 0.49%) reserved for issue when certificates issued in the name of predecessor corporations of the Filer (e.g., International Amco Corporation) are returned by the holders of those shares for transmission into shares of the Filer. Such shareholders had not responded to the original notice and letter of transmission, and mailings to their registered address have been returned.

12. Other than the Ordinary Shares, the Filer has no other securities, including debt securities, outstanding.
13. The Filer has no plans to seek public financing by way of offering its securities in Canada.
14. The Filer is subject to the requirements, policies and rules of AIM and the securities laws of the United Kingdom (collectively, the **British Laws**), including the reporting obligations pursuant thereto, which are substantially similar to those imposed on reporting issuers subject to the requirements of the Legislation.
15. Under the British Laws, the Filer is required to deliver to Ontario and Nova Scotia holders of Ordinary Shares its annual report, and semi-annual financial statements.
16. Under the British Laws, the Filer is required to file with AIM its Chairman's Statement, Chief Executive Review, Financial Director's Report, Profit and Loss Statement and other related information that is found in the Annual Report and Accounts. In addition, the Filer must report to AIM any changes of directors, declarations of dividends and large shareholder movements, and issuance of treasury shares. The Filer must issue and file with AIM a press release when it is aware of a change that would affect stock price.
17. The British Laws also require that if any person acquires shares that takes their holding to 3% or more of the issued shares of the company, or they acquire 3% or more from one transfer or purchase, they are required to report such acquisition.

**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 securities legislation of the Jurisdiction that provides the Decision Maker with the jurisdiction to make the Decision has been met;

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

September 15, 2003.

"Paul M. Moore"

"Robert L. Shirriff"

## **2.1.8 Boyd Group Income Fund and The Boyd Group Inc. - MRRS Decision**

### **Headnote**

MRRS for Exemptive Relief Applications. Relief from registration and prospectus requirements granted for issuance of trust units of the Applicant issued under a new distribution reinvestment plan, subject to certain conditions. First trade relief granted, subject to certain conditions.

### **Statutes Cited**

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

### **Instruments Cited**

Multilateral Instrument 45-102 Resale of Securities.

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

**AND**

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

**AND**

**IN THE MATTER OF  
BOYD GROUP INCOME FUND AND  
THE BOYD GROUP INC.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Newfoundland and Labrador, New Brunswick, Nova Scotia and Prince Edward Island (the "Jurisdictions") has received an application from Boyd Group Income Fund (the "Fund") for a decision, pursuant to the securities legislation of the Jurisdictions (the "Legislation"), that the requirements 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 certain trades in units of the Fund issued pursuant to a distribution reinvestment plan;

**AND WHEREAS** the Decision Maker in Manitoba has received an application from The Boyd Group Inc. ("BGI") and the Fund for a decision, pursuant to the Legislation of that Jurisdiction that Registration and Prospectus Requirements shall not apply to certain trades

in securities of BGI and the Fund under a dividend reinvestment plan of BGI;

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

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

1. The Fund is an unincorporated open-ended investment trust governed by the laws of the Province of Manitoba created pursuant to a declaration of trust dated as of December 16, 2002. The head office of the Fund is located in Winnipeg, Manitoba.
2. The Fund was established for the purposes of, among other things, investing in securities of BGI.
3. As of June 30, 2003, the Fund directly held approximately 63.7% of the voting equity securities of BGI. The remaining voting equity interest in BGI is held directly by Boyd Group Holdings Inc. ("BGHI"), a corporation that is controlled by the Fund through its ownership of 70% of the outstanding voting shares of BGHI.
4. The Fund has been a reporting issuer or the equivalent under the Legislation of British Columbia, Alberta, Saskatchewan, Manitoba and Ontario since February 17, 2003 and, to the best of its knowledge, is not in default of any requirements of such Legislation.
5. The Fund is not a "mutual fund" under the Legislation as the holders of Units are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Fund, as contemplated by the definition of "mutual fund" in the Legislation.
6. The Fund is authorized to issue an unlimited number of units ("Units"), each of which represents an equal fractional undivided beneficial interest in any distributions from the Fund and in any net assets of the Fund in the event of termination or winding-up of the Fund. All Units are of the same class with equal rights and privileges. Each Unit is transferable, entitles the holder thereof to participate equally in distributions and entitles the holder thereof to one vote at all meetings of holders of Units ("Unitholders") for each Unit held. As of June 30, 2003, there were 3,626,443 Units issued and outstanding.
7. The Units are listed and posted for trading on the Toronto Stock Exchange (the "TSX").
8. The Fund makes and expects to continue to make monthly cash distributions to its Unitholders in an

amount per Unit equal to a pro rata share of all amounts received by the Fund in each month including, without limitation, dividends, interest or other distributions on securities held by the Fund, less: (i) costs and expenses of the Fund incurred or anticipated; (ii) amounts that may be paid by the Fund in connection with any cash redemptions of Units; (iii) interest expenses of the Fund; and (iv) any amount the trustees of the Fund feel is necessary to provide for the liabilities and costs incurred in the activities and operations of the Fund.

9. The Fund intends to establish a distribution reinvestment plan (the "Fund Plan") pursuant to which eligible Unitholders may, at their option, direct that cash distributions paid by the Fund in respect of their existing Units ("Cash Distributions") be applied to the purchase of additional Units ("Additional Units") to be held for their account under the Fund Plan (the "Distribution Reinvestment Option").
10. Alternatively, the Fund Plan will enable eligible Unitholders who wish to reinvest their Cash Distributions to authorize and direct the trust company that is appointed as agent under the Fund Plan (the "Fund Plan Agent"), to pre-sell through a designated broker (the "Fund Plan Broker"), for the account of the Unitholders who so elect, a number of Units approximately equal to the number of Additional Units issuable on such reinvestment, and to settle such pre-sales with the Additional Units issued on the applicable distribution payment date in exchange for a premium cash payment equal to 102% of the reinvested Cash Distribution (the "Premium Distribution Option"). The Fund Plan Broker will be entitled to retain for its own account the difference between the proceeds realized in connection with such pre-sales and the cash payment to the Fund Plan Agent in an amount equal to 102% of the reinvested Cash Distributions.
11. Eligible Unitholders who have directed that their Cash Distributions be reinvested in Additional Units under either the Distribution Reinvestment Option or the Premium Distribution Option ("Participants") may also be able to directly purchase Additional Units under the Fund Plan by making optional cash payments within the limits established thereunder (the "Cash Payment Option"). The Fund shall have the right to determine from time to time whether the Cash Payment Option will be available. The Cash Payment Option will only be available to Unitholders that are Participants.
12. The Fund anticipates that Unitholders who are resident in the United States will be permitted under U.S. federal securities laws to participate in the Distribution Reinvestment Option or the

- Premium Distribution Option, but not the Cash Payment Option.
13. All Additional Units purchased under the Fund Plan will be purchased by the Fund Plan Agent directly from the Fund on the relevant distribution payment date at a price determined by reference to the Average Market Price (as defined in the Fund Plan), being the arithmetic average of the daily volume weighted average trading prices of the Units on the TSX for a defined period prior to the distribution payment date.
  14. Additional Units purchased under the Distribution Reinvestment Option or the Premium Distribution Option will be purchased at a 5% discount to the Average Market Price. Additional Units purchased under the Cash Payment Option will be purchased at the Average Market Price.
  15. The Fund Plan Broker's *prima facie* return under the Premium Distribution Option will be approximately 3% of the reinvested Cash Distributions (based on pre-sales of Units having a market value of approximately 105% of the reinvested Cash Distributions and a fixed cash payment to the Fund Plan Agent, for the account of applicable Participants, of an amount equal to 102% of the reinvested Cash Distributions). The Fund Plan Broker may, however, realize more or less than this *prima facie* amount, as the actual return will vary according to the prices the Fund Plan Broker is able to realize on the pre-sales of Units. The Fund Plan Broker bears the entire risk of adverse changes in the market, as Participants who have elected the Premium Distribution Option are assured a premium cash payment equal to 102% of the reinvested Cash Distributions.
  16. All activities of the Fund Plan Broker on behalf of the Fund Plan Agent that relate to pre-sales of Units for the account of Participants who elect the Premium Distribution Option will be in compliance with applicable Legislation and the rules and policies of the TSX (subject to any exemptive relief granted). The Fund Plan Broker will also be a member of the Investment Dealers Association of Canada and will be registered under the legislation of any Jurisdiction where the first trade in Additional Units pursuant to the Premium Distribution Option makes such registration necessary.
  17. Participants may elect either the Distribution Reinvestment Option or the Premium Distribution Option in respect of their Cash Distributions. Eligible Unitholders may elect to participate in either the Distribution Reinvestment Option or the Premium Distribution Option at their sole option and are free to terminate their participation under either option, or to change their election, in accordance with the terms of the Fund Plan.
  18. Under the Distribution Reinvestment Option, Cash Distributions will be paid to the Fund Plan Agent and applied by the Fund Plan Agent to the purchase of Additional Units, which will be held under the Fund Plan for the account of Participants who have elected to participate in that component of the Fund Plan.
  19. Under the Premium Distribution Option, Cash Distributions will be paid to the Fund Plan Agent and applied by the Fund Plan Agent to the purchase of Additional Units for the account of Participants who have elected to participate in that component of the Fund Plan, but the Additional Units purchased thereby will be automatically transferred to the Fund Plan Broker to settle pre-sales of Units made by the Fund Plan Broker on behalf of the Fund Plan Agent for the account of such Participants in exchange for a premium cash payment equal to 102% of the reinvested Cash Distributions.
  20. Under the Cash Payment Option, a Participant may, through the Fund Plan Agent, purchase Additional Units up to a specified maximum dollar amount per distribution period and subject to a minimum amount per remittance. The aggregate number of Additional Units that may be purchased under the Cash Payment Option by all Participants in any financial year of the Fund will be limited to a maximum of 2% of the number Units issued and outstanding at the start of the financial year.
  21. No brokerage fees or service charges will be payable by Participants in connection with the purchase of Additional Units under the Fund Plan.
  22. Additional Units purchased and held under the Fund Plan will be registered in the name of the Fund Plan Agent (or its nominee) and credited to the accounts of the appropriate Participants, and all Cash Distributions on Units so held under the Fund Plan will be automatically reinvested in Additional Units in accordance with the terms of the Fund Plan and the current election of that Participant.
  23. The Fund Plan permits full investment of reinvested Cash Distributions and optional cash payments under the Cash Payment Option (if available) because fractions of Units, as well as whole Units, may be credited to Participants' accounts with the Fund Plan Agent.
  24. The Fund reserves the right to determine, for any distribution payment date, the amount of Unitholders' equity that may be issued pursuant to the Fund Plan.
  25. If, in respect of any distribution payment date, fulfilling all of the elections under the Fund Plan would result in the Fund exceeding either the limit

on Unitholders' equity set by the Fund or the aggregate annual limit on Additional Units issuable pursuant to the Cash Payment Option, then elections for the purchase of Additional Units on such distribution payment date will be accepted: (i) first, from Participants electing the Distribution Reinvestment Option; (ii) second, from Participants electing the Premium Distribution Option; and (iii) third, from Participants electing the Cash Payment Option (if available). If the Fund is not able to accept all elections in a particular category, then purchases of Additional Units on the applicable distribution payment date will be pro rated among all Participants in that category according to the number of Additional Units sought to be purchased.

26. If the Fund determines not to issue any Unitholders' equity through the Fund Plan on a particular distribution payment date, then all Participants will receive the Cash Distribution announced by the Fund for that distribution payment date.
27. A Participant may terminate its participation in the Fund Plan at any time by submitting a termination form to the Fund Plan Agent, provided that a termination form received between a distribution record date and the distribution payment date to which such record date relates will not become effective until after that distribution payment date.
28. The Fund reserves the right to amend, suspend or terminate the Fund Plan at any time, provided that such action shall not have a retroactive effect that would prejudice the interests of the Participants. All Participants will be sent written notice of any such amendment, suspension or termination.
29. The distribution of Additional Units by the Fund pursuant to the Fund Plan cannot be made in reliance on registration and prospectus exemptions contained in the Legislation as the Fund Plan involves the reinvestment of distributions of the distributable cash of the Fund and not the reinvestment of dividends, interest or distributions of capital gains or out of earnings or surplus.
30. The distribution of Additional Units by the Fund pursuant to the Fund Plan cannot be made in reliance on registration and prospectus exemptions contained in the Legislation for distribution reinvestment plans of mutual funds, as the Fund is not a "mutual fund" as defined in the Legislation.

**AND WHEREAS** BGI and the Fund have represented to the Decision Maker in Manitoba that:

31. BGI is a corporation amalgamated on February 28, 2003, pursuant to a plan of arrangement (the "Arrangement") under the laws of the Province of

Manitoba and maintains its head office in Winnipeg, Manitoba. BGI owns and operates, either directly or through subsidiaries, automotive collision repair centers in Canada and the United States.

32. BGI is not currently a reporting issuer or the equivalent thereof in any of the provinces or territories of Canada, although it was a "reporting issuer" (or the equivalent thereof) in the Provinces of Manitoba and Ontario until May 20, 2003 when The Manitoba Securities Commission issued a decision under the System deeming BGI to have ceased to be a reporting issuer in those Jurisdictions.
33. The authorized capital of BGI consists of an unlimited number of Class I Shares, an unlimited number of Class II Shares and an unlimited number of Class III Shares. As of June 30, 2003, there were 3,626,443 Class I Shares and 2,062,863 Class II Shares issued and outstanding, all of which are owned by the Fund and BGHI, respectively. There are presently no issued and outstanding Class III Shares. BGI also has outstanding a class of notes (the "BGI Notes"), all of which are held by the Fund.
34. On January 5, 1998, BGI issued convertible debentures in the aggregate principal amount of \$2 million (the "1998 Debentures") and on December 3, 2002 and December 16, 2002, issued convertible debentures in the aggregate principal amount of \$7.5 million (collectively, the "2002 Debentures"). Prior to completion of the Arrangement, each of the 1998 Debentures and the 2002 Debentures were convertible into Class A (Restricted Voting) Shares of BGI at a rate of one Class A (Restricted Voting) Share for each \$1.17647 of aggregate principal amount of the 1998 Debentures so converted and at a rate of one Class A (Restricted Voting) Share for each \$2.00 of aggregate principal amount of the 2002 Debentures so converted. As part of the Arrangement, the trust indenture in respect of each of the 1998 Debentures and the 2002 Debentures was amended by making the Fund a party thereto and changing certain of the provisions thereof to provide the holder of the Debentures issued thereunder the right to exchange such Debentures for Units in lieu of BGI's previously publicly traded securities, Class A (Restricted Voting) Shares, at the rate (after taking into account the 4 for 1 share consolidation which was part of the Arrangement) of \$4.68 and \$8.00 per Unit, respectively. As at the date hereof, there are \$1,332,000 aggregate principal amount of 1998 Debentures and \$6,525,000 aggregate principal amount of 2002 Debentures outstanding.
35. BGHI was incorporated under *The Corporations Act* (Manitoba) for purposes of participating in the

Arrangement and owns an approximate 36.3% voting equity interest in BGI through its ownership of all of the Class II Shares of BGI. BGHI, subject to applicable legal and contractual requirements, distributes all of its income on a monthly basis to its shareholders by way of a dividend on its issued and outstanding common shares.

36. The authorized capital of BGHI consists of 2,062,606 Class A Common Shares, all of which are outstanding as fully paid and non-assessable shares in the capital of BGHI, an unlimited number of Class B Common Shares of which 257 are issued and outstanding, and an unlimited number of Voting Shares, of which 100,000,000 are issued and outstanding. Of those 2,062,606 issued and outstanding Class A Common Shares, as of the date hereof, the public unitholders of the Fund hold approximately 57.4% of the Class A Common Shares and 4612094 Manitoba Inc. ("Management Holdco"), a private corporation established by certain senior management of BGI to participate in the Arrangement, holds the remaining 42.6%. All of the issued and outstanding Class B Common Shares of BGHI are owned by the Fund. The Fund owns 70% of the issued and outstanding Voting Shares of BGHI and Management Holdco owns the balance.
37. BGI intends to establish a dividend reinvestment plan (the "BGI Plan") pursuant to which BGHI, the sole shareholder of BGI Class II Shares, at its option, may direct that cash dividends paid by BGI in respect of its Class II Shares (the "BGI Dividends") be applied to the purchase of Class III Shares (the "BGI Class III Shares") of BGI (the "BGHI Dividend Reinvestment Option"). The purchase price of the BGI Class III Shares purchased by BGHI pursuant to the BGHI Dividend Reinvestment Option will be equal to a 5% discount of the Average Market Price of the Units (as determined in accordance with the terms of the Fund Plan).
38. The BGI Class III Shares are, by their terms, convertible at the option of either the holder or BGI into Units on a one-for-one basis (the "Class III Share to Unit Conversion Right"). Pursuant to an exchange agreement between BGI, the Fund and BGHI, BGI can require the Fund to issue a sufficient number of Units (the "Class III Share Converted Units") to satisfy any such conversion request, provided that BGI issues a sufficient number of BGI Notes and Class I Shares to the Fund in satisfaction of the purchase price for the Class III Share Converted Units.
39. It is anticipated that BGHI will elect to convert all of the BGI Class III Shares that it receives pursuant to the BGHI Dividend Reinvestment Option into Units, and upon receipt thereof transfer such Class III Share Converted Units to the Fund Plan Broker to settle pre-sales of Units

made by the Fund Plan Broker on behalf of BGHI in exchange for a premium cash payment equal to 102% of the amount of the reinvested BGI Dividends. This arrangement between the Fund Plan Broker and BGHI with respect to the pre-sale of Class III Share Converted Units will be substantially the same as that which is implemented under the Fund Plan with respect to the Premium Distribution Option.

40. The issue of Units to BGHI upon the conversion of BGI Class III Shares (the "Class III Converted Units Issue") and the issue by BGI of the BGI Notes and Class I Shares to the Fund in satisfaction of the purchase price for the Units issued in respect of the Class III Share to Unit Conversion Right (the "BGI Note and Class I Share Issue") involve trades in securities occurring only in the Province of Manitoba, but are not exempt from the Registration and Prospectus Requirements under the Legislation of that Jurisdiction.

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

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

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

1. the trades of Additional Units by the Fund to the Fund Plan Agent for the account of Participants pursuant to the Fund Plan shall not be subject to the Registration and Prospectus Requirements of the Legislation provided that:
  - (a) at the time of the trade the Fund is a reporting issuer or the equivalent in a jurisdiction listed in Appendix B of Multilateral Instrument 45-102 *Resale of Securities* ("MI 45-102") and is not in default of any requirements of the Legislation of that jurisdiction;
  - (b) no sales charge is payable in respect of the trade;
  - (c) the Fund has caused to be sent to the person or company to whom the Additional Units are traded, not more than 12 months before the trade, a statement describing:
    - (i) their right to withdraw from the Fund Plan and to make an election to receive Cash Distributions instead of Additional Units, and

- (ii) instructions on how to exercise the right referred to in paragraph (i) above;
- (d) the aggregate number of Additional Units issued under the Cash Payment Option of the Fund Plan in any financial year of the Fund shall not exceed 2% of the aggregate number of Units outstanding at the start of that financial year;
- (e) except in Quebec, the first trade in Additional Units acquired pursuant to this Decision will be a distribution or primary distribution to the public unless the conditions in paragraphs 2 through 5 of subsection 2.6(3) of MI 45-102 are satisfied;
- (f) in Québec, the alienation of Additional Units acquired pursuant to this Decision will be a distribution unless:
  - (i) all of the following are true:
    - (A) the Fund is and has been a reporting issuer in Québec for the 12 months preceding the alienation;
    - (B) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the alienation;
    - (C) no extraordinary commission or other consideration is paid in respect of the alienation;
    - (D) if the seller of the securities is an insider of the issuer, the seller has no reasonable grounds to believe that the issuer is in default of any requirement of securities legislation; or
  - (ii) such alienation is made through the TSX;

in paragraphs 2 through 5 of subsection 2.6(3) of MI 45-102 are satisfied.

**THE DECISION** of the Decision Maker in Manitoba pursuant to the Legislation of that Jurisdiction is that the Registration and Prospectus Requirements shall not apply to the Class III Converted Units Issue or the BGI Note and Class I Share Issue.

September 3, 2003.

"Chris Besko"

2. the Registration and Prospectus Requirements shall not apply to the first trade of the Class III Share Converted Units by BGHI in settlement of the pre-sales of Units made by the Fund Plan Broker on its behalf, provided that the conditions



**2.1.9 Pioneer Natural Resources Canada Inc. and  
Pioneer Natural Resources Company  
- MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Decision declaring corporation to be no longer a reporting issuer following the acquisition of all of its outstanding securities by another issuer.

**Applicable Ontario Statutory Provisions**

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

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

**AND**

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

**AND**

**IN THE MATTER OF  
PIONEER NATURAL RESOURCES CANADA INC. AND  
PIONEER NATURAL RESOURCES COMPANY**

**MRRS DECISION DOCUMENT**

1. **WHEREAS** the local securities regulatory authority or regulator (the Decision Maker) in each of the provinces of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland (the Jurisdictions) has received an application from Pioneer Natural Resources Canada Inc. (Pioneer Canada) and Pioneer Natural Resources Company (PNRC) for a decision pursuant to the securities legislation of the Jurisdictions (the Legislation) that Pioneer Canada and PNRC be deemed to have ceased to be reporting issuers or equivalent under the Legislation;
2. **AND WHEREAS** pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the System) the Alberta Securities Commission is the principal regulator for this application;
3. **AND WHEREAS** PNRC has represented to the Decision Makers that:
  - 3.1 PNRC is incorporated under the laws of Delaware and pursuant to Order #97/11/508 of the Alberta Securities Commission and similar orders of the British Columbia, Saskatchewan, Manitoba, Quebec and Nova Scotia

securities commissions (collectively, the Commission Orders) which were issued in accordance with the Arrangement (defined below) declared that, among other things, PNRC was deemed to be a reporting issuer in such provinces on December 18, 1997, the effective date of the Arrangement and in Ontario and Newfoundland PNRC became a reporting issuer or the equivalent thereof pursuant to the operation of law;

- 3.2 the head office of PNRC is located at 5205 N. O'Connor Blvd., Suite 1400, Irving, Texas, U.S.A.;
- 3.3 the authorized capital of PNRC consists of 100,000,000 shares of preferred stock, par value \$0.01, and 500,000,000 shares of common stock, par value \$0.01 (the PNRC Shares) of which one preferred share and approximately 119.58 million PNRC Shares are outstanding as of January 29, 2003;
- 3.4 the PNRC Shares are currently listed and posted for trading on the New York Stock Exchange (the NYSE) and were delisted from trading on the Toronto Stock Exchange (the TSX) on December 31, 2002;
- 3.5 no securities of PNRC are listed or quoted on any exchange in Canada;
- 3.6 PNRC is subject to and in compliance with the reporting requirements of applicable United States securities legislation and the NYSE;
- 3.7 all of the shareholders of PNRC resident in Canada (whether registered or unregistered) will continue to be provided with the same continuous disclosure documents that are provided to shareholders of PNRC resident in the United States, including annual audited financial statements;
- 3.8 on September 3, 1997, PNRC and Chauvco Resources Ltd. (Chauvco) entered into a combination agreement pursuant to which the businesses of Pioneer Natural Resources (Canada) Ltd., a predecessor to Pioneer Canada, and Chauvco were combined pursuant to a plan of arrangement (the "Arrangement") under the *Business Corporations Act* (Alberta) (the ABCA);
- 3.9 as of June 17, 2003, there are fewer than 50 holders of PNRC Shares resident in Canada, holding less than 0.3%, in

- aggregate, of the currently issued and outstanding PNRC Shares, with 15 or fewer holders of PNRC Shares resident in any one of the Jurisdictions;
- 3.10 as of May 9, 2003 PNRC was not in default of the securities legislation of the Jurisdictions;
- 3.11 other than the PNRC Shares, certain notes held primarily by U.S. resident investors, the preferred share and certain securities under its incentive plans, PNRC has no securities outstanding; and
- 3.12 as of the date hereof, PNRC does not currently intend to seek public financing by way of an offering of its securities in Canada;
4. **AND WHEREAS** Pioneer Canada has represented to the Decision Makers that:
- 4.1 Pioneer Canada was incorporated as Pioneer Natural Resources (Canada) Ltd. under the laws of British Columbia. As part of the Arrangement, Pioneer Canada was continued under the ABCA on December 18, 1997. On January 1, 1999 Pioneer Canada amalgamated with Pioneer Natural Resources (Canada) Ltd., PNRC Oil & Gas Ltd. and Pioneer Petroleum (TRI) Ltd. and continued under the name Pioneer Natural Resources Canada Inc. On January 1, 2001, Pioneer Canada amalgamated with its wholly-owned subsidiary CR International Limited;
- 4.2 pursuant to the terms of the Commission Orders, Pioneer Natural Resources (Canada) Ltd., a corporate predecessor to Pioneer Canada, was deemed to be a reporting issuer in the Province of Alberta and in British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland. However, the Commission Orders exempted Pioneer Canada from the continuous disclosure requirements of applicable provincial securities legislation provided that, among other things:
- (a) PNRC sent copies of all disclosure material of PNRC to Canadian resident holders of Exchangeable Shares of Pioneer Canada which was provided to U.S. resident holders of PNRC Shares;
- (b) PNRC filed all continuous disclosure documents of PNRC
- which were required to be filed by it with the United States Securities and Exchange Commission pursuant to applicable U.S. securities legislation with the securities commissions in Canada; and
- (c) PNRC remained the direct or indirect holder of all shares of Pioneer Canada, other than the Exchangeable Shares.
- 4.3 the principal office of Pioneer Canada is located at 2900, 255 – 5<sup>th</sup> Avenue S.W., Calgary, Alberta and its registered office is located at 3700, 400 – 3<sup>rd</sup> Avenue S.W., Calgary, Alberta;
- 4.4 the authorized share capital of Pioneer Canada consists of an unlimited number of common shares (the Common Shares) and an unlimited number of exchangeable shares (the Exchangeable Shares);
- 4.5 as of the date hereof all of the issued and outstanding share capital of Pioneer Canada, is held by Pioneer International Resources Company, a wholly-owned subsidiary of PNRC;
- 4.6 pursuant to the Arrangement, Exchangeable Shares were issued to those shareholders of Chauvco who elected to receive such exchangeable shares as partial consideration for their Chauvco common shares;
- 4.7 on December 18, 2002:
- (a) all of the then issued and outstanding Exchangeable Shares were automatically redeemed in accordance with their terms in exchange for PNRC Shares (the Automatic Redemption); and
- (b) the Exchangeable Shares were delisted from trading on the TSX;
- 4.8 there are no securities of Pioneer Canada listed or quoted on any exchange;
- 4.9 after the completion of the Automatic Redemption, PNRC became the indirect holder of all of the securities of Pioneer Canada;

- 4.10 Pioneer Canada has no securities which are held by members of the public, including debt securities, outstanding, other than the Common Shares;
- 4.11 Pioneer Canada is not in default of the securities legislation of the Jurisdictions;
- 4.12 Pioneer Canada does not currently intend to seek public financing by way of an offering of its securities in Canada;

5. **AND WHEREAS** under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the Decision);
6. **AND WHEREAS** each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;
7. **THE DECISION** of the Decision Makers under the Legislation is that Pioneer Canada and PNRC are deemed to have ceased to be a reporting issuers or the equivalent under the Legislation.

