

The Ontario Securities Commission

# OSC Bulletin

October 3, 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

OCTOBER 3, 2003

#### CURRENT PROCEEDINGS

#### BEFORE

#### ONTARIO SECURITIES COMMISSION

-----

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

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

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Paul K. Bates	—	PKB
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Robert W. Korthals	—	RWK
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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 7, 2003      **Gregory Hyrniw and Walter Hyrniw**

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

10:00 a.m.

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

**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**

**1.1.2 Notice of Proposed Amendments to National**  
**Instrument 54-101 Communication with**  
**Beneficial Owners of Securities of a Reporting**  
**Issuer and Companion Policy 54-101CP**

**NOTICE OF PROPOSED AMENDMENTS TO**  
**NATIONAL INSTRUMENT 54-101**  
**COMMUNICATION WITH BENEFICIAL**  
**OWNERS OF SECURITIES**  
**OF A REPORTING ISSUER**  
**AND**  
**COMPANION POLICY 54-101CP**

The Commission is publishing in today's Bulletin a Notice requesting comment on proposed amendments (the Proposed Amendments) to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* and Companion Policy 54-101CP. The Notice and the Proposed Amendments are published in Chapter 6 of the Bulletin.

**1.1.3 OSC Staff Notice 81-706 Treatment of Sales Commissions in the Calculation of Net Asset Value of Labour Sponsored Investment Funds**

**OSC STAFF NOTICE 81-706  
TREATMENT OF SALES COMMISSIONS  
IN THE CALCULATION OF NET  
ASSET VALUE OF LABOUR SPONSORED  
INVESTMENT FUNDS**

The purpose of this Staff Notice is to set out staff's views on the implications for net asset value calculations for purchases and redemptions of shares (Pricing NAV) by labour sponsored investment funds (LSIFs) of a change in the accounting for sales commissions paid out of an LSIF's assets.

**Facts**

For the past 10 years LSIFs have been permitted to pay sales commissions out of fund assets. The Commission since 1999 has granted specific exemptive relief from National Instrument 81-105 Mutual Fund Sales Practices to this effect.

The practice of many LSIFs has been to record sales commissions paid out of fund assets as an asset (deferred charge) on a fund's statement of net assets and to amortize this amount to retained earnings on a straight line basis over 8 years. The amortization period matches the period for which an investor is required to hold the related shares in order to avoid being required to repay associated tax credits and to avoid paying a redemption fee.

In July 2003 the Accounting Standards Board of the CICA issued a new Handbook Section, Generally Accepted Accounting Principles, Section 1100, effective for financial years beginning on or after October 1, 2003. This Handbook section clarifies the basis on which an entity determines the appropriate accounting for a transaction in the absence of specific recommendations in the CICA Handbook. In particular, the revised definition of generally accepted accounting principles (GAAP) indicates that accounting practices cannot be considered to comply with GAAP by virtue of their use in similar circumstances by a significant number of entities in Canada. In other words, industry practice on its own will not meet the definition of GAAP. LSIFs have relied on industry practice to treat sales commissions as a deferred charge.

The result of this Handbook change is that, for financial years beginning on or after October 1, 2003, the LSIF industry will no longer be able to treat the sales commissions paid by the fund as an asset on their statement of net assets.

**Issue**

Generally, the calculation of the Pricing NAV has been set out in each LSIF's prospectus. Without being explicitly stated, the Pricing NAV has typically been determined on a basis that is consistent with GAAP. An LSIF that continues, after this accounting change, to calculate its

Pricing NAV in accordance with the basis set out in the prospectus will have a Pricing NAV that is different from the net asset value (NAV) determined by reference to the financial statements.

**Staff Position**

It is intended that proposed National Instrument 81-106 Investment Fund Continuous Disclosure (NI 81-106), which will be published for a second comment period later this year, will require Pricing NAV for all investment funds, including LSIFs, to be calculated in accordance with GAAP. The expected effective date for proposed NI 81-106 is July 1, 2004.

For transitional purposes only, NI 81-106 will propose limited exemptive relief from the proposed requirement to calculate Pricing NAV in accordance with GAAP to LSIFs that cease adding new sales commissions to the existing deferred charge by December 31, 2003. Relief will be limited to allowing Pricing NAV to be determined on the basis that the deferred charge existing at December 31, 2003 will continue to be amortized over its remaining amortization period. It is expected that all other elements of the calculation of the Pricing NAV will be in accordance with GAAP.

The implication of staff's position is that, for a period of up to 8 years, the Pricing NAV for those LSIFs that are granted exemptive relief will differ from the NAV in the financial statements prepared in accordance with GAAP. However, the relief proposed will limit the amount of that difference. LSIFs that follow this transitional method will be required to provide in the notes to their financial statements a reconciliation between the NAV calculated for financial statement purposes and the Pricing NAV.

Staff expect LSIFs to inform existing and new investors of the changes to the accounting for sales commissions paid out of fund assets and the impact of this change on the fund and investors.

Questions regarding this notice may be directed to:

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

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

September 30, 2003.

**1.2 Notices of Hearing**

**1.2.1 Normand Riopelle - s. 127**

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

**AND**

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

**NOTICE OF HEARING  
(Section 127)**

**TAKE NOTICE** that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at the offices of the Commission, Hearing Room, 17<sup>th</sup> floor, 20 Queen Street West, Toronto, on October 1, 2003, at 2:00 p.m., or as soon thereafter as the hearing can be held;

**AND TAKE NOTICE** that the purpose of the hearing will be for the Commission to consider whether to approve the proposed settlement of the proceeding entered into between Staff of the Commission and Normand Riopelle;

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

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

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

September 25, 2003.

"John Stevenson"

**1.2.2 Marlene Berry - s. 127**

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

**AND**

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

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**AND TAKE NOTICE** that the purpose of the hearing will be for the Commission to consider whether to approve the proposed settlement of the proceeding entered into between Staff of the Commission and Marlene Berry;

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

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

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

September 29, 2003.

"John Stevenson"



**1.3 News Releases**

**1.3.1 Further Funds Sent to Receiver in the Matter of Secure Investments, Daniel Shuttleworth and Andrew Keith Lech**

**FOR IMMEDIATE RELEASE  
September 26, 2003**

**FURTHER FUNDS SENT TO RECEIVER  
IN THE MATTER OF  
SECURE INVESTMENTS,  
DANIEL SHUTTLEWORTH AND  
ANDREW KEITH LECH**

**TORONTO** – In Orders dated September 3 and 24, 2003, the Ontario Superior Court of Justice determined that the contents of four bank accounts held in the name of Daniel Shuttleworth should be sent to KPMG Inc., a court-appointed Receiver and Guardian. The contents of all of these bank accounts had originally been frozen by the Ontario Securities Commission on the grounds that they contained investor funds solicited as part of an illegal securities investment scheme orchestrated by Andrew Keith Lech of Peterborough, Ontario.

By order of the Ontario Superior Court of Justice, KPMG Inc. is the Receiver and Guardian of the assets provided to Andrew Keith Lech by persons who invested money with him. Investors or any persons with a potential claim on the transferred funds should contact Szemenyei Kirwin MacKenzie LLP, counsel to the Receiver and Guardian. Szemenyei Kirwin MacKenzie can be reached by telephone, toll-free, at 1-866-433-8155 or at [www.skmlawyers.com](http://www.skmlawyers.com).

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

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

**1.3.2 OSC to Consider a Settlement Reached Between Staff and Normand Riopelle in the Saxton Matter**

**FOR IMMEDIATE RELEASE  
September 26, 2003**

**ONTARIO SECURITIES COMMISSION TO  
CONSIDER A SETTLEMENT REACHED BETWEEN  
STAFF AND NORMAND RIOPELLE  
IN THE SAXTON MATTER**

**TORONTO** – On October 1, 2003 commencing at 2 p.m., the Ontario Securities Commission will convene a hearing in the Main Hearing Room of the Commission's offices, 17<sup>th</sup> Floor, 20 Queen Street West, Toronto, to consider a settlement reached by Staff of the Commission and the respondent Normand Riopelle.

Riopelle has never been registered with the Commission. During the material time, he was a level two life insurance agent. Riopelle sold Saxton securities to Ontario investors. Staff alleges that he participated in such securities' illegal distributions and engaged in unregistered trading.

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

Copies of the Notice of Hearing and Amended Statement of Allegations of Staff of the Commission are available on the Commission's website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

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

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

**1.3.3 OSC Chair Endorses International Standards for Analysts and Credit Rating Agencies**

**FOR IMMEDIATE RELEASE  
September 26, 2003**

**OSC CHAIR ENDORSES  
INTERNATIONAL STANDARDS FOR  
ANALYSTS AND CREDIT RATING AGENCIES**

**TORONTO** – Ontario Securities Commission Chair David Brown endorsed two statements of principles issued yesterday by the International Organization of Securities Commissions (IOSCO), of which the OSC is a member. The principles address conflicts of interest that securities analysts may face and assist credit rating agencies in providing investors with well informed, independent opinions and analyses.

“Through prohibitions of certain practices, such as trading in securities in advance of publishing reports on them, and the requirement of disclosure of other practices, such as disclosing any interest analysts may have in the securities on which they report, the IOSCO principles go right to the root of conflicts of interest,” said Mr. Brown. “These principles set a high standard for analysts and their employers. Investors in jurisdictions that implement these principles will be able to rely on truly independent research.”

While the OSC does not regulate credit rating agencies, Mr. Brown noted that the standards issued by IOSCO set clear objectives that will assist credit rating agencies in assuring the independence of their research. “For investors to have confidence in them, ratings must be, and be seen to be, fully independent of any influence. The IOSCO principles give flexible guidance to credit rating agencies for practices that will reassure investors and issuers about the quality and independence of the analysis that the agencies provide,” said Mr. Brown.

“The discussions around the IOSCO table allowed us to explore best practices from jurisdictions around the globe,” added Mr. Brown. “I am quite pleased that we were able to contribute to the development of the principles, especially given the very high standard of principles that the global regulators were able to promote. In Ontario, we should soon see the adoption of analyst standards developed by the Investment Dealers Association of Canada that are as robust as the IOSCO principles, and that will even exceed them in some areas.”

The IOSCO statements of principles are available at [www.iosco.org](http://www.iosco.org).

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

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

**1.3.4 OSC to Consider a Settlement Reached Between Staff and Marlene Berry in the Saxton Matter**

**FOR IMMEDIATE RELEASE  
September 30, 2003**

**ONTARIO SECURITIES COMMISSION TO  
CONSIDER A SETTLEMENT REACHED  
BETWEEN STAFF AND MARLENE BERRY  
IN THE SAXTON MATTER**

**TORONTO** – On October 1, 2003 commencing at 2 p.m., the Ontario Securities Commission will convene a hearing to consider a settlement reached by Staff of the Commission and the respondent Marlene Berry in the Main Hearing Room of the commission's offices, 17<sup>th</sup> Floor, 20 Queen Street West, Toronto.

Between 1995 and 1998, various Saxton companies issued securities. The sale of such securities raised approximately \$37 million from investors. Staff alleges that the distribution of the Saxton securities did not comply with Ontario securities law.

Berry was employed by Integrated Planning Services and Rick Fangeat as the office administrator. Staff alleges that the vast majority of Integrated Planning Services' business related to the sale of the Saxton securities and that Fangeat acted as the manager of several Saxton salespeople. Staff further alleges that Berry was involved in the illegal distributions of the Saxton securities by, among other things, acting as a liaison between the Saxton salespeople and Saxton's head office and participating in the execution of subscription agreements.

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

Copies of the Notice of Hearing and Amended Statement of Allegations of Staff of the Commission are available on the Commission's website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

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

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

## Chapter 2

# Decisions, Orders and Rulings

## 2.1 Decisions

### 2.1.1 P7S1 Holding L.P. - MRRS Decision

#### Headnote

Mutual Reliance Review System for Applications – German take-over bid made in Ontario – securities of offeree issuer held in bearer form, so that offeror unable to determine the number of Ontario holders or percentage of securities held by Ontario holders – number of Ontario holders and percentage of securities held believed to be *de minimis* – offer made in compliance with laws of Germany – bid exempted from requirements of Part XX, subject to certain conditions.

#### Applicable Ontario Statutes

Securities Act, R.S.O. 1990, c. S.5, as amended, ss. 93(1)(e), 95-100 and 104(2)(c).