July 28, 2003.

"Patricia M. Johnston"

## **2.1.10 Systech Retail Systems Corp. - MRRS Decision**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – Relief from registration and prospectus requirements in connection with an arrangement under the Companies' Creditors Arrangement Act (Canada). First trade deemed a distribution unless made in accordance with specified provisions of Multilateral Instrument 45-102 – Resale of Securities.

### **Applicable Ontario Statutory Provisions**

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

### **Applicable Ontario Rules**

Rule 45-501 – Exempt Distributions.

### **Applicable Multilateral Instruments**

Multilateral Instrument 45-102 – Resale of Securities.

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

**AND**

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

**AND**

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

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the Decision Maker) in each of Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (collectively, the Jurisdictions) has received an application from Systech Retail Systems Corp. (Systech) for a decision under the securities legislation of the Jurisdictions (the Legislation) that the requirements contained in the Legislation to be registered to trade in a security (the Registration Requirement) and to file and obtain a receipt for a preliminary prospectus and a prospectus (the Prospectus Requirement) shall not apply to certain trades in connection with a plan of compromise and arrangement (the CCAA Plan) under the *Companies' Creditors Arrangement Act* (the CCAA) and a consolidated amended plan of reorganization (the U.S. Plan and, together with the CCAA Plan, the Plans) under Chapter 11

of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended (the U.S. Bankruptcy Code);

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

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

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

1. Systech is a corporation organized under the laws of the Province of Ontario and its registered office is located in Mississauga, Ontario.
2. Systech is a reporting issuer (or its equivalent) in each of the Provinces of Ontario, British Columbia and Québec and has been so for a period in excess of 12 months.
3. Systech is not on the list of defaulting issuers maintained by the Decision Makers in the Provinces of Ontario and Québec pursuant to the Legislation or by the British Columbia Securities Commission pursuant to the *Securities Act* (British Columbia) and the regulations and rules made thereunder.
4. Systech is not currently a qualified issuer as defined under Multilateral Instrument 45-102 Resale of Securities (45-102), but is an electronic filer under National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR).
5. The authorized capital of Systech consists of an unlimited number of common shares, an unlimited number of Series A convertible preferred shares and an unlimited number of Series C convertible preferred shares, of which, as at August 7, 2003, there were 36,645,901 common shares, 301,059 Series A convertible preferred shares and 1,174,947 Series C convertible preferred shares issued and outstanding.
6. As at August 7, 2003, there were outstanding warrants of Systech (the Old Warrants) exercisable for 10,161,214 common shares of Systech and options (the Old Options) granted by Systech pursuant to two option plans in respect of directors, officers, employees and consultants exercisable for 1,644,500 common shares of Systech.
7. The outstanding common shares of Systech are listed and posted for trading on the Toronto Stock Exchange (the TSX) under the symbol "SYS".

8. On January 13, 2003, Systech and its subsidiaries filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of North Carolina (the U.S. Court). In addition, on January 16, 2003 and January 20, 2003, Systech and certain of its Canadian subsidiaries sought, and by order of the Ontario Superior Court of Justice (the Canadian Court and, together with the U.S. Court, the Courts), was granted protection from its creditors pursuant to the CCAA.
9. The Plans provide for a comprehensive recapitalization of Systech and its subsidiaries through the settlement of claims in consideration of the issuance of new debt, 1,908,329,606 additional common shares (the New Common Shares) and 136,148,285 warrants (the New Warrants) of Systech, each whole New Warrant entitling the holder to acquire one common share of Systech at a price of Cdn\$0.025 per share for a period of 5 years following implementation of the Plans. The aggregate number of the New Warrants will equal 7% of the number of common shares of Systech outstanding after implementation of the Plans. The Plans have the support of Systech's senior secured lenders, Park Avenue Equity Partners, L.P. and Integrated Partners Limited Partnership One (the "Senior Secured Lenders").
10. A disclosure statement for the U.S. Plan (the Disclosure Statement), which was prepared in accordance with the requirements of the U.S. Bankruptcy Code, was conditionally approved by the U.S. Court on July 3, 2003 and distributed to the Senior Secured Lenders, secured creditors and each holder of impaired unsecured claims under the U.S. Plan.
11. The Disclosure Statement provides a detailed description of the terms of the U.S. Plan, the background and events leading up to the filing of the Plans and prospectus-level disclosure of the business of Systech and includes *pro forma* financial statements.
12. The CCAA Plan was filed with the Canadian Court on August 6, 2003. A Canadian disclosure statement, containing information specific to the CCAA proceedings and including a summary of the Disclosure Statement was sent to each of the Senior Secured Lenders, secured creditors and each person that would have been an affected unsecured creditor under the CCAA Plan.
13. On the implementation of the Plans, among other things, the following trades (the Trades) will occur in the Jurisdictions:
  - 13.1 The secured claims of the Senior Secured Lenders will be satisfied through

- the issuance to the Senior Secured Lenders of a *pro rata* share of the New Common Shares and New Warrants, which New Common Shares, together with the existing 3,333,333 common shares of Systech owned by Park Avenue Equity Partners, L.P., shall represent 80% of the common shares of Systech outstanding after implementation of the Plans;
- 13.2 The secured and unsecured claims of Robert Simon will be satisfied as follows: (a) payment of Cdn\$325,000 in cash to Robert Simon on the date of the implementation of the Plans; (b) the balance owing to Robert Simon to be paid from royalties due to Systech pursuant to a software development agreement between MGCV Computer Holdings, Inc. and IBM after implementation of the Plans (all such payments are contingent on such royalties and are non-recourse); (c) 3.25% of the common shares of Systech and New Warrants owned by the Secured Lenders and management of Systech will be held in escrow as security to Robert Simon of the obligation of Systech in 13.2(b) above; and (d) the payment noted in 13.2(a) is inclusive of a payment of Cdn\$25,000 in cash to George Patterson (a former shareholder of MGCV Computer Holdings, Inc.) on the date of the implementation of the Plans for work performed on the agreement noted in 13.2(b) above as a director;
- 13.3 The secured claim of Systech Group, Inc. will be satisfied through the issuance to Systech Group, Inc. of a *pro rata* share of the New Common Shares and New Warrants, which New Common Shares shall represent 6.47578% of the common shares of Systech outstanding after implementation of the Plans and, together with the existing 21,865,597 common shares of Systech owned by Systech Group, Inc., Systech Group, Inc. shall own approximately 7.6% of the common shares of Systech outstanding after implementation of the Plans;
- 13.4 Holders of impaired unsecured claims will be satisfied through the issuance to such holders of a *pro rata* share of the New Common Shares and New Warrants, which New Common Shares shall represent 10% of the common shares of Systech outstanding after implementation of the Plans;
- 13.5 The Class A preferred shares and Class C preferred shares of Systech will be cancelled and extinguished and the holders thereof will be issued a *pro rata* share of the New Common Shares and New Warrants, which New Common Shares shall represent 1.81147% of the common shares of Systech outstanding after implementation of the Plans. Park Avenue Equity Partners, L.P., which is the registered and beneficial owner of 246,575 Class A preferred shares of Systech, has agreed to waive any right to receive a distribution of New Common Shares and New Warrants on account of its Class A preferred share holdings;
- 13.6 Holders of common shares of Systech: (a) will retain such shares, which, excluding the existing 3,333,333 common shares of Systech owned by Park Avenue Equity Partners, L.P., shall represent 1.71275% of the common shares of Systech outstanding after implementation of the Plans; and (b) other than Park Avenue Equity Partners, L.P., will be issued a *pro rata* share of the New Warrants;
- 13.7 Each holder of an Old Warrant and Old Option will not receive or retain any property under the Plans and all Old Warrants and all Old Options will be extinguished and terminated; and
- 13.8 The Senior Secured Lenders shall segregate and dedicate approximately 10% of their holdings of common shares of Systech after implementation of the Plans to a management stock option incentive plan to be developed by Systech following implementation of the Plans (the New Options).
14. In certain Jurisdictions, not all of the Trades are exempt from the Registration Requirement and Prospectus Requirement.
15. Other than through the vote on the Plans in the U.S. Court, shareholder approval of the Plans is not required under the CCAA, the *Business Corporations Act* (Ontario) or the U.S. Bankruptcy Code;
16. Systech has received conditional listing approval from the TSX for the New Common Shares, the New Warrants and the common shares of Systech issuable upon the due exercise of the New Warrants, subject to certain conditions.
17. Section 1145(a)(1) of the U.S. Bankruptcy Code exempts the offer and sale of securities from registration under U.S. federal and state securities

laws if: (a) the securities have been issued "under a plan" of reorganization by the debtor or its successor or by an affiliate participating in a joint plan of reorganization with the debtor; (b) the recipients of the securities hold a pre-petition or administrative expense claim against the debtor or an interest in the debtor; and (3) the securities are issued entirely in exchange for the recipient's claim against or interest in the debtor, or "principally" in such exchange and "partly" for cash or property. Section 1145(c) of the U.S. Bankruptcy Code deems any offer or sale of securities of the kind and in the manner specified in Section 1145(a)(1) to have been a public offering, and such securities will be freely transferable under U.S. federal securities laws, subject to certain exceptions.

securities that are the subject of the trade;

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

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

September 11, 2003.

"P.M. Moore"

"Wendell S. Wigle"

18. Systech is of the view, and it has been advised, that implementation of the Plans is necessary for it to continue as a going concern and to provide a more favourable result for creditors than a liquidation under applicable bankruptcy legislation.

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

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

**THE DECISION** of the Decision Makers under the Legislation is that the Registration Requirement and the Prospectus Requirement shall not apply to the Trades provided that: (A) all approvals required by orders of the U.S. Court and the Canadian Court to implement the U.S. Plan and the CCAA Plan, respectively, have been obtained, and all conditions of such Plans have been satisfied or waived in accordance with such Plans; and (B) the first trade in any New Common Shares or New Warrants acquired under this Decision in a Jurisdiction or of the common shares of Systech issued upon the due exercise of the New Warrants or New Options is deemed to be a distribution or a primary distribution to the public under the Legislation of such Jurisdiction unless:

1. except in the Province of Québec, the conditions in subsections (3) or (4) of Section 2.6 or subsections (2) or (3) of Section 2.8 of 45-102 are satisfied; and
2. in the Province of Québec:
  - (a) the issuer is and has been a reporting issuer in the Province of Québec for the 12 months immediately preceding the trade;
  - (b) no unusual effort is made to prepare the market or to create a demand for the

**2.1.11 Millennium Energy Inc. - MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – exemption from the requirement contained in Multilateral Instrument 45-102 Resale of Securities for a qualifying issuer to have a current annual information form filed on the system for electronic document analysis and retrieval.

**Applicable Instrument or Policy**

Multilateral Instrument 45-102 Resale of Securities, subsections 1.1 and 4.1.

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, ALBERTA, AND ONTARIO**

**AND**

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

**AND**

**IN THE MATTER OF  
MILLENNIUM ENERGY INC.**

**MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in British Columbia, Alberta, and Ontario (the "Jurisdictions") has received an application from Millennium Energy Inc. ("Millennium") for a decision under section 4.1 of Multilateral Instrument 45-102 *Resale of Securities* ("MI 45-102") that the requirement contained in MI 45-102 for a qualifying issuer (the "Qualifying Issuer") to have a current annual information form ("AIF") filed on the system for electronic document analysis and retrieval ("SEDAR") shall not apply to Millennium;
2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System") the Alberta Securities Commission is the principal regulator for this application;
3. AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions*;
4. AND WHEREAS Millennium has represented to the Decision Makers that:
  - 4.1 Millennium is a corporation incorporated under the laws of Alberta and its head office is located in Calgary, Alberta;

- 4.2 Millennium is a reporting issuer under the securities legislation in each of the Jurisdictions (the "Legislation") and is not in default of any of its obligations under Legislation;
- 4.3 the common shares of Millennium are listed and posted on the TSX Venture Exchange (the "Exchange");
- 4.4 Millennium's authorized share capital consists of an unlimited number of common shares (the "Common Shares") and an unlimited number of Class B Shares, Class C Shares, Class D Shares and Class E Shares preferred shares of which, at the date hereof, there are 24,790,459 Common Shares outstanding;
- 4.5 by way of a statutory plan of arrangement (the "Arrangement"), expected to become effective on or about July 24, 2003, among Millennium and its security holders, Crossfield Gas Corp. ("Crossfield") and its security holders, 1036655 Alberta Ltd., and 1050412 Alberta Ltd.,
  - 4.5.1 Millennium will issue 6.3 Common Shares for each Crossfield common share and special warrant, based on an ascribed value of \$0.22 (pre-consolidated) per Common Share;
  - 4.5.2 each option of Crossfield will be changed into an option to acquire 6.3 pre-consolidated Common Shares; and
  - 4.5.3 a consolidation of the outstanding Common Shares will occur on a one for 15 basis;
- 4.6 the Arrangement constitutes a constitutes a reverse take-over under Exchange Policy 5.2 *Changes of Business and Reverse Take-overs*;
- 4.7 before the closing of the Arrangement, Millennium proposes to complete a financing ("Financing") for aggregate gross proceeds of up to \$1,200,000, by way of a private placement to Millennium insiders and other parties designated by Millennium;
- 4.8 the Financing will consist of the issue of units priced at \$0.24 (pre-consolidated), that are contemplated to be issued to residents of Alberta and an international

- resident, each of which will consist of one Common Share and one Millennium warrant;
- 4.9 the placees under the Financing will be directors and senior officers of Millennium and certain of their spouses and children and employees of APF Energy Inc., a management company which, pursuant to a management contract with Millennium, manages the business and properties of Millennium, and certain of their spouses;
- 4.10 all of the placees under the Financing have the same access to information about Millennium, its assets and operations;
- 4.11 special meetings ("Special Meetings") for the security holders (the "Security Holders") of Millennium and Crossfield, respectively, are to be held on or about July 24, 2003, where the Security Holders, respectively, will be asked to pass a special resolution (the "Special Resolution") approving the Arrangement, amongst other matters;
- 4.12 Millennium and Crossfield prepared a draft joint management information circular (the "Circular") in connection with the Arrangement and the Special Meetings;
- 4.13 the Circular has been filed with the Exchange and the Toronto Stock Exchange ("TSX") and has been reviewed and approved by the Exchange;
- 4.14 the Circular contains prospectus level disclosure and includes,
- 4.14.1 audited financial statements of Millennium for each of its last three financial years;
- 4.14.2 audited financial statements of Crossfield for the two years that it has been in existence;
- 4.14.3 audited operating statements with respect to a significant acquisition made by Crossfield in 2001; and
- 4.14.4 pro forma financial statements for Millennium for the year ended December 31, 2002 and for the three months ended March 31, 2003;
- 4.15 Millennium and Crossfield have also had independent engineering reports consistent with National Policy Statement 2-B *Guide for Engineers, Geologists and Prospectors Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators* prepared effective January 1, 2003 with respect to their oil and natural gas properties, which they have filed in accordance with National Instrument 13-101 *SEDAR*;
- 4.16 Millennium has received conditional approval from the Exchange and TSX regarding the listing of the shares to be issued on the Arrangement;
- 4.17 as Millennium does not have a current AIF, as defined in MI 45-102, filed on SEDAR, it is not a qualifying issuer under MI 45-102; and
- 4.18 the Circular contains all of the information that is prescribed by Form 44-101 F1 AIF of National Instrument 44-101 *Short Form Prospectus Distributions*;
5. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");
6. AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;
7. THE DECISION of the Decision Makers under MI 45-102 is that:
- 7.1. under section 4.1 of MI 45-102, Millennium is exempt from the requirement contained in the definition of Qualifying Issuer to have a current AIF filed on SEDAR provided that:
- 7.1.1 Millennium files a Form 45-102F2 on or before the tenth day after the distribution date of any securities certifying that it is a Qualifying Issuer except for the requirement that Millennium have a current AIF; and
- 7.1.2 at the distribution date of any securities, Millennium has filed a notice on SEDAR advising that it has filed the Circular as an alternative form of AIF and identifying the SEDAR project number under which the Circular was filed; and



7.2 this order expires 140 days after Millennium's financial year ended December 31, 2003.

July 23, 2003.

"Glenda A. Campbell"

"Stephen R. Murison"

## **2.1.12 RMD Properties I - MRRS Decision**

### **Headnote**

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

### **Applicable Ontario Statutory Provisions**

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

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

**AND**

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

**AND**

**IN THE MATTER OF  
RMD PROPERTIES I**

**MRRS DECISION DOCUMENT**

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

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

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

1. RMD was established on November 16, 1987 pursuant to the *Limited Partnerships Act* (Ontario).
2. RMD Properties I Corp. ("RMD GP") is the general partner of RMD. RMD GP is a corporation incorporated on November 13, 1987 pursuant to the *Business Corporations Act* (Ontario). RMD GP maintains its head office in Toronto, Ontario.
3. The authorized capital of RMD consists of 7,000 limited partnership units (the "Units"), of which 7,000 are issued and outstanding.
4. RMD is a reporting issuer or the equivalent thereof in the Jurisdictions and is not in default of any of the requirements of the Legislation.

5. As a result of a take-over bid and the subsequent compulsory acquisition procedures, Realstar RMD Holdings Limited Partnership ("Realstar LP") beneficially owns all of the issued and outstanding Units of RMD.
6. Realstar LP is not a reporting issuer, or the equivalent thereof, in any of the Jurisdictions, and does not have any intention of becoming one.
7. No securities of RMD are listed or quoted on any stock exchange or organized market. Other than the Units, RMD has no securities, including debt securities, outstanding.
8. RMD does not intend to seeking financing by way of an offering securities to the public.

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

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

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

September 8, 2003.

"Wendell S. Wigle"

"H. Lorne Morphy"

## **2.1.13 MRF 2003 Limited Partnership - MRRS Decision**

### **Headnote**

Issuer exempted from interim financial reporting requirements for first and third quarter of each financial year – issuer also exempted from requirements to file annual information forms and management's discussion and analysis – exemption terminates upon the occurrence of a material change in the business affairs of the Issuer unless the Decision Makers are satisfied that the exemption should continue.

### **Applicable Ontario Statutory Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am, ss. 77, 79 and 80(b)(iii).

### **Applicable Ontario Rules**

OSC Rule 51-501 – AIF and MD&A, (2000) 23 OSCB 8365, as am., ss. 1.2(2), 2.1(1), 3.1, 4.1(1), 4.3 and 5.1.

OSC Rule 52-501 – Financial Statements, (2000) 23 OSCB 8372, ss. 2.2(2) and 4.1.

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

**AND**

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

**AND**

## **IN THE MATTER OF MRF 2003 LIMITED PARTNERSHIP**

### **MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application from MRF 2003 Limited Partnership (the "Partnership") for:

1. a decision pursuant to the securities legislation of each of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation to file and send to its securityholders (the "Limited Partners") its interim financial statements for each of the first and third quarters of each of the Partnership's fiscal years (the "First & Third Quarter Interim Financials"), shall not apply to the Partnership; and
2. in Ontario and Saskatchewan only, a decision pursuant to the securities legislation of Ontario

and Saskatchewan that the requirements to file and send to the Limited Partners, its:

- (a) annual information form (the "AIF");
- (b) annual management discussion and analysis of financial condition and results of operations (the "Annual MD&A"); and
- (c) interim management discussion and analysis of financial condition and results of operations (the "Interim MD&A"),

shall not apply to the Partnership.

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

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

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

1. The Partnership is a limited partnership formed pursuant to the *Limited Partnerships Act* (Ontario) on January 9, 2003.
2. The Partnership was formed to invest in certain common shares ("Flow-Through Shares") of companies involved primarily in oil and gas, mining or renewable energy exploration and development ("Resource Companies").
3. The Partnership will enter into agreements ("Resource Agreements") with Resource Companies and under the terms of each Resource Agreement, the Partnership will subscribe for Flow-Through Shares of the Resource Company and the Resource Company will incur and renounce to the Partnership, in amounts equal to the subscription price of the Flow-Through Shares, expenditures in respect of resource exploration and development which qualify as Canadian exploration expense or as Canadian development expense which may be renounced as Canadian exploration expense to the Partnership.
4. On April 29, 2003, the Decision Makers, together with the securities regulatory authority or regulator for Manitoba, Quebec, New Brunswick, Prince Edward Island and the Yukon Territory (in which jurisdictions no legislative requirement exists to file first and third quarter interim financial statements), issued a receipt under the System for the prospectus of the Partnership dated April 29, 2003 (the "Prospectus") relating to an offering of up to

3,000,000 units of the Partnership (the "Partnership Units").

5. The Prospectus contained disclosure that the Partnership intends to apply for an order from the Decision Makers exempting it from the requirements to file and distribute financial statements of the Partnership in respect of the first and third quarters of each fiscal year of the Partnership and from the requirements to prepare an annual information form and interim and annual management discussion and analysis.
6. The Partnership Units will not be listed or quoted for trading on any stock exchange or market.
7. At the time of purchase or transfer of Partnership Units, each purchaser or transferee consents to the application by the Partnership for an order from the Decision Makers exempting the Partnership from the requirements to file and distribute financial statements of the Partnership in respect of the first and third quarters of each fiscal year of the Partnership.
8. On or about May 15, 2005, the Partnership will be liquidated and the Limited Partners will receive their pro rata share of the net assets of the Partnership; and it is the current intention of the general partner of the Partnership to propose prior to the dissolution that the Partnership enter into an agreement with Middlefield Mutual Funds Limited (the "Mutual Fund"), an open end mutual fund, whereby assets of the Partnership would be exchanged for shares of the Growth Class of the Mutual Fund; and upon dissolution, Limited Partners would then receive their pro rata share of the shares of the Growth Class of the Mutual Fund.
9. Since its formation on January 9, 2003, the Partnership's activities primarily included (i) collecting the subscriptions from the Limited Partners, (ii) investing the available Partnership funds in Flow-Through Shares of Resource Companies, and (iii) incurring expenses to maintain the fund.
10. Unless a material change takes place in the business and affairs of the Partnership, the Limited Partners will obtain adequate financial information concerning the Partnership from the semi-annual financial statements and the annual report containing audited financial statements of the Partnership together with the auditors' report thereon distributed to the Limited Partners and that the Prospectus and the semi-annual financial statements provide sufficient background materials and the explanations necessary for a Limited Partner to understand the Partnership's business, its financial position and its future plans, including dissolution on May 15, 2005.

11. Given the limited range of business activities to be conducted by the Partnership and the nature of the investment of the Limited Partners in the Partnership, the provision by the Partnership of the First and Third Quarter Interim Financials, the AIF, the Annual MD&A and the Interim MD&A will not be of significant benefit to the Limited Partners and may impose a material financial burden on the Partnership.
12. It is disclosed in the Prospectus that the General Partner will apply on behalf of the Partnership for relief from the requirements to send to Limited Partners the First and Third Quarter Interim Financials and from the requirements to prepare the AIF, the Annual MD&A and the Interim MD&A.
13. Each of the Limited Partners has, by subscribing for the units offered by the Partnership in accordance with the Prospectus, agreed to the irrevocable power of attorney contained in Article XIX of the Amended and Restated Limited Partnership Agreement scheduled to the Prospectus and has thereby consented to the making of this application for the exemption requested herein.

September 11, 2003.

"Cameron McInnis"

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

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

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the requirements contained in the Legislation to file and send to the Limited Partners its First & Third Quarter Interim Financials shall not apply to the Partnership provided that this exemption shall terminate upon the occurrence of a material change in the affairs of the Partnership unless the Partnership satisfies the Decision Makers that the exemptions should continue, which satisfaction shall be evidenced in writing.

September 11, 2003.

"W.S. Wigle"

"P.K. Bates"

**THE FURTHER DECISION** of the securities regulatory authority or securities regulator in each of Ontario and Saskatchewan is that the requirements contained in the legislation of Ontario and Saskatchewan to file and send to its Limited Partners its AIF, Annual MD&A and Interim MD&A shall not apply to the Partnership provided that this exemption shall terminate upon the occurrence of a material change in the affairs of the Partnership unless the Partnership satisfies the Decision Makers that the exemptions should continue, which satisfaction shall be evidenced in writing.

## 2.2 Orders

### 2.2.1 Dimensional Fund Advisors Canada 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 extra-provincial advisers in respect of the provision of advisory services relating to futures contracts to mutual funds that do not have an address in Ontario, subject to certain terms and conditions.