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, ALBERTA, 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  
P7S1 HOLDING L.P.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application from P7S1 Holding L.P. (the “Applicant”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the formal take-over bid requirements, including the provisions relating to delivery of an offer and take-over bid circular and any notices of change or variation thereto, delivery of a directors’ circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up of and payment for securities tendered to a take-over bid, disclosure, financing, restrictions upon purchases of securities, identical consideration and collateral benefits (collectively, the

“Take-over Bid Requirements”), do not apply to the proposed offer (the “Offer”) by the Applicant for the outstanding preferred shares (“Preferred Shares”) of ProSiebenSat.1 Media AG (the “Target”);

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

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

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

1. the Applicant is an exempted limited partnership formed under the laws of the Cayman Islands and its registered office is located at Walkers SPV Limited, Walker House, Mary Street, P.O. Box 908 GT, George Town, Grand Cayman, Cayman Islands;
2. the Applicant is not a reporting issuer or the equivalent in any of the Jurisdictions. The Applicant's securities are not listed or quoted for trading on any Canadian stock exchange or market;
3. the Target is a stock corporation established under the laws of Germany and is registered in the commercial register of the local courts of Munich;
4. the Target's stated capital amounts to EUR 194,486,400 and is divided into 97,243,200 Common Shares, which are registered holders shares, and 97,243,200 Preferred Shares, which are bearer shares; the Preferred Shares constitute “equity securities” for the purposes of the definition of “take-over bid” in the Jurisdictions as they carry a residual right to participate in the earnings of the Target and, upon liquidation or winding-up of the Target, in its assets;
5. the Preferred Shares are traded at the stock exchanges in Frankfurt am Main, Dusseldorf, Stuttgart, Munich, Berlin-Bremen, Hannover and Hamburg; the Target also maintains a facility for American Depositary Receipts in respect of the Preferred Shares but those receipts are not listed on any exchange;

6. the Target is not a reporting issuer or equivalent in any of the Jurisdictions. The Target's securities are not listed or quoted for trading on any Canadian stock exchange or market;
7. the Applicant currently holds 69,999,000 or approximately 72.0% of the outstanding Common Shares; the Applicant does not hold any of the Preferred Shares;
8. on August 11, 2003, the Applicant announced the acquisition of control over more than 30% of the voting rights of the Target and its intention to launch, pursuant to the requirements of German Law (§35 *German Securities Acquisition and Takeover Act*), an all-cash mandatory tender offer whereby holders of Common Shares and Preferred Shares of the Target would be invited to tender their Common Shares and Preferred Shares of the Target; the announcement made no statement as to the consideration as this is not required by German Law; in the case of a mandatory tender offer the *German Securities Acquisition and Take-over Act* provides for minimum consideration that must be offered which is the higher of the three-month weighted average stock exchange price during the three months before the announcement of the offer and the price paid to other shareholders in previous or parallel transactions;
9. the Offer is being made, and the offer document (the "Offer Document") reflecting the terms of the Offer is being prepared, in accordance with the laws of Germany and, in particular, in compliance with the *German Securities Acquisition and Takeover Act*;
10. the Offer is also being made in the United States in compliance with Regulation 14E under the *Securities and Exchange Act of 1934* and will be exempt from the requirements of Regulation 14D under that act;
11. in accordance with German law, the Offer Document will be available on the internet under <http://www.P7S1Holding.com> and [www.saban.com](http://www.saban.com) as well as in the form of free printed copies which will be made available to holders of the Common Shares and Preferred Shares, combined with a public announcement in a national German newspaper and the Wall Street Journal, U.S. edition, which will specify where and how the shareholders may obtain a copy of the Offer Document free of charge;
12. as permitted by German law, the Target has issued bearer securities and does not maintain a share register; accordingly, any information about the Target's shareholdings in Canada can only be determined on a limited enquiry basis; the Target has informed the Applicant that the last enquiry commissioned by the Target concluded that shareholders resident in various Canadian provinces hold more than 2% of the outstanding Preferred Shares; the Applicant believes that as of September 5, 2003 there were no holders of Common Shares resident in Canada; the Applicant believes that one of the holders of Preferred Shares resides in British Columbia; the Applicant also believes that shareholders also reside in Manitoba, Ontario and Québec but given that no share register exists for the Preferred Shares, these holders cannot be confirmed;
13. if any material relating to the Offer is sent by the Applicant to holders of the Preferred Shares in Germany, such material will also be sent to holders of Preferred Shares residing in the Jurisdictions (if addresses are known), along with an English translation for convenience purposes, and will be concurrently filed with the securities regulatory authorities in the Jurisdictions;
14. a public announcement in a national Canadian newspaper, made at the same time as the public announcement in a national German newspaper, will specify where and how the shareholders may obtain a copy of the material relating to the Offer or an English convenience translation free of charge;
15. the *de minimis* take-over bid exemptions found in certain of the Jurisdictions are not available to the Target since the bid is not being made in compliance with the laws of a jurisdiction that is recognized by the applicable Decision Makers for the purposes of the *de minimis* take-over bid exemptions; also, because the Target does not maintain a share register, the Applicant is unable to determine conclusively the number of holders of the Preferred Shares resident in each of the Jurisdictions, or the number of Preferred Shares held by any of these persons;
16. all of the holders of the Target's Common Shares and Preferred Shares to whom the Offer is made will be treated equally;
17. if the requested relief is not granted, holders of the Preferred Shares resident in the Jurisdictions will not have the opportunity to participate in the Offer;

**AND WHEREAS** under the System, this MRRS Decision Document evidences the decision of each Decision Maker (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 Applicant is exempt from the Take-over Bid Requirements in making the Offer to the

shareholders of the Target who are resident in the Jurisdictions provided that:

- (i) the Offer and all amendments to the Offer are made in compliance with the laws of Germany;
- (ii) any material relating to the Offer that is sent to the holders of the Preferred Shares in Germany will be sent to the holders of the Preferred Shares resident in the Jurisdictions as well as an English translation, and copies of the material will be filed with the Decision Maker in each Jurisdiction; and
- (iii) a public announcement in a national Canadian newspaper, made at the same time as the public announcement in a national German newspaper, will specify where and how the shareholders may obtain a copy of any material relating to the Offer or an English translation free of charge.

September 22, 2003.

"Brenda Leong"

## 2.1.2 Magellan Aerospace Limited - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications. Issuer deemed to have ceased to be a reporting issuer. Issuer has less than 50 beneficial holders of its debt and equity securities in Canada. Issuer provides the trustee of its debentures with its quarterly and annual financial statements, for the purpose of distributing those statements to its debenture holders. Issuer does not intend to seek public financing by way of an offering of its securities.

### Applicable Ontario Statutory Provisions

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

### IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA, SASKATCHEWAN, ONTARIO, AND QUÉBEC

AND

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

AND

### IN THE MATTER OF MAGELLAN AEROSPACE LIMITED

### MRRS DECISION DOCUMENT

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker" and collectively, the "Decision Makers") in each of Alberta, Saskatchewan, Ontario and Québec (the "Jurisdictions") has received an application from Magellan Aerospace Limited (the "Applicant") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the Applicant be deemed to have ceased to be a reporting issuer or the equivalent under the Legislation;

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

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

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

1. Haley Industries Limited ("Haley") was incorporated under *the Business Corporations Act* (Ontario) on October 4, 1962. Effective December 1, 2002, Haley amalgamated with 2014835 Ontario Limited, a wholly owned subsidiary of the

- Applicant to form Haley Industries Limited ("Haley No. 2") ("Amalgamation No. 1"). At the option of the shareholders of Haley other than the Applicant and 2014835 Ontario Limited, each shareholder of Haley received for each common share of Haley (a "Haley Share") either \$2.16 in cash or 0.45 of a common share of Magellan Aerospace Corporation ("Magellan").
2. The Haley Shares were delisted from the Toronto Stock Exchange at the close of business on December 3, 2002.
3. On January 1, 2003, Haley No. 2 and the Applicant, its sole shareholder, amalgamated ("Amalgamation No. 2") to form Magellan Aerospace Limited (which is the Applicant). The head office of the Applicant is located at 3160 Derry Road East, Mississauga, Ontario L4T 1A9.
4. As a result of Amalgamation No. 1 and Amalgamation No. 2, the Applicant is a reporting issuer or the equivalent in each of the Jurisdictions. Since the date of Amalgamation No. 1, the Applicant has been in default of the continuous disclosure requirements of applicable securities legislation in the Jurisdictions.
5. The Applicant is authorized to issue an unlimited number of common shares ("Common Shares") and an unlimited number of First Preferred Shares. As of September 2, 2003, there are 100 Common Shares issued and outstanding, and no First Preferred Shares issued and outstanding. The beneficial holder of the 100 Common Shares is Magellan.
6. Magellan is a reporting issuer in each of the provinces and territories in Canada. The common shares of Magellan are listed for trading on the Toronto Stock Exchange.
7. Haley and Montreal Trust Company of Canada as Trustee entered into an indenture dated July 20, 1989 (the "Indenture"), providing for the issuance of subordinated Debentures ("Debentures"). As of September 2, 2003, there are two series of Debentures issued and outstanding under the terms of the Indenture: (i) the 9% Convertible Subordinated Series A Debentures due July 20, 2004 (the "Series A Debentures"), and (ii) the 1997 Convertible Subordinated Debentures Series B due July 20, 2004 (the "Series B Debentures").
8. The principal amount outstanding on the Series A Debentures is US \$110,000. The principal amount outstanding on the Series B Debentures is \$2,600,000.
9. Interest payments on the Series A Debentures and the Series B Debentures are not in default.
10. As a result of Amalgamation No. 1 and Amalgamation No. 2 and pursuant to the terms of the Indenture, the obligations of Haley under the Indenture are now the obligations of the Applicant.
11. The Applicant has provided the Trustee, as required under the terms of the Indenture, with quarterly and annual financial statements of the Applicant. The Applicant intends to continue to provide the Trustee with those financial statements until the due date of the Debentures. The purpose of providing the statements to the Trustee is for those statements to be distributed to registered debenture holders (and, subsequently, by the registered debenture holders to beneficial debenture holders). Since the date of Amalgamation No. 1, the financial statements provided have been the financial statements of Magellan (the parent corporation). Magellan's financial statements consolidate the financial results of all of its subsidiaries, including those of the Applicant.
12. The Applicant does not intend to seek public financing by way of an offering of its securities.

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

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

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

September 24, 2003.

"Robert W. Davis"

"H. Lorne Morphy"

**2.1.3 General Motors Corporation et al.  
- MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Application for certain resale relief and for listing representations relief in connection with a series of transactions involving the distribution by an issuer of securities of a subsidiary of the issuer to the issuer's securityholders, and the subsequent sale by the issuer of its interest in the subsidiary to a third party – resale relief granted subject to conditions.

**Ontario Statutes**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 38(3), 53 and 74(1).

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

**AND**

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

**AND**

**IN THE MATTER OF  
GENERAL MOTORS CORPORATION,  
HUGHES ELECTRONICS CORPORATION  
AND THE NEWS CORPORATION LIMITED**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Québec and the Yukon Territory (the "Hughes Distribution Relief Jurisdictions") has received an application from General Motors Corporation ("GM"), Hughes Electronics Corporation ("Hughes") and The News Corporation Limited ("News Corporation") for a decision under the securities legislation (the "Legislation") of each of the Hughes Distribution Relief Jurisdictions that the Registration Requirements and the Prospectus Requirements shall not apply to trades to holders of GM common stock in connection with the transactions described below;

**AND WHEREAS** the Decision Maker in each of Québec, Manitoba, New Brunswick, the Northwest Territories, the Yukon Territory and Nunavut (together, the "News Distribution Relief Jurisdictions") has received an application from GM, Hughes and News Corporation for a decision under the Legislation of each of the News Distribution Relief Jurisdictions that the Registration Requirements and the Prospectus Requirements shall not

apply to a distribution by News Corporation of News Corporation Preferred ADSs in connection with the transactions described below;

**AND WHEREAS** the Decision Maker in each of Québec, British Columbia, Saskatchewan, Manitoba, Ontario, Nova Scotia, Newfoundland and Labrador, the Yukon Territory, the Northwest Territories and Nunavut (the "Resale Jurisdictions") has received an application from GM, Hughes and News Corporation for a decision under the Legislation of each of the Resale Jurisdictions that the first trade in (and in Québec, the alienation of) the securities acquired pursuant to the transactions described below shall be exempt from the Prospectus Requirements;

**AND WHEREAS** the Decision Makers in Québec, Alberta, Saskatchewan, Manitoba, Ontario, Newfoundland and Labrador and Nova Scotia (collectively, the "Hughes Listing Relief Jurisdictions") have received an application from GM, Hughes and News Corporation for a decision under the Legislation of each of the Hughes Listing Relief Jurisdictions that GM, Hughes and News Corporation may represent in a consent solicitation disclosure document being sent to shareholders that Hughes common stock will be listed on the New York Stock Exchange;

**AND WHEREAS** the Decision Makers in Québec, Manitoba and Nova Scotia (collectively, the "News Listing Relief Jurisdictions") have received an application from GM, Hughes and News Corporation for a decision under the Legislation of each of the News Listing Relief Jurisdictions that GM, Hughes and News Corporation may represent in a consent solicitation disclosure document being sent to shareholders that News Corporation Preferred ADSs will be listed on the New York Stock Exchange;

**AND WHEREAS** pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Québec 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** GM, Hughes and News Corporation have represented to the Decision Makers that:

1. GM is a corporation incorporated under the laws of the State of Delaware and has its principal executive offices located in Detroit, Michigan. GM is primarily engaged in the automotive industry and, through its wholly owned subsidiary, Hughes, the telecommunications and media industries. GM is the world's largest manufacturer of automotive vehicles. GM also has financing and insurance operations and, to a lesser extent, is engaged in other industries.
2. GM currently has two classes of common stock outstanding: common stock, \$1-2/3 par value per share ("GM \$1-2/3 par value common stock") and

- Class H common stock, \$0.10 par value per share ("GM Class H common stock"). GM Class H common stock is a "tracking stock" of GM designed to provide holders with financial returns based on the financial performance of Hughes.
3. GM \$1-2/3 par value common stock is listed on The Toronto Stock Exchange under the symbol "GM". GM Class H common stock is not listed on any Canadian stock exchange. GM \$1-2/3 par value common stock and GM Class H common stock are listed on exchanges outside of Canada, including the New York Stock Exchange ("NYSE"), on which such stocks are listed under the symbols "GM" and "GMH", respectively.
4. As of June 19, 2003, based on GM's stock transfer records, there were approximately:
  - (a) 1,108,119,000 shares of GM Class H common stock outstanding worldwide;
  - (b) 200,000 shares of GM Class H common stock outstanding and held directly by residents of Canada, representing approximately 0.02% of the total outstanding shares of GM Class H common stock;
  - (c) 560,704,000 shares of GM \$1-2/3 par value common stock outstanding worldwide; and
  - (d) 866,000 shares of GM \$1-2/3 par value common stock outstanding and held directly by residents of Canada, representing approximately 0.16% of the total outstanding shares of GM \$1-2/3 par value common stock.
5. GM is a reporting issuer in the provinces of Ontario and Québec and is a "foreign issuer (SEDAR)", as defined in National Instrument 13-101 – System for Electronic Document Analysis and Retrieval (SEDAR). GM is not a reporting issuer in any other province or territory of Canada and has no present intention of becoming a reporting issuer in any of these jurisdictions.
6. GM is subject to the reporting requirements of the United States Securities Exchange Act of 1934 (the "1934 Act").
7. Hughes is a corporation incorporated under the laws of the State of Delaware and has its principal executive offices located in El Segundo, California. Hughes is a world-leading provider of digital television entertainment, broadband satellite networks and services on a global basis and has developed a wide range of entertainment, information and communications services for home and business use, including video, data voice, multimedia and Internet services. Hughes is currently a wholly owned subsidiary of GM.
8. Hughes currently has two classes of common stock outstanding: common stock, par value \$0.01 per share ("Hughes common stock") and Class B common stock, par value \$0.01 per share ("Hughes Class B common stock").
9. Hughes is not a reporting issuer in any Canadian province or territory.
10. News Corporation is a corporation incorporated under the laws of the Commonwealth of Australia and has its principal executive offices located in Surry Hills, New South Wales, Australia. News Corporation is a diversified international media and entertainment company with operations in a number of industry segments, including filmed entertainment, television, cable network programming, magazines and inserts, newspapers and book publishing. The activities of News Corporation are conducted principally in the United States, the United Kingdom, Italy, Asia, Australia and the Pacific Basin.
11. News Corporation currently has two types of shares outstanding: preferred limited voting ordinary shares ("Preferred Ordinary Shares") and ordinary shares ("Ordinary Shares").
12. News Corporation also has outstanding preferred American depositary shares ("News Corporation Preferred ADSs"), representing four Preferred Ordinary Shares, and ordinary American depositary shares ("News Corporation Ordinary ADSs"), representing four Ordinary Shares. The News Corporation Preferred ADSs and the News Corporation Ordinary ADSs are listed on the NYSE and traded under the symbol "NWS.A." and "NWS", respectively. In accordance with the rules of the NYSE, the Preferred Ordinary Shares and Ordinary Shares are also listed on the NYSE solely in connection with the listing of the News Corporation Preferred ADSs and the News Corporation Ordinary ADSs, but without the ability to trade.
13. Each holder of News Corporation Preferred ADSs is entitled to withdraw the underlying Preferred Ordinary Shares at any time by surrendering the American Depositary Receipts representing the News Corporation Preferred ADSs with the Depository, as defined in the amended and restated deposit agreement dated as of December 3, 1996, as amended by the letter agreement dated as of December 17, 2001, between News Corporation, Citibank, N.A., as depositary, and the holders from time to time of the News Corporation Preferred ADSs.