#### Statutes Cited

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

**IN THE MATTER OF  
THE COMMODITY FUTURES ACT  
R.S.O. 1990, CHAPTER C.20, AS AMENDED  
(the CFA)**

**AND**

**IN THE MATTER OF  
DIMENSIONAL FUND ADVISORS CANADA INC.**

**ORDER  
(Subsection 38(1))**

**UPON** the application of Dimensional Fund Advisors Canada Inc. (the Applicant) to the Ontario Securities Commission (the Commission) for a ruling under subsection 38(1) of the CFA that the Applicant, affiliates of the Applicant (the Affiliates) and their respective directors, officers and employees are not subject to the requirements of paragraph 22(1)(b) of the CFA with respect to advice provided to mutual funds (collectively, the Funds) managed by the Applicant with respect to commodity futures contracts and commodity futures options;

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

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

1. The Applicant is a corporation incorporated under the *Canada Business Corporations Act*. The head office of the Applicant is located in British Columbia. The Applicant does not have an address in Ontario.
2. The head offices of the Affiliates are or will be located outside of Canada. None of the Affiliates have an address in Ontario.
3. The Applicant is registered as an adviser in the category of portfolio manager under the *Securities Act* (British Columbia) (the BCSA). This

registration will permit the Applicant to provide advice in British Columbia with respect to securities (including futures and options) and exchange contracts within the meaning of the BCSA.

4. The Affiliates are or will be registered or otherwise qualified under applicable laws in the United States or in the jurisdiction where their head office is located to provide investment counselling and portfolio management services.
5. The Applicant is the manager and principal portfolio advisor of the Funds. The head office of each of the Funds is located in British Columbia. None of the Funds has an address in Ontario.
6. Securities of the Funds will be distributed in Ontario either pursuant to a simplified prospectus filed with the Commission or pursuant to exemptions from the prospectus requirements under the *Securities Act* (Ontario) (the OSA).
7. The Affiliates will be the sub-advisers to the Applicant with respect to the Funds. The Affiliates wish to advise the Funds with respect to commodity futures contracts and commodity futures options within the meaning of the CFA.
8. The obligations of the Affiliates are or will be set out in a written agreement with the Applicant.
9. The Applicant has or will contractually agree with the Funds to be responsible for any loss to the Funds that arises out of the failure of any Affiliate to:
  - (a) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Funds; or
  - (b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances
 (the Assumed Obligations).
10. The Applicant cannot be relieved by the Funds or the Funds' securityholders from its responsibility for any liability arising under the Assumed Obligations.

**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 ORDERED** pursuant to subsection 38(1) of the CFA that the Applicant, the Affiliates and their respective directors, officers and employees are not subject to the requirement of paragraph 22(1)(b) of the CFA in respect of the advice they provide to the Funds, provided that:

- (a) all advice by the Applicant and the Affiliates to the Funds is given and received, or portfolio management services are provided, outside of Ontario;
- (b) the Applicant remains registered under the BCSA and permitted to provide advice in British Columbia with respect to exchange contracts;
- (c) the Applicant, the Affiliates and the Funds continue to not have addresses in Ontario;
- (d) the obligations of the Affiliates are set out in a written agreement with the Applicant;
- (e) the Applicant remains responsible to the Participating Clients for the Assumed Obligations; and
- (f) this order shall terminate three years from the date of the order.

September 5, 2003.

"Paul M. Moore"

"Wendell S. Wigle"

## **2.2.2 Neotel Inc. - s. 144**

### **Headnote**

Cease-trade order revoked where the issuer has remedied its default in respect of disclosure requirements under the Securities Act.

### **Statute Cited**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127(1)2, 127(5), 127(8), 144.

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

**AND**

**IN THE MATTER OF  
NEOTEL INC.**

**ORDER  
(Section 144)**

**WHEREAS** the securities of **Neotel Inc.** (the "Company") are subject to a temporary order of the Manager made on behalf of the Ontario Securities Commission (the "Commission"), pursuant to paragraph 2 of subsection 127(1) and subsection 127(5) of the Act, on June 23, 2003, as extended by a further order of the Manager on July 4, 2003 on behalf of the Commission pursuant to subsection 127(8) of the Act (collectively, the "Cease Trade Order"), directing that trading in the securities of the Company cease until the Cease Trade Order is revoked by a further order of revocation;

**AND UPON** the Company having applied to the Commission for revocation of the Cease Trade Order pursuant to section 144 of the Act;

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

1. The Company was incorporated by certificate of amalgamation issued pursuant to the provisions of the *Business Corporations Act* (Ontario) on February 1, 1997;
2. The Company is a reporting issuer in the Provinces of Ontario, British Columbia, Alberta and Manitoba;
3. The authorized capital of the Company consists of an unlimited number of common shares, of which 25,092,670 are issued and outstanding as of the date hereof;
4. The Cease Trade Order was issued by reason of the failure of the Corporation to file with the Commission its audited annual financial statements for the year ended January 31, 2003

(the "Annual Financial Statements") as required by the Act;

5. The Annual Financial Statements were filed with the Commission via SEDAR on July 18, 2003. An amended version of the Annual Financial Statements was filed with the Commission via SEDAR on July 28, 2003. The interim financial statements for the three-month period ended April 30, 2003 (the "Interim Financial Statements"), which were required to be filed by June 29, 2003, were filed with the Commission via SEDAR on July 31, 2003;
6. The delay in preparing and filing the Annual Financial Statements and the Interim Financial Statements was caused by the resignation of the Company's internal accountant due to serious illness, the death of a senior manager of the Company and the previous auditing firm advising the Company that they would be unable to continue to act as auditors of the Company; and
7. The date of the annual meeting of the shareholders of the Company has been fixed as October 31, 2003 by the board of directors of the Company and the Company will mail the Annual Financial Statements and the Interim Financial Statements to all of its shareholders, together with the Company's 2003 annual report, on October 1, 2003; and
8. Except for the Cease Trade Order and the failure of the Company to file the Interim Financial Statements when due, the Company is not otherwise in default of any requirements of the Act or the regulation made thereunder;

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

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

**IT IS ORDERED** pursuant to section 144 of the Act that the Cease Trade Order be and is hereby revoked.

September 15, 2003.

"Cameron McInnis"

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## 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
701 Media Group Inc.	09 Sep 03	19 Sep 03		
Aurado Energy Inc.	04 Sep 03	16 Sep 03		12 Sep 03
ePhone Telecom, Inc.	17 Sep 03	29 Sep 03		
Fiscal Investments Limited	10 Sep 03	22 Sep 03		
Genesys Conferencing Ltd.	09 Sep 03	19 Sep 03		
Goran Capital Inc.	16 Sep 03	26 Sep 03		
Knightsbridge London Limited Partnership 1993	08 Sep 03	19 Sep 03		
Mississauga Teachers Retirement Village Limited Partnership	08 Sep 03	19 Sep 03		
NSI Global Inc.	16 Sep 03	26 Sep 03		
Platinova A/S	09 Sep 03	19 Sep 03		
Platinova Resources Ltd.	09 Sep 03	19 Sep 03		
Teddy Bear Valley Mines, Limited	27 Aug 03	08 Sep 03	08 Sep 03	11 Sep 03
Teton Petroleum Company	10 Sep 03	22 Sep 03		12 Sep 03
Transpacific Resources Inc	09 Sep 03	19 Sep 03		11 Sep 03
UNIREX Corporation	10 Sep 03	22 Sep 03		
Uranium Resources Inc.	11 Sep 03	23 Sep 03		
Vision SCMS Inc.	09 Sep 03	19 Sep 03		
YWL Corp.	12 Sep 03	24 Sep 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
National Construction Inc.	25 Jul 03	07 Aug 03	07 Aug 03		
Wastecorp. International Investment Inc.	23 Jul 03	05 Aug 03	05 Aug 03		

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## Chapter 5

# Rules and Policies

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### 5.1.1 Notice of Amendments to OSC Rule 13-502 - Fees, Including Forms 13-502F1, 13-502F2, 13-502F3, and 13-502F4, and Companion Policy 13-502CP - Fees

#### NOTICE OF AMENDMENTS TO RULE 13-502 - FEES, INCLUDING FORMS 13-502F1, 13-502F2, 13-502F3, AND 13-502F4, AND COMPANION POLICY 13-502CP - FEES

##### Notice of Amendments to Rule and to Companion Policy

The Commission has made amendments to Rule 13-502 - *Fees* (the **Rule**), including Forms 13-502F1, 13-502F2, 13-502F3, and 13-502F4, under section 143 of the *Securities Act* (the **Act**) (collectively, the **Rule Amendments**).

The Rule Amendments and the materials required by the Act to be delivered to the Minister of Finance were delivered on September 17, 2003. If the Minister does not approve, reject or return the Rule Amendments by November 16, 2003, or if the Minister approves the amendments, the Rule Amendments will come into force on December 1, 2003.

The Commission has made amendments to Companion Policy 13-502CP - *Fees* (the **Companion Policy**) under section 143.8 of the Act (the **Policy Amendments**, and together with the Rule Amendments, the **Amendments**).

On May 16, 2003, we published the Amendments for comment. We received submissions from three commentators. The revisions do not materially change the Amendments. Accordingly, we are not publishing the Amendments for a further comment period. For a summary of these comments and our response to them, please see Appendix A to this Notice.

##### Substance and Purpose of the Amendments

Since the Rule was published, we have received numerous requests for clarification on various parts of the Rule. The purpose of the Amendments is to clarify portions of the Rule as well as add to and modify certain portions of the Rule and the Companion Policy. Furthermore, the Amendments reflect the implementation of Rule 13-503 - *Fees (Commodity Futures Act)*.

##### Summary of Changes to the Amendments

This section describes minor changes made to the Amendments from the version published on May 16, 2003. Changes made only for purposes of clarification or drafting are not discussed. The following changes were made based on comments received and upon further deliberations:

- Section 2.7 was amended to allow a Class 3 issuer to simply use the percentage of outstanding securities of the issuer registered in the name of Ontario persons when calculating the Ontario portion of their market capitalization.
- Section 4.1 was amended so that the fee payable by a person or company for the late filing of an insider report on Form 55-102F2 is not due until they receive an invoice from the Commission.
- Appendix C, new item H(1) was amended so that the additional \$2,000 fee would not be charged if the offeror, or an issuer of which the offeror is a wholly-owned subsidiary, is subject to, or reasonably expected to become subject to, a participation fee.
- Appendix C, new item N(2) was amended to exempt insiders from a late fee in Ontario if they are under an obligation to pay a late fee for filing a Form 55-102F2 in a jurisdiction other than Ontario.

##### Clarification of Consequential Amendments

A number of amendments to various rules and policies of the Commission were made at the time that the Rule came into force for the purpose of deleting or amending references to fees as required by the making of the Rule ((2003) 26 OSCB 57). Section 1.4 of those amendments referred in error to a deletion of Part 6 of Rule 45-502 - *Dividend or Interest Reinvestment and Stock Dividend Plans* and consequential renumbering; the Commission wishes to clarify that the correct reference should have been to a deletion of Part 5 of Rule 45-502 with consequential renumbering.

The Commission also notes that section 1.6 to the amendments described above contained a reference to an amendment to Companion Policy 91-504CP. This reference was in error; Companion Policy 91-504CP and the associated Rule 91-504 were proposed by the Commission in 2000 but did not come into force, and the Commission is not proceeding with those instruments at the present time.

**Authority for the Rule Amendments**

The following section of the Act provides the Commission with authority to make the Rule Amendments. Paragraph 143(1)43 authorizes us to make rules that prescribe the fees payable to the Commission, including those for filing, for applications for registration or exemptions, for trades in securities, in respect of audits made by the Commission, and in connection with the administration of Ontario securities law.

**Unpublished Materials**

In making the Amendments, the Commission has not relied on any significant unpublished study, report or other written material.

**Text of Amendments**

The text of the Amendments follows.

September 19, 2003.

## APPENDIX A

**SUMMARY OF PUBLIC COMMENTS  
ON THE AMENDMENTS TO  
ONTARIO SECURITIES COMMISSION  
RULE 13-502 – FEES  
AND  
COMPANION POLICY 13-502CP**

The following provided their comments:

S. Romano – Stikeman Elliot  
R. McGee – Blake, Cassel & Graydon  
T. Robson – Bennett Jones

Theme	Detailed Comments and Arguments	Response
Concern over fee for filing 45-501F1	One commentator expressed concern that the fee of \$500 was excessive for small and medium sized private businesses raising small amounts of capital. The commentator also noted that the fee does not behave in the manner of an activity fee as defined in the Companion Policy of Rule 13-502.	The fee is intended to represent a blended fee for the “activities undertaken by staff” as well as a fee for the business’s fair share for accessing the capital market. It was decided to categorize this fee under activity fees for simplicity and ease of use by stakeholders.
Class 3 calculation	One commentator noted that it is extremely difficult for a foreign issuer to determine the amount held beneficially by an Ontario person.	We have amended the calculation to allow the issuer to simply use the percentage of outstanding securities of the issuer registered in the name of Ontario persons when calculating the Ontario portion of their market capitalization.
Ceasing to be a reporting issuer	One commentator felt the addition of section 2.9 which requires an issuer to pay a portion of their participation fees prior to being allowed to cease to be a reporting issuer is unfair to others that cease to be a reporting issuer later in the year.	In general, Rule 13-502 was intended to simplify fees and reduce costs associated with collecting fees. As part of this, refunds are not granted except as allowed under Forms 13-502F2 and 13-502F4. The addition of section 2.9 is to capture fees from issuers who were not caught in the earlier draft of the Rule.
Allocation of fees for a joint prospectus	One commentator noted that issuers generally prefer to allocate filing fees amongst themselves in the manner they deem most appropriate.	We believe that a pro-rata share is the simplest method of allocating fees. As prospectus filing fees are significantly less than before, this method of allocation should not make a material difference to a filer.
Late fees for insider reports filed on Form 55-102F2	One commentator noted that calculating late fees on calendar days rather than business days places an undue burden on filers using agents to file their reports. The commentator also felt this was incongruous with the other late fees that are calculated based on business days.	Insider reports are due 10 calendar days after the transaction. The late fee is calculated on the same basis that SEDI counts such days. Late fees are calculated on business days for filings that can not be made on a weekend or holiday.
Use of fiscal period for calculating maximum late fees on Form 55-102F2	One commentator noted that the use of April 1 – March 31 was inconsistent with the use of the period established for other late fees.	We have amended the period for late fees relating to Form 55-102F2 because the issuers year end was creating confusion for filers who are insiders of more than one reporting issuer. The OSC’s fiscal period was selected for simplicity and processing ease.

5.1.2 Amendment to OSC Rule 13-502 Fees

**AMENDMENT TO  
RULE 13-502 FEES**

**PART 1 AMENDMENTS TO RULE 13-502 FEES**

**1.1 Amendments to Rule 13-502 Fees**

- (1) Rule 13-502 Fees is amended by this Part of this instrument.
- (2) Section 1.1(1) is amended by
  - (a) the deletion of the definition of “capital markets activities” and the substitution of the following:

“capital markets activities” means

    - (a) activities for which registration under the Act or an exemption from registration is required,
    - (b) acting as an investment fund manager, and
    - (c) activities for which registration under the *Commodity Futures Act* or an exemption from registration under the *Commodity Futures Act* is required;”;
  - (b) the deletion of the definition of “corporate debt” and the substitution of the following:

“corporate debt” means debt issued in Canada by a person or company that has a remaining term to maturity of one year or more;”;
  - (c) the deletion of the definition of “entity”;
  - (d) the deletion of the definition of “equity security” and the substitution of the following:

“equity security” means a security

    - (a) within the meaning of the term “equity security” in subsection 89(1) of the Act, or
    - (b) of an issuer that is exchangeable for an equity security, within the meaning of subsection 89(1) of the Act, of another issuer.”; and
  - (e) the deletion of the definition of “investment fund” and the substitution of the following:

“investment fund” means a mutual fund or a non-redeemable investment fund;”;
- (3) Subsection 2.3(1) is deleted and the following substituted:

“(1) A reporting issuer shall pay the participation fee by the earlier of the date on which its annual financial statements are required to be filed and the date on which its annual financial statements are filed.”.
- (4) Section 2.5 is deleted and the following substituted:

**“2.5 Calculation of Capitalization for Class 1 Reporting Issuers –** The capitalization of a Class 1 reporting issuer at the end of a financial year of the reporting issuer is the aggregate of

  - (a) the market value of each class or series of the reporting issuer’s equity securities listed or quoted on a marketplace on that date, calculated by multiplying
    - (i) the total number of securities of the class or series outstanding on that date; and
    - (ii) the simple average of the closing price of the class or series of securities as of the last trading day of each of the months of the financial year of the reporting issuer on

- (A) the marketplace in Canada on which the highest volume of the class or series of securities were traded in that financial year, or
    - (B) if none of the class or series of securities were traded on a marketplace in Canada, the marketplace in the United States of America on which the highest volume of the class or series of securities were traded in that financial year, and
  - (b) as determined by the reporting issuer, the aggregate market value, at the end of the financial year, of each class or series of corporate debt and of each class or series of preferred shares of the reporting issuer, and of a subsidiary entity of the reporting issuer that is exempt from the requirement to pay a participation fee under subsection 2.2(2), if securities of that class or series are listed, quoted or traded on a marketplace, trade over the counter or, after their initial issuance, are otherwise generally available for purchase or sale by way of transactions carried out through, or with, dealers.”.
- (5) Section 2.6 is amended by:
- (a) the renumbering of the existing section 2.6 as subsection 2.6(1);
  - (b) the addition of the following as subsection 2.6(2):
    - “(2) Despite subsection (1), a reporting issuer may base the calculation of its market capitalization on unaudited financial statements if it is not required to prepare, and does not ordinarily prepare, audited financial statements.”; and
  - (c) the addition of the following as subsection 2.6(3):
    - “(3) Despite subsections (1) and (2), a reporting issuer that is a trust that issues only asset-backed securities through pass-through certificates may base the calculation of its market capitalization on the monthly filed distribution report for the last month of its financial year, if the reporting issuer is not required to prepare, and does not ordinarily prepare, annual financial statements.”.
- (6) Section 2.7 is amended by
- (a) the deletion of the words “debt or equity securities listed or traded”, in the first line of each of paragraphs (a) and (b) of section 2.7 and the substitution of “securities listed, quoted or traded”;
  - (b) the deletion of the words “, or held beneficially by,” in subparagraph (iii) of paragraph 2.7(a); and
  - (c) the deletion of the words “, or held beneficially by,” in subparagraph (ii) of paragraph 2.7(b).
- (7) Subsection 2.8(4) is amended by the deletion of the introductory words and the substitution of the following:
- “(4) Despite sections 2.2 and 2.3, and subject to subsection (5), a person or company that becomes a reporting issuer other than through the filing of a prospectus shall pay a participation fee within two business days of the date on which the person or company becomes a reporting issuer, calculated by multiplying.”.
- (8) The following is added as section 2.9, and sections 2.9 and 2.10 are renumbered:
- “2.9 Participation Fee for an Issuer Ceasing to be a Reporting Issuer –** Despite sections 2.2 and 2.3, an issuer that ceases to become a reporting issuer before it has paid its participation fee for the current financial year, and before that participation fee has been required to be paid, shall pay a participation fee at the time that it ceases to be a reporting issuer, calculated by multiplying
- (a) the participation fee that would be otherwise payable for that financial year; and
  - (b) the number of entire months in the financial year before it submitted its application to cease to become a reporting issuer, divided by 12.”.
- (9) Old subsection 2.10(2) is deleted and the following substituted as subsection 2.11(2):

- “(2) Subsection (1) does not apply if the reporting issuer knows that the information made available by the marketplace is incorrect and
    - (a) knows the correct information; or
    - (b) has not used reasonable efforts to learn the correct information.”.
- (10) Paragraphs (a) of section 3.4, (a) of section 3.5 and (1)(a) of section 3.6 are amended by the addition of the words “less any amounts not attributable to capital markets activities” immediately before the words “for a financial year” in each paragraph.
- (11) Paragraph 3.6(3)(a) is amended by the addition of the words “or a registrant firm as defined in Rule 13-503 (*Commodity Futures Act*) (Ontario)” immediately after the words “another registrant firm in Ontario”.
- (12) Section 3.6 is amended by the addition of the following as subsection 3.6(4):
  - “(4) Despite subsection (1), a registrant firm registered only as one or more of a limited market dealer, an international dealer or an international adviser may base the calculation of its gross revenues on unaudited financial statements if it is not required to prepare, and does not ordinarily prepare, audited financial statements.”.
- (13) Subsection 7.2(5) is amended by the addition of the words “that is a reporting issuer” after the words “investment fund” in the first line of the subsection.
- (14) Section 4.1 is amended by the deletion of the period at the end of the sentence and the insertion of “; except that a person or company shall pay the fee for the late filing of an insider report on Form 55-102F2 upon receiving an invoice from the Commission.”.

## 1.2 Amendments to Appendices to Rule 13-502 Fees

- (1) The Appendices to Rule 13-502 are amended by this Part of this instrument.
- (2) Appendix A is amended by
  - (a) the deletion of the words “\$0 to under \$25 million” and the substitution of the words “under \$25 million”; and
  - (b) the deletion of the words “Over \$25 billion” and the substitution of the words “\$25 billion and over”;
- (3) Appendix B is amended by
  - (a) the deletion of the words “\$0 to under \$500,000” and the substitution of the words “under \$500,000”; and
  - (b) the deletion of the words “Over \$1 billion” and the substitution of the words “\$1 billion and over”;
- (4) Appendix C is amended by
  - (a) the deletion of the words “or issuers” and “or issuer” in Note (iv) to item A(1);
  - (b) the addition of the following as Note (v) to item A(1):

*“Each named issuer should pay its proportionate share of the fee in the case of a prospectus for multiple issuers (other than in the case of investment funds).”;*
  - (c) the addition of the following as Note (vi) to item A(1):

*“The fee for a prospectus showing minimum and maximum offering sizes shall be based on the maximum offering size.”;*
  - (d) the addition of the word “Canadian” before the words “gross proceeds”, wherever appearing, in item A(3) and the deletion of the Note in item A(3);



- (e) the addition of the following, as item B(2):
  - (i) under the heading “Document or Activity” – “Filing of a Form 45-501F1 for a distribution of securities for an issuer that is not subject to a participation fee”, and
  - (ii) under the heading “Fee” – “\$500”;
- (f) the deletion of the words under the heading “Fee” of item C, and the substitution of the words “\$2,000 (plus \$2,000 if the applicant is not subject to, and is not reasonably expected to become subject to, a participation fee under this Rule)”;
- (g) the addition of the following as new item D, and the renumbering of the items after item D:

Document or Activity	Fee
<b>D. Provision of Notice under section 72(1)(h)(ii) of the Act</b>	\$2,000

- (h) the deletion of old item E and the substitution of the following as item F:

Document or Activity	Fee
<b>F. Applications for Discretionary Relief</b>	
1. Application under clause 72(1)(m), sections 74, 104 and 127, subsection 140(2) or section 147 of the Act (not including an application under section 3.1 of Rule 31-503 or section 4.1 of Rule 35-502), Multilateral Instrument 45-102, Rule 45-501, Rule 45-502, Rule 45-503, National Instrument 51-101, Rule 56-501, Rule 61-501, National Instrument 62-101, National Instrument 62-103 or Rule 62-501.	\$5,500 for each section under which an application is made (plus \$2,000 if the applicant is not subject to, and is not reasonably expected to become subject to, a participation fee under this Rule or Rule 13-503 ( <i>Commodity Futures Act</i> ) (Ontario)) subject to the overall limitation set out below
2. Application under:	Nil
(a) subsection 38(3), subsection 72(8) or section 83 of the Act or subsection 1(6) of the <i>Business Corporations Act</i> (Ontario);	
(b) application under section 144 of the Act for an order revoking a cease-trade order to permit trades solely for the purpose of establishing a tax loss in accordance with Commission Policy 57-602;	
(c) relief from section 213 of the <i>Loan and Trust Corporations Act</i> (Ontario);	
(d) application for waiver of the requirements of Rule 51-501; and	
(e) application where the discretionary relief or regulatory approval is evidenced by the issuance of a receipt for the applicants' final prospectus (such as certain applications under Rule 41-501 or National Instrument 81-101).	