14. As of June 23, 2003, based on News Corporation's stock transfer records, there were approximately:
  - (a) 2,097,411,000 Ordinary Shares, 3,230,088,000 Preferred Ordinary Shares, 465,456,000 News Corporation Preferred ADSs and 86,297,000 News Corporation Ordinary ADSs outstanding worldwide; and
  - (b) 48,000 Ordinary Shares, 35,000 Preferred Ordinary Shares, 3,050 News Corporation Preferred ADSs and 2,350 News Corporation Ordinary ADSs outstanding and held directly by residents of Canada, representing approximately 0.0007% of the News Corporation Preferred ADSs and 0.003% of the total News Corporation Ordinary ADSs.
15. News Corporation is not a reporting issuer in any Canadian province or territory.
16. News Publishing Australia Limited ("NPAL") is a corporation incorporated under the laws of Delaware and has principal executive offices located in New York, New York. NPAL is a wholly owned subsidiary of News Corporation. NPAL engages, through its subsidiaries, in News Corporation's businesses conducted in the United States. NPAL is the subsidiary of News Corporation that is acquiring 34% of Hughes pursuant to the Transactions (as defined below).
17. NPAL is not a reporting issuer in any Canadian province or territory.
18. GMH Merger Sub, Inc. ("GMH Merger Sub") is a corporation incorporated under the laws of Delaware. GMH Merger Sub does not carry on any active business and has been incorporated solely for the purpose of effecting the Transactions (as defined below).
19. GMH Merger Sub is not a reporting issuer in any Canadian province or territory.
20. GM, Hughes and News Corporation have announced plans to enter into a series of transactions (the "Transactions") that would result in the separation of the business of Hughes from GM and the acquisition by News Corporation of 34% of Hughes outstanding capital stock.
21. Pursuant to the Transactions, GM will amend its restated certificate of incorporation to, among other things, make the GM Class H common stock redeemable in exchange for shares of Hughes common stock.
22. In order to split-off the Hughes business (the "Split-Off"), GM will distribute to each holder of GM Class H common stock one share of Hughes common stock in exchange for and in redemption of each share of GM Class H common stock the holder owns (the "Hughes Distribution"). As a result, all outstanding shares of GM Class H common stock will be redeemed and cancelled.
23. Prior to the Hughes Distribution, Hughes will declare and pay to GM a U.S.\$275 million special cash dividend, which is intended to provide GM consideration for the value enhancement to GM Class H common stockholders arising from the exchange of GM Class H common stock, a tracking stock, for asset-based Hughes common stock.
24. After the Hughes Distribution, there will be no shares of GM Class H common stock outstanding. GM \$1-2/3 par value common stock will remain outstanding and will be GM's only class of common stock.
25. Immediately prior to the Split-Off, GM will own a number of shares of Hughes Class B common stock representing GM's approximately 19.8% retained economic interest in Hughes. Simultaneously with the Split-Off, GM will sell all of its shares of Hughes Class B common stock to NPAL (the "GM/News Stock Sale").
26. News Corporation will pay GM a fixed price of U.S.\$14.00 per share in cash for 80% of the shares of Hughes Class B common stock. For the other 20% of the shares of Hughes Class B common stock purchased from GM, News Corporation may elect to pay for such shares in the form of News Corporation Preferred ADSs, cash or in a combination of News Corporation Preferred ADSs and cash.
27. Upon the simultaneous completion of the Split-Off and the GM/News Stock Sale, News Corporation will indirectly own approximately 19.8% of the outstanding equity in Hughes and the former GM Class H common stockholders will own approximately 80.2% of the outstanding equity in Hughes. Immediately following the Split-Off and the GM/News Stock Sale, News Corporation, through its NPAL subsidiary, will then increase its ownership in Hughes to 34% by acquiring an additional approximately 14.2% of the outstanding Hughes common stock from the former GM Class H common stockholders that receive Hughes common stock in the split-off share exchange (the "News Stock Acquisition"). News Corporation will acquire these additional shares by merging GMH Merger Sub, a wholly owned subsidiary of NPAL, with and into Hughes (the "Merger"). Hughes will be the surviving company in the Merger.

28. As part of the Merger, each share of Hughes common stock (all of which will be held by the former GM Class H common stockholders) will be converted into the right to receive (i) approximately 0.82336 of a share of Hughes common stock, and (ii) News Corporation Preferred ADSs, cash or a combination of News Corporation Preferred ADSs and cash (at News Corporation's election) worth approximately U.S.\$2.47, subject to adjustment.
29. News Corporation is a party to the merger agreement for, among other things, the purpose of distributing cash and/or News Corporation Preferred ADSs to holders of Hughes common stock (the "News Distribution") on the completion of the Merger. The Merger constitutes a "three-cornered merger" in that News Corporation will cause GMH Merger Sub, an indirect wholly owned subsidiary of News Corporation to merge with and into Hughes, with Hughes continuing as the surviving corporation.
30. As a result of the Merger, the former GM Class H common stockholders will retain approximately 82.3% of the Hughes common stock received in the Split-Off. The other approximately 17.7% of the Hughes common stock received in the Split-Off will be exchanged in the Merger.
31. Immediately after the Merger, each share of Hughes Class B common stock will automatically convert into one share of Hughes common stock and Hughes common stock will be the only common stock of Hughes that is outstanding.
32. Application will be made to list the Hughes common stock and News Corporation Preferred ADSs on the NYSE. Such stock will not be listed on any exchange or quoted on any market in Canada. Accordingly, no market for the Hughes common stock and News Corporation Preferred ADSs is expected to develop in Canada.
33. Upon completion of the Transactions, after giving effect to the Hughes Distribution, residents in Canada will not own, directly or indirectly, more than 10 percent of the outstanding shares of Hughes common stock and will not represent in number more than 10 percent of the total number of owners, directly or indirectly, of Hughes common stock and, after giving effect to the News Distribution, residents in Canada will not own, directly or indirectly, more than 10 percent of the outstanding Preferred Ordinary Shares (assuming that each outstanding News Corporation Preferred ADS was exchanged for the underlying Preferred Ordinary Shares) and will not represent in number more than 10 percent of the total number of owners, directly or indirectly, of Preferred Ordinary Shares (assuming that each outstanding News Corporation Preferred ADS was exchanged for the underlying Preferred Ordinary Shares).
34. The amendments to GM's restated certificate of incorporation in connection with the Split-Off require the approval of GM stockholders. In addition, GM is asking its stockholders to ratify the Split-Off, the GM/News Stock Sale, the News stock acquisition and the new Hughes certificate of incorporation which ratification is a condition to the completion of the Transactions. GM is seeking such approval and ratifications pursuant to a consent solicitation process. GM, as sole stockholder of Hughes, has already approved the Merger and adopted the merger agreement. In addition, NPAL, as the sole stockholder of GMH Merger Sub, has approved the Merger and adopted the merger agreement. Also, the Hughes and News Corporation boards of directors have unanimously approved the Transactions, and the GM board of directors approved the Transactions by unanimous vote of all those directors present at the applicable GM board meeting.
35. The Transactions will be carried out in accordance with applicable U.S. federal securities laws and U.S. state corporate laws. The requisite GM common stockholder approval of the Transactions will be sought under such laws, and GM common stockholders resident in Canada will have the benefit of any rights and remedies in respect of the consent solicitation disclosure document and related materials furnished in respect of the Transactions as are available under applicable U.S. laws.
36. Holders of GM \$1-2/3 par value common stock and GM Class H common stock resident in Canada will be furnished with the consent solicitation disclosure document and all other materials mailed to GM common stockholders in the United States (except to the extent that such other materials are of relevance only to U.S. residents or U.S. citizens), as applicable, that provide detailed information about the Transactions.
37. Following the Transactions, all continuous disclosure materials relating to Hughes that are furnished to Hughes common stockholders generally will also be furnished to registered Hughes common stockholders resident in Canada, and all continuous materials relating to News Corporation that are furnished to its News Corporation Preferred ADS holders generally will also be furnished to registered News Corporation ADS holders resident in Canada.

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

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

**THE DECISION** of the Decision Makers in each of the Hughes Distribution Relief Jurisdictions under the Legislation of such jurisdictions is that trades made in connection with the Hughes Distribution shall be exempt from the Registration Requirements and Prospectus Requirements of the Legislation of such jurisdictions;

**AND THE DECISION** of the Decision Makers in each of the News Distribution Relief Jurisdictions under the Legislation of such jurisdictions is that trades made in connection with the News Distribution shall be exempt from the Registration Requirements and the Prospectus Requirements of the Legislation of such jurisdictions;

**AND THE DECISION** of the Decision Makers in each of the Resale Jurisdictions under the Legislation of such jurisdictions is that the first trade (and in Québec, the alienation) of the shares of Hughes common stock acquired pursuant to the distributions referred to above shall be exempt from the Prospectus Requirements, provided that:

- (a) after giving effect to the issuance of the shares of Hughes common stock, and any other shares of Hughes common stock that are issued at the same time or as part of the same distribution, residents of Canada will:
  - (i) not own directly or indirectly more than ten percent (10%) of the outstanding shares of Hughes common stock; and
  - (ii) not represent in number more than ten percent (10%) of the total number of owners directly or indirectly of shares of Hughes common stock; and
- (b) Hughes was not a reporting issuer in any jurisdiction that provides for a reporting issuer regime other than Québec at the date of the distribution; and
- (c) such first trade (and in Québec, such alienation) is made through an exchange or a market outside of Canada, or to a person or company outside of Canada.

**AND THE DECISION** of the Decision Makers in each of the Resale Jurisdictions under the Legislation of such jurisdictions is that the first trade (and in Québec, the alienation) of the News Corporation Preferred ADSs acquired pursuant to the distributions referred to above shall be exempt from the Prospectus Requirements, provided that:

- (a) after giving effect to the issuance of the News Corporation Preferred ADSs, and any other News Corporation Preferred ADSs that are issued at the same time or as part of the same distribution, residents of Canada will:

- (i) not own directly or indirectly more than ten percent (10%) of the outstanding Preferred Ordinary Shares (assuming that each outstanding News Corporation Preferred ADS was exchanged for the underlying Preferred Ordinary Shares); and
- (ii) not represent in number more than ten percent (10%) of the total number of owners directly or indirectly of Preferred Ordinary Shares (assuming that each outstanding News Corporation Preferred ADS was exchanged for the underlying Preferred Ordinary Shares); and

- (b) News Corporation was not a reporting issuer in any jurisdiction that provides for a reporting issuer regime other than Québec at the date of the distribution; and
- (c) such first trade (and in Québec, such alienation) is made through an exchange or a market outside of Canada, or to a person or company outside of Canada.

**AND THE DECISION** of the Decision Makers in each of the Hughes Listing Relief Jurisdictions and the News Listing Relief Jurisdictions under the Legislation is that GM, Hughes and News Corporation may represent in their consent solicitation disclosure document, an amended copy of which was filed with the United States Securities Exchange Commission on July 24, 2003, that following the Transactions, Hughes common stock and News Corporation Preferred ADSs will be listed on the New York Stock Exchange.

August 18, 2003.

"Daniel Laurion"

## 2.1.4 TD Asset Management Inc. - MRRS Decision

### Headnote

A variation of a prior order to permit investments by Top Funds in securities of Underlying Funds for a specified purpose - exempted from the reporting requirements and self-dealing prohibitions of clauses 111(2)(b), 111(3) and clause 117(1)(a) and (d).

### Statutes Cited

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

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

**AND**

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

**AND**

**IN THE MATTER OF  
TD ASSET MANAGEMENT INC.**

**AND**

**THE TD MANAGED ASSETS PROGRAM PORTFOLIOS**

**MRRS DECISION DOCUMENT**

**WHEREAS** the Canadian securities regulatory authority or regulator (collectively, the Decision Makers") in each of the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland and Labrador (collectively, the "Jurisdictions") has received an application from TD Asset Management Inc. ("TDAM") for a decision by each Decision Maker (collectively, the "Decision") under the securities legislation of the Jurisdictions (the "Legislation") revoking and replacing the MRRS Decision Document dated November 29, 2001 entitled *In the Matter of TD Asset Management Inc. and The TD Managed Assets Program Portfolios* (the "Existing Decision Document") which decided that the Applicable Requirements (as defined below) did not apply to TDAM or the TD Managed Assets Program Portfolios (as defined in Schedule "A", collectively, the "Existing Top Funds") and other mutual funds managed by TDAM after the date of the Existing Decision Document that will have an investment objective to invest substantially all of their assets in other mutual funds (individually, a "Future Top Fund" and together with the Existing Top Funds, the "Top Funds"), as the case may be, in respect of certain investments to be made by the Top Funds in units of a mutual fund managed by TDAM or a person or company unrelated to TDAM (together, the "Existing Underlying Funds") and future

mutual funds managed by TDAM or a person or company unrelated to TDAM (the "Future Underlying Funds" and collectively with the Existing Underlying Funds, the "Underlying Funds");

**AND WHEREAS** TDAM, as manager of the Top Funds, has requested a Decision that the following provisions of the Legislation (the "Applicable Requirements") shall not apply to TDAM or the Top Funds, as the case may be, in respect of certain investments to be made from time to time by a Top Fund in securities of an Underlying Fund:

1. the restrictions contained in the Legislation prohibiting a mutual fund from knowingly making or holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial securityholder; and
2. the requirements contained in the Legislation requiring a management company, or in British Columbia, a mutual fund manager, to file a report relating to a purchase or sale of securities between the mutual fund and any related person or company, or any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is a joint participant with one or more of its related persons or companies;

**AND WHEREAS** under the Mutual Reliance Review System ("MRRS") 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** TDAM has represented to the Decision Makers as follows:

1. TDAM is a corporation incorporated under the laws of Ontario and is a wholly-owned subsidiary of The Toronto-Dominion Bank ("TD Bank") and is the manager or will be the manager of the Top Funds and the TD Underlying Funds (collectively, the "TD Funds" and "TD Underlying Funds" being Underlying Funds that are or will be managed by TDAM).
2. TDAM's head office is located in Toronto, Ontario. TDAM is registered as an investment counsel and portfolio manager or their equivalent in all provinces and territories other than Prince Edward Island, as a mutual fund dealer in Quebec, as a limited market dealer in Ontario and Newfoundland and Labrador, and as a commodity trading manager under the *Commodity Futures Act* (Ontario).

3. Each of the TD Funds is or will be an open-ended mutual fund trust or mutual fund corporation established under the laws of Ontario or Canada, as the case may be. Units of each of the TD Funds are or will be qualified for distribution in all of the provinces and territories of Canada pursuant to a simplified prospectus and annual information form filed with and accepted by the Decision Makers.
4. Each of the TD Funds is or will be a reporting issuer in each of the provinces and territories of Canada and will not be in default of any of the requirements of the Legislation.
5. As part of its investment objective, each of the Top Funds invests or will invest a certain fixed percentage (the "Fixed Percentages") of its assets (excluding cash and cash equivalents) in units of specified Underlying Funds, subject to a variation of 2.5% above or below the Fixed Percentages (the "Permitted Ranges") to account for market fluctuations.
6. Certain Top Funds (the "RSP Top Funds") have or will have an objective to limit its holdings in foreign property such that its units are or will not be foreign property under Part XI of the *Income Tax Act* (Canada) (the "Tax Act").
7. TDAM now wishes to revoke and replace the Existing Decision Document so that the RSP Top Funds may invest in the Underlying Funds in the same manner as the other Top Funds invest, as described in paragraph 5, on substantially the same terms as other "passive" fund-on-fund structures, subject to compliance with restrictions in the Tax Act relating to holdings of foreign property.
8. Investments of each Top Fund will be made in accordance with the fundamental investment objectives of the Top Fund.
9. A Top Fund will not invest in an Underlying Fund with an investment objective which includes investing directly or indirectly in other mutual funds.
10. The simplified prospectus for each of the Top Funds will disclose the investment objectives, investment strategies, risks and restrictions of the Top Fund and the investment objectives and risk factors of the Underlying Funds, the adviser to the Underlying Funds and the Fixed Percentages and the Permitted Ranges.
11. The investments by the Top Funds in securities of the Underlying Funds represent the business judgement of "responsible persons" (as that term is defined in the Legislation) uninfluenced by considerations other than the best interests of the Top Funds.

12. Except to the extent evidenced by this Decision and specific approvals granted by the Decision Makers pursuant to National Instrument 81-102 - *Mutual Funds* ("NI 81-102"), the investments by each of the Top Funds in the Underlying Funds have been structured to comply with the investment restrictions of the Legislation and NI 81-102.
13. In the absence of this Decision, pursuant to the Legislation, each Top Fund is prohibited from knowingly making or holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder. As a result, in the absence of this Decision, each Top Fund would be required to divest itself of any such investments.
14. In the absence of this Decision, the Legislation requires TDAM to file a report on every purchase or sale of securities of the Underlying Funds by a Top Fund.

**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 Existing Decision Document is hereby revoked and replaced with the following Decision with effect as of, and from, the date hereof;

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

**PROVIDED IN EACH CASE THAT:**

1. The Decision, as it relates to the jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation or rule of that Decision Maker dealing with matters in section 2.5 of NI 81-102.
2. The Decision shall only apply if, at the time a Top Fund makes or holds an investment in its Underlying Funds, the following conditions are satisfied:
  - (a) the securities of both the Top Fund and the Underlying Funds are being offered for sale in the jurisdiction of the Decision Maker pursuant to a simplified prospectus and annual information form

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| <p>which has been filed and accepted by the Decision Maker;</p> <p>(b) the investment by the Top Fund in the Underlying Funds is compatible with the fundamental investment objectives of the Top Fund;</p> <p>(c) the simplified prospectus discloses the intent of the Top Fund to invest in securities of the Underlying Funds, the names of the Underlying Funds, the Fixed Percentages and the Permitted Ranges within which such Fixed Percentages may vary;</p> <p>(d) the investment objective of the Top Fund discloses that the Top Fund invests in securities of other mutual funds;</p> <p>(e) the Underlying Funds are not mutual funds whose investment objective includes investing directly or indirectly in other mutual funds;</p> <p>(f) the Top Fund invests its assets (exclusive of cash and cash equivalents) in the Underlying Funds in accordance with the Fixed Percentages disclosed in the simplified prospectus;</p> <p>(g) the Top Fund's holding of securities in the Underlying Funds does not deviate from the Permitted Ranges;</p> <p>(h) subject to condition (j) with respect to the RSP Top Funds, any deviation from the Fixed Percentages is caused by market fluctuations only;</p> <p>(i) subject to condition (j) with respect to the RSP Top Funds, if an investment by the Top Fund in any of the Underlying Funds has deviated from the Permitted Ranges as a result of market fluctuations, the Top Fund's investment portfolio was re-balanced to comply with the Fixed Percentages on the next day on which the net asset value was calculated following the deviation;</p> <p>(j) if, due to the foreign property investment limitations under the Tax Act, the RSP Top Fund was precluded from purchasing additional securities or re-instituting the Fixed Percentages in order to comply with condition (i), or the RSP Top Fund was re-balanced in order to comply with those foreign property investment limitations and such re-balancing required the RSP Top Fund to temporarily deviate beyond the Permitted Ranges, the RSP Top Fund complied</p> | <p>with condition (i) as soon as it was possible to do so in compliance with those foreign property investment limitations;</p> <p>(k) if the Fixed Percentages and the Underlying Funds which are disclosed in the simplified prospectus have been changed, either the simplified prospectus has been amended in accordance with securities legislation to reflect this significant change, or a new simplified prospectus reflecting the significant change has been filed within ten days thereof, and the securityholders of the Top Fund have been given at least 60 days' notice of the change;</p> <p>(l) there are compatible dates for the calculation of the net asset value of the Top Fund and the Underlying Funds for the purpose of the issue and redemption of the securities of such mutual funds;</p> <p>(m) no sales charges are payable by the Top Fund in relation to its purchase of securities in the Underlying Funds;</p> <p>(n) no redemption fees or other charges are charged by an Underlying Fund in respect of the redemption by the Top Fund of securities of the Underlying Fund owned by the Top Fund;</p> <p>(o) no fees or charges of any sort are paid by the Top Fund and the Underlying Funds, by their respective managers or principal distributors, or by any affiliate or associate of any of the foregoing entities, to anyone in respect of the Top Fund's purchase, holding or redemption of the securities of the Underlying Funds other than trailing commissions paid to TDAM by the Underlying Funds managed by a person or company unrelated to TDAM;</p> <p>(p) the arrangements between or in respect of the Top Fund and the Underlying Funds are such as to avoid the duplication of management fees;</p> <p>(q) any notice provided to securityholders of an Underlying Fund as required by applicable laws or the constating documents of that Underlying Fund has been delivered by the Top Fund to its securityholders;</p> <p>(r) all of the disclosure and notice material prepared in connection with a meeting of securityholders of the Underlying Funds and received by the Top Fund has been provided to its securityholders, the</p> |
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securityholders have been permitted to direct a representative of the Top Fund to vote its holdings in the Underlying Fund in accordance with their direction, and the representative of the Top Fund has not voted its holdings in the Underlying Funds except to the extent the securityholders of the Top Fund have directed;

- (s) in addition to receiving the annual and, upon request, the semi-annual financial statements, of the Top Fund, securityholders of the Top Fund have received appropriate summary disclosure in respect of the Top Fund's holdings of securities of the Underlying Funds in the financial statements of the Top Fund; and
- (t) to the extent that the Top Fund and the Underlying Funds do not use a combined simplified prospectus and annual information form containing disclosure about the Top Fund and the Underlying Funds, copies of the simplified prospectus and annual information form of the Underlying Funds have been provided upon request to securityholders of the Top Fund and the right to receive these documents is disclosed in the prospectus of the Top Fund.

September 26, 2003.

"Robert W. Davis"

"Paul M. Moore"

## Schedule "A"

### TD Managed Portfolios

TD Managed Income Portfolio  
 TD Managed Income & Moderate Growth Portfolio  
 TD Managed Balanced Growth Portfolio  
 TD Managed Aggressive Growth Portfolio  
 TD Managed Maximum Equity Growth Portfolio

TD Managed Income RSP Portfolio  
 TD Managed Income & Moderate Growth RSP Portfolio  
 TD Managed Balanced Growth RSP Portfolio  
 TD Managed Aggressive Growth RSP Portfolio  
 TD Managed Maximum Equity Growth RSP Portfolio

### TD FundSmart Managed Portfolios

TD FundSmart Managed Income Portfolio  
 TD FundSmart Managed Income & Moderate Growth Portfolio  
 TD FundSmart Managed Balanced Growth Portfolio  
 TD FundSmart Managed Aggressive Growth Portfolio  
 TD FundSmart Managed Maximum Equity Growth Portfolio

TD FundSmart Managed Income RSP Portfolio  
 TD FundSmart Managed Income & Moderate Growth RSP Portfolio  
 TD FundSmart Managed Balanced Growth RSP Portfolio  
 TD FundSmart Managed Aggressive Growth RSP Portfolio  
 TD FundSmart Managed Maximum Equity Growth RSP Portfolio

### TD Managed Index Portfolios

TD Managed Index Income Portfolio  
 TD Managed Index Income & Moderate Growth Portfolio  
 TD Managed Index Balanced Growth Portfolio  
 TD Managed Index Aggressive Growth Portfolio  
 TD Managed Index Maximum Equity Growth Portfolio

TD Managed Index Income RSP Portfolio  
 TD Managed Index Income & Moderate Growth RSP Portfolio  
 TD Managed Index Balanced Growth RSP Portfolio  
 TD Managed Index Aggressive Growth RSP Portfolio  
 TD Managed Index Maximum Equity Growth RSP Portfolio

**2.1.5 John Deere Credit Inc. and John Deere Capital Corporation - MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - issuer to distribute medium term notes - medium term notes fully and unconditionally guaranteed - issuer exempt from the requirement that financial statements be reconciled to Canadian GAAP and that auditor's report be accompanied by statement of auditor, subject to conditions - issuer exempt from certain continuous disclosure requirements, including material change requirements, proxy requirements, insider reporting requirements, annual financial statement requirements, and interim financial statement requirements, subject to conditions - issuer exempt from certain prospectus disclosure and eligibility requirements, subject to conditions - issuer exempt from requirement to file a current annual information form in Ontario, Quebec and Saskatchewan, subject to conditions.

**Applicable Ontario Statutory Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 80(b)(iii), 88(2)(b), and 121(2)(a)(ii).

**Applicable Ontario Rules**

Rule 51-501 AIF and MD&A.  
National Instrument 44-101 Short Form Prospectus Distributions (2000) 23 OSCB (Supp) 867.  
National Instrument 44-102 Shelf Distributions (2000) 23 OSCB (Supp) 985.  
National Instrument 71-101 Multijurisdictional Disclosure System.