<p>3. Any application for discretionary relief from, or regulatory approval under, any section of the Act, the Regulations or any Rule of the Commission not listed in items F(1) or (2) above.</p> <p><i>Note: It is noted that the following applications for recognition or approval under the Act are subject to the fees contained in this item F(3):</i></p> <p>(i) <i>recognition of an exchange under section 21 of the Act, a self-regulatory organization under section 21.1 of the Act, a clearing house under section 21.2 of the Act or a quotation and trade reporting system under section 21.2.1 of the Act;</i></p> <p>(ii) <i>approval of a compensation fund or contingency trust fund under section 110 of the Regulations to the Act; and</i></p> <p>(iii) <i>approval of the establishment of a council, committee or ancillary body under section 21.3 of the Act.</i></p>	<p>\$1,500 for each section under which an application is made (plus \$2,000 if the applicant is not subject to, and is not reasonably expected to become subject to, a participation fee under this Rule or Rule 13-503 (<i>Commodity Futures Act</i>) (Ontario)) subject to the overall limitation set out below</p>
	<p>The maximum fee for an application to which this item F applies, regardless of the number of sections under which application is made, shall be</p> <p>\$7,500 if the applicant is subject to, or is reasonably expected to become subject to, a participation fee under this Rule or Rule 13-503 (<i>Commodity Futures Act</i>) (Ontario),</p> <p>or</p> <p>\$9,500 if the applicant is not subject to, and is not reasonably expected to become subject to, a participation fee under this Rule or Rule 13-503 (<i>Commodity Futures Act</i>) (Ontario). These limits apply to the application even if the application is made under both the Act and the <i>Commodities Futures Act</i> (Ontario); i.e. an application under both statutes will not be subject to a fee of more than \$7,500 or \$9,500, as applicable.</p>

- (i) the deletion of old item G(1) and the substitution of the following as item H(1):

Document or Activity	Fee
<p>1. Filing of a take-over bid or issuer bid circular under subsection 100(3) or (7) of the Act</p>	<p>\$5,500 (plus \$2,000 if neither the offeror nor an issuer of which the offeror is a wholly-owned subsidiary is subject to, or reasonably expected to become subject to, a participation fee under this Rule)</p>

- (j) the deletion of the words "subsection 98(2) or subsection 98(4)" and the substitution of the words "subsection 100(4)" in item H(2), as renumbered;
- (k) the addition of numbering for the Notes to item J(3), as renumbered, and the addition of the following Note (iii) to such item:

*“A registration fee will not be charged if an individual makes an application to register with a new registrant firm within three months of terminating employment with his or her previous registrant firm provided that the individual’s category of registration remains unchanged.”; and*

- (l) the deletion of item M and the substitution of the following as item N:

Document or Activity		Fee
<b>N.</b>	<b>Late Filing</b>	
1.	Fee for late filing of any of the following documents:	\$100 per business day (subject to a maximum of \$5,000 per reporting issuer or registrant firm for all documents within any financial year of the reporting issuer or registrant firm)
(a)	Annual financial statements and interim financial statements;	
(b)	Annual information form filed under Rule 51-501;	
(c)	Report of Form 45-501F1 filed by a reporting issuer;	
(d)	Notice under Section 104 of the Regulation;	
(e)	Report under Section 141 or 142 of the Regulation;	
(f)	Filings for the purpose of amending Form 3 and Form 4 or Form 33-109F4 under Multilateral Instrument 33-109; and	
(g)	Any document required to be filed by a registrant firm or individual in connection with the registration of the registrant firm or individual under the Act with respect to	
	(i) terms and conditions imposed on a registrant firm or individual; or	
	(ii) an order of the Commission.	
2.	Fee for late filing of an insider report on Form 55-102F2	<p>\$50 per calendar day per insider per issuer (subject to a maximum of \$1,000 within any one year beginning on April 1<sup>st</sup> and ending on March 31<sup>st</sup>.)</p> <p>The late fee does not apply to an insider that is under an obligation to pay a late fee for filing a Form 55-102F2 in a jurisdiction other than Ontario.</p>

## PART 2 AMENDMENTS TO FORMS TO RULE 13-502

### 2.1 Amendments to Form 13-502F1

- (1) Form 13-502F1 is amended by the deletion of the words “Participation Fee for the Financial Year Ending:” on the second line of the Form and the substitution of the words “Financial Year Ending, used in calculating the participation fee:”.
- (2) Form 13-502F1 is amended by changing the formula for calculating a reduced participation fee for new reporting issuers, wherever appearing, to read
$$\text{Total Fee Payable} \times \frac{\text{Number of entire months remaining in the issuer's financial year}}{12}$$
- (3) Form 13-502F1 is amended by the deletion of the words “, or held beneficially by,” under the heading 3. *Class 3 Reporting Issuers (Foreign Issuers)*, subheading *Market value of securities*.

- (4) Form 13-502F1 is amended by the deletion of the words “, or held beneficially by,” under the heading 3. *Class Reporting Issuers (Foreign Issuers)*, subheading *Financial Statement Values*.
- (5) Paragraph 1 of the Notes and Instructions to Form 13-502F1 is deleted and the following substituted:

“This participation fee is payable by all reporting issuers, except in the case of investment funds. An investment fund that is a reporting issuer and that has an investment fund manager does not pay a corporate finance participation fee. The only investment funds that pay a corporate finance participation fee are those that are reporting issuers and that do not have an investment fund manager.”.
- (6) Paragraph 2 of the Notes and Instructions to Form 13-502F1 is amended by the deletion of the word “posting” and the substitution of the word “posted”.
- (7) Paragraph 3 of the Notes and Instructions to Form 13-502F1 is amended by the addition of the words “exchange rate” immediately after the words “daily noon” and the removal of the square brackets enclosing “daily noon”.

**2.2 Amendments to Form 13-502F2** - Form 13-502F2 is amended to read as set out in Appendix A to these amendments.

**2.3 Amendments to Form 13-502F3**

- (1) Note 1 to the Notes and Instructions of Form 13-502F3 (including the footnotes thereto) is deleted and the following substituted:

“1. Registrant firms are required to complete the Part that applies to their particular category of registration, as follows:

Part I - Investment Dealers Association of Canada members

Part II - Mutual Fund Dealers Association of Canada members

Part III - Advisers<sup>1</sup>, other Dealers<sup>2</sup> and unregistered Investment Fund Managers.

<sup>1</sup> Includes all adviser categories as per section 99 of the Regulations in the *Securities Act* (Ontario), as well as non-resident advisors, extra-provincial advisors and registrant firms within the meaning of Rule 13-503 (*Commodity Futures Act*) (Ontario).

<sup>2</sup> Includes all dealer categories as per section 98 of the Regulations in the *Securities Act* (Ontario) and registrant firms within the meaning of Rule 13-503 (*Commodity Futures Act*) (Ontario) except IDA and MFDA members which are treated separately in Parts I and II.”
- (2) Form 13-502F3 is amended to read as set out in Appendix B to these amendments.
- (3) Paragraph 1 of the Notes and Instructions to Part III of Form 13-502F3 is amended by the addition of the following at the end of that paragraph:

“Gross revenues are reduced by amounts not attributable to capital markets activities. A registrant firm registered only as one or more of a limited market dealer, international dealer or international adviser may use its unaudited financial statements as the basis for determining its gross revenues if it is not required to, and does not ordinarily prepare, audited financial statements.”.
- (4) Paragraph 3 of the Notes and Instructions to Part III of Form 13-502F3 is amended by the deletion of the words “mutual funds” and the substitution of the words “investment funds”.
- (5) Paragraph 4 of the Notes and Instructions to Part III of Form 13-502F3 is amended by the addition of the words “or registrant firms within the meaning of Rule 13-503 (*Commodity Futures Act*) Ontario)” immediately after the words “another Ontario registrant firm”.

**2.4 Amendment to Form 13-502F4** – Form 13-502F4 is amended by the deletion of the words “Participation Fee for the Calendar Year” and the substitution of the words “Participation Fee based on the Specified Ontario Revenues for the Calendar or Financial Year Ended:”.

**FEES RULE  
FORM 13-502F2****ADJUSTMENT OF FEE PAYMENT  
UNDER SUBSECTION 2.4(2) OF RULE 13-502****Reporting Issuer Name:** \_\_\_\_\_**Financial Year Ending, used in  
calculating the Participation Fee:** \_\_\_\_\_State the amount paid under subsection 2.3(3) of Rule 13-502: \_\_\_\_\_ (A)  
Show calculation of actual capitalization based on audited financial statements:Financial Statement Values (use stated values from the audited financial statements of the reporting issuer as at its most recent audited year end):

Retained earnings or deficit \_\_\_\_\_

Contributed surplus \_\_\_\_\_

Share capital or owners' equity, options, warrants and preferred shares (whether such shares are classified as debt or equity for financial reporting purposes) \_\_\_\_\_

Long term debt (including the current portion) \_\_\_\_\_

Capital leases (including the current portion) \_\_\_\_\_

Minority or non-controlling interest \_\_\_\_\_

Items classified on the balance sheet between current liabilities and shareholders' equity (and not otherwise listed above) \_\_\_\_\_

Any other item forming part of shareholders' equity and not set out specifically above \_\_\_\_\_

**Total Capitalization** \_\_\_\_\_

Total Fee payable: \_\_\_\_\_ (B)

Difference between A and B: \_\_\_\_\_

Indicate refund due (balance owing): \_\_\_\_\_

## Revenue for Participation Fee

Firm Name: \_\_\_\_\_

Calendar or Financial Year Ending,  
used in calculating the Participation  
Fee: \_\_\_\_\_

## Part I – Investment Dealers Association of Canada Members

	Current Year \$	Prior Year \$
1. Line 18 of Statement E of the Joint Regulatory Financial Questionnaire and Report	_____	_____
2. Less Amounts not attributable to capital markets activities	_____	_____
3. <b>REVENUE SUBJECT TO PARTICIPATION FEE</b> (line 1 less line 2)	_____	_____

## Part II – Mutual Fund Dealers

## REVENUE SUBJECT TO PARTICIPATION FEE

1. Line 12 of Statement D of the MFDA Financial Questionnaire and Report	_____	_____
2. Less Amounts not attributable to capital markets activities	_____	_____
3. <b>REVENUE SUBJECT TO PARTICIPATION FEE</b> (line 1 less line 2)	_____	_____

## Part III – Advisers, Other Dealers, and Unregistered Investment Fund Managers

1. Gross Revenue as per the audited financial statements (note 1)	_____	_____
<b>Less the following items:</b>		
2. Amounts not attributable to capital markets activities	_____	_____
3. Redemption Fees (note 2)	_____	_____
4. Administration Fees (note 3)	_____	_____
5. Advisory or Sub-Advisory fees paid to other Ontario registrant firms and registrant firms within the meaning of Rule 13-503 ( <i>Commodity Futures Act</i> ) (Ontario) (note 4)	_____	_____
6. Trailer fees paid to other Ontario registrant firms (note 5)	_____	_____
7. Total Deductions – sum of lines 2 to 6	_____	_____
8. <b>REVENUE SUBJECT TO PARTICIPATION FEE</b> (line 1 less line 7)	_____	_____

**Part IV – Calculation of Revenue Attributable to Ontario**

---

**Firm Name:** \_\_\_\_\_

**Calendar or Financial Year Ending,  
used in calculating the Participation  
Fee:** \_\_\_\_\_

Line 3 from Part I \_\_\_\_\_ \$

Line 3 from Part II \_\_\_\_\_

Line 8 from Part III \_\_\_\_\_

Total \_\_\_\_\_

Percentage attributable to Ontario  
(based on most recent tax return) \_\_\_\_\_ %

**Specified Revenue attributed to Ontario** \_\_\_\_\_

**Total Fee payable (refer to Appendix B of the Rule)** \_\_\_\_\_

**AMENDMENT TO  
COMPANION POLICY 13-502CP  
FEES**

**PART 1 AMENDMENTS TO COMPANION POLICY 13-502CP FEES**

**1.1 Amendments to Companion Policy 13-502CP Fees**

- (1) Companion Policy 13-502CP is amended by this instrument.
- (2) The following is added to the Companion Policy as section 2.3:

**“Registrants under the Act and the *Commodity Futures Act***

- (1) The Rule imposes an obligation to pay a participation fee on registrant firms, as defined in the Rule. A registrant firm is a person or company registered as a dealer or adviser under the Act. An entity so registered may also be registered as a dealer or adviser under the *Commodity Futures Act*; however an entity registered under both statutes will be a registrant firm under the Rule and will therefore pay a participation fee under the Rule. The revenue of such an entity from *Commodity Futures Act* activities will be included in the calculation of revenues made by the entity for purposes of calculating its fee under the Rule, as the definition of “capital markets activities” includes activities for which registration or an exemption from registration under the *Commodity Futures Act* is required. Section 2.8 of Rule 13-503 (*Commodity Futures Act*) (Ontario) exempts such an entity from paying any participation fee under that rule if the entity is current in paying its participation fees under the (*Securities Act*) Rule.
- (2) It is noted that registrant firms will pay activity fees under Rule 13-503 (*Commodity Futures Act*) (Ontario) even if they are not required to pay participation fees under that Rule.”
- (3) The following is added to the Companion Policy as section 2.4:

**“2.4 Registrant Firms** - A participation fee is paid by a “registrant firm”, which is defined in the Rule as “a person or company that is registered as one or both of a dealer or an adviser under the Act”. This definition ensures that a participation fee is paid at the firm level, and not by individual partners, directors, officers, representatives or salespersons of a firm.”
- (4) Old sections 2.3, 2.4 and 2.5 are renumbered as sections 2.5, 2.6 and 2.7, respectively, and references to such sections appearing in the Companion Policy are amended accordingly.
- (5) Section 3.2 is amended by the deletion of the last sentence of subsection 3.2(1) and the substitution of the following:

“Subsection 2.3(1) of the Rule requires the payment of this participation fee to be made by the earlier of the date on which the reporting issuer’s financial statements are required to be filed and the date on which the reporting issuer’s annual financial statements are filed.”
- (6) Subsection 3.3(1) is deleted and the following substituted:

“(1) Section 2.5 of the Rule requires the calculation of the capitalization of a Class 1 reporting issuer to include the aggregate market value, at the end of the relevant financial year, of each class or series of corporate debt and of each class or series of preferred shares of the reporting issuer or, if applicable, a subsidiary entity of the reporting issuer. It is noted that the requirement that corporate debt or preferred shares be valued in accordance with market value excludes from the calculation corporate debt or preferred shares that are not normally traded after their initial issuance. For instance, corporate debt or an issue to its bankers generally would have no market value and would not be included in these calculations.”
- (7) Section 3.4 is amended by the deletion of the first sentence and the substitution of the following:

“Paragraph 2.7(b) of the Rule requires that the participation fee for a Class 3 reporting issuer that has no debt or equity securities listed or traded on a marketplace located anywhere in the world be determined by reference to the percentage of outstanding equity securities of the Class 3 reporting issuer registered in the name of Ontario persons.”.



- (8) Section 3.3 is amended by the addition of the following as subsections (3) and (4):
- “(3) It is noted that market value calculation of a class of securities included in a calculation under section 2.5 will include all of the securities of the class, even if some of those securities are still subject to a hold period or are otherwise not freely tradable.
- (4) If the closing price of a security on a particular date is not ascertainable because there is no trade on that date or the marketplace does not generally provide closing prices, a reasonable alternative, such as the most recent closing price before that date, the average of the high and low trading prices for that date, or the average of the bid and ask prices on that date is acceptable.”
- (9) Section 4.4 is amended by
- (a) renumbering the existing section as subsection (1); and
- (b) adding the following as subsection (2):
- “The definition of “capital market activities” also includes activities for which registration or an exemption from registration under the *Commodity Futures Act* is required. The Commission is of the view that these activities would include, without limitation, trading in commodity futures contracts, providing commodity futures contracts-related advice and portfolio management services involving commodity futures contracts.”.
- (10) Section 5.1 is deleted, and subsequent sections renumbered.

## 1.2 Amendments to Appendices to Companion Policy 13-502CP

- (1) The Appendices to Companion Policy 13-502CP are amended by this Part of this instrument.
- (2) Appendix A is amended by
- (a) the change of the Activity Fee in respect of “files application for relief pursuant to sections 104 and 121 of the Act” from “\$5,500” to “\$7,000 (\$5,500 plus \$1,500)”, and the addition of the following footnote to that Activity Fee, with subsequent footnotes renumbered:
- “as to the \$5,500 fee, see item F.1 of Appendix C to the Rule and, as to the \$1,500 fee, see item F.3 of Appendix C to the Rule.”.
- (b) the deletion of the Item “files a Form 42 Report of Issuer Bid”;
- (c) the change of the second last Item to “files final short form prospectus”; and
- (d) the change of the Activity Fee payable in the last Item from “\$500” to “nil”.
- (3) Appendix B is amended by the deletion of the reference to “Form 13-502F1” in the first Item and the substitution of a reference to “Form 13-502F3”.
- (4) Appendix E is amended by the deletion of the reference to “Form 13-502F2” in the first Item and the substitution of a reference to “Form 13-502F3”.
- (5) The footnotes to Appendices A to E are amended by the following changes to the following footnotes, as numbered without regard to the renumbering of footnotes referred to in paragraph 2(a) above:

Footnote	Old Reference	New Reference
1	E.1	F.1
6	H	I
7	M.1	N.1
9	I.3	J.3
10	I.3	J.3
11	I.4	J.4

Footnote	Old Reference	New Reference
13	E.3	F.3
14	I.3	J.3
15	I.4	J.4
17	I.3	J.3
18	E.3	F.3
20	E.3	F.3
21	E.3	F.3

**5.1.3 Notice of Final Rule and Policy Under the Commodity Futures Act - OSC Rule 13-503 (Commodity Futures Act) Forms 13-503F1 and 13-503F2, Companion Policy 13-503CP Fees and Notice of Revocation of Schedule 1 of Regulation 90 Made Under the Commodity Futures Act**

**NOTICE OF FINAL RULE AND POLICY UNDER THE *COMMODITY FUTURES ACT***

**ONTARIO SECURITIES COMMISSION RULE 13-503  
(*COMMODITY FUTURES ACT*)  
FORMS 13-503F1 AND 13-503F2  
COMPANION POLICY 13-503CP  
FEES**

**AND**

**NOTICE OF REVOCATION OF  
SCHEDULE 1 OF REGULATION 90 MADE UNDER THE *COMMODITY FUTURES ACT***

**Notice of Rule**

The Commission has, under section 65 of the *Commodity Futures Act* (CFA), made rule 13-503 Fees (the Rule) as a rule under the CFA and has, under section 73 of the CFA, adopted Companion Policy 13-503CP (the Companion Policy) as a policy under the CFA. The Rule contains Forms 13-503F1 and 13-503F2.

The Rule and the material required by the CFA to be delivered to the Minister of Finance were delivered on September 17, 2003. If the Minister does not approve, reject or return the Rule by November 16, 2003, or if the Minister approves the rule, the Rule will come into force on December 1, 2003.

The rule was published for comment on May 16, 2003, at (2003) 26 OSCB 3712. No comments were received.

**Substance and Purpose of Proposed Rule**

On March 31, 2003, OSC Rule 13-502 (OSA Fees Rule), which governs fees paid under the *Securities Act* (Ontario), came into effect. The purpose of the Rule and Companion Policy is to establish a fee regime under the *Commodity Futures Act* (CFA) that is consistent with the approach of the OSA Fees Rule. Both the Rule and the OSA Fees Rule are designed to accomplish three primary purposes: to reduce the overall fees charged to market participants from what existed previously in Ontario; to create a clear and streamlined fee structure; and to adopt fees that accurately reflect the Commission's costs of providing services.

Similar to the OSA Fees Rule, the Rule requires the payment of "participation fees" and "activity fees". Participation fees are generally intended to represent the benefit derived by registrant firms from participating in Ontario's capital markets. Activity fees, on the other hand, are intended to represent the direct cost of OSC staff resources to take a specific action or provide a specific service requested by a market player.

**Summary of Changes to the Rule**

Only minor drafting changes were made to the Rule and to the Forms to mirror minor drafting changes made to Rule 13-502 and its related forms.

**Amendments to Regulation**

In connection with making the Rule and the Companion Policy, the Commission will revoke the current fee schedule, Schedule 1 of Regulation 90 made under the CFA (the Regulation). The revocation will become effective on the same date that the Rule comes into force, December 1, 2003.

**Text of Rule and Companion Policy**

The text of the Rule and the Companion Policy follows.

**Questions**

Questions may be referred to:

Randee Pavalow  
Director, Capital Markets  
(416) 593-8257  
e-mail: [\*\*rpavalow@osc.gov.on.ca\*\*](mailto:rpavalow@osc.gov.on.ca)

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(416) 593-8253  
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**5.1.4 OSC Rule 13-503 (Commodity Futures Act) Fees**

**ONTARIO SECURITIES COMMISSION  
RULE 13-503 (COMMODITY FUTURES ACT)  
FEES**

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**ONTARIO SECURITIES COMMISSION  
RULE 13-503 (COMMODITY FUTURES ACT)  
FEES**

**PART 1            DEFINITIONS**

**1.1        Definitions - In this Rule,**

“CFA” means the *Commodity Futures Act*;

“CFA activities” means activities for which registration under the CFA or an exemption from registration is required;

“IDA” means the Investment Dealers Association of Canada;

“Ontario percentage” means, for the financial year of a registrant firm

- (a)        that has a permanent establishment in Ontario, the percentage of the income of the registrant firm allocated to Ontario for the financial year in the corporate tax filings made for the person or company under the *Income Tax Act* (Canada), or
- (b)        that does not have a permanent establishment in Ontario, the percentage of the total revenues of the registrant firm attributable to CFA activities in Ontario;

“registrant firm” means a person or company registered as one or both of a dealer or an adviser under the CFA; and

“specified Ontario revenues” means, for a registrant firm, the revenues determined in accordance with section 2.5 or 2.6.

**PART 2            PARTICIPATION FEES**

**2.1        Participation Fee** - Subject to section 2.8, a registrant firm shall pay, for each calendar year, the participation fee shown in Appendix A that applies to the registrant firm according to the specified Ontario revenues of the registrant firm for its previous financial year earned from CFA activities.

**2.2        Time of Payment** - A registrant firm shall pay the participation fee referred to in section 2.1 by December 31 of each year.

**2.3        Form Requirements**

- (1)        A registrant firm shall file a Form 13-503F1, completed in accordance with its terms, by December 1 of each year.
- (2)        The Form 13-503F1 referred to in subsection (1) shall be based on the audited financial statements of the registrant firm for its financial year last completed or to be completed before January 1 of the calendar year for which the participation fee calculated in the Form 13-503F1 will be paid.
- (3)        If the financial year referred to in subsection (2) is not completed, or the financial statements of the registrant firm for that financial year are not available, by December 1, the registrant firm shall
  - (a)        file the Form 13-503F1 due on that date on the basis of a good faith estimate of its specified Ontario revenues for that financial year; and
  - (b)        pay its participation fee by December 31 based on the estimate of the Ontario specified revenues contained in the Form 13-503F1.
- (4)        A registrant firm that filed its Form 13-503F1 under subsection (3) shall, when it files its annual financial statements for the applicable financial year,
  - (a)        file a revised Form 13-503F1 reflecting the annual financial statements;
  - (b)        calculate the participation fee on the basis of those financial statements; and
  - (c)        either

- (i) pay any amount of the participation fee not paid under subsection (3), or
- (ii) be entitled to receive from the Commission a refund of any amount paid under subsection (3) in excess of the participation fee payable.

**2.4 Filing of Form 13-502F2** - A registrant firm shall file a Form 13-503F2, completed in accordance with its terms, in connection with the adjustment made in accordance with subsection 2.3(4).

**2.5 Calculation of Specified Ontario Revenues for a Member of the IDA** - The specified Ontario revenues for a financial year of a registrant firm that is a member of the IDA are calculated by multiplying

- (a) the amount indicated by the registrant firm as the Total Revenue on the statement of income contained in the Joint Financial Questionnaire and Report of the IDA for the financial year, less amounts not attributable to CFA activities; and
- (b) the Ontario percentage of the member of the IDA for the financial year.

**2.6 Calculation of Specified Ontario Revenues for Others**

- (1) The specified Ontario revenues for a financial year of a registrant firm that is not a member of the IDA are calculated by multiplying
  - (a) the gross revenues earned from CFA activities of the registrant firm contained in its audited financial statements for the financial year, less amounts not attributable to CFA activities, and further less the reductions of that amount taken under subsection (2); and
  - (b) the Ontario percentage of the registrant firm for the financial year.
- (2) A registrant firm may reduce the amount referred to in subsection (1) by deducting the amount of the advisory or sub-advisory fees paid by the registrant firm to another registrant firm in Ontario in the applicable financial year.

**2.7 Late Fee**

- (1) Subject to subsection (2), a registrant firm that is late in paying a participation fee under this Part shall pay an additional fee of one percent of the participation fee payable apart from this section for each business day on which the participation fee remains due and unpaid.
- (2) A registrant firm is not required to pay a fee under subsection (1) in excess of 25 percent of the participation fee otherwise payable under this Part.

**2.8 Exemption** - This Part does not apply to a registrant firm registered under the *Securities Act* (Ontario) that is current in paying its participation fees under Rule 13-502 under the *Securities Act* (Ontario).

### PART 3 ACTIVITY FEES

**3.1 Activity Fees** - A person or company that files a document or takes an action listed in Appendix B shall, concurrently with the filing of the document or taking of the action, pay the activity fee shown in Appendix B beside the description of the document or action.

### PART 4 CURRENCY CALCULATIONS

**4.1 Currency Calculations** - Any calculation of money required to be made under this Rule that results in a currency other than Canadian dollars shall be translated into a Canadian dollar amount at the daily noon exchange rate posted on the Bank of Canada website for the date for which the calculation is made.

### PART 5 EXEMPTIONS

**5.1 Exemptions** - The Director may grant an exemption from the provisions of this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

## **PART 6 EFFECTIVE DATE**

**6.1 Effective Date** - This Rule comes into force on December 1, 2003.



**APPENDIX A – PARTICIPATION FEES**

<b>Specified Ontario Revenues</b>	<b>Participation Fee</b>
Under \$500,000	\$1,000
\$500,000 to under \$1 million	\$5,000
\$1 million to under \$5 million	\$10,000
\$5 million to under \$10 million	\$25,000
\$10 million to under \$25 million	\$50,000
\$25 million to under \$50 million	\$75,000
\$50 million to under \$100 million	\$150,000
\$100 million to under \$200 million	\$250,000
\$200 million to under \$500 million	\$500,000
\$500 million to under \$1 billion	\$650,000
\$1 billion and over	\$850,000

## APPENDIX B - ACTIVITY FEES

Document or Activity	Fee
<b>A. Applications for Discretionary Relief</b>	
1. Application under section 38 or 80	\$5,500 for each section under which an application is made (plus \$2,000 if the applicant is not subject to, and is not reasonably expected to become subject to, a participation fee under this Rule or Rule 13-502 under the <i>Securities Act</i> (Ontario)) subject to the overall limitation set out below
2. Application under (a) Sections 36(1), 40, 46(2) of the CFA; and (b) Subsection 27(1) of the Regulation to the CFA.	Nil
3. Any application for discretionary relief from, or regulatory approval under, any other section of the CFA, Regulation and any Rule of the Commission made under the CFA but not listed in items A.1 or A.2 above.  <i>Note: It is noted that the following applications for recognition, registration or approval under the CFA are subject to the fees contained in this item A(2):</i>  (i) <i>recognition of an exchange under section 34 of the CFA, a self-regulatory organization under section 16 of the CFA or a clearing house under section 17 of the CFA;</i>  (ii) <i>registration of an exchange under section 15 of the CFA; and</i>  (iii) <i>approval of the establishment of a council, committee or ancillary body under section 18 of the CFA.</i>	\$1,500 for each section under which an application is made (plus \$2,000 if the applicant is not subject to, and is not reasonably expected to become subject to, a participation fee under this Rule or Rule 13-502 under the <i>Securities Act</i> (Ontario)) subject to the overall limitation set out below
	The maximum fee for an application, or, regardless of the number of sections under which application is made, shall be \$7,500 if the applicant is subject to, or is reasonably expected to become subject to, a participation fee under this Rule or Rule 13-502 under the <i>Securities Act</i> (Ontario), or \$9,500 if the applicant is not subject to, and is not reasonably expected to become subject to, a participation fee under this Rule or Rule 13-502 under the <i>Securities Act</i> (Ontario). These limits apply to the application even if the application is made under both the CFA and the <i>Securities Act</i> (Ontario); i.e. an application under both statutes will not be subject to a fee of more than \$7,500 or \$9,500, as applicable.