**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  
JOHN DEERE CREDIT INC. AND  
JOHN DEERE CAPITAL CORPORATION**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince

Edward Island, Quebec and Saskatchewan (the "Jurisdictions") has received an application from John Deere Credit Inc. ("JDCI") and John Deere Capital Corporation ("JDCC", and together with JDCI, the "Applicants") for decisions under the securities legislation of the Jurisdictions (the "Legislation") that the Applicants, as applicable, be exempted from the following requirements contained in the Legislation:

- (a) the requirements in National Instrument 44-101 ("NI 44-101") and National Instrument 44-102 ("NI 44-102") 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 (the "Eligibility Requirement") in order to permit JDCI to issue non-convertible debt securities, in particular medium term notes, with an approved rating (as defined in NI 44-101) which will be fully and unconditionally guaranteed by JDCC;
- (b) the requirement pursuant to NI 44-101 to reconcile financial statements included in a prospectus and prepared in accordance with generally accepted accounting principles of a foreign jurisdiction to Canadian GAAP (the "Canadian GAAP Reconciliation Requirement");
- (c) the requirement pursuant to NI 44-101 to provide, where financial statements included in a prospectus are audited in accordance with generally accepted auditing standards ("GAAS") of a foreign jurisdiction, a statement by the auditor (a) disclosing any material differences in the form and content of the auditor's report as compared to a Canadian auditor's report; and (B) confirming that the auditing standards of the foreign jurisdiction are substantially equivalent to Canadian GAAS (the "Canadian GAAS Reconciliation Requirement", and together with the Canadian GAAP Reconciliation Requirement, the "Reconciliation Requirements");
- (d) the requirement in NI 44-101 and under the Legislation of Ontario, Quebec and Saskatchewan that JDCI have a current annual information form (an "AIF") and file renewal AIFs with the Decision Makers (the "AIF Requirements");
- (e) the requirement that JDCI file with the Decision Makers and send to its securityholders annual audited comparative financial statements and an annual report, where applicable (the "Annual Financial Statements Requirements");
- (f) the requirement that JDCI file with the Decision Makers and send to its securityholders, where applicable, interim unaudited financial statements (the "Interim Financial Statements Requirements");



- (g) the requirement that JDCl file with the Decision Makers and send to its securityholders, where applicable, annual and interim MD&A (the "MD&A Requirements");
- (h) the requirement that JDCl issue and file with the Decision Makers press releases, and file with the Decision Makers material change reports (together, the "Material Change Requirements");
- (i) the requirement that JDCl comply with the proxy and proxy solicitation requirements under the Legislation, including filing with the Decision Makers and, if applicable, sending to securityholders, an information circular or report in lieu thereof (the "Proxy Requirements");
- (j) the requirement that the insiders of JDCl (the "Insiders") file insider reports with the Decision Makers (the "Insider Reporting Requirements"); and
- (k) the requirement that a short form prospectus include the information set forth in item 12.1(1) and items 12.2(1) to 12.2(4) of Form 44-101F3 (the "Prospectus Disclosure Requirements");

**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 meanings set out in National Instrument 14-101 Definitions;

**AND WHEREAS** the Applicants have represented to the Decision Makers that:

- 1. JDCl primarily finances sales and leases by John Deere dealers of new and used agricultural, commercial and consumer, and construction and forestry equipment.
- 2. JDCl is the result of the amalgamation under the *Canada Business Corporations Act* on October 28, 1996 of Canadian Equipment Finance Corporation and John Deere Finance Limited. JDCl is an indirect, wholly-owned subsidiary of Deere & Company ("Deere"), a reporting company under the *Securities Exchange Act of 1934*, as amended (the "1934 Act").
- 3. JDCl became a reporting issuer or the equivalent in the Jurisdictions by virtue of it filing a short form shelf prospectus dated July 22, 1999 with the Decision Makers in connection with the establishment in Canada of a medium term note program (the "1999 MTN Program") under the provisions of former National Policy Statement No. 47 and former National Policy Statement No. 44. JDCl "renewed" the 1999 MTN Program on August 2, 2001 (the "2001 MTN Program") pursuant to a short form shelf prospectus dated July 31, 2001.

- 4. JDCC was incorporated under the laws of Delaware on June 18, 1958, and is not a reporting issuer or the equivalent in any of the Jurisdictions. JDCC is an indirect, wholly-owned subsidiary of Deere. Deere is party to an agreement with JDCC pursuant to which Deere has agreed to continue to own at least 51% of the voting shares of capital stock of JDCC. JDCC and its subsidiaries (collectively, "John Deere Capital") provide and administer financing for retail purchases of new equipment manufactured by Deere's agricultural equipment, commercial and consumer equipment, and construction and forestry divisions and used equipment taken in trade for this equipment. John Deere Capital purchases retail installment sales and loan contracts (retail notes) from Deere and its subsidiaries (collectively, "John Deere"). John Deere acquires these retail notes through John Deere retail dealers. John Deere Capital also purchases and finances a limited amount of non-Deere retail notes and continues to service a small portfolio of recreational products and other retail notes. In addition, John Deere Capital leases John Deere equipment and a limited amount of non-Deere equipment to retail customers (financing and operating leases). John Deere Capital also finances and services revolving charge accounts, in most cases acquired from and offered through merchants in the agricultural, commercial and consumer, and construction and forestry markets (revolving charge accounts). Further, John Deere Capital finances and services operating loans, in most cases acquired from and offered through farm input providers, and provides insured international export financing generally involving John Deere products (operating loans). John Deere Capital also provides wholesale financing for inventories of John Deere engines and John Deere agricultural, commercial and consumer and construction and forestry equipment owned by dealers of those products (wholesale receivables). In addition, John Deere Capital purchases and administers a significant portion of the trade receivables originated by John Deere, which are included in wholesale receivables.
- 5. JDCC has been a reporting company under the 1934 Act since at least 1961. JDCC has filed annual reports on Form 10-K and quarterly reports on Form 10-Q since it first became a reporting company, in accordance with the filing obligations set out in sections 13 and 15(d) of the 1934 Act. JDCC has filed with the United States Securities and Exchange Commission (the "SEC") all filings required to be made with the SEC under the 1934 Act during the last 12 months.
- 6. Pursuant to each of the 1999 MTN Program and the 2001 MTN Program, JDCl was entitled to issue up to Cdn.\$1,000,000,000 (or the equivalent thereof in lawful money of the United States of America) of non-convertible medium term notes which were fully and unconditionally guaranteed by Deere in respect of the payment of principal, premium (if any), interest and certain other amounts that could become due under

the notes. As at July 31, 2003, JDCI had issued and outstanding under the 1999 MTN Program a total of Cdn.\$150,000,000 in principal amount of notes and under the 2001 MTN Program a total of Cdn.\$990,000,000 in principal amount of notes (collectively, the "Existing Notes"). JDCI and Deere will continue to satisfy the conditions of the 1999 decision document and the 2001 decision document (the "2001 Decision Document") previously obtained in connection with the 1999 MTN Program and the 2001 MTN Program, respectively, except to the extent that such conditions are amended by this decision document, so long as the Existing Notes remain outstanding.

7. As at July 31, 2003, JDCC and its consolidated subsidiaries had approximately US\$6,841.8 million in senior long-term debt outstanding (excluding current maturities). JDCC's senior long-term debt is rated "A-" by Standard & Poor's, "A3" by Moody's Investors Service and "A" by Fitch Investors Service.
8. JDCI proposes to file a short form shelf prospectus in each of the Jurisdictions pursuant to National Instrument 44-101 ("NI 44-101") and National Instrument 44-102 ("NI 44-102", and together with NI 44-101, the "Shelf Requirements") in order to issue medium term notes in an aggregate principal amount of up to Cdn.\$1,000,000,000 (or the equivalent thereof in lawful money of the United States of America) (the "Proposed Offering") and may in the future file additional short form shelf prospectuses in each of the Jurisdictions in respect of the issuance by JDCI of additional medium term notes from time to time (the "Future Offerings" and together with the Proposed Offering, the "Offerings" and each an "Offering"). All medium term notes issued by JDCI pursuant to the Proposed Offering and Future Offerings (collectively, the "Notes") will have an approved rating (as defined in NI 44-101) and will be rated by a recognized security evaluation agency in one of the categories determined by the Commission des valeurs mobilières du Québec (an "Approved Rating").
9. In connection with the Proposed Offering and any Future Offerings:
  - (a) each short form shelf prospectus of JDCI will be prepared pursuant to the Shelf Requirements, with the disclosure required by:
    - (i) item 12.1 of Form 44-101F3 of NI 44-101 ("Form 44-101F3") being addressed by incorporating by reference in each prospectus:
      - (A) the most recent annual report on Form 10-K of JDCC filed with the SEC (including the exhibit setting out the "Computation of ratio of earnings to fixed charges");

- (B) all quarterly reports on Form 10-Q and current reports on Form 8-K of JDCC filed with the SEC in respect of the financial year following the year that is the subject of JDCC's most recently filed annual report on Form 10-K (including exhibits setting out the "Computation of ratio of earnings to fixed charges");
- (C) in respect of the prospectus filed in connection with the Proposed Offering only, the audited annual financial statements of JDCI for the fiscal years ended October 31, 2002 and 2001 and the unaudited interim financial statements of JDCI for the three months ended January 31, 2003, the six months ended April 30, 2003 and the nine months ended July 31, 2003; and
- (D) in respect of a prospectus filed in connection with any Future Offering:
  - (I) the annual comparative selected financial information (the "Annual Selected Financial Information") derived from the audited annual financial statements of JDCI for its most recently completed financial year and the financial year immediately preceding such financial year, prepared in accordance with generally accepted accounting principles in Canada ("Canadian GAAP"), accompanied by a specified procedures report of the auditors to JDCI, which shall define and include at least the following line items (or such other line items that provide substantially similar disclosure): 1) total revenues; (2) net income; (3) net investment in financing contracts and equipment on operating leases, together with a descriptive note on the dollar amount of the allowance for impaired financial contracts; (4) total assets; (5) short-term borrowings; (6) long-term borrowings (which shall include the Notes); (7) accounts payable and other liabilities; and (8) total shareholder's equity; and
  - (II) the interim comparative selected financial information (the "Interim Selected Financial Information") derived from the unaudited interim financial statements of JDCI for its most recently completed interim period and the corresponding interim period in the previous financial year, prepared in accordance with Canadian GAAP, which shall define

and include at least the line items set out above in paragraph 9(a)(i)(D)(I) (or such other line items that provide substantially similar disclosure);

(ii) item 12.2 of Form 44-101F3 being addressed by incorporating by reference in each short form shelf prospectus of JDCI the following documents filed with the SEC or the Decision Makers, as applicable, subsequent to the date of the particular prospectus but prior to the termination of the particular Offering:

(A) any annual reports on Form 10-K of JDCC filed with the SEC (including exhibits setting out the "Computation of ratio of earnings to fixed charges");

(B) any quarterly reports on Form 10-Q and current reports on Form 8-K of JDCC filed with the SEC (including exhibits setting out the "Computation of ratio of earnings to fixed charges");

(C) the Annual Selected Financial Information referred to above in paragraph 9(a)(i)(D)(I);

(D) the Interim Selected Financial Information referred to above in paragraph 9(a)(i)(D)(II); and

(E) any material change reports filed by JDCI; and

(iii) item 7 of Form 44-101F3 (earnings coverage ratios) and section 8.4 of NI 44-102 (requirement to update earnings coverage ratios) being addressed in respect of JDCC by disclosure with respect to JDCC in accordance with United States requirements;

(b) JDCC will fully and unconditionally guarantee payment of the principal, premium (if any), interest and certain other amounts that could become payable under any provisions of the trust indenture relating to the particular Notes;

(c) any Notes issued by JDCI pursuant to any Offering will have an Approved Rating;

(d) JDCC will sign each short form shelf prospectus of JDCI as credit supporter;

(e) each short form shelf prospectus of JDCI will include, directly or indirectly, all material disclosure regarding JDCI and JDCC;

(f) JDCC will undertake to file with the Decision Makers, in electronic format through SEDAR (as defined in National Instrument 13-101) under JDCI's SEDAR profile, all documents that it files

under sections 13 and 15(d) of the 1934 Act until such time as the Notes are no longer outstanding;

(g) the consolidated annual and interim financial statements of JDCC that will be included or incorporated by reference in any short form shelf prospectus of JDCI will be prepared in conformity with generally accepted accounting principles in the United States that the SEC has identified as having substantial authoritative support, as supplemented by Regulation S-X and Regulation S-B under the 1934 Act ("US GAAP"), and, in the case of the audited consolidated annual financial statements, such financial statements will be audited in accordance with generally accepted auditing standards in the United States, as supplemented by the SEC's rules on auditor independence ("US GAAS"); and

(h) JDCC satisfies the criteria set forth in paragraph 3.1 of NI 71-101 (or any applicable successor provision or instrument) and is eligible to use the multi-jurisdictional disclosure system ("MJDS") described therein (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.

**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 in each of Ontario, Québec and Saskatchewan is that, in connection with any Offering (which, for greater certainty, includes the Proposed Offering and any Future Offerings), the AIF Requirements shall not apply to JDCI provided that (i) JDCC complies with the AIF Requirements of NI 44-101 as if it is the issuer by filing an AIF in the form of JDCC's most recently filed Form 10-K (as filed under the 1934 Act); and (ii) JDCI and JDCC comply with all of the conditions of each of the Decisions below.

September 29, 2003.

"Charlie MacCready"

**AND THE FURTHER DECISION** of the Decision Makers under the Legislation is that the Applicants be exempt from the Eligibility Requirement and the Reconciliation Requirements in connection with any Offering (which, for greater certainty, includes the Proposed Offering and any Future Offerings) provided that:

(a) each of JDCI and JDCC complies with paragraph 9 above;

- (b) JDCl 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;
- (c) the consolidated annual and interim financial statements of JDCC that will be included or incorporated by reference in any short form shelf prospectus of JDCl will be prepared in conformity with US GAAP, and, in the case of the audited consolidated annual financial statements, such financial statements will be audited in accordance with US GAAS;
- (d) Deere remains the direct or indirect beneficial owner of (i) 100% of the issued and outstanding voting shares of JDCl and (ii) at least 51% of the issued and outstanding voting shares of JDCC; and
- (e) JDCC continues to satisfy the criteria set forth in paragraph 3.1 of NI 71-101 (or any applicable successor provision or instrument) and remains eligible to use the MJDS described therein (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.

September 29, 2003.

"Charlie MacCready"

**AND THE FURTHER DECISION** of the Decision Makers under the Legislation is that, commencing as of the date hereof, the Prospectus Disclosure Requirements shall not apply to any short form shelf prospectus filed by JDCl in connection with any Offering (which, for greater certainty, includes the Proposed Offering and any Future Offerings), provided that each of JDCl and JDCC complies with paragraph 9 above.

September 29, 2003.