Document or Activity	Fee
<b>B. Registration-Related Activity</b>	
1. New registration of a firm in any category of registration  <i>Note: If a firm is registering as both a dealer and an adviser, it will be required to pay two activity fees.</i>	\$800
2. Change in registration category  <i>Note: This would include a dealer becoming an adviser or vice versa, or changing a category of registration within the general category of adviser. A dealer adding a category of registration, such as a dealer becoming both a dealer and an adviser, would be covered in the preceding section.</i>	\$800
3. Registration of a new director, officer or partner (trading and/or advising), salesperson, floor trader or representative  <i>Notes:</i>  <i>(i) Registration of a new non-trading or non-advising director, officer or partner does not trigger an activity fee.</i>  <i>(ii) An individual registering as both a dealer and an adviser will be required to pay two activity fees.</i>  <i>(iii) A registration fee will not be charged if an individual makes application to register with a new registrant firm within three months of terminating employment with his or her previous registrant firm provided that the individual's category of registration remains unchanged.</i>	\$400 per person
4. Change in status from a non-trading and/or non-advising capacity to a trading and/or advising capacity	\$400 per person
5. Registration of a new registrant firm, or the continuation of registration of an existing registrant firm, resulting from or following an amalgamation of registrant firms	\$6,000
6. Application for amending terms and conditions of registration	\$1,500
<b>C. Application for Approval of the Director under Section 9 of the Regulation</b>	\$1,500
<b>D. Request for Certified Statement from the Commission or the Director under Section 62 of the CFA</b>	\$500
<b>E. Commission Requests</b>	
1. Request for a photocopy of Commission records	\$0.50 per page
2. Request for a search of Commission records	\$10
<b>F. Late Filing</b>	
1. Fee for late filing of any of the following documents:	

Document or Activity	Fee
<p>(a) Annual financial statements and interim financial statements;</p> <p>(b) Report under section 15 of Regulation to the CFA;</p> <p>(c) Report under section 17 of Regulation to the CFA;</p> <p>(d) Filings for the purpose of amending Form 5 and Form 7 or Form 33-506F4 under Rule 33-506; and</p> <p>(e) Any document required to be filed by a registrant firm or individual in connection with the registration of the registrant firm or individual under the CFA with respect to</p> <p style="padding-left: 40px;">(i) terms and conditions imposed on a registrant firm or individual; or</p> <p style="padding-left: 40px;">(ii) an order of the Commission.</p>	<p>\$100 per business day (subject to a maximum of \$5,000 per registrant firm for all documents within one financial year of the registrant firm)</p>

**ONTARIO SECURITIES COMMISSION  
FORM 13-503F1  
(COMMODITY FUTURES ACT)**

**PARTICIPATION FEE CALCULATION  
FOR REGISTRANT FIRMS**

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**Notes and Instructions**

1. Registrant firms are required to complete the Part that applies to their particular category of registration, as follows:  
  
Part I - Investment Dealers Association of Canada members  
  
Part II – Advisers and other Dealers
2. The components of revenue reported in this Form should be based on the same principles as the comparative statement of income that is prepared in accordance with generally accepted accounting principles (“GAAP”), or such equivalent principles applicable to the audited financial statements of non-resident advisers, except that revenues should be reported on an unconsolidated basis. It is recognized that the components of the revenue classification may vary between firms. However, it is important that each firm be consistent between periods.
3. Each Part of this Form should be read in conjunction with the related notes and instructions of that Part where applicable.
4. Members of the Investment Dealers Association of Canada may refer to Statement E of the Joint Regulatory Financial Questionnaire and Report for guidance.
5. Comparative figures are required for the registrant firm’s year end date.
6. Participation fee revenue will be based on the portion of total revenue that can be attributed to Ontario. The percentage attributable to Ontario for the reported year end should be the provincial allocation rate used in the corporate tax return for the same fiscal period. For firms that do not have a permanent establishment in Ontario, the percentage attributable to Ontario will be based on the proportion of total revenues generated from CFA activities in Ontario.
7. All figures should be expressed in Canadian dollars and rounded to the nearest thousand.
8. Information reported on this questionnaire must be certified by two members of senior management in Part IV to attest to its completeness and accuracy.

Revenue for Participation Fee

Firm Name: \_\_\_\_\_

Calendar or Financial Year Ending,  
used in calculating the Participation Fee: \_\_\_\_\_

**PART I – Investment Dealers Association of Canada Members**

	Current Year \$	Prior Year \$
<b>REVENUE SUBJECT TO PARTICIPATION FEE</b>		
1. Line 18 of Statement E of the Joint Regulatory Financial Questionnaire and Report	_____	_____
2. Less amounts not attributable to CFA activities	_____	_____
3. <b>REVENUE SUBJECT TO PARTICIPATION FEE</b> (line 1 less line 2)	_____	_____

**Part II – Advisers and Other Dealers**

1. Gross Revenue as per the audited financial statements (note 1)	_____	_____
<b>Less the following items:</b>		
2. Amounts not attributable to CFA activities	_____	_____
3. Advisory or Sub-Advisory fees paid to other Ontario registrant firms (note 2)	_____	_____
4. <b>REVENUE SUBJECT TO PARTICIPATION FEE</b> (line 1 less lines 2 and 3)	_____	_____

**[See Notes and Instructions]**

**Notes and Instructions**

1. Gross Revenue is defined as the sum of all revenues reported on a gross basis as per the audited financial statements prepared in accordance with GAAP, or such equivalent principles applicable to the audited financial statements of non-resident advisers, except that revenues should be reported on an unconsolidated basis. Items reported on a net basis must be adjusted for purposes of the fee calculation. Gross revenues are reduced by amounts not attributable to CFA activities.
2. Where the advisory or sub-advisory services of another Ontario registrant firm are used by the registrant firm to advise on a portion of its assets under management, such advisory or sub-advisory costs are permitted as a deduction on this line.

**Part III – Calculation of Revenue Attributable to Ontario**

---

**Firm Name:** \_\_\_\_\_

**Calendar or Financial Year Ending,  
used in calculating the Participation Fee:** \_\_\_\_\_

**Gross Revenue subject to Participation Fee:** \$ \_\_\_\_\_

Line 3 from Part I \_\_\_\_\_

Line 4 from Part II \_\_\_\_\_

Percentage attributable to Ontario  
(based on most recent tax return) \_\_\_\_\_ %

**Specified Revenue attributable to Ontario** \_\_\_\_\_

**Total Fee payable (refer to Appendix A of the Rule)** \_\_\_\_\_



**Part IV - Management Certification**

---

**Registrant Firm Name:** \_\_\_\_\_

We have examined the attached statements and certify that, to the best of our knowledge, they present fairly the revenues of the firm for the period ended \_\_\_\_\_ and are prepared in agreement with the books of the firm.

We certify that the reported revenues of the firm are complete and accurate and in accordance with generally accepted accounting principles.

Name and Title	Signature	Date
1. _____ _____	_____	_____
2. _____ _____	_____	_____

**FEES RULE  
FORM 13-503F2  
(COMMODITY FUTURES ACT)**

**ADJUSTMENT OF FILING OR FEE PAYMENT  
UNDER SUBSECTION 2.3(4) OF RULE 13-503**

---

**Registrant Firm Name:** \_\_\_\_\_

**Calendar or Financial Year Ending,  
used in calculating the Participation Fee:** \_\_\_\_\_

1. State the amount of the participation fee estimated under the filing of Form 13-503F1 previously made:  
\_\_\_\_\_
2. Show the amount of the participation fee based on the audited financial statements for the last completed financial year: \_\_\_\_\_
3. **[Include revised and completed Form 13-503F1.]**
4. Difference between 1 and 2: \_\_\_\_\_
5. Indicate refund due (balance owing): \_\_\_\_\_

**ONTARIO SECURITIES COMMISSION  
COMPANION POLICY 13-503CP  
(COMMODITY FUTURES ACT)**

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**ONTARIO SECURITIES COMMISSION  
COMPANION POLICY 13-503CP  
(COMMODITY FUTURES ACT)**

**PART 1 PURPOSE OF COMPANION POLICY AND INTERPRETATION**

- 1.1 Purpose of Companion Policy** - The purpose of this Companion Policy is to state the views of the Commission on various matters relating to Rule 13-503 Fees under the CFA (the "Rule"), including
- (a) an explanation of the overall approach of the Rule;
  - (b) explanation and discussion of various parts of the Rule; and
  - (c) examples of some matters described in the Rule.
- 1.2 Interpretation** - Terms defined in the Rule and used in this Companion Policy have the respective meaning ascribed to them in the Rule.

**PART 2 PURPOSE AND GENERAL APPROACH OF THE RULE**

**2.1 Purpose and General Approach of the Rule**

- (1) The general approach of the Rule is to establish a fee regime that is consistent with the approach of Rule 13-502 (the "OSA Fees Rule"), which governs fees paid under the *Securities Act* (Ontario). That rule is designed to accomplish three primary purposes – to reduce the overall fees charged to market participants from what existed previously in Ontario, to create a clear and streamlined fee structure and to adopt fees that accurately reflect the Commission's costs of providing services.
- (2) The fee regime implemented by the Rule is based on the concept of "participation fees" and "activity fees".

- 2.2 Participation Fees** - Participation fees generally are designed to represent the benefit derived by registrant firms from participating in Ontario's capital markets. Registrant firms are required to pay participation fees annually. The participation fee is based on a measure of the registrant firm's revenues from CFA activities in Ontario, which is intended to serve as a proxy for the registrant firm's activities under the CFA. The amounts of the participation fees have been based on the cost of a broad range of regulatory services that cannot be practically or easily attributed to individual activities or entities. Participation fees replace most of the filing fees and other activity fees formerly charged to registrant firms under the previous fees regime.

**2.3 Registrants under the CFA and the *Securities Act* (Ontario)**

- (1) The Rule imposes an obligation to pay a participation fee only on registrant firms, as defined in the Rule. A registrant firm is a person or company registered as a dealer or adviser under the CFA. The only registrant firms to pay a participation fee under the Rule will be those firms registered in Ontario only under the CFA. An entity that is registered both under the CFA and the *Securities Act* (Ontario) is exempted by section 2.8 of the Rule from the requirement to pay a participation fee under the Rule if it is current in paying its participation fees under the OSA Fees Rule. Such an entity will pay its participation fee under the OSA Fees Rule, and will include its revenues derived from CFA activities as part of its revenues for purposes of determining its participation fee under that Rule.
- (2) It is noted, of course, that dual registrants will pay activity fees under the Rule in accordance with Appendix B of the Rule even though they may pay their participation fees under the OSA Fees Rule.

- 2.4 Registrant Firms** - A participation fee is paid by a "registrant firm", which is defined in the Rule as "a person or company that is registered as one or both of a dealer or an adviser under the CFA". This definition ensures that a participation fee is paid at the firm level, and not by individual partners, directors, officers, representatives, salespersons and floor traders of a firm.

- 2.5 Activity Fees** - Activity fees are designed to represent the direct cost of Commission staff resources expended in undertaking certain activities requested of staff by registrant firms or other persons or companies, for example in connection with the applications for discretionary relief or the processing of registration documents. Market participants are charged activity fees only for activities undertaken by staff at the request of the market participant. Activity fees are charged for a limited number of activities only and are flat rate fees based on the average cost to the Commission of providing the service.

## 2.6 No Refunds

- (1) Generally speaking, a person or company that pays a fee under the Rule is not entitled to a refund of that fee. For example, there is no refund available for an activity fee paid in connection with an action that is subsequently abandoned by the payor of the fee. Also, there is no refund available for a participation fee paid by a registrant firm whose registration is terminated later in the calendar year for which the fee was paid.
- (2) An exception to the principle discussed in subsection (1) is provided for in subsection 2.3(4) of the Rule. This provision allows for the adjustment of a participation fee paid by a registrant firm based on a good faith estimate of its revenues if its financial statements are not available, or its relevant financial year is not completed, at the time that the Form 13-503F1 is required to be filed under subsection 2.3(1) of the Rule.
- (3) The Commission will also consider requests for adjustments to fees paid in the case of incorrect calculations made by fee payors.

**2.7 Indirect Avoidance of Rule** - The Commission may examine arrangements or structures implemented by registrant firms and their affiliates that raise the suspicion of being structured solely for the purpose of reducing the fees payable under the Rule. In particular, the Commission will be interested in circumstances in which revenues from registrable activities carried on by a corporate group are not treated as revenues of a registrant firm, thereby possibly artificially reducing the specified Ontario revenue calculations used in determining fees payable under the Rule.

## PART 3 PARTICIPATION FEES

### 3.1 Fees Payable in Advance

- (1) Section 2.1 of the Rule prescribes the annual payment of a participation fee by each registrant firm, for each calendar year, to be based on the specified Ontario revenues of the registrant firm for its previous financial year earned from CFA activities. Section 2.2 of the Rule requires the payment of a participation fee for a calendar year on December 31 of each year.
- (2) The Commission notes that the effect of sections 2.1 and 2.2 of the Rule is that a participation fee is payable in advance by a registrant firm for a calendar year, even though the fee is based on the specified Ontario revenues of the registrant firm for the last financial year of the registrant firm that ends before the beginning of the calendar year for which the participation fee is paid. In respect of a participation fee for the 2004 calendar year, the calculation of the fee would be based on the financial year of the registrant firm ending in 2003.
- (3) Section 2.2 and subsection 2.3(1) of the Rule require each registrant firm to file its Form 13-503F1 respecting its participation fee by December 1, and to pay its participation fee by December 31, of the year before the calendar year for which the participation fee applies. The fixing of one date for each of the filing and fee payment by a registrant firm is consistent with the National Registration Database ("NRD") system of the Canadian securities regulatory authorities; the NRD system uses a common renewal date for all registrants of December 31 in each year.
- (4) By way of illustration, a registrant firm with a financial year end of June 30, will file a Form 13-503F1 by December 1, 2003 and pay its participation fee by December 31, 2003. That filing and payment will satisfy the registrant firm's obligations contained in the Rule for the 2004 calendar year, but the calculation of the participation fee will be based on the specified Ontario revenues of the registrant firm for the financial year ended June 30, 2003.
- (5) A registrant firm with a financial year end of December 31 will, by December 1, 2003, file its Form 13-503F1, and pay its participation fee by December 31, 2003, in order to pay its participation fee for the 2004 calendar year. Even though that filing and payment will satisfy the registrant firm's obligations contained in the Rule for the 2004 calendar year, the calculation of the participation fee will be based on the specified Ontario revenues of the registrant firm for the financial year ended December 31, 2003. In such circumstances, the registrant firm would use the mechanism of subsection 2.3(3) and (4) and section 2.4 to pay a participation fee based on an estimation of its specified Ontario revenues and later to adjust its payment.

**3.2 Late Fees** - Section 2.7 of the Rule prescribes the payment of additional fees in case of overdue payment of fees. The Commission notes that it will, in appropriate circumstances, consider tardiness in the payment of fees as a matter going to the fitness for registration of a registrant firm in considering the registration status of that registrant firm.

**3.3 "CFA Activities"** - Calculation of the participation fee involves consideration of the CFA activities undertaken by a person or company. The term "CFA activities" is defined in Section 1.1 of the Rule to include "activities for which

registration under the CFA or an exemption from registration is required". The Commission is of the view that these activities would include, without limitation, trading in commodity futures contracts, providing commodity futures contracts-related advice and portfolio management services involving commodity futures contracts.

#### **PART 4 CALCULATION EXAMPLES**

**4.1 Calculation Examples** - Appendices A and B contain some examples of how fees would be calculated under the Rule.

## Appendix A Commodity Trading Manager

Assume that:

- Financial year-end is December 31<sup>st</sup>
- Firm had specified Ontario revenues of \$450,000 for the financial year ended December 31, 2003
- audited financial statements have to be filed

Item	Participation Fee	Activity Fee
files Form 13-503F1 on December 1, 2003, estimating its specified Ontario revenues for the year ending December 31, 2003 as \$550,000	\$5,000 <sup>1</sup>	
files annual financial statements, showing actual specified Ontario revenues of \$450,000		nil
files revised Form 13-503F1 and Form 13-503F2, reflecting actual specified Ontario revenues of \$450,000 and actual participation fee for 2004 of \$1,0000	Refund of \$4,000 <sup>2</sup>	
1 renewal of registration		nil
3 appointments of new advising officers/directors		\$400 x 3 = \$1,200 <sup>3</sup>
2 appointments of new non-advising officer/director		nil
2 new branches		nil
1 branch closure		nil
1 termination of director		nil
1 termination of officer		nil
2 requests for change in the status of officers from non-advising to advising		\$400 x 2 = \$800 <sup>4</sup>

<sup>1</sup> See Section 2.3 and Appendix A of the Rule.

<sup>2</sup> See Subsection 2.3(4) and Section 2.4 of the Rule.

<sup>3</sup> See item B.3 of Appendix B of the Rule.

<sup>4</sup> See item B.4 of Appendix B of the Rule.

**Appendix B**  
**Futures Commission Merchant ("FCM")**

Assume that:

- FCM's financial year-end is December 31<sup>st</sup>
- FCM had specified Ontario revenues of \$600,000 for the financial year ended on December 31, 2003
- FCM currently has 5 sales representatives
- audited financial statements have to be filed with the IDA

Item	Participation Fee	Activity Fee
files Form 13-503F1 on December 1, 2003, estimating its specified Ontario revenues for the year ending December 31, 2003 as \$475,000	\$1,000 <sup>5</sup>	
files annual financial statements, showing actual specified Ontario revenues of \$600,000		nil
Files revised Form 13-503F1 and Form 13-503F2, reflecting actual specified Ontario revenues of \$600,000 and actual participation fee for 2004 of \$5,000	\$4,000 <sup>6</sup>	
1 application for discretionary relief of one requirement under the Act		\$1,500 x 1 = \$1,500 <sup>7</sup>
files annual financial statements		nil
1 renewal of registration		nil
2 appointments of new trading officers/directors		\$400 x 2 = \$800 <sup>8</sup>
1 appointment of new salesperson		\$400 x 1 = \$400 <sup>9</sup>
2 transfers of salespersons		nil
3 transfers of registration of trading officer/director		nil
1 change in business name		nil
3 terminations of sales representatives or officer/director		nil
3 appointments of non-trading officers/directors		nil
1 request for change in the status of officers from non-trading to trading		\$400 x 1 = \$400 <sup>10</sup>

<sup>5</sup> See Section 2.3 and Appendix A of the Rule.

<sup>6</sup> See Subsection 2.3(4) and Section 2.4 of the Rule.

<sup>7</sup> See item A.2 of Appendix B of the Rule.

<sup>8</sup> See item B.3 of Appendix B of the Rule.

<sup>9</sup> See item B.3 of Appendix B of the Rule.

<sup>10</sup> See item B.4 of Appendix B of the Rule.



## **Chapter 7**

# **Insider Reporting**

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

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

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

## Chapter 8

# Notice of Exempt Financings

### Exempt Financings

The Ontario Securities Commission reminds issuers and other parties relying on exemptions that they are responsible for the completeness, accuracy, and timely filing of Forms 45-501F1 and 45-501F2, and any other relevant form, pursuant to section 27 of the *Securities Act* and OSC Rule 45-501 ("Exempt Distributions").

#### REPORTS OF TRADES SUBMITTED ON FORM 45-501F1

<u>Transaction Date</u>	<u>Purchaser</u>	<u>Security</u>	<u>Total Purchase Price (\$)</u>	<u>Number of Securities</u>
01-Sep-2003	3 Purchasers	ABC American -Value Fund - Units	500,000.00	67,842.00
01-Sep-2003	1058195 Ontario Inc.	ABC Fully-Managed Fund - Units	160,000.00	18,079.00
01-Sep-2003	6 Purchasers	ABC Fundamental - Value Fund - Units	962,802.00	60,903.00
28-Aug-2003	Ralph Robb	Acuity Pooled Core Canadian Equity Fund - Trust Units	200,000.00	13,898.00
11-Sep-2003	Credit Risk Advisors	Advanstar Communications, Inc. - Notes	351,832.06	11.00
01-Sep-2000	Dynamic Mutual Funds	African Minerals Ltd. - Common Shares	5,310,000.00	1,000,000.00
22-Aug-2003	Inglewood Holdings Inc.	Allegro Investment Corporation S.A. - Notes	176,375.00	1,250.00
02-Sep-2003	Ariella Rohringer	Alpha Fund (The) - Limited Partnership Units	500,000.00	4.00
14-Aug-2003	Steven Boileau	Andromeda Media Capital Corporation - Units	1,000.00	1,000.00
03-Sep-2003	10 Purchasers	Aquiline Resources Inc. - Units	407,500.00	626,923.00
29-Aug-2003	N/A	BioSyntech, Inc. - Units	813,000.00	813.00
04-Sep-2003	CMP 2003 Resources Limited Partnership	Bravo Venture Group Inc. - Flow-Through Shares	170,000.00	1,700,000.00
30-Aug-2003	Kenneth Foster Wilson	Call Genie Inc. - Common Shares	10,000.00	33,334.00
02-Sep-2003	Canada Dominion Resources LP XI;CMP 2003 Resource Limited Partnership	Cambior Inc. - Common Shares	1,999,998.00	571,428.00

**Notice of Exempt Financings**

05-Sep-2003	John Dermastja & Rosemary Ragno	CareVest First Mortgage Investment Corporation - Preferred Shares	100,000.00	100,000.00
05-Sep-2003	3 Purchasers	Cassidy Gold Corp. - Units	42,000.00	140,000.00
09-Sep-2003	Dave Skarica	Chariot Resources Limited - Units	3,000.00	20,000.00
02-Sep-2003	Tricor (CGI) Holdings Inc.	Comweb Group Inc. - Shares	20,000,000.00	1,729,138.00
20-Aug-2003	36 Purchasers	Cygnal Technologies Corporation - Common Shares	7,000,000.00	5,600,000.00
05-Sep-2003	Daniel Hachey	Datec Group Ltd. - Common Shares	12,000.21	21,053.00
05-Sep-2003	BMO Nesbitt Burns Inc. and Royal Bank of Canada	DDJ U.S. High Yield Trust - Units	37,300,000.00	4,000,000.00
10-Sep-2003	5 Purchasers	Desert Sun Mining Corp. - Common Shares	6,520,500.00	4,725,000.00
05-Sep-2003	4 Purchasers	Devlan Exploration Inc. - Flow-Through Shares	3,500,000.00	1,093,750.00
20-Aug-2003	Axis Investment Fund Inc.; Venture Coaches Fund LP	Elliptic Semiconductor Inc. - Convertible Debentures	450,000.00	2.00
05-Sep-2003	12 Purchasers	Euston Capital Corp. - Common Shares	38,919.00	12,973.00
08-Sep-2003	Sherfam Inc.	Excalibur Limited Partnership - Limited Partnership Units	3,242,720.35	13.00
22-Aug-2003	Paniz; Jessica; Executive Systems	Fisgard Capital Corporation - Shares	30,220.00	30,220.00
27-Aug-2003	Inco Limited	Freewest Resources Canada Inc. - Common Shares	0.00	50,000.00
29-Aug-2003	Clare Pirie	Gold Summit Corporation - Units	6,000.00	20,000.00
20-Aug-2003	Ardesic Corporation	GotCompany.com Inc. - Preferred Shares	172,000.00	2,030,697.00
02-Sep-2003	Ontario Teachers's Pension Plan Board	Graham Global Investment Fund II Ltd. - Shares	US\$12,000.00	12,000,000.00
12-Sep-2003	17 Purchasers	Guyana Goldfields Inc. - Special Warrants	2,963,500.00	6,585,556.00
28-Aug-2003	Stonestreet L.P.	Heartland Oil and Gas Corp. - Units	356,070.40	80,000.00
23-Jul-2003 to 02-Sep-2003	11 Purchasers	Hornby Bay Exploration Limited - Units	75,000.00	1,500,000.00
22-Aug-2003	Cinram International Inc.	HSBC Short Term Investment Fund - Shares	1,000,000.00	99,638.00

**Notice of Exempt Financings**

21-Jul-2003	ATI Technologies Inc.	HSBC US Dollar Liquidity Fund - Units	84,312,000.00	60,000.00
05-Sep-2003 to 10-Sep-2003	4 Purchasers	IMAGIN Diagnostics, Inc. - Common Shares	30,000.00	30,000.00
02-Sep-2003	Deborah Beatty	Investeco Private Equity Fund, L.P. - Limited Partnership Units	150,000.00	150.00
31-Aug-2003	Jennifer Landecker and Abbey Lipson	Kingwest Avenue Portfolio - Units	43,300.00	2,179.00
01-Sep-2003	Lancaster Balanced Fund II	Lancaster Fixed Income Fund - Trust Units	234,006.00	18,828.00
03-Sep-2003	David Balsdon; Craig Allardyce	Mavrix Fund Managment Inc. - Common Shares	15,000.00	7,500.00
29-Aug-2003	6 Purchasers	McElvaine Investment Trust - Trust Units	272,962.23	15,131.00
03-Sep-2003	Suzanne Tremblay	Microsource Online, Inc. - Common Shares	30,000.00	5,000.00
03-Sep-2003	Michael K. Wright	Microsource Online, Inc. - Common Shares	6,000.00	1,000.00
03-Sep-2003	Trung Tran	Microsource Online, Inc. - Common Shares	6,000.00	1,000.00
05-Sep-2003	Kim L. Reilly	Microsource Online, Inc. - Common Shares	1,200.00	200.00
05-Sep-2003	Wes Durie	Microsource Online, Inc. - Common Shares	30,000.00	5,000.00
05-Sep-2003	Todd Warren Rowe	Microsource Online, Inc. - Common Shares	3,000.00	500.00
28-Aug-2003	Gary Cartwright	N-able Technologies International, Inc. - Common Shares	10,001.00	20,000.00
31-Jul-2003 to 06-Aug-2003	Angie Huzar and John Dudys	Navaho Networks Inc. - Common Shares	80,000.00	80,000.00
05-Sep-2003	Murray Sinclair; Sr.	Nevada Pacific Gold Ltd. - Units	111,000.00	300,000.00
15-Sep-2003	344850 Canada Inc.	NETISTIX TECHNOLOGIES CORPORATION - Common Shares	100,000.00	200,000.00
28-Aug-2003	12 Purchasers	Nucanolan Resources Ltd. - Units	140,000.00	1,400,000.00
29-Aug-2003	5 Purchasers	Passion Media Inc. - Units	80,000.00	533,333.00
21-Aug-2003	15 Purchasers	Peregrine Diamonds Ltd. - Special Warrants	2,050,000.00	20,500,000.00

**Notice of Exempt Financings**

05-Sep-2003	7 Purchasers	Plasma Environmental Technologies Inc. - Units	41,000.00	820,000.00
04-Sep-2003	Home Trust Company	QSPE - HCC Trust. - Notes	150,000.00	150,000.00
29-Aug-2003	The K2 Principal Fund L.P.	Queenstake Resources Ltd. - Common Shares	325,000.00	500,000.00
31-Jul-2003	Absolute Return Concepts Fund	RBC Asset Management - Units	84,600.00	782.00
29-Sep-2003	Sheldon Spring; Harry H. McDonald	Regis Resources Inc. - Flow-Through Shares	49,000.00	61,250.00
09-Sep-2003	Henry Maitland	Regis Resources Inc. - Flow-Through Shares	10,000.00	12,500.00
08-Sep-2003	Ontario teachers' Pension Plan Board	Rhone Offshore Partners II L.P - Limited Partnership Interest	0.00	1.00
03-Sep-2003	7 Purchasers	Rock Creek Resources Ltd. - Shares	3,455,000.00	1,382,000.00
09-Sep-2003	Leo J. Thibodeau	Ross River Minerals Inc. - Units	50,000.00	250,000.00
27-Aug-2003	7 Purchasers	Rubicon Minerals Corporation - Units	2,517,355.00	2,245,100.00
05-Sep-2003	Northern Rivers Innovation Fund LP	Rutter Technologies Inc. - Shares	90,000.00	60,000.00
02-Sep-2003 to 10-Sep-2003 01-Sep-2003	5 Purchasers	Sargold Resource Corporation - Units	1,200,000.31	8,656,666.00
	Central Perth Investments Limited and Kitchener Rangers Jr. A Hockey Club	Stacey Investment Limited Partnership - Limited Partnership Units	90,020.00	3,152.00
10-Sep-2003	Argosy Bridge Fund L.P. I	Systech Retail Systems Corp. - Warrants	1.00	69,630,123.00
13-Jun-2003	Randal Heide; Carolyn Gibson	Threads of Time Inc. - Preferred Shares	8,000.00	16,000.00
02-Sep-2003	Extendicare Inc.	THiiNC Information Management Inc. - Units	1,002,000.00	100.00
10-Sep-2003	Orin Securities Inc.	TUSK Energy Inc. - Subscription Receipts	830,000.00	200,000.00
05-Sep-2003	Futurenet Consulting Ltd. and Kerry Munro	Verb Exchange Inc. - Common Shares	46,970.00	167,750.00
31-Aug-2003	3 Purchasers	Vertex Balanced Fund - Trust Units	235,235.33	18,562.00
31-Aug-2003	John Helfrich	Vertex Fund - Trust Units	25,086.87	838,232.00
02-Sep-2003	Tricor Pacific Capital Mezzanine Debt (CGI) Company Ltd.	William F. White International Inc. - Subordinated secured credit facility	21,000,000.00	21,000,000.00

**NOTICE OF INTENTION TO DISTRIBUTE SECURITIES AND ACCOMPANYING DECLARATION UNDER SECTION 2.8 OF MULTILATERAL INSTRUMENT 45-102 RESALE OF SECURITIES - FORM 45-102F3**

<u><b>Seller</b></u>	<u><b>Security</b></u>	<u><b>Number of Securities</b></u>
John Buhler	Buhler Industries Inc. - Common Shares	222,522.00
Larry Melnick	Champion Natural Health.com Inc. - Shares	10,525.00
David M Smith	Coolbrands International Inc. - Shares	1,390,972.00
David J. Stern	Coolbrands International Inc. - Shares	486,106.00
Richard E. Smith	Coolbrands International Inc. - Shares	692,240.00
Stephen Sadler	Enghouse Systems Limited - Common Shares	350,000.00
Robert Essery	How to Web TV Inc. - Shares	600,000.00
Mustang Minerals Corp.	JML Resources Ltd. - Common Shares	3,129,482.00
Mourin Investments Corp.	July Resources Corp. - Common Shares	702,656.00
Xenolith Gold Limited	Kookaburra Resources Ltd. - Common Shares	1,113,700.00
Cambrelco Inc.	Polyair Inter Pack Inc. - Common Shares	99,900.00
Le Fonds De solidaritie des Travilleur du Quebec	TSO3 Inc. - Common Shares	2,000,000.00
Le Fonds De solidaritie des Travilleur du Quebec	TSO3 Inc. - Warrants	375,000.00

**REPORTS MADE UNDER SUBSECTION 2.7(1) OF MULTILATERAL INSTRUMENT 45-102 RESALE OF SECURITIES WITH RESPECT TO AN ISSUER THAT HAS CEASED TO BE A PRIVATE COMPANY OR PRIVATE ISSUER - FORM 45-102F1**

<u><b>Issuer</b></u>	<u><b>Date the Company Ceased to be a Private Company or Private Issuer</b></u>
Exceed Energy Inc.	9/2/03

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## Chapter 11

# IPOs, New Issues and Secondary Financings

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**Issuer Name:**

CAE Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated September 15, 2003  
Mutual Reliance Review System Receipt dated September 15, 2003

**Offering Price and Description:**

\$175,028,000.00 - 26,600,000 Common Shares Price: \$6.58 per Common Share

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

Scotia Capital Inc.  
RBC Dominion Securities Inc.  
CIBC World Markets Inc.  
Dundee Securities Corporation  
TD Securities Inc.  
Griffiths McBurney & Partners

**Promoter(s):**

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**Project #573642**

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**Issuer Name:**

Cameco Corporation  
Principal Regulator - Saskatchewan

**Type and Date:**

Preliminary Short Form Prospectus dated September 11, 2003  
Mutual Reliance Review System Receipt dated September 11, 2003

**Offering Price and Description:**

\$200,000,000.00 - 5% Convertible Subordinated Debentures due October 1, 2013 Price: 100% plus accrued interest, if any

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

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

**Promoter(s):**

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**Project #573195**

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**Issuer Name:**

Fortis Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated September 16, 2003  
Mutual Reliance Review System Receipt dated September 16, 2003

**Offering Price and Description:**

\$ \* - \* Subscription Receipts, each representing the right to receive one Common Share Price: \$ \* per Subscription Receipts

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

Scotia Capital Inc.

**Promoter(s):**

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**Project #573843**

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**Issuer Name:**

Gabriel Resources Ltd.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated September 9, 2003  
Mutual Reliance Review System Receipt dated September 10, 2003

**Offering Price and Description:**

\$45,750,000.00 - 15,000,000 Common Shares Price: \$3.05 per Common Share

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

Griffiths McBurney & Partners  
BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
Dundee Securities Corporation  
TD Securities Inc.

**Promoter(s):**

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**Project #572661**



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**Issuer Name:**

Gaz Metropolitain and Company, Limited Partnership  
Principal Regulator - Quebec

**Type and Date:**

Preliminary Short Form Prospectus dated September 16, 2003

Mutual Reliance Review System Receipt dated September 16, 2003

**Offering Price and Description:**

\$70,035,000.00 - 3,450,000 Units Price: \$20.30 per Unit

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

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

**Promoter(s):**

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**Project #573903**

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**Issuer Name:**

Gloucester Credit Card Trust  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated September 15, 2003

Mutual Reliance Review System Receipt dated September 15, 2003

**Offering Price and Description:**

\$ \*\* % Series 2003-2 Class A Notes,  
Expected Final Payment Date of \*, 200 .  
\$ \*\* % Series 2003-2 Collateral Notes,  
Expected Final Payment Date of \*, 200 .

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

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

**Promoter(s):**

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**Project #573540**

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**Issuer Name:**

Movie Distribution Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Amended and Restated Preliminary Prospectus dated September 12, 2003

Mutual Reliance Review System Receipt dated September 16, 2003

**Offering Price and Description:**

\$ \* - \* Units Price: \$10.00 per Unit

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

CIBC World Markets Inc.  
RBC Dominion Securities Inc.  
TD Securities Inc.  
BMO Nesbitt Burns Inc.  
Dundee Securities Corporation  
Westwind Partners Inc.

**Promoter(s):**

Alliance Atlantis Communications Inc.

**Project #570714**

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**Issuer Name:**

NovaGold Resources Inc.  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Prospectus dated September 16, 2003

Mutual Reliance Review System Receipt dated September 16, 2003

**Offering Price and Description:**

\$25,000,000.00 - 5,000,000 Units each Unit comprised of one Common Share and one-half of one Common Share  
Purchase Warrant Price: \$5.00 per Unit

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

Salman Partners Inc.  
Canaccord Capital Corporation  
BMO Nesbitt Burns Inc.  
First Associates Investments Inc.

**Promoter(s):**

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**Project #573938**

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**Issuer Name:**

Provident Energy Trust  
Principal Regulator – Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated September 12, 2003  
Mutual Reliance Review System Receipt dated September 12, 2003

**Offering Price and Description:**

\$150,150,000.00 - 14,300,000 Trust Units \$75,000,000  
8.75% Convertible Extendible Unsecured Subordinated  
Debentures

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

Scotia Capital Inc.  
National Bank Financial Inc.  
BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
TD Securities Inc.  
Canaccord Capital Corporation  
FirstEnergy Capital Corp.  
Orion Securities Inc.

**Promoter(s):**

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**Project #573458**

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**Issuer Name:**

RIOCAN REAL ESTATE INVESTMENT TRUST  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Shelf Prospectus September 9, 2003  
Mutual Reliance Review System Receipt dated September 10, 2003

**Offering Price and Description:**

\$275,000,000.00 - Debt Securities (Senior Unsecured)

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

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**Promoter(s):**

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**Project #572520**

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**Issuer Name:**

SCITI Trust II  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated September 10, 2003  
Mutual Reliance Review System Receipt dated September 11, 2003

**Offering Price and Description:**

Maximum \$ \* - \* Trust Units  
Price: \$10.00 per Unit

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

Scotia Capital Inc.  
National Bank Financial Inc.  
TD Securities Inc.  
Dundee Securities Corporation  
HSBC Securities (Canada) Inc.  
Canaccord Capital Corporation  
Raymond James Ltd.

**Promoter(s):**

Scotia Capital Inc.

**Project #572992**

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**Issuer Name:**

Shatheena Capital Corp.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary CPC Prospectus dated September 15, 2003  
Mutual Reliance Review System Receipt dated September 16, 2003

**Offering Price and Description:**

\$300,000.00 - 1,500,000 Common Shares Price: \$0.20 per  
Common Share

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

First Associates Investments Inc.

**Promoter(s):**

Anthony J. Cohen

**Project #573941**

---

**Issuer Name:**

Taylor NGL Limited Partnership  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Prospectus dated September 11, 2003  
Mutual Reliance Review System Receipt dated September 11, 2003

**Offering Price and Description:**

\$ \* - \* Limited Partnership Units Price: \$ \* per Unit

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

RBC Dominion Securities Inc.  
National Bank Financial Inc.  
Canaccord Capital Corporation  
Clarus Securities Inc.  
Peters & Co. Limited

**Promoter(s):**

-

**Project #573215**

---

**Issuer Name:**

Telesystem International Wireless Inc.  
Principal Regulator - Quebec

**Type and Date:**

Preliminary Short Form Prospectus dated September 11, 2003  
Mutual Reliance Review System Receipt dated September 11, 2003

**Offering Price and Description:**

Cdn\$82,944,819.00 - 12,960,128 Common Shares Price:  
\$6.40 per Common Share

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

BMO Nesbitt Burns Inc.

**Promoter(s):**

-

**Project #573105**

---

**Issuer Name:**

TimberWest Forest Corp.  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Prospectus dated September 15, 2003  
Mutual Reliance Review System Receipt dated September 15, 2003

**Offering Price and Description:**

\$65,000,000.00 - 7.0% Senior Debentures due October 1, 2007 (unsecured)

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

Merrill Lynch Canada Inc.  
BMO Nesbitt Burns Inc.  
Scotia Capital Inc.  
HSBC Securities (Canada) Inc.  
National Bank Financial Inc.

**Promoter(s):**

-

**Project #573685**

---

**Issuer Name:**

Cardiome Pharma Corp  
Principal Regulator - British Columbia

**Type and Date:**

Final Short Form Prospectus dated September 15, 2003  
Mutual Reliance Review System Receipt dated September 16, 2003

**Offering Price and Description:**

\$20,002,500.00 - 3,810,000 Common Shares @\$5.25 per Common Share

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

Orion Securities Inc.  
Sprott Securities Inc.  
First Associates Investments Inc.  
Raymond James Ltd.  
Research Capital Corporation

**Promoter(s):**

-

**Project #572368**

---

**Issuer Name:**

Chou Associates Fund  
Chou RRSP Fund  
Chou Europe Fund  
Chou Asia Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated September 11, 2003  
Mutual Reliance Review System Receipt dated September 15, 2003

**Offering Price and Description:**

Mutual Funds @ Net Asset Value

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

-

**Promoter(s):**

Chou Associates Management Inc.  
**Project #567896**

---

**Issuer Name:**

Mackenzie Cundill Global Balanced Fund  
Principal Regulator - Ontario

**Type and Date:**

Amendment #4 dated September 9, 2003 to the Annual Information Form dated December 20, 2002  
Mutual Reliance Review System Receipt dated September 12, 2003

**Offering Price and Description:**

-

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

Quadrus Investment Services Ltd.  
Mackenzie Financial Corporation

**Promoter(s):**

Mackenzie Financial Corporation  
**Project #494068**

---

**Issuer Name:**

MD Growth Investments Limited  
MD Dividend Fund  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated September 2, 2003 to the Final Simplified Prospectuses and Annual Information Forms dated July 23, 2003  
Mutual Reliance Review System Receipt dated September 10, 2003

**Offering Price and Description:**

Mutual Fund Net Asset Value

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

MD Management Limited  
MD Management Limited

**Promoter(s):**

MD Funds Management Inc.  
MD Private Trust Company  
**Project #552939**

---

**Issuer Name:**

Noranda Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Shelf Prospectus dated September 15, 2003  
Mutual Reliance Review System Receipt dated September 15, 2003

**Offering Price and Description:**

U.S.\$600,000,000.00 - Debt Securities (unsecured)

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

-

**Promoter(s):**

-

**Project #569573**

---

**Issuer Name:**

PrimeWest Energy Trust  
Principal Regulator - Alberta (ASC)

**Type and Date:**

Final Short Form Prospectus (NI 44-101) dated September 15, 2003  
Mutual Reliance Review System Receipt dated September 15, 2003

**Offering Price and Description:**

\$80,290,000.00 - 3,100,000 Trust Units @\$25.90 per Trust Unit

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

Scotia Capital Inc.  
CIBC World Markets Inc.  
BMO Nesbitt Burns Inc.  
RBC Dominion Securities Inc.  
TD Securities Inc.  
National Bank Financial Inc.  
Canacorrd Capital Corporation  
Desjardins Securities Inc.  
FirstEnergy Capital Corp.  
HSBC Securities (Canada) Inc.

**Promoter(s):**

-

**Project #571917**

---

**Issuer Name:**

Real Assets Social Leaders Fund  
Real Assets Social Impact Balanced Fund  
Principal Regulator - British Columbia

**Type and Date:**

Final Simplified Prospectus and Annual Information Form (NI 81-101) dated September 12, 2003  
Mutual Reliance Review System Receipt dated September 12, 2003

**Offering Price and Description:**

Class M Units and Class A Units

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

Real Assets Investment Management Inc.

**Promoter(s):**

-

**Project #556980**

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## Chapter 12

# Registrations

### 12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Wildman Capital Management Inc. Attention: Douglas Kemp-Welch 3300 Bloor Street West Suite 3120 Toronto ON M8X 2X3	Limited Market Dealer	Sep 10/03
New Registration	J.L. Kaplan Associates, LLC Attention: Frank Lombardi Designated Compliance Officer 222 Berkeley Street Boston MA 02116 USA	International Adviser (Investment Counsel & Portfolio Manager)	Aug 28/03
New Registration	The Investment House of Canada Inc. Attention: Sanjiv Sawh 1033 Bay Street Suite 211 Toronto ON M5S 3A5	Mutual Fund Dealer	Sep 12/03
New Registration	Growth Works Capital Ltd. Attention: David Levi 1055 West Georgia Street Suite 2600 Vancouver BC V6E 3R5	Mutual Fund Dealer Investment Counsel & Portfolio Manager	Sep 15/03
Change of Name	From: Hoenig & Co., Inc.  To: ITG Execution Services, Inc.	International Dealer	Sep 02/03
Change of Name	From: Mellon Asset Management, Limited  To: Mellon Institutional Asset Management Limited	Limited Market Dealer Investment Counsel & Portfolio Manager	Aug 29/03
Change of Name	From: Lancet Asset Management Inc.  To: Howson Tattersall Investment Counsel Limited	Limited Market Dealer Investment Counsel & Portfolio Manager	Sep 02/03
Change of Name	From: Howson Tattersall Investment Counsel  To: Normandy Canada Limited/ Normandie Canada Limitee	Investment Counsel & Portfolio Manager	Sep 02/03

**Registrations**

---

<b>Type</b>	<b>Company</b>	<b>Category of Registration</b>	<b>Effective Date</b>
Voluntary Surrender of Registration	Canadian Pacific Investment Management Limited c/o Linda Raffaghello McCarthy Tetrault LLP Box 48, Suite 4700 Toronto Dominion Bank Tower Toronto ON M5K 1E6	Limited Market Dealer Investment Counsel & Portfolio Manager	Sep 16/03

## Chapter 13

# SRO Notices and Disciplinary Proceedings

### 13.1.1 MFDA Notice - Housekeeping Amendments to MFDA Financial Questionnaire and Report

#### MFDA NOTICE - HOUSEKEEPING AMENDMENTS TO MFDA FINANCIAL QUESTIONNAIRE AND REPORT

Amendments to the Financial Questionnaire and Report of the Mutual Fund Dealers Association of Canada (the "MFDA") were made and enacted by the MFDA Board of Directors on June 13, 2003. These amendments which are composed of clarifications and corrections and are considered housekeeping in nature, are summarized below.

	Reference	Change Required	Rationale
1.	<b>Global Change</b>	Change all references to "MFDA Investor Protection Plan" to "MFDA Investor Protection Corporation"	Correction to reflect proper name.
2.	<b>Global Change</b>	Change all references to "deferred income taxes" to "future income taxes"	Change in terminology to reflect a change in generally accepted accounting principles.
3.	<b>General Notes and Definitions</b>	Line 7 – change "thousand" to "dollar"  Renumbering definitions.	Rounding to the nearest thousand does not give sufficient detail for our smaller Members.  Clarification
4.	<b>Statement A, (Notes and Instructions)</b>	Line 9 – "Part VI" should be "Part IV".	Typo
5.	<b>Statement C</b>	Page 1 Line 2(b) – add "Total" to "long term liabilities"  Page 2 Line C.2. – Add reference to B-16	Clarification
6.	<b>Statement C, (Notes and Instructions)</b>	Line 2 - Change reference to Statement D, Line 19.	Corresponding amendment to reflect change in line reference resulting in additional line item in #7 below.
7.	<b>Statement D</b>	Line 10 – Add "from clients" after "Fees" Add Line 11 – "Management Fees" Line 12 (former Line 11) - Add "provide details" after "Other" Add Line 16 – "Realized/unrealized (gain) loss on marketable securities"  Renumber lines and line references accordingly.	Clarification
8.	<b>Statement D (Notes and Instructions)</b>	Add the following notes:  "11. Includes fund management fees and other consulting fees not charged to clients."  "16. Includes trading profits/losses from principal trading activities and adjustment of marketable securities to market value"  Amend line numbering and references accordingly.	Clarification
9.	<b>Statement E</b>	Line C(2)(a) - Change reference to D-23 Line C(2)(b) – Add reference to D-24	Clarification and correction



		Line C(2)(c) – Add reference to D-25	
10.	<b>Statement F, footnote 2</b>	Change wording “in a form satisfactory to the MFDA...” to “in the form prescribed by the MFDA..”	Correction to reflect the prescribed MFDA subordinated loan agreement.
11.	<b>Certificate of Partners or Directors</b>	<b>Renumber requirements 6 and 7 as 8 and 9 respectively.</b>	Correction (see item #13 below)
12.	<b>Certificate of Partners or Directors (Notes and Instructions)</b>	Amend note 2 to clarify that one individual may sign the certificate in certain circumstances:  “Where there is only one individual that meets the qualifications of the positions listed above, this individual must sign the certificate.”	Clarification to acknowledge the fact that some Members may have only one individual that satisfies the qualifications.
13.	<b>Part II Auditors Report</b>	Change reference to questions on Certificate of Partners and Directors to read “....questions 2 through 7” to accord with changes above.	To correct a cross-reference error in the FQR.
14.	<b>Schedule 1</b>	Add Line 2 – “Money market mutual funds” Line 3 (former Line 2) - add “other than money market mutual funds” after “Mutual funds” Line 6 (former line 5) - add “provide details”  Amend Line numbering accordingly.	Clarification
15.	<b>Schedule 3</b>	Line A(5) – Change reference to “D-21(a)” Line B(4) - Change reference in Debit column to “A-18”	Correction
16.	<b>Schedule 4</b>	Line 1 – Delete (b)  Part A Question 4 – Add “greatest under any clause” after “Amount deductible under FIB”	This line is redundant as client cash held by the Member is included in “Allowable assets”. Therefore line 1(c) will always be greater than or equal to line 1 (b).  Clarification
17.	<b>Schedule 4 (Notes and Instructions)</b>	Note 3– add “Cash and securities held by a Member in its capacity as an agent for the trustee must be included in the determination of total client cash and securities held by the Member.”  Line 7 – Change reference from “Statement” to “Schedule”.	Clarification  Correction

02/23/04 June 13, 2003

**FORM 1**  
**MFDA FINANCIAL QUESTIONNAIRE AND REPORT**

\_\_\_\_\_  
(Firm Name)

\_\_\_\_\_  
(Date)

**TABLE OF CONTENTS**

GENERAL NOTES AND DEFINITIONS

PART I — AUDITORS' REPORT *[at audit date only]*

STATEMENT

- |             |   |
|-------------|---|
| A (3 pages) | Statements of assets and of liabilities and shareholder/partner capital                                     |
| B           | Statement of risk adjusted capital  |
| C           | Statement of early warning excess and early warning tests   |
| D           | Summary statement of income   |
| E           | Statement of changes in capital and retained earnings (corporations)<br>or undivided profits (partnerships) |
| F           | Statement of changes in subordinated loans  |

CERTIFICATE OF PARTNERS OR DIRECTORS

PART II — AUDITORS' REPORT *[at audit date only]*

REPORT ON COMPLIANCE FOR INSURANCE *[at audit date only]*

REPORT ON COMPLIANCE FOR SEGREGATION OF CASH AND SECURITIES *[at audit date only]*

SCHEDULE

- |   |   |
|---|---|
| 1 | Analysis of securities owned and sold short at market value |
| 2 | Analysis of clients' debit balances                         |
| 3 | Income taxes  |
| 4 | Insurance   |

02/23/04 June 13, 2003

**MFDA FINANCIAL QUESTIONNAIRE AND REPORT  
GENERAL NOTES AND DEFINITIONS**

1. Each Member shall comply in all respects with the requirements outlined in this prescribed MFDA Financial Questionnaire and Report as approved and amended from time to time by the Board of Directors of the MFDA and MFDA Investor Protection ~~Plan Corporation~~.

These statements are to be prepared in accordance with generally accepted accounting principles, except as modified by the requirements of the MFDA or the MFDA Investor Protection ~~Plan Corporation~~.