"Charlie MacCready"

**AND THE FURTHER DECISION** of the Decision Makers (other than the Decision Maker in Prince Edward Island) under 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 Statements Requirements shall not apply to JDCl provided that (i) JDCl files, in electronic format, the Annual Selected Financial Information, accompanied by a specified procedures report of the auditors to JDCl, in accordance with paragraph 9(a)(i)(D)(I) above, commencing for the fiscal year ended October 31, 2003; (ii) JDCC files with the Decision Makers, in electronic format through SEDAR under JDCl's SEDAR profile, the annual reports on Form 10-K

filed by JDCC with the SEC, on the same day on which they are filed with the SEC, or as soon as practicable thereafter; and (iii) the documents referred to in (ii) above are provided to holders of Notes whose last address as shown on the books of JDCl is in Canada, in the manner, at the time and only if required by applicable United States law to be sent to JDCC debt holders;

- B. the Interim Financial Statements Requirements shall not apply to JDCl provided that (i) JDCl files, in electronic format, the Interim Selected Financial Information in accordance with paragraph 9(a)(i)(D)(II) above, commencing for the interim period ended January 31, 2004; (ii) JDCC files with the Decision Makers, in electronic format through SEDAR under JDCl's SEDAR profile, each of the quarterly reports on Form 10-Q filed by JDCC with the SEC, on the same day on which they are filed with the SEC, or as soon as practicable thereafter; and (iii) the documents referred to in (ii) above are provided to holders of Notes whose last address as shown on the books of JDCl is in Canada, in the manner, at the time and only if required by applicable United States law to be sent to JDCC debt holders;
- C. the MD&A Requirements shall not apply to JDCl, provided that (i) JDCC files with the Decision Makers, in electronic format through SEDAR under JDCl's SEDAR profile, the documents referred to in paragraphs A(ii) and (B)(ii) above, on the same day on which they are filed with the SEC, or as soon as practicable thereafter; and (ii) such documents are provided to holders of Notes whose last address as shown on the books of JDCl is in Canada, in the manner, at the time and only if required by applicable United States law to be sent to JDCC debt holders;
- D. the Material Change Requirements shall not apply to JDCl, provided that (i) JDCl files with the Decision Makers, in electronic format through SEDAR under JDCl's SEDAR profile, each of the mandatory current reports on Form 8-K filed by JDCC with the SEC, on the same day on which they are filed with the SEC, or as soon as practicable thereafter; (ii) JDCC forthwith issues in each Jurisdiction and JDCl files with the Decision Makers, 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 JDCC; and (iii) if there is a material change in respect of the business, operations or capital of JDCl that is not a material change in respect of JDCC, JDCl 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 a material change in respect of JDCC;
- E. the Proxy Requirements shall not apply to JDCl, provided that (i) JDCC complies with the

requirements of the 1934 Act and the rules and regulations made thereunder relating to proxy statements, proxies and proxy solicitations in connection with any meetings of its noteholders (if any); (ii) JDCC files with the Decision Makers, in electronic format through SEDAR under JDCI's SEDAR profile, materials relating to the meeting filed by it with the SEC, on the same day on which they are filed with the SEC, or as soon as practicable thereafter; and (iii) such documents are provided to holders of Notes whose last address as shown on the books of JDCI is in Canada, in the manner, at the time and only if required by applicable United States law to be sent to JDCC debt holders; and

F. the Insider Reporting Requirements shall not apply to Insiders of JDCI, provided that each insider (as defined in the Legislation) files 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.

provided that (for A. through F.):

- (a) JDCI does not issue additional securities other than the Notes, debt securities ranking *pari passu* to the Notes, short-term promissory notes guaranteed by JDCC or Deere (the "Short Term Notes"), medium term notes guaranteed by JDCC or Deere issued pursuant to the Deere Euro medium term note programme (the "Euro MTN Programme"), any debentures issued in connection with the security granted by JDCI to the holders of the Notes or of the Existing Notes or debt ranking *pari passu* with the Notes, and those securities currently issued and outstanding, other than to Deere or to direct or indirect subsidiaries of Deere;
- (b) if debt securities ranking *pari passu* with the Notes are hereinafter issued by JDCI (other than (i) to Deere or to direct or indirect subsidiaries of Deere, (ii) any Short Term Notes that may be considered to rank *pari passu* with the Notes, or (iii) any medium term notes (the "Euro Notes") issued pursuant to the Euro MTN Programme that may be considered to rank *pari passu* with the Notes, provided that reasonable precautions and restrictions are implemented by JDCI, the relevant dealers and other participants in the distribution to ensure that such Euro Notes are not distributed, or redistributed, into Canada or to Canadian residents and that such Euro Notes come to rest outside Canada), JDCC shall fully and unconditionally guarantee such debt securities as to the payments required to be made by JDCI to holders of such debt securities;
- (c) each of JDCI and JDCC complies with paragraph 9 above;

- (d) JDCI and Deere continue to satisfy the conditions of the 2001 Decision Document, except to the extent that such conditions are amended by the Decision, so long as the Existing Notes remain outstanding;
- (e) the Notes maintain an Approved Rating;
- (f) Deere remains the direct or indirect beneficial owner of securities (i) 100% of the issued and outstanding voting securities of JDCI and (ii) at least 51% of the issued and outstanding voting securities of JDCC;
- (g) JDCC 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;
- (h) JDCC continues to satisfy the criteria set forth in paragraph 3.1 of NI 71-101 (or any applicable successor provision or instrument) and remains eligible to use the MJDS described therein (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; and
- (i) all filing fees that would otherwise be payable by JDCI in connection with the Annual Financial Statements Requirements, the Interim Financial Statements Requirements and the Material Change Requirements, or in connection with JDCI's participation as a reporting issuer in any Jurisdiction, are paid.

September 29, 2003.

"R.W. Davis"

"H. Lorne Morphy"

**2.1.6 Crescent Point Energy Trust et al.  
- MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief from registration and prospectus requirements for trades made in connection with an arrangement – relief granted from certain continuous disclosure requirement, subject to conditions – relief from “current AIF” requirement, subject to certain conditions.

**Applicable Statutory Provisions**

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

**Applicable Instruments**

Multilateral Instrument 45-102 Resale of Securities.

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
ALBERTA, BRITISH COLUMBIA, SASKATCHEWAN,  
MANITOBA, ONTARIO, QUEBEC, NEW BRUNSWICK,  
PRINCE EDWARD ISLAND, 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  
CRESCENT POINT ENERGY LTD.,  
TAPPIT RESOURCES LTD.,  
STARPOINT ENERGY LTD.,  
CRESCENT POINT ENERGY TRUST,  
CRESCENT POINT ACQUISITION LTD.,  
AND CRESCENT POINT EXCHANGE 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, New Brunswick, Prince Edward Island, Newfoundland and Labrador and Nova Scotia (the “Jurisdictions”) has received an application from Crescent Point Energy Trust (the “Trust”), Crescent Point Energy Ltd. (“Crescent Point”), Tappit Resources Ltd., (“Tappit”), Crescent Point Acquisition Ltd. (“AcquisitionCo”), StarPoint Energy Ltd. (“ExploreCo”), and Crescent Point Exchange Ltd. (“ExchangeCo”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements contained in the Legislation:

1.1 to be registered to trade in a security (the “Registration Requirement”) and to file a preliminary prospectus and a prospectus and receive receipts therefore (the “Prospectus Requirement”) in the Jurisdictions, except in British Columbia (the “Registration and Prospectus Jurisdictions”), 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”) and section 192 of the Canada Business Corporations Act (the “CBCA”) involving the Trust, AcquisitionCo, Crescent Point, Tappit, ExploreCo, ExchangeCo and the shareholders of Crescent Point and Tappit; and

1.2 with respect to AcquisitionCo (or its successor on amalgamation with Crescent Point (“AmalgamationCo”)) in those Jurisdictions in which it becomes a reporting issuer or the equivalent under the Legislation, to issue a press 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 the security holders of 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 ExploreCo to have a current annual information form filed upon filed on the System for Electronic Document Analysis and Retrieval (“SEDAR”) under Multilateral Instrument 45-102 Resale of Securities (“MI 45-102”) would 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 in Québec Securities Commission Notice 14-101;

4. AND WHEREAS the Trust, Crescent Point, Tappit, AcquisitionCo, ExploreCo and ExchangeCo have represented to the Decision Makers that:

4.1 Crescent Point was incorporated pursuant to the ABCA on June 20, 2001;

- 4.2 the head and principal offices of Crescent Point are located at Suite 1800, 500 – 4th Ave. S.W., Calgary, Alberta, T2P 2V6 and the registered office is located at Suite 3300, 421 – 7th Ave S.W., Calgary, Alberta, T2P 4K9;
- 4.3 Crescent Point is 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 Crescent Point consists of an unlimited number of Class A Shares (“Crescent Point Class A Shares”), an unlimited number of Class B Shares (“Crescent Point Class B Shares” and together with the Crescent Point Class A Shares, “Crescent Point Shares”), and an unlimited number of preferred shares, issuable in series;
- 4.5 as at July 21, 2003, 26,373,757 Crescent Point Class A Shares, 808,830 Crescent Point Class B Shares and nil preferred shares were issued and outstanding, and options (“Crescent Point Options”) to purchase a total of 2,064,334 Crescent Point Class A Shares were outstanding;
- 4.6 the Crescent Point Class A Shares and Crescent Point Class B Shares are listed on the Toronto Stock Exchange (the “TSX”);
- 4.7 Crescent Point is a reporting issuer or the equivalent in the provinces of British Columbia, Alberta, Manitoba and Ontario and has been for more than 12 months;
- 4.8 Crescent Point 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, Manitoba and Ontario is not in default of the securities legislation in any of these jurisdictions;
- 4.9 Tappit was incorporated pursuant to the CBCA as 98941 Canada Ltd. on June 5, 1980. On July 31, 1980, Tappit changed its name to “Tappit Resources Ltd.”. On December 31, 1998, Tappit was amalgamated with its wholly-owned subsidiary Goal Energy Inc;
- 4.10 the registered and head office of Tappit is located at 704-2500 Victoria Avenue, Regina, Saskatchewan, S4P 3X2;
- 4.11 Tappit is a junior oil and gas exploration, development and production company with operations focused on oil in southeast Saskatchewan and on natural gas in northeast Alberta;
- 4.12 the authorized capital of Tappit consists of an unlimited number of common shares (“Tappit Shares”);
- 4.13 as at July 21, 2003, 19,085,871 Tappit Shares were issued and outstanding, and options (“Tappit Options”) to purchase of 1,200,000 Tappit Shares were outstanding;
- 4.14 Tappit Shares are listed on the TSX;
- 4.15 Tappit is a reporting user or the equivalent thereof in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador and has been for more than 12 months;
- 4.16 Tappit has filed all the information that it has been required to file as a reporting issuer or the equivalent thereof in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador and is not in default of the securities legislation in any of these jurisdictions;
- 4.17 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 22, 2003 between Crescent Point and Olympia Trust Company, as trustee;
- 4.18 Trust was established, inter alia, for the purpose of: (a) investing in shares of AcquisitionCo and the unsecured, subordinate promissory note of AcquisitionCo (the “Note”); (b) acquiring the Crescent Point Shares and the Tappit Shares pursuant to the Arrangement; (c) investing in units of Crescent Point Commercial Trust and shares of Crescent Point General Partner Corp.; (d) acquiring royalties in respect of Canadian resource properties; (e) acquiring, holding, transferring disposing of, investing in and otherwise dealing with assets, securities and other interests or properties of AmalgamationCo or any other entity; (f) disposing of any part of the monies, properties and assets of the Trust; (g) issuing units of the Trust (“Trust Units”) and other securities from time to time; (h) temporarily holding cash and investments for the purposes of paying the expenses and the liabilities of the Trust, paying amounts payable by the Trust in connection with the redemption of any Trust Units, and making distributions to holders of Trust Units (“Unitholders”); and (i) paying costs, fees and expenses associated with the foregoing purposes or incidental thereto;

- 4.19 the Trust was established with nominal capitalization and currently has only nominal assets and no liabilities and the only activity which will initially be carried on by the Trust will be the holding of securities of AmalgamationCo, Crescent Point ExchangeCo Ltd., Crescent Point Commercial Trust and Crescent Point General Partner Corp.;
- 4.20 the Trust is authorized to issue an unlimited number of Trust Units and an unlimited number of special voting rights ("Special Voting Rights");
- 4.21 as of the date hereof, there is one Trust Unit issued and outstanding and owned by Crescent Point and no Special Voting Rights are outstanding;
- 4.22 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;
- 4.23 the Trust is not a reporting issuer in any of the Jurisdictions;
- 4.24 the Trust expects to make monthly distributions of distributable income, if any, to the Unitholders;
- 4.25 the Trust is not a "mutual fund" under the Legislation, as Unitholders are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Trust, as contemplated by the definition of "mutual fund" in the Legislation;
- 4.26 AcquisitionCo was incorporated pursuant to the ABCA on July 22, 2003;
- 4.27 AcquisitionCo was incorporated to participate in the Arrangement by acquiring Crescent Point Shares and Tappit Shares;
- 4.28 the head and principal office of AcquisitionCo is located at Suite 1800, 500 - 4th Ave. S.W., Calgary, Alberta, T2P 2V6 and the registered office is located at Suite 3300, 421 - 7th Ave S.W., Calgary, Alberta, T2P 4K9;
- 4.29 the authorized capital of AcquisitionCo currently consists of an unlimited number of common shares and an unlimited number of exchangeable shares, issuable in series. Prior to the Arrangement, the articles of AcquisitionCo will be amended to create an unlimited number of Series A exchangeable shares ("Exchangeable Shares") of which an unlimited number will be authorized and up to 2,000,000 Exchangeable Shares will be issued pursuant to the Arrangement;
- 4.30 as of July 21, 2003, one common share of AcquisitionCo was issued and outstanding and owned by the Trust;
- 4.31 AcquisitionCo is not a reporting issuer in any of the Jurisdictions;
- 4.32 ExploreCo was incorporated pursuant to the ABCA on July 22, 2003 and has not carried on any active business since incorporation;
- 4.33 the head and principal office of ExploreCo is located at Suite 1800, 500 - 4th Ave. S.W., Calgary, Alberta, T2P 2V6 and the registered office is located at Suite 3300, 421 - 7th Ave S.W., Calgary, Alberta, T2P 4K9;
- 4.34 pursuant to the Arrangement, ExploreCo will acquire, directly and indirectly, certain natural gas assets from Crescent Point and upon completion of the Arrangement, ExploreCo will be engaged in the exploration for, and acquisition, development and production of, oil and natural gas reserves, primarily in western Canada;
- 4.35 the authorized capital of ExploreCo consists of an unlimited number of common shares ("ExploreCo Shares") and an unlimited number of preferred shares, issuable in series.
- 4.36 as of July 22, 2003, one ExploreCo Share and no preferred shares were issued and outstanding. ExploreCo has also reserved a total of 2,546,964 ExploreCo Shares for issuance pursuant to outstanding stock options;
- 4.37 ExploreCo has made application for conditional approval to list the ExploreCo Shares on the TSX;
- 4.38 ExploreCo is not a reporting issuer in any of the Jurisdictions;
- 4.39 the Arrangement will be effected by way of a plan of arrangement pursuant to section 193 of the ABCA (in respect of Crescent Point) and section 192 of the CBCA (in respect of Tappit) and was approved by not less than two-thirds of the votes cast by the holders of Crescent Point Class A Shares and Crescent Point Class B Shares (present in person or represented by proxy), each voting separately as a class, at a special meeting of holders of Crescent Point Shares held on August 21, 2003 and by not less than two-thirds of the votes cast by the holders of Tappit Shares (present in person or represented by proxy) at



a special meeting of holders of Tappit Shares held on August 21, 2003 (the "Meetings"). The Arrangement received the final approval of the Court of Queen's Bench of Alberta (the "Court") on August 22, 2003;