2. These statements and schedules should be read in conjunction with the Bylaws, Rules, Policies and Forms of the MFDA and MFDA Investor Protection ~~Plan Corporation~~ including, but not limited to rules relating to the early warning system, segregation of client assets, and insurance and audit requirements.
3. For purposes of these statements and schedules, the accounts of related Members as defined by the MFDA may be consolidated as provided by the Bylaws, Rules and Policies of the MFDA . If consolidation is appropriate, the names of the companies consolidated must be provided.
4. For the purposes of these capital calculations reporting on a trade date basis must be used unless specified otherwise IN THE INSTRUCTIONS. This means including in the following prescribed statements and schedules, all assets and liabilities resulting from sales and purchases of securities on or before the reporting date, even though they may be for normal settlement after the reporting date.
5. All statements and schedules must be filed. If a schedule is not applicable, a "NIL" return must be filed.
6. Comparative figures on all statements are required only at the audit date.
7. All statements and schedules must be expressed in Canadian dollars and must be rounded to the nearest ~~thousand dollar~~.
8. Schedules should be attached showing details of any significant amounts that have not been clearly described on the attached statements and schedules.
9. **Mandatory security counts and reconciliations.** Securities held in segregation and safekeeping must be counted once in the year in addition to the count as at the year-end audit date. Reconciliation must be performed monthly in addition to the year-end audit date between the Member's records and the records of the depository or custodian where the Member holds client securities in nominee name accounts.
10. At the year-end, enclose a list of all brokers and dealers and mutual fund companies for which a confirmation has not been obtained after two requests. Such list should include the dollar balances in such accounts, as reflected in the firm's records.

**DEFINITIONS :**

~~(a)~~1. "acceptable entity" means:

~~1-(a)~~ Acceptable institutions.

~~2-(b)~~ Government of Canada, the Bank of Canada and Provincial Governments.

~~3-(c)~~ Insurance companies licensed to do business in Canada or a province thereof.

~~4-(d)~~ Canadian provincial capital cities and all other Canadian cities and municipalities, or their equivalents.

~~5-(e)~~ All crown corporations, instrumentalities and agencies of the Canadian federal or provincial governments which are government guaranteed as evidenced by a written unconditional irrevocable guarantee or have a call on the consolidated revenue fund of the federal or provincial governments.

~~6-(f)~~ Canadian pension funds which are regulated either by the Office of Superintendent of Financial Institutions or a provincial pension commission.

~~7.~~(g) Corporations (other than Regulated Entities) with a minimum net worth of \$75 million on the last audited balance sheet, provided acceptable financial information with respect to such corporation is available for inspection.

~~8.~~(h) Members of the Mutual Fund Dealers Association of Canada.

~~9.~~(i) Regulated entities.

~~(b)~~2. “**acceptable institutions**” means:

~~1.~~(a) Canadian banks, Quebec savings banks, trust companies licensed to do business in Canada or a province thereof.

~~2.~~(b) Credit and central credit unions and regional caisses populaires.

~~3.~~(c) “**acceptable securities locations**” means those entities considered suitable to hold securities on behalf of a Member, for both inventory and client positions, without capital penalty, given that the locations meet the requirements outlined in the segregation Bylaws, Rules or Policies of the MFDA including, but not limited to, the requirement for a written custody agreement outlining the terms upon which such securities are deposited and including provisions that no use or disposition of the securities shall be made without the prior written consent of the Member and the securities can be delivered to the Member promptly on demand. The MFDA will maintain and regularly update a list of those foreign depositories and clearing agencies that comply with these criteria. The entities are as follows:

~~1.~~(a) Depositories

<del>(a)</del> (i) Canada	The Canadian Depository for Securities Limited
<del>(b)</del> (ii) United States	Depository Trust Company Pacific Securities Depository Trust Company Midwest Securities Trust Company

~~2.~~(b) Government of Canada, the Bank of Canada and Provincial Governments.

~~3.~~(c) Canadian banks, Quebec savings banks, trust companies and loan companies licensed to do business in Canada or a province thereof.

~~4.~~(d) Credit and central credit unions and regional caisses populaires.

~~5.~~(e) Insurance companies licensed to do business in Canada or a province thereof.

~~6.~~(f) Mutual Funds or their Agents - with respect to security positions maintained as a book entry of securities issued by the mutual fund and for which the mutual fund is unconditionally responsible.

~~7.~~(g) Regulated entities.

~~(d)~~4. “**regulated entities**” means those that are Members covered by the Canadian Investor Protection Fund or Members of recognized exchanges and associations. For the purposes of this definition, recognized exchanges and associations are those that are identified as a “regulated entity” by the Investment Dealers Association of Canada.

02/23/04 June 13, 2003

**MFDA FINANCIAL QUESTIONNAIRE AND REPORT  
PART I - AUDITORS' REPORT**

TO: The MFDA and the MFDA Investor Protection Plan Corporation.

We have audited the following Part I financial statements of \_\_\_\_\_:  
(firm)

- |             |   |  |
|-------------|---|--|
| Statement A | — | Statements of assets and of liabilities and shareholder/partner capital;   |
| Statement B | — | Statement of risk adjusted capital,<br>as at _____ 20__ and _____ 20__;<br>(date) (date)                         |
| Statement C | — | Statement of early warning excess and early warning tests;   |
| Statement D | — | Summary statement of income for the years ended _____ 20__<br>(date)<br>and _____ 20__;<br>(date)                |
| Statement E | — | Statement of changes in capital and retained earnings (corporations) or<br>undivided profits (partnerships); and |
| Statement F | — | Statement of changes in subordinated loans for the year ended _____ 20__.<br>(date)                              |

These financial statements are the responsibility of the firm's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. Our audits also included the audit procedures prescribed by the By-laws, Rules and Policies of the MFDA.

In our opinion,

- (a) the statements of assets and of liabilities and shareholder/partner capital and the summary statement of income present fairly, in all material respects, the financial position of the firm as at \_\_\_\_\_ 20\_\_ & \_\_\_\_\_ 20\_\_  
(dates)  
and the results of its operations for the years then ended in the form required by the MFDA in accordance with generally accepted accounting principles, except as modified by the requirements of the MFDA.
- (b) the statement of risk adjusted capital, as at \_\_\_\_\_ 20\_\_ & \_\_\_\_\_ 20\_\_ and the statements of  
(date) (date)  
early warning excess and early warning tests, changes in capital and retained earnings (corporations) or undivided profits (partnerships), and changes in subordinated loans, either as at or for the year ended \_\_\_\_\_ 20\_\_  
(date)  
are presented fairly, in all material respects, in accordance with the applicable instructions of the MFDA.

\_\_\_\_\_  
[auditing firm name]

\_\_\_\_\_  
[date]

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[place of issue]

~~02/23/04~~ June 13, 2003

**PART I - AUDITORS' REPORT  
NOTES AND INSTRUCTIONS**

A measure of uniformity in the form of the auditors' report is desirable in order to facilitate identification of circumstances where the underlying conditions are different. Therefore, when auditors are able to express an unqualified opinion, their report should take the form of the auditors' report shown above.

An alternate form of Auditors' Report is available from the MFDA in the case where the auditor is unable to express an opinion on previous year's figures due to not having been the auditor for the previous year.

Any limitations in the scope of the audit must be discussed in advance with the MFDA. Discretionary scope limitations will not be accepted.

Two copies with original signatures must be provided to the MFDA.

02/23/04 June 13, 2003

Statement A  
Page 1 of 3

**PART I**  
**MFDA FINANCIAL QUESTIONNAIRE AND REPORT**

(Firm Name)

**STATEMENT OF ASSETS**

(as at \_\_\_\_\_ with comparative figures as at \_\_\_\_\_)

Reference	Current Year	Previous Year
LIQUID ASSETS:		
1. Cash on deposit with Acceptable Institutions.....	\$ _ _ _ _ _	\$ _ _ _ _ _
2. Client funds held in trust with Acceptable Institutions .....	_ _ _ _ _	_ _ _ _ _
3. Sch.1 Securities owned at market value .....	_ _ _ _ _	_ _ _ _ _
4. Receivable from carrying broker or mutual fund .....	_ _ _ _ _	_ _ _ _ _
5. TOTAL LIQUID ASSETS .....	_____	_____
OTHER ALLOWABLE ASSETS <i>[From Acceptable Entities]</i> :		
6. Interest and dividends receivable .....	_ _ _ _ _	_ _ _ _ _
7. Other receivables <i>[attach details]</i> .....	_ _ _ _ _	_ _ _ _ _
8. Sch.3 Recoverable and overpaid income taxes .....	_ _ _ _ _	_ _ _ _ _
9. Recoverable and overpaid taxes .....	_ _ _ _ _	_ _ _ _ _
10. TOTAL OTHER ALLOWABLE ASSETS .....	_____	_____
11. TOTAL ALLOWABLE ASSETS <i>(line 5 plus line 10)</i> .....	_____	_____
NON ALLOWABLE ASSETS:		
12. Sch.2 Advanced redemption proceeds receivable .....	_ _ _ _ _	_ _ _ _ _
13. Provincial contingency fund deposits .....	_ _ _ _ _	_ _ _ _ _
14. Fixed assets at depreciated value .....	_ _ _ _ _	_ _ _ _ _
15. Capitalized leases.....	_ _ _ _ _	_ _ _ _ _
16. Investments in and advances to subsidiaries and affiliates.....	_ _ _ _ _	_ _ _ _ _
17. Subordinated loans receivable from other Members .....	_ _ _ _ _	_ _ _ _ _
18. Other assets <i>[attach details]</i> .....	_ _ _ _ _	_ _ _ _ _
19. TOTAL NON ALLOWABLE ASSETS .....	_____	_____
20. TOTAL ASSETS <i>(line 11 plus line 19)</i> .....	\$ =====	\$ =====

02/23/04 June 13, 2003

Statement A

Page 2 of 3

**PART I**  
**MFDA FINANCIAL QUESTIONNAIRE AND REPORT**

(Firm Name)

**STATEMENT OF LIABILITIES AND SHAREHOLDER/PARTNER CAPITAL**

(as at \_\_\_\_\_ with comparative figures as at \_\_\_\_\_)

Reference	Current Year	Previous Year
CURRENT LIABILITIES:		
21. Overdrafts and loans .....	\$ _____	\$ _____
22. Sch.1 Securities sold short at market value .....	_____	_____
23. Trust liabilities .....	_____	_____
24. Sch.3 Income taxes payable .....	_____	_____
25. Sch.3 <del>Deferred</del> Future income taxes - current portion .....	_____	_____
26. Variable compensation payable .....	_____	_____
27. Bonuses payable .....	_____	_____
28. Accounts payable and accrued expenses .....	_____	_____
29. Capitalized leases and lease-related liabilities - current portion .....	_____	_____
30. Other current liabilities <i>[attach details]</i> .....	_____	_____
31. TOTAL CURRENT LIABILITIES .....	_____	_____
LONG TERM LIABILITIES:		
32. Sch.3 Non-current portion of <del>deferred</del> future income taxes .....	_____	_____
33. Non-current portion of capitalized leases and lease-related liabilities .....	_____	_____
34. Other long term liabilities <i>[attach details]</i> .....	_____	_____
35. TOTAL LONG TERM LIABILITIES .....	_____	_____
36. TOTAL LIABILITIES <i>[line 31 plus line 35]</i> .....	_____	_____
FINANCIAL STATEMENT CAPITAL:		
37. F-6 Subordinated loans .....	_____	_____
38. E-A-3 Capital .....	_____	_____
39. E-C-3 Retained earnings or undivided profits .....	_____	_____
40. TOTAL FINANCIAL STATEMENT CAPITAL .....	_____	_____
41. TOTAL LIABILITIES AND CAPITAL <i>(line 36 plus line 40)</i> .....	\$ =====	\$ =====



~~02/23/04~~ June 13, 2003

Statement A  
Page 3 of 3

**PART I**  
**MFDA FINANCIAL QUESTIONNAIRE AND REPORT**

---

(Firm Name)

**NOTES TO THE FINANCIAL STATEMENTS**  
**[to be provided at audit date]**

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**Notes to the financial statements** - Any notes which may be necessary for the fair presentation of the financial statements in accordance with generally accepted accounting principles and which are not contained in the supporting schedules must be attached as page 3 to Statement A, including without limitation:

- Significant accounting policies;
- Subsequent events (which are not otherwise disclosed) to the date of filing, which have a material effect on the firm's financial position and risk adjusted capital;
- Obligations under letters of credit;
- Outstanding legal claims which are likely to result in a material adverse effect on the firm's financial position and risk adjusted capital;
- Related party transactions, detailing by type of transaction the amount and parties involved, for all such transactions;
- Description of authorized and issued share capital and subordinated loans;
- Lease commitments; and
- Any other significant commitments or contingencies not otherwise disclosed.

*[see notes and instructions]*

02/23/04 June 13, 2003

**STATEMENT A**  
**NOTES AND INSTRUCTIONS**  
*[comparative figures to be completed at audit date only]*

**Line 4** - In the case of commission receivables from mutual funds, to the extent that there is written documentation that the Member does not have a liability to pay salespersons' commission until it is received from the mutual fund company, the salespersons' portion of the commission receivable is an allowable asset.

**Line 8** - Include **only** overpayment of prior years' income taxes or current year installments. Taxes recoverable due to current year losses may be included to the extent that they can be carried back and applied against taxes previously paid. This line should not include future tax debits arising from losses carried forward.

**Line 9** - Include GST receivables, capital tax, Part ~~V~~ IV tax, sales and property taxes.

**Line 10** - Includes **only** receivables from Acceptable Entities but does not include subordinated loans receivable from other Members which should be shown on line 17. Allowable assets are those assets which due to their nature, location or source are either readily convertible into cash or from such creditworthy entities as to be allowed for capital purposes.

**Line 18** - Including but not limited to such items as:

- prepaid expenses
- future income tax debits
- cash surrender value of life insurance
- intangibles
- deferred charges
- advances to employees

**Line 23** - Includes amounts owed by the Member for the purchase of client securities.

**Line 27** - Include discretionary bonuses payable and bonuses payable to shareholders.

**Line 29** - Include current portion of deferred lease inducements.

**Line 38** - Include contributed surplus, if applicable.

02/23/04 June 13, 2003

Statement B

**PART I**  
**MFDA FINANCIAL QUESTIONNAIRE AND REPORT**

(Firm Name)

**STATEMENT OF RISK ADJUSTED CAPITAL**

(as at \_\_\_\_\_ with comparative figures as at \_\_\_\_\_)

Reference		Current Year	Previous Year
1. A-11	Total Allowable Assets.....	\$ _____	\$ _____
2. A-31	<b>Deduct:</b> Total Current Liabilities.....	_____	_____
3.	ALLOWABLE WORKING CAPITAL.....	\$ _____	\$ _____
4.	<b>Deduct:</b> Minimum capital.....	_____	_____
5.	SUBTOTAL.....	_____	_____
6.	<b>Deduct:</b> Total Long Term Liabilities (A-35) _____x10%	_____	_____
7.	<b>Deduct:</b> Contingent Liabilities <i>[attach details]</i> _____x10%	_____	_____
8.	SUBTOTAL.....	_____	_____
	<b>Deduct - amounts required to fully margin:</b>		
9.Sch.1	Securities owned and sold short.....	_____	_____
10. Sch.4	Financial institution bond deductible <i>[greatest under any clause]</i> .....	_____	_____
11.	Securities held at non-acceptable securities locations <i>[see note]</i> .....	_____	_____
12.	Unresolved differences in nominee name accounts.....	_____	_____
13.	Unresolved differences in trust accounts.....	_____	_____
14.	Other <i>[attach details]</i> .....	_____	_____
15.	TOTAL MARGIN REQUIRED <i>[lines 9 through 14]</i> .....	_____	_____
16.	RISK ADJUSTED CAPITAL <i>[line 8 minus line 15]</i> .....	\$ =====	\$ =====

02/23/04 June 13, 2003

**STATEMENT B  
NOTES AND INSTRUCTIONS**

EACH MEMBER SHALL HAVE AND MAINTAIN AT ALL TIMES RISK ADJUSTED CAPITAL IN AN AMOUNT NOT LESS THAN ZERO.

**Line 4** - Rule 3.1.1 requires the following minimum capital amounts:

Level 1	\$ 25,000
Level 2	50,000
Level 3	75,000
Level 4	200,000

**Line 11** - 100% of the market value of securities must be provided in the case where client or firm securities are held at locations which do not qualify as acceptable securities locations (see General Notes and Definitions). Securities held by an entity with which the Member has not entered into a written custodial agreement as required by the By-laws and Rules of the MFDA shall be considered as being held at non-acceptable securities locations.

For nominee name accounts, where a mutual fund company does not provide a monthly statement or electronic file confirming all of the Member firm's mutual fund positions, the Member shall provide margin equal to 100% of the market value of such mutual funds held on behalf of clients.

**Line 12 and 13** - Items are considered unresolved unless a journal entry to resolve the difference has been processed as of the Due Date of the questionnaire.

This does not include journal entries writing off the difference to profit or loss in the period subsequent to the date of the questionnaire.

Margin must be provided for adverse unresolved differences in nominee name accounts in an amount equal to the market value of the securities short plus the applicable margin rates related to the security. If the deficiency has not been resolved within thirty days of being discovered, the Member shall immediately purchase the securities that are short.

**Line 14** - This item should include all margin requirements not mentioned above as outlined in the By-laws and Rules of the MFDA

02/23/04 June 13, 2003

DATE: \_\_\_\_\_

Statement C  
Page 1 Of 2**PART I**  
**MFDA FINANCIAL QUESTIONNAIRE AND REPORT**\_\_\_\_\_  
(Firm Name)  
**STATEMENT OF EARLY WARNING EXCESS**

Reference	Current Year
1. B-16 RISK ADJUSTED CAPITAL .....	\$=====
2. LIQUIDITY ITEMS -	
<b>DEDUCT:</b>	
A-10 (a) Other allowable assets.....	-----
<b>ADD:</b>	
B-6 (b) 10% of <del>Total Long</del> long term liabilities.....	-----
3. EARLY WARNING EXCESS .....	\$=====

**NOTES:**

The early warning system is designed to provide advance warning of a Member firm encountering financial difficulties. It will anticipate capital shortages and/or liquidity problems and encourage firms to build a capital cushion.

**Line 2(a)** - Other allowable assets are deducted from RAC because they are illiquid or the receipt is either out of the firm's control or contingent.

**Line 2(b)** - Long term liabilities are added back to RAC as they are not current obligations of the firm and can be used as financing.

02/23/04 June 13, 2003

DATE: \_\_\_\_\_

Statement C  
Page 2 of 2**PART II**  
**MFDA FINANCIAL QUESTIONNAIRE AND REPORT**\_\_\_\_\_  
(Firm Name)**EARLY WARNING TESTS****Early Warning****A. CAPITAL DEFICIENCY**  
Is RAC less than 0?\_\_\_\_\_  
YES/NO**B. LIQUIDITY TEST**  
Is Early Warning Excess less than 0?\_\_\_\_\_  
YES/NO**C. PROFITABILITY TEST** (note 3)

1. Loss for current quarter

\$=====

B-16 2. RAC [at questionnaire date]

\$=====

Is line 2 less than line 1?

\_\_\_\_\_  
YES/NO**D. FREQUENCY PENALTY**Has the Member triggered Early Warning  
more than 2 times in the past 12 months?\_\_\_\_\_  
YES/NO

~~02/23/04~~ June 13, 2003

**STATEMENT C  
NOTES AND INSTRUCTIONS**

1. The objective of the various Early Warning Tests is to measure characteristics likely to identify a firm heading into financial trouble and to impose restrictions and sanctions to reduce further financial deterioration and prevent a subsequent capital deficiency. "Yes" answers indicate Early Warning has been triggered.

If the firm is currently capital deficient (i.e. risk adjusted capital is negative), only Part A of the early warning tests need be completed.

2. The profit or loss figures to be used are before bonuses, income taxes and extraordinary items [Statement D, line ~~47~~19]. Note that the "current quarter" figure must also reflect any audit adjustments made subsequent to the filing of the Quarterly Financial Report.
3. If the current quarter is profitable, enter a "No" answer for Part C.

02/23/04 June 13, 2003

Statement D

**PART I**  
**MFDA FINANCIAL QUESTIONNAIRE AND REPORT**

(Firm Name)

**SUMMARY STATEMENT OF INCOME FOR THE PERIOD ENDED***[with comparative figures for the year /month ended \_\_\_\_\_]*

1.	Number of salespersons .....	_____	
2.	Assets Under Administration at statement date .....	_____	
		<b>Current Yr/Mo</b>	<b>Previous Yr/Mo</b>
<b>Commission Revenue</b>			
3.	Mutual funds .....	_____	_____
4.	Segregated Funds .....	_____	_____
5.	Deposit Instruments .....	_____	_____
6.	Limited Partnerships .....	_____	_____
7.	Other securities (provide details) .....	_____	_____
8.	Insurance .....	_____	_____
<b>Other Revenue</b>			
9.	Interest .....	_____	_____
10.	Fees <u>from clients</u> .....	_____	_____
11.	<u>Management fees</u> .....	_____	_____
11.12.	Other (provide details) .....	_____	_____
12.13.	TOTAL REVENUE .....	_____	_____
<b>Expenses</b>			
13.14.	Variable compensation .....	_____	_____
14.15.	Interest on subordinated debt .....	_____	_____
16.	Realized/unrealized (gain) loss on marketable securities .....	_____	_____
15.17.	Unusual items [attach details] .....	_____	_____
16.18.	Operating expenses other than lines 1720 to 2022 .....	_____	_____
17.19.	Income [loss] before lines 1720 to 2022 .....	_____	_____
18.20.	Bonuses .....	_____	_____
19.21.	S-3(5) Provision for (recovery of) income taxes		
	(a) current .....	_____	_____
	(b) <del>deferred</del> future .....	_____	_____
20.22.	Extraordinary items [attach details] .....	_____	_____
21.23.	NET INCOME [LOSS] FOR PERIOD .....	\$=====	\$=====
22.24.	Dividends paid or partners drawings .....	_____	_____
23.25.	Other [attach details] .....	_____	_____
24.26.	NET CHANGE TO RETAINED EARNINGS [lines 2423 to 2325] .....	\$=====	\$=====



**STATEMENT D — NOTES AND INSTRUCTIONS**

A comparative statement of income prepared in accordance with generally accepted accounting principles and containing at least the information shown in the pre-printed Statement D may be substituted. It should be affixed to the statement provided.

**It is recognized that the components of the revenue and expense classification on this statement may vary between firms. However, it is important that each firm be consistent between periods.** Fair presentation may require the separate disclosure of additional large and/or unusual items by way of a note to this statement.

**Lines**

- 2 Assets under Administration means the market value of all mutual funds reflected in the client accounts (nominee and client name) of a Member in all provinces of Canada, excluding Quebec.
- 3-7 All **Commission Revenue** should be reported net of payouts to carrying dealers. Commission paid to salespersons should be shown on line ~~43-14~~.
- 3 Includes all gross commissions and trailer fees earned on mutual fund transactions, net of any payouts to the mutual funds.
- 10 Includes any charges to clients that are not related to commissions.
- ~~11.~~ Includes fund management fees and other consulting fees not charged to clients.
- ~~44-12.~~ Includes foreign exchange profits/losses and all other revenue not reported above.
- ~~43-14.~~ This category should include commissions, bonuses and other variable compensation of a contractual nature. Examples would encompass commission payouts to salespersons. Discretionary bonuses should be included on line ~~4820~~. All contractual bonuses should be accrued monthly and included on line ~~4314~~.
- ~~44-15.~~ Includes all interest on subordinated debt.
- ~~16.~~ Includes trading profits/losses from principal trading activities and adjustment of marketable securities to market value.
- ~~4617.~~ Unusual items are items that have some but not all of the characteristics of extraordinary items [~~line 2022~~]. An example of an unusual item may include costs associated with a branch closure.
- ~~4618.~~ Includes all operating expenses except those mentioned elsewhere: Variable compensation [~~line 4314~~], discretionary bonuses [~~line 4820~~].
- ~~4820.~~ This category should include discretionary bonuses and all bonuses to shareholders in accordance with share ownership. However, please read the instructions for line ~~4314~~ before completing.
- ~~4921.~~ Includes ONLY income taxes. Realty and capital taxes should be included in line ~~4618~~. Taxes at 33-1/3% on partnership profits should be disclosed on this line. The current provision should be net of loss carryforwards, the details of which should be disclosed on Schedule 3.
- ~~2022.~~ Extraordinary items have the following characteristics:
- (a) they are not expected to occur frequently over several years;
  - (b) they do not typify normal business activities; and
  - (c) they do not depend primarily on decisions or determinations by management.
- They should be reported net of tax. An example of an extraordinary item would include the destruction of a company's uninsured art collection by fire.
- ~~23-25~~ Includes only direct charges or credits to retained earnings that are capital transactions (e.g. premium on share redemptions), income of a subsidiary accounted for by the equity method and prior period adjustments. Any adjustment(s) required to reconcile retained earnings on the Monthly Financial Report to the MFDA Financial Questionnaire and Report should be posted to the individual Statement E line items on the first Monthly Financial Report that is filed after the adjustment(s) is known.