4.40 the joint management information circular (the "Information Circular") mailed to the holders of Crescent Point Shares and the holders of Tappit Shares (collectively, the "Shareholders") in connection with the Meetings conforms with the ABCA, the CBCA, applicable securities laws and an interim order of the Court and contains prospectus-level disclosure concerning the respective business, affairs and securities of the Trust, Crescent Point, Tappit, AmalgamationCo and ExploreCo, and a detailed description of the Arrangement;

4.41 the Arrangement provides for a transaction where, commencing at the effective time of the Arrangement (the "Effective Time"), the events set out below shall be deemed to occur in the following order:

4.41.1 the shareholder rights plan of Tappit shall be terminated and all rights issued thereunder extinguished;

4.41.2 the Crescent Point Shares and Tappit Shares held by Shareholders who validly exercise their rights of dissent under section 191 of the ABCA or section 190 of the CBCA, as applicable, as modified by an interim order of the Court, shall, as of the Effective Time, be deemed to have been transferred to Crescent Point or Tappit, as the case may be, and be cancelled and cease to be outstanding, and as of the Effective Time, such dissenting Shareholders shall cease to have any rights as shareholders of Crescent Point or Tappit, as the case may be, other than the right to be paid the fair value of their Crescent Point Shares or their Tappit Shares;

4.41.3 AcquisitionCo shall be granted by Crescent Point the right to acquire all ExploreCo Shares to be issued to Crescent Point on the exchange of certain natural gas assets (the "ExploreCo Assets") for ExploreCo Shares referred to in paragraph 4.41.4 for an amount equal to the fair market value of such ExploreCo Shares as determined at the time of their issuance;

4.41.4 the conveyance of ExploreCo Assets from Crescent Point to ExploreCo will be effected, pursuant to which ExploreCo shall issue to Crescent Point as consideration for the ExploreCo Assets such number of ExploreCo Shares which, shall be equal to the total number of ExploreCo Shares to be delivered to Crescent Point Shareholders and Tappit Shareholders pursuant to paragraph 4.41.10;

4.41.5 AcquisitionCo shall be deemed to exercise the right granted to it under paragraph 4.41.3 hereof and Crescent Point shall transfer all of the ExploreCo Shares owned by it to AcquisitionCo (free of all encumbrances) in exchange for an unsecured, demand promissory note of AcquisitionCo (the "Interim Note");

4.41.6 the transactions set forth in this paragraph 4.41.6 shall occur simultaneously:

a) AcquisitionCo agrees to purchase at the Completion Time, as defined below, each Crescent Point Class A Share (other than any such share previously held by a dissenting Shareholder and deemed to be cancelled pursuant to paragraph 4.41.2) from the holder thereof for consideration consisting of:

i) the delivery at the moment in time during the Arrangement immediately following the completion of steps in this paragraph 4.41.6 through paragraph 4.41.9 (the "Completion Time") by AcquisitionCo to the holder of one-half (0.50) of one (1.00) ExploreCo Share; and

ii) in accordance with the election or deemed election of a Crescent Point Class A Shareholder in respect of a particular Crescent Point Class A Share, either:

- A the payment at the Completion Time by AcquisitionCo to the holder of an amount equal to the fair market value of one-half (0.50) of one (1.00) Trust Unit which amount, if not paid by AcquisitionCo at the Completion Time, shall be payable on demand and bear interest at the rate of 14% per annum and which shall be assigned by the holder to subscribe for Trust Units under paragraph 4.41.6(b) or
- B the issuance at the Completion Time by AcquisitionCo to the holder of one-half (0.50) of one (1.00) Exchangeable Share; and
- b) the holder of each Crescent Point Class A Share entitled to receive an amount at the Completion Time pursuant to paragraph 4.41.6(a)(ii)(A) agrees to subscribe for one-half (0.50) of one (1.00) Trust Unit and shall pay the subscription price by the absolute and irrevocable assignment by the holder to the Trust of the entire amount that is paid or may become payable at the Completion Time to the holder by AcquisitionCo pursuant to paragraph 4.41.6(a)(ii)(A) in respect of that Share, and the Trust agrees to accept such assignment in full and absolute payment of the subscription price of that one-half (0.50) of one (1.00) Trust Unit and to issue same to
- such holder at the Completion Time;
- 4.41.7 the transactions set forth in this paragraph 4.41.7 shall occur simultaneously:
- a) AcquisitionCo agrees to purchase at the Completion Time each Crescent Point Class B Share (other than any such share previously held by a dissenting Shareholder and deemed to be cancelled pursuant to paragraph 4.41.2) from the holder thereof for consideration consisting of:
- i) the delivery at the Completion Time by AcquisitionCo to the holder of three-quarters (0.75) of one (1.00) ExploreCo Share; and
- ii) in accordance with the election or deemed election of a Crescent Point Class B Shareholder in respect of a particular Crescent Point Class B Share, either:
- A the payment at the Completion Time by AcquisitionCo to the holder of an amount equal to the fair market value of three-quarters (0.75) of one (1.00) Trust Unit which amount, if not paid by AcquisitionCo at the Completion Time, shall be payable on demand and bear interest at the rate of 14% per annum and which shall be assigned by the holder to subscribe for Trust Units under paragraph 4.41.7(b); or

- B the issuance at the Completion Time by AcquisitionCo to the holder of three-quarters (0.75) of one (1.00) Exchangeable Share; and
- b) the holder of each Crescent Point Class B Share entitled to receive an amount at the Completion Time pursuant to paragraph 4.41.7(a)(ii)(A) agrees to subscribe for three-quarters (0.75) of one (1.00) Trust Unit and shall pay the subscription price by the absolute and irrevocable assignment by the holder to the Trust of the entire amount that is paid or may become payable at the Completion Time to the holder by AcquisitionCo pursuant to paragraph 4.41.7(a)(ii)(A) in respect of that Share, and the Trust agrees to accept such assignment in full and absolute payment of the subscription price of that three-quarters (0.75) of one (1.00) Trust Unit and to issue same to such holder at the Completion Time;
- 4.41.8 the transactions set forth in this paragraph 4.41.8 shall occur simultaneously:
- a) AcquisitionCo agrees to purchase at the Completion Time each Tappit Share (other than any such share previously held by a dissenting Shareholder and deemed to be cancelled pursuant to subsection 4.41.2) from the holder thereof for consideration consisting of:
- i) the delivery at the Completion Time by AcquisitionCo to the holder of one-tenth (0.10) of one (1.00) ExploreCo Share; and
- ii) in accordance with the election or deemed election of a Tappit Shareholder in respect of a particular Tappit Share, either:
- A the payment at the Completion Time by AcquisitionCo to the holder of an amount equal to the fair market value of nineteen-one hundredths (0.19) of one (1.00) Trust Unit which amount, if not paid by AcquisitionCo at the Completion Time, shall be payable on demand and bear interest at the rate of 14% per annum and which shall be assigned by the holder to subscribe for Trust Units under paragraph 4.41.8(b); or
- B the issuance at the Completion Time by AcquisitionCo to the holder of nineteen-one hundredths (0.19) of one (1.00) Exchangeable Share; and
- iii) 0.36 of cash; and
- b) the holder of each Tappit Share entitled to receive an amount at the Completion Time pursuant to paragraph 4.41.8(a)(ii)(A) agrees to subscribe for nineteen-one hundredths (0.19) of one (1.00) Trust Unit and shall pay the subscription price by the absolute and irrevocable assignment by the holder to the Trust of the entire amount that is paid or may become payable at the Completion Time to the holder by AcquisitionCo pursuant to paragraph 4.41.8(a)(ii)(A) in respect of that Share, and the Trust agrees to accept such assignment in full and absolute payment of the subscription price of that

- nineteen-one hundredths (0.19) of one (1.00) Trust Unit and to issue same to such holder at the Completion Time.
- 4.41.9 each Crescent Point Class A Shareholder, Crescent Point Class B Shareholder and Tappit Shareholder shall assign absolutely and irrevocably to the Trust the entire amount, if any, that will be payable at the Completion Time to such holder by AcquisitionCo pursuant to paragraphs 4.41.6(a)(ii)(A), 4.41.7(a)(ii)(A), and 4.41.8(a)(ii)(A), as the case may be, and the Trust shall accept such assignment in full and absolute payment of each such holder's obligation in respect of the subscription for Trust Units;
- 4.41.10 at the Completion Time, the following shall occur:
- 4.41.11 Each Crescent Point Class A Shareholder shall receive:
- i) from AcquisitionCo:
    - A the number of ExploreCo Shares to which such holder is entitled pursuant to paragraph 4.41.6(a)(i); and
    - B the number of Exchangeable Shares to which such holder is entitled pursuant to paragraph 4.41.6(a)(ii)(B);
  - ii) from the Trust, the number of Trust Units to which such holder is entitled pursuant to paragraph 4.41.6(b);
  - b) each Crescent Point Class B Shareholder shall receive:
    - i) from AcquisitionCo:
      - A the number of ExploreCo Shares to which such holder is entitled pursuant to paragraph 4.41.7(a)(i); and
      - B the number of Exchangeable Shares to which such holder is entitled pursuant to paragraph 4.41.7(a)(ii)(B);
    - ii) from the Trust, the number of Trust Units to which such holder is entitled pursuant to paragraph 4.41.7(b);
- B the number of Exchangeable Shares to which such holder is entitled pursuant to paragraph 4.41.7(a)(ii)(B);
- ii) from the Trust, the number of Trust Units to which such holder is entitled pursuant to paragraph 4.41.7(b);
- c) each Tappit Shareholder shall receive:
- i) from AcquisitionCo:
    - A the number of ExploreCo Shares to which such holder is entitled pursuant to paragraph 4.41.8(a)(i);
    - B the number of Exchangeable Shares to which such holder is entitled pursuant to paragraph 4.41.8(a)(ii)(B); and
    - C the cash consideration to which such holder is entitled pursuant to paragraph 4.41.8(a)(iii); and
  - ii) from the Trust, the number of Trust Units to which such holder is entitled pursuant to paragraph 4.41.8(b) and
  - d) AcquisitionCo will deliver to the Trust the demand promissory note of AcquisitionCo bearing interest at the rate of 14% per annum evidencing any unpaid aggregate balance of the purchase price owing by AcquisitionCo at the Completion Time under

- paragraphs 4.41.6(a)(ii)(A)), 4.41.7(a)(ii)(A) and 4.41.8(a)(ii)(A).
- 4.41.12 all unexercised Crescent Point Options and all unexercised Tappit Options will be cancelled;
- 4.41.13 the aggregate stated capital of the Crescent Point Class A Shares, the Crescent Point Class B Shares and the Tappit Shares shall each be reduced without a return of capital or other distribution to the holders of shares of those classes by the amount that, in each case, shall result in the aggregate stated capital of all of the outstanding shares of each such class being reduced to \$1.00; and
- 4.41.14 Crescent Point and AcquisitionCo shall be amalgamated and continue as one corporation in accordance with the following:
- a) the Crescent Point Class A Shares and the Crescent Point Class B Shares acquired by AcquisitionCo pursuant to paragraph 4.41.7 and representing all issued and outstanding Crescent Point Shares shall be cancelled without any repayment of capital;
  - b) the articles of AmalgamationCo shall be the same as the articles of AcquisitionCo, and the name of the amalgamated corporation shall be "Crescent Point Resources Ltd.";
  - c) no securities shall be issued by AcquisitionCo in connection with the amalgamation and for greater certainty, the common shares, the Note and Exchangeable Shares of AcquisitionCo shall survive and continue to be common shares, Note and Exchangeable Shares of AmalgamationCo without amendment;
  - d) the property of each of the amalgamating corporations shall continue to be the property of AmalgamationCo;
  - e) AmalgamationCo shall continue to be liable for the obligations of each of the amalgamating corporations, including the Note;
  - f) any existing cause of action, claim or liability to prosecution of either of the amalgamating corporations shall be unaffected;
  - g) 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;
- 4.42 AmalgamationCo will become a reporting issuer under the Legislation in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia and Newfoundland and Labrador, and will be subject to the Continuous Disclosure Requirements in such jurisdictions;
- 4.43 the Trust will become a reporting issuer under the Legislation in British Columbia, Alberta, Saskatchewan and Ontario and will be subject to the Continuous Disclosure Requirements in such jurisdictions;
- 4.44 ExploreCo will become a reporting issuer under the Legislation in British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland and Labrador, and will be subject to the Continuous Disclosure Requirements in such jurisdictions;
- 4.45 the Exchangeable Shares will provide a holder with a security having economic, ownership and voting rights which are, as nearly as practicable, equivalent to those of the Trust Units;
- 4.46 Exchangeable Shares will not be issued to: (i) a person who is not a resident of Canada for the purposes of the Income Tax Act (Canada) (the "Tax Act"); (ii) a partnership that is not a Canadian partnership for the purposes of the Tax Act; or (iii) a person who is exempt from tax under Part I of the Tax Act; or (iv) a U.S. person as defined in Rule 902(k) under Regulation S under the United States Securities Act of 1933, as amended. Any such person who elects to receive Exchangeable Shares will be deemed to have elected to receive Trust Units on completion of the Arrangement;