02/23/04 June 13, 2003

Statement E

**PART I**  
**MFDA FINANCIAL QUESTIONNAIRE AND REPORT**

(Firm Name)

**STATEMENT OF CHANGES IN CAPITAL AND RETAINED EARNINGS (CORPORATIONS) OR  
UNDIVIDED PROFITS (PARTNERSHIPS) FOR THE YEAR ENDED \_\_\_\_\_**

Reference	Current Year
<b>A. Changes in Capital</b>	
1. Balance at last year-end .....	\$ _____
2. Increases (Decreases) during period <i>[provide details]</i>	
(a) .....	_____
(b) .....	_____
(c) .....	_____
3. Present capital .....	\$=====
	A-38
<b>B. Analysis of Present Capital <i>[see note 1]</i></b>	
1. (a) .....	\$ _____
(b) .....	_____
(c) .....	_____
To agree with line A-3 above .....	\$=====
<b>C. Retained Earnings [Corporations] or Undivided Profits [Partnerships]</b>	
1. Retained earnings or undivided profits, at last year-end .....	\$ _____
2. Increases (Decreases) during period <i>[see note 2]</i> :	
D-2223 (a) Net income (loss) for the period .....	_____
D-24 (b) Dividends paid or partners drawings .....	_____
D-25 (c) Other <i>[provide details]</i> .....	_____
.....	_____
.....	_____
3. Present retained earnings or undivided profits .....	\$=====
	A-39

**NOTES:**

1. **Part B** - Disclosure should be made of authorized and issued share capital in accordance with generally accepted accounting principles.
2. **Line C-2** - Direct charges or credits to retained earnings are to be restricted to capital transactions (e.g. dividends, premium on share redemptions, etc.) and prior period adjustments. All income items of an extraordinary or unusual nature (e.g. profits or losses on sale of fixed assets etc.) are to be included in Statement D in arriving at net income or loss for the period. The latter amount is to be transferred in total to retained earnings [Stmnt.E-line C-2(a)].

02/23/04 June 13, 2003

Statement F

**PART I**  
**MFDA FINANCIAL QUESTIONNAIRE AND REPORT**

\_\_\_\_\_  
(Firm Name)

**STATEMENT OF CHANGES IN SUBORDINATED LOANS**  
**FOR THE YEAR ENDED** \_\_\_\_\_

1. Balance at last year-end .....	\$ _____
2. Increases during period	
<i>[give name of lender and date of increase]</i>	
(a) .....	_____
(b) .....	_____
(c) .....	_____
(d) .....	_____
(e) .....	_____
(f) .....	_____
3. Subtotal .....	_____
4. Decreases during period	
<i>[give name of lender and date of decrease]</i>	
(a) .....	_____
(b) .....	_____
(c) .....	_____
(d) .....	_____
(e) .....	_____
(f) .....	_____
5. Subtotal .....	_____
6. Present subordinated loans .....	\$=====
	A-37

**NOTES:**

1. **At the annual audit date only**, provide an attachment to Statement F showing the amount and the name of the lender for each subordinated loan outstanding.
2. **“subordinated loans”** means approved loans, pursuant to an agreement in writing in ~~the~~ a form prescribed by ~~satisfactory~~ to the MFDA, the payment of which is deferred in favour of other creditors and is subject to regulatory approval.

02/23/04 June 13, 2003

**MFDA FINANCIAL QUESTIONNAIRE AND REPORT  
CERTIFICATE OF PARTNERS OR DIRECTORS**

\_\_\_\_\_  
(Firm Name)

**I/We have examined the attached statements and schedules and certify that, to the best of my/our knowledge, they present fairly the financial position and capital of the firm at \_\_\_\_\_ and the results of operations for the period then ended, and are in agreement with the books of the firm.**

I/We certify that the following information is true and correct to the best of my/our knowledge for the period from the last audit to the date of the attached statements which have been prepared in accordance with the current requirements of the MFDA and MFDA Investor Protection ~~Plan~~ Corporation.

**ANSWERS**

1. Do the attached statements fully disclose all assets and liabilities including the following:
  - (a) All future purchase and sales commitments? ..... \_\_\_\_\_
  - (b) Writs issued against the firm or partners or corporation or any other litigation pending? ..... \_\_\_\_\_
  - (c) Income tax arrears of partners or corporation? ..... \_\_\_\_\_
  - (d) Other contingent liabilities, guarantees, accommodation, endorsements or commitments affecting the financial position of the firm? ..... \_\_\_\_\_
2. Does the firm promptly segregate clients' cash and securities in accordance with the Rules and Policies prescribed by the MFDA? ..... \_\_\_\_\_
3. Does the firm determine on a regular basis its segregation amount and act promptly to segregate assets as appropriate in accordance with the Rules and Policies prescribed by the MFDA? .... \_\_\_\_\_
4. Does the firm carry insurance of the type and in the amount required by the Rules and Policies of the MFDA? ..... \_\_\_\_\_
5. Does the firm monitor on a regular basis its adherence to early warning requirements in accordance with the Rules and Policies prescribed by the MFDA? ..... \_\_\_\_\_
6. Does the firm perform regular reconciliations of its trust accounts in accordance with the Rules and Policies prescribed by the MFDA ? ..... \_\_\_\_\_
7. Does the firm perform regular reconciliations of its mutual fund transactions with fund company records in accordance with the Rules and Policies prescribed by the MFDA ? ..... \_\_\_\_\_
- ~~6~~8. Does the firm have adequate internal controls in accordance with the Rules and Policies prescribed by the MFDA ? ..... \_\_\_\_\_
- ~~7~~9. Does the firm maintain adequate books and records in accordance with the Rules and Policies prescribed by the MFDA ? ..... \_\_\_\_\_
- ~~8.~~ Does the firm perform regular reconciliations of its trust accounts in accordance with the Rules and Policies prescribed by the MFDA ? ..... \_\_\_\_\_
- ~~9.~~ Does the firm perform regular reconciliations of its mutual fund transactions with fund company records in accordance with the Rules and Policies prescribed by the MFDA ? ..... \_\_\_\_\_

\_\_\_\_\_  
[date]

**Name and Title - Please print****Signature**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

~~02/23/04~~ June 13, 2003

**CERTIFICATE OF PARTNERS OR DIRECTORS  
NOTES AND INSTRUCTIONS**

1. Details must be given for any "no" answers.
2. To be signed by two of either:
  - (a) chief executive officer/partner
  - (b) chief financial officer
  - (c) chief accountant
  - (d) one director/partner not included in (a), (b) or (c) above.

Where there is only one individual that meets the qualifications of the positions listed above, this individual must sign the certificate.

3. Two copies with original signatures must be provided to the MFDA.

02/23/04 June 13, 2003

**MFDA FINANCIAL QUESTIONNAIRE AND REPORT  
PART II - AUDITORS' REPORT**

TO: The MFDA and the MFDA Investor Protection Plan Corporation

The additional information set out in Part II, Schedules 1 to 4 and the answers contained in questions 2 through 97 on the Certificate of Partners or Directors have been subjected to the procedures applied in the audit of the financial statements A to F in Part I, and in our opinion, present fairly the information contained therein, in all material respects, in relation to these financial statements taken as a whole.

\_\_\_\_\_  
*[name of auditing firm]*

\_\_\_\_\_  
*[date]*

\_\_\_\_\_  
*[signature]*

\_\_\_\_\_  
*[place of issue]*

**NOTES:**

A measure of uniformity in the form of the auditors' report is desirable in order to facilitate identification of circumstances where the underlying conditions are different. Therefore, when auditors are able to express an unqualified opinion, their report should take the above form.

Any limitations in the scope of the audit must be discussed in advance with the MFDA. Discretionary scope limitations will not be accepted.

Copies with original signatures must be provided to the MFDA.

02/23/04 June 13, 2003

## REPORT ON COMPLIANCE FOR INSURANCE

To: The MFDA and the MFDA Investor Protection ~~Plan~~ Corporation.

We have performed the following procedures in connection with the regulatory requirements for \_\_\_\_\_ to maintain minimum insurance as outlined in the Bylaws, Rules, \_\_\_\_\_  
(Member firm)

and Policies of the MFDA and the MFDA Investor Protection ~~Fund~~ Corporation. Compliance with the MFDA By-laws, Rules, and Policies with respect to insurance is the responsibility of the management of the Member firm. Our responsibility is to perform the procedures requested by you.

1. We read the Member firm's written internal control policies and procedures with respect to maintaining insurance coverage to determine that such policies and procedures meet the minimum required, as prescribed by the Rules and Policies of the MFDA in regards to establishing and maintaining adequate internal controls.
2. We obtained representation from appropriate senior management of the Member firm that the Member firm's internal control policies and procedures with respect to insurance meet the minimum required, as prescribed by the Policies of the MFDA in regards to establishing and maintaining adequate internal controls and that they have been implemented.
3. We read the Financial Institution Bond Form (the "FIB") insurance policy(s) to determine that the FIB policy(s) includes the minimum required clauses and coverage limits as prescribed in the By-laws, Rules and Policies of the MFDA.
4. We requested and obtained confirmation from the Member firm's Insurance Broker(s) as at \_\_\_\_\_ 20\_\_\_\_\_  
(period end date)

as to the FIB coverage maintained with the Insurance Underwriter(s) including:

- |                                      |   |
|--------------------------------------|---|
| (a) clauses                          | (d) name of insurer and insured                     |
| (b) aggregate and single loss limits | (e) claims made on the policy since last audit date |
| (c) deductible amounts               | (f) details of losses/claims outstanding            |

These procedures do not constitute an audit and therefore we express no opinion on the adequacy of the Member firm's insurance coverage or its internal control policies and procedures.

This letter is for use solely by the MFDA and the MFDA Investor Protection ~~Plan~~ Corporation to assist in their assessment of the Member firm's compliance with the requirement to maintain minimum insurance as outlined in the Bylaws, Rules and Policies of the MFDA and not for any other purpose.

\_\_\_\_\_  
(auditing firm)

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(place of issue)

02/23/04 June 13, 2003

## REPORT ON COMPLIANCE FOR SEGREGATION OF CASH AND SECURITIES

To: The MFDA and the MFDA Investor Protection Plan Corporation.

We have performed the following procedures in connection with the requirement for \_\_\_\_\_  
(Member firm)

to segregate client securities as outlined in the By-laws, Rules and Policies of the MFDA. Compliance with the MFDA By-laws, Rules and Policies with respect to the segregation of client cash and securities is the responsibility of the management of the Member firm. Our responsibility is to perform the procedures requested by you.

1. We have read the Member firm's written internal control policies and procedures with respect to segregation of client cash and securities to determine that such policies and procedures meet the minimum required under the policies of the MFDA in regards to establishing and maintaining adequate internal controls.
2. We obtained representation from appropriate senior management of the Member firm that the Member firm's internal control policies and procedures with respect to segregation of client cash and securities meet the minimum required under the policies of the MFDA in regards to establishing and maintaining adequate internal controls.
3. We obtained a listing of all securities segregation locations used by the Member firm and determined that each location met the definition of "Acceptable Securities Locations" as defined in the General Notes and Definitions to the MFDA Financial Questionnaire and Report.
4. We obtained a listing of all cash segregation locations used by the Member firm and determined that each location met the definition of "Acceptable Institutions" as defined in the General Notes and Definitions of the MFDA Financial Questionnaire and Report and that each account was designated as "in trust" and was interest bearing.

As a result of applying the above procedures, we found the following exceptions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

These procedures do not constitute an audit of segregation of client cash and securities and therefore we express no opinion on the adequacy of the Member firm's internal control policies or procedures over segregation of client cash and securities.

This letter is for use solely by the MFDA and the MFDA Investor Protection Plan Corporation to assist in their assessment of the Member firm's compliance with the requirements regarding segregation of client cash and securities as outlined in the By-laws, Rules and Policies of the MFDA and not for any other purpose.

\_\_\_\_\_  
(auditing firm)

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(place of issue)



02/23/01 June 13, 2003

DATE: \_\_\_\_\_

Schedule 1

**PART II**  
**MFDA FINANCIAL QUESTIONNAIRE AND REPORT**

(Firm Name) \_\_\_\_\_

**ANALYSIS OF SECURITIES OWNED AND SOLD SHORT AT MARKET VALUE**

<u>Category</u>	<u>Market Value</u>		<u>Margin required</u>
	<u>Long</u>	<u>Short</u>	
1. Money market	\$ _____	\$ _____	\$ _____ NIL
Accrued interest	_____	_____	
TOTAL MONEY MARKET	_____	_____	
2. Money market mutual funds	NIL		
23. Mutual funds (other than money market mutual funds)	_____	NIL	_____
34. Equities	_____	_____	_____ NIL
Accrued interest on convertible debentures	_____	_____	
TOTAL EQUITIES	_____	_____	
45. Bonds	_____	_____	_____ NIL
Accrued interest	_____	_____	
TOTAL BONDS	_____	_____	
56. Other (provide details)	_____	_____	_____ NIL
Accrued interest	_____	_____	
TOTAL OTHER	_____	_____	
67. TOTAL	\$=====	\$=====	\$=====
	A-3	A-22	B-9

# **SCHEDULE 1** **NOTES AND INSTRUCTIONS**

1. All securities are to be valued at market (see General Notes and Definitions) as of the reporting date. The margin rates to be used are those outlined below:

**(a) Bonds, Debentures, Treasury Bills and Notes**

- (i) Bonds, debentures, treasury bills and other securities of or guaranteed by the Government of Canada, of the United Kingdom, of the United States of America or guaranteed by any province of Canada:

within 1 year	1% of market value multiplied by the fraction determined by dividing the number of days to maturity by 365
---------------	--

over 1 year	5% of market value
-------------	--------------------

- (ii) All other bonds, debentures and notes:

within 1 year	3% of market value multiplied by the fraction determined by dividing the number of days to maturity by 365
---------------	--

over 1 year	10% of market value
-------------	---------------------

**(b) Bank Paper**

Deposit certificates, promissory notes or debentures issued by a Canadian chartered bank (and of Canadian chartered bank acceptances) maturing:

within 1 year	2% of market value multiplied by the fraction determined by dividing the number of days to maturity by 365
---------------	--

over 1 year	10% of market value
-------------	---------------------

**(c) Mutual Funds**

Securities of mutual funds qualified by prospectus for sale in any province of Canada shall be margined at the following rates:

Money Market Funds (as defined in NI81-102) - 5% of market value.

All Other Mutual Funds - 50% of market value.

**(d) Stocks**

On securities (other than bonds and debentures) including rights and warrants listed on any recognized stock exchange in Canada or the United States:

Long Positions - Margin Required

Securities selling at \$2.00 or more - 50% of market value

Securities selling at \$1.75 to \$1.99 - 60% of market value

Securities selling at \$1.50 to \$1.74 - 80% of market value

Securities selling under \$1.50 - 100% of market value

Short Positions - Credit Required

Securities selling at \$2.00 or more - 150% of market value

Securities selling at \$1.50 to \$1.99 - \$3.00 per share

Securities selling at \$0.25 to \$1.49 - 200% of market value

Securities selling at less than \$0.25 - market value plus \$0.25 per share

**(e) FOR ALL OTHER SECURITIES - 100%.**

2. Schedule 1 summarizes **all** securities owned and sold short by the categories indicated. Details that must be included for each category are total long market value, total short market value and total margin required as indicated.
3. The Examiners and/or Auditors of the MFDA may request additional details of securities owned or sold short as they, in their discretion, believe necessary.

**Line 1** - Money market shall include Canadian & US Treasury Bills, Bankers Acceptances, Bank paper (Domestic & Foreign), Municipal and Commercial Paper or other similar instruments.

02/23/04 June 13, 2003

DATE: \_\_\_\_\_

Schedule 2

**PART II**  
**MFDA FINANCIAL QUESTIONNAIRE AND REPORT**

(Firm Name)

**ANALYSIS OF CLIENTS' DEBIT BALANCES**

	Advanced Redemption Proceeds Receivable	Other Client Receivables [attach details]
1. Non-registered accounts .....	-----	-----
2. RRSP and other registered accounts.....	-----	-----
3. TOTAL .....	\$=====	\$=====
	A-12	Note 2

**SUPPLEMENTARY DISCLOSURE:**NAME OF RRSP TRUSTEE(S)

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

**NOTES:**

1. Rule 3.2.1 prohibits Members from lending or extending credit to a client unless the Member is in compliance with Rule 3.2.3 which provides for the advancement of redemption proceeds.
2. Receivables from clients are non-allowable assets and are to be reported on Statement A line 18.

**Supplementary Disclosure:**

The name of the RRSP trustee(s) used by the Member must be provided. The RRSP or other similar balances held at a trustee must be insured by the Canada Deposit Insurance Corporation (CDIC) or Quebec Deposit Insurance Corporation (QDIC).

02/23/04 June 13, 2003

DATE: \_\_\_\_\_

Schedule 3

**PART II**  
**MFDA FINANCIAL QUESTIONNAIRE AND REPORT**

(Firm Name)  
**INCOME TAXES**

**A. Income Tax Payable (Recoverable)**

- |    |   |            |   |
|----|---|------------|---|
| 1. | Balance payable (recoverable) at last year-end .....  | \$         | _____                                       |
| 2. | (a) Payments (made) or received relating to above balance .....   | \$         | _____                                       |
|    | (b) Adjustments, including reassessments, relating to<br>prior periods <i>[give details if significant]</i> ..... |            | _____                                       |
| 3. | Total adjustment to prior years' payable (recoverable) taxes<br>during current year .....                         |            | _____                                       |
| 4. | Subtotal <i>[add or subtract line 3 from line 1]</i> .....  |            | _____                                       |
| 5. | Provision for (recovery of) taxes, including<br>taxes on extraordinary items - current .....                      | D-4921 (a) | _____                                       |
| 6. | less: Current installments .....  |            | _____                                       |
| 7. | Other adjustments <i>[give details if significant]</i> .....  |            | _____                                       |
| 8. | Total adjustment for current year's taxes .....   |            | _____                                       |
| 9. | TOTAL PAYABLE (RECOVERABLE) <i>[add or subtract line 8 from line 4]</i> .....                                     | \$=====    | A-8 -- if recoverable<br>A-24 -- if payable |

**B. Analysis of ~~DEFERRED~~FUTURE Income Taxes**

	<u>Debit</u>	Credit re <u>Current assets</u> <u>and liabilities</u>	Credit re Non-current assets and <u>liabilities</u>
1. Unrealized - Trading .....	\$ _____	\$ _____	\$ _____
- Commission .....	_____	_____	_____
2. CCA/Depreciation .....	_____	_____	_____
3. Other <i>[give details]</i> .....	_____	_____	_____
4. TOTAL <del>DEFERRED</del> FUTURE INCOME TAXES .....	\$=====	\$=====	\$=====
	A-2018 details	A-25	A-32

02/23/04 June 13, 2003

DATE: \_\_\_\_\_

Schedule 4  
Page 1 of 2

**PART II**  
**MFDA FINANCIAL QUESTIONNAIRE AND REPORT**

(Firm Name)  
**INSURANCE**

**PART A. Financial Institution Bond (FIB) Clauses (A) to (E)**

1. Minimum coverage required for each clause:

Level 1, 2 or 3 Dealers

(a) Lesser of \$50,000 per Approved Person or \$200,000 \_\_\_\_\_

~~(b)~~ Total client cash held by the Member (A-2) \$\_\_\_\_\_ x 1% \_\_\_\_\_

~~(e)~~(b) Allowable assets (A-11) \$===== x 1% \_\_\_\_\_

**Greater of (a), ~~(b)~~ and ~~(e)~~ above** **\$=====**

The actual coverage required for each clause is the greater of (a), ~~(b)~~ and ~~(e)~~(b) above to a maximum requirement of \$25,000,000.

LEVEL 4 DEALERS

(a) Minimum coverage of \_\_\_\_\_ \$500,000

(b) Total client cash and securities held by the Member \$===== x 1% \_\_\_\_\_

(c) Allowable assets (A-11) \$===== x 1% \_\_\_\_\_

**Greater of (a), (b) and (c) above** **\$=====**

The actual coverage required for each clause is the greater of (a), (b) and (c) above to a maximum requirement of \$25,000,000.

2. Coverage maintained per FIB \_\_\_\_\_ [Notes 3&7]

3. Excess / (Deficiency) in coverage \$===== [Note 4]

4. Amount deductible under FIB ~~(if any)~~ (greatest under any clause) \$===== [Note 5]  
B-10

**PART B. REGISTERED MAIL INSURANCE**

1. Coverage per mail policy \$===== [Note 6]

**PART C. FIB AND REGISTERED MAIL POLICY INFORMATION [Note 8]**

Insurance Company	Name of the Insured	FIB/ Registered Mail	Expiry Date	Coverage	Premium
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02/23/04 June 13, 2003

DATE: \_\_\_\_\_

Schedule 4  
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**PART II**  
**MFDA FINANCIAL QUESTIONNAIRE AND REPORT**

\_\_\_\_\_  
(Firm Name)  
**INSURANCE**

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**PART D. Losses and Claims [Note 9]**

<u>Date of Loss</u>	<u>Date of Discovery</u>	<u>Amount of Loss</u>	<u>Deductible Applying to Loss</u>	<u>Description</u>	<u>Claim Made?</u>	<u>Settlement</u>	<u>Date Settled</u>
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02/23/04 June 13, 2003

**SCHEDULE 4  
NOTES AND INSTRUCTIONS**

1. Member firms must maintain minimum insurance in type and amounts as outlined in the By-laws, Rules and Policies of the MFDA and the MFDA Investor Protection Plan Corporation.
2. Schedule 4 must be completed at the audit date.
3. The amounts of insurance required to be maintained by a Member firm shall as a minimum be by way of a Financial Institution Bond with a double aggregate limit or a provision for full reinstatement.

For Financial Institution Bond policies containing an "aggregate limit" coverage, the actual coverage maintained should be reduced by the amount of reported loss claims, if any, during the policy period.

Cash and securities held by a Member in its capacity as agent for the trustee must be included in the determination of total client cash and securities held by the Member.

4. The Certificate of Partners or Directors contains a question pertaining to the adequacy of insurance coverage. The Auditors' Report requires the auditor to state that the question has been fairly answered. The MFDA Rules also state: "Should there be insufficient coverage, firms shall be deemed to be complying with this Rule 4 provided that any such deficiency does not exceed 10% of the insurance requirement and that evidence is furnished within two months of the dates of completion of the monthly operations questionnaire and annual audit that the deficiency has been corrected. If the deficiency is 10% or more of the insurance requirement, action must be taken by the Member to correct the deficiency within 10 days of its determination and the Member shall immediately notify the MFDA."
5. A Financial Institution Bond maintained pursuant to the MFDA Rules may contain a clause or rider stating that all claims made under the bond are subject to a deductible, provided that the firm's margin requirement is increased by the amount of the deductible.
6. Every MFDA Member firm shall effect and keep in force Mail Insurance against loss arising by reason of any outgoing shipments of money, securities, or other property negotiable or non-negotiable, by first-class mail, registered mail, registered air mail, express or air express, such insurance to provide at least 100% coverage.
7. The aggregate value of securities in transit in the custody of any employee or any person acting as a messenger shall not at any time exceed the coverage per the Financial Institution Bond (~~Statement Schedule 4~~, line 2).
8. List all Financial Institution Bond and Registered Mail underwriters, policies, coverage and premiums indicating their expiry dates. State type of aggregate limits, if applicable, or note that provision for full reinstatement exists.
9. List all losses reported to the insurers or their authorized representatives including those losses that are less than the amount of the deductible. Do not include lost document bond claims. Indicate in the "Amount of Loss" column if the amount of the loss is estimated or unknown as at the reporting date.

Losses should continue to be reported on Schedule 4 Part D until resolved. In the reporting period where a claim has been settled or a decision has been made not to pursue a claim, the loss should be listed along with the amount of the settlement, if any.

At the annual audit date, list all unsettled claims, whether or not the claims were initiated in the period under audit. In addition, list all losses and claims identified in the current or previous periods that have been settled during the period under audit.



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## Chapter 25

### Other Information

#### 25.1 Consents

##### 25.1.1 Gold Summit Corporation - cl. 4(b) of Reg. 289/00

#### Headnote

Consent given to OBCA corporation to continue under the CBCA.

#### Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., ss. 181, 185.

Canada Business Corporations Act, R.S.C. 1985, c. C-44, as am.

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

#### Regulations Cited

O. Reg. 289/00, as am., s. 4(b).

R.R.O. 1990, Reg. 1015, as am.

**IN THE MATTER OF  
THE REGULATION MADE UNDER  
THE *BUSINESS CORPORATIONS ACT* (ONTARIO)  
R.S.O. 1990, c. B.16 (the "OBCA") AND  
ONT.REG. 289/00 (THE "FORMS REGULATION")**

**AND**

**IN THE MATTER OF  
GOLD SUMMIT CORPORATION**

**CONSENT  
(Clause 4(b) of the Forms Regulation)**

**UPON** the application (the "Application") of Gold Summit Corporation (the "Corporation") to the Ontario Securities Commission (the "Commission") requesting the consent of the Commission to continue into another jurisdiction pursuant to clause 4(b) of the Forms Regulation;

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

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

1. the Corporation proposes to make application (the "Application for Continuance") to the Director appointed under the OBCA for authorization to continue under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (the "CBCA"), pursuant to section 181 of the OBCA;

2. pursuant to clause 4(b) of the Forms Regulation, where the corporation is an offering corporation, the Application for Continuance must be accompanied by the consent of the Commission;
3. the Corporation is an offering corporation under the OBCA and is a reporting issuer under the *Securities Act*, R.S.O. 1990, c. S.5, (the "Act");
4. the Corporation is not a defaulting reporting issuer under the Act or the regulation thereunder and is not a party to any proceeding nor, to the best of its knowledge, information and belief, any pending proceeding under the Act;
5. the continuance of the Corporation under the CBCA has been proposed because the Corporation believes it to be in its best interest to conduct its affairs in accordance with the CBCA;
6. the material rights, duties and obligations of a corporation under the CBCA are substantially similar to those under the OBCA with the exception that the OBCA requires that a majority of a corporation's directors be resident Canadians whereas the CBCA was recently amended to provide that only one-quarter of directors need be resident Canadians;
7. the shareholders of the Corporation have approved the continuance under the CBCA at a Special Meeting of the Shareholders held on May 20, 2003 (the "Meeting");
8. the management proxy circular of the Corporation dated April 17, 2003 provided to all shareholders of the Corporation in connection with the Meeting advised the shareholders of their dissent rights pursuant to section 185 of the OBCA; and
9. the Corporation presently intends to continue to be a reporting issuer in the Province of Ontario.

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

**THE COMMISSION** hereby consents to the continuance of the Corporation under the CBCA.

August 29, 2003.

"Wendell S. Wigle"

"Lorne Morphy"

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