- 4.47 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;
- 4.48 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;
- 4.49 in order to ensure that the Exchangeable Shares remain the voting and economical equivalent of the Trust Units prior to their exchange, the Arrangement provides for:
  - 4.49.1 a voting and exchange trust agreement to be entered into among the Trust, AcquisitionCo, ExchangeCo and Olympia 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;
  - 4.49.2 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
  - 4.49.3 a support agreement to be entered into between the Trust and AmalgamationCo which will, among other things, restrict the Trust from distributing additional Trust Units or rights to subscribe therefore or other property or assets to all or substantially all of the holders of Trust Units, or changing the rights, privileges or other terms of the Trust Units, unless the same or an economically equivalent change to the Exchangeable Shares (or in the rights of the holders thereof) is made simultaneously or approval of holders of Exchangeable Shares is obtained;
- 4.50 the steps under the Arrangement, the terms of the Exchangeable Shares and the exercise of certain rights provided for in connection with the Arrangement and the Exchangeable Shares involve a number of trades of potential trades in Crescent Point Class A Shares, Crescent Point Class B Shares, Tappit Shares, ExploreCo Shares, Trust Units, Exchangeable Shares, the Interim Note, the Note, the Special Voting Right, certain rights to acquire Trust Units and Exchangeable Shares under the Arrangement and rights to otherwise make a trade of a security that was derived from the Arrangement (collectively, the "Trades");
- 4.51 there are no exemptions from the Registration Requirement or the Prospectus Requirement available under the Legislation of the Registration and Prospectus Jurisdictions for certain of the Trades;
- 4.52 the Information Circular discloses that the Trust, Crescent Point, AcquisitionCo, AmalgamationCo and ExploreCo will rely on exemptions, including discretionary exemptions, from the Registration Requirement and Prospectus Requirement with respect to the issuance of Trust Units, Exchangeable Shares and ExploreCo Shares pursuant to the Arrangement and discloses that application will be made to relieve AmalgamationCo from the Continuous Disclosure Requirements;
- 4.53 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; and
- 4.54 the Information Circular provided to all Shareholders, and filed in all of the Jurisdictions, contains prospectus-level disclosure in respect of Crescent Point, ExploreCo, the Trust and AmalgamationCo;
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 Prospectus Requirement contained in the Legislation of the Registration and Prospectus Jurisdictions and shall not apply to the Trades provided

that the first trade in securities acquired under this Decision shall be deemed to be a distribution or primary distribution to the public;

7.2 the Prospectus Requirement contained in the Legislation of the Registration and Prospectus Jurisdictions shall not apply to the first trade in Trust Units, Exchangeable Shares or ExploreCo Shares acquired by shareholders of Crescent Point and Tappit under the Arrangement and the first trade of the Trust Units acquired on the exercise of all rights, automatic or otherwise, under such Exchangeable Shares, provided that:

7.2.1 except in Québec, the conditions in subsections (3) or (4) of section 2.6 of MI 45-102 are satisfied and, for the purposes of determining the period of time that the Trust or ExploreCo has been a reporting issuer under section 2.6 of MI 45-102, the period of time that Crescent Point 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:

- a) the Trust or ExploreCo, as applicable, is deemed to be a reporting issuer in Québec and the Commission des valeurs mobilières du Québec recognizes the period during which Crescent Point has been a reporting issuer in Alberta immediately before the Arrangement;
- b) no unusual effort is made to prepare the market or create a demand for the securities that are the subject of the trade;
- c) no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
- d) if the selling security holder is an insider or officer of the Trust, the selling security holder has no reasonable grounds to believe that the Trust is in default of securities legislation;

7.3 upon the effectiveness of the Arrangement, 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 or pursuant to paragraph 1(e)(i) of decision no. 2003-C-0016 of the Commission des valeurs du Québec shall not apply to ExploreCo provided that:

7.3.1 ExploreCo 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 K to the Information Circular as the portion of the Information Circular containing disclosure specific to ExploreCo;

7.3.2 ExploreCo files a copy of Appendix K of the Information Circular under ExploreCo's SEDAR profile;

7.3.3 ExploreCo 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;

7.3.4 such order to expire 140 days after ExploreCo's financial year ended December 31, 2003; and

7.4 the Continuous Disclosure Requirements shall not apply to AmalgamationCo for so long as:

7.4.1 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;

7.4.2 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;

7.4.3 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;

7.4.4 AmalgamationCo 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 AmalgamationCo that is not also a material change in the affairs of the Trust;

7.4.5 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 holders of Trust Units;

7.4.6 the Trust remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of AmalgamationCo; and

7.4.7 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.

September 2, 2003.

"Glenda Campbell"

"Stephen R. Murison"

## 2.1.7 The VenGrowth Traditional Industries Fund Inc. - MRRS Decision

### Headnote

Exemption from section 2.1 of National Instrument 81-105 Mutual Fund Sales Practices granted to labour sponsored investment fund corporation to permit it to pay certain specified distribution costs out of fund assets.

### Rules Cited

National Instrument 81-105 Mutual Fund Sales Practices.

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

**AND**

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

**AND**

**IN THE MATTER OF  
THE VENGROWTH TRADITIONAL  
INDUSTRIES FUND INC.**

### MRRS DECISION DOCUMENT

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the "Jurisdictions") has received an application from The VenGrowth Traditional Industries Fund Inc. (the "**Fund**") for a decision under section 9.1 of *National Instrument 81-105, Mutual Fund Sales Practices* ("NI 81-105") that the prohibition in section 2.1 of NI 81-105 against the making of certain payments by the Fund to participating dealers shall not apply to the Fund;

**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;

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

1. The Fund is a corporation incorporated under the *Canada Business Corporations Act* by articles of incorporation dated August 8, 2003.



2. The Fund has applied to be registered as a labour sponsored investment fund corporation under the *Community Small Business Investment Funds Act* (Ontario) (the "Ontario Act") and expects to be registered as such by October, 2003. The Fund will not be applying for registration as a labour sponsored venture capital corporation, or similar concept, under the provincial legislation of the Jurisdictions.
3. The Fund has applied to be registered as a labour sponsored venture capital corporation under the *Income Tax Act* (Canada) (the "Tax Act") and expects to be registered as such by October, 2003.
4. The Fund is a mutual fund pursuant to the securities legislation of the Jurisdictions (the "Legislation"), and will distribute securities in the Jurisdictions under a prospectus. The Fund has filed a preliminary prospectus dated August 20, 2003 under Sedar Project No. 565839 in each of the Jurisdictions.
5. The Fund will become a "reporting issuer" or equivalent in the Jurisdictions that have this concept when its prospectus is receipted in such Jurisdictions.
6. The Fund will invest in traditional Canadian industrial businesses with the objective of generating interest and dividend income and long-term capital appreciation.
7. The authorized capital of the Fund consists of an unlimited number of Class A shares (the "Class A Shares"), 25,000 Class B shares and 10,000 Class C shares, of which 100 Class B shares and 100 Class C shares are issued and outstanding as of the date hereof.
8. VenGrowth Traditional Industries Management Inc. (the "Manager"), the manager of the Fund and the Association of Public Service Financial Administrators, the sponsor of the Fund, formed and organized the Fund.
9. As will be disclosed in the Fund's prospectus, the Fund (or the Manager) will pay the following distribution costs ("Distribution Costs"):
  - a. a sales commission in the amount of 6% of the subscription price derived on the sale of a Class A Share to the dealer procuring such subscription ("Sales Commission"). Such sales commissions payable by the Fund are amortized by it on a straight-line basis over a period of eight years on its financial accounts and are recoverable on a straight line basis, at the rate of 0.75% per annum, in the event that Class A Shares are redeemed by the holders thereof prior to the expiry of an eight-year period following the purchase thereof. This mechanism is viewed by the Fund as an appropriate and beneficial mechanism through which the Fund may match distribution expenses against subscriptions;
  - b. a monthly servicing commission ("Servicing Commission") of up to 1/12 of 0.5% of the total net asset value of Class A Shares held by clients of participating dealers; and
  - c. the reimbursement of co-operative marketing expenses (the "Co-op Expenses") incurred by certain dealers in promoting sales of the Class A Shares, pursuant to co-operative marketing agreements the Fund enters into with such dealers from time to time. For accounting purposes, the Fund expenses the Co-op Expenses in the fiscal period when incurred and does not defer or amortize any Co-op Expenses.
10. The structural aspects of the Fund relating to the payment of commissions are consistent with the legislative requirements contemplated under the Ontario Act. Gross investment amounts will be paid to the Fund as opposed to, for example, first deducting a commission and remitting the net investment amount to the Fund, in order to ensure that the entire amount paid by an investor is eligible for applicable federal, and in the case of Ontario, provincial tax credits which arise on the purchase of the Class A Shares of the Fund. Section 25(4) of the Ontario Act, for example, provides that the provincial tax credit is a defined percentage of the amount received by the corporation as equity capital on the issue. Accordingly, the most tax efficient way for sales commissions to be financed is for the Fund to pay such expenses and amortize them in the manner described above.
11. Due to the structure of the Fund, the most tax efficient way for the Distribution Costs to be financed is for the Fund (or the Manager) to pay them directly.
12. The payment of commissions on the sale of Class A Shares by the Fund is an event contemplated under the Ontario Act and the Tax Act.
13. As other labour sponsored investment funds have been granted this relief, requiring investors to pay the Distribution Costs would put the Fund at a permanent and serious competitive disadvantage with its competitors.
14. The Fund undertakes to comply with all other provisions of NI 81-105. In particular, the Fund undertakes that all Distribution Costs paid by it will

be compensation permitted to be paid to participating dealers under NI 81-105.

**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 section 9.1 of NI 81-105 is that the Fund shall be exempt from the prohibition in section 2.1 of NI 81-105 in order to permit the Fund to pay the Distribution Costs directly provided that:

1. The Distribution Costs are otherwise permitted by, and paid in accordance with, NI 81-105;
2. The Fund will in its financial statements:
  - a. expense the Servicing Commission and the Co-op Expenses in the fiscal period when incurred;
3. The summary section of the prospectus of the Fund has full, true and plain disclosure explaining to investors that:
  - a. they pay the Sales Commission indirectly, as the Fund (or the Manager) pays the Sales Commission using investors' subscription proceeds; and
  - b. a portion of the net asset value of the Fund may be comprised of a deferred commission, rather than an investment asset.

This summary section must be placed within the first 10 pages of the prospectus.

4. This exemption shall cease to be operative with respect to each Decision Maker on the date that a rule or regulation replacing or amending section 2.1 of NI 81-105 comes into force.

September 24, 2003.

"Paul M. Moore"

"Paul K. Bates"

## **2.1.8 Matisse Investment Management Ltd. - MRRS Decision**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - application for mutual fund prospectus lapse date extension.

### **Applicable Ontario Provisions**

Securities Act, R.S.O. 1990, c. S.5, s. 62(5).

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

### **AND**

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

### **AND**

### **IN THE MATTER OF STRATEGICNOVA MANAGED FUTURES HEDGE FUND**

### **MRRS DECISION DOCUMENT**

**WHEREAS** the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Newfoundland and Labrador, Prince Edward Island and Nova Scotia (the "Jurisdictions") have received an application from Matisse Investment Management Ltd. ("Matisse") on behalf of the StrategicNova Managed Futures Hedge Fund (the "Fund") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the lapse date for the prospectus of the Fund, as prescribed by the Legislation, be extended;

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

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

1. the Fund is an open-end trust established under the laws of British Columbia;
2. Matisse is the manager and promoter of the Fund;
3. the Royal Trust Company is the current trustee of the Fund;

4. the units of the Fund (the "Units") are qualified for distribution in each of the Jurisdictions under a prospectus of the Fund dated July 19, 2002 filed with each of the Decision Makers (the "Current Prospectus"), for which a receipt was issued by each of the Decision Makers dated July 22, 2002;
5. Matisse intends to make certain changes to the Fund, including changing the name of the Fund, appointing a new portfolio manager of the Fund, and replacing the current custodian and trustee of the Fund;
6. Matisse has filed applications with the Decision Makers of British Columbia and Ontario to vary past exemption orders of those Decision Makers in respect of adviser requirements under the Legislation of those Jurisdictions, to reflect the intended appointment of the new portfolio manager;
7. Matisse, on behalf of the Fund, filed a pro forma prospectus and related documents on June 17, 2003 with each of the Decision Makers as part of its annual renewal prospectus filing;
8. Matisse, on behalf of the Fund, intends to file a final prospectus of the Fund (the "Final Prospectus") with each of the Decision Makers, to ensure the Units continue to be qualified for distribution in the Jurisdictions beyond the lapse dates for the Current Prospectus;
9. there has been no material change in the affairs of the Fund since the date of the Current Prospectus;
10. effective on the date of the Final Prospectus, the Fund is to be renamed "Dynamic Managed Futures Hedge Fund";
11. the Final Prospectus will contain full, true and plain disclosure of all material facts related to the offering of the Units; and
12. under the Legislation, the lapse date of the Current Prospectus in British Columbia and certain other Jurisdictions is 12 months after the date of the Current Prospectus and in Quebec is 12 months from the date of the receipt for the Current Prospectus;

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

**AND WHEREAS** the Decision Makers are of the opinion that it would not be prejudicial to the public interest to make the Decision;

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the time periods provided by the Legislation as they apply to the continued distribution of

Units under the Current Prospectus for the Fund (including the time periods that apply to the filing and receipt of the Final Prospectus) are extended to the time periods that would be applicable if the lapse date in the Legislation for the distribution of Units under the Current Prospectus was August 1, 2003.

July 28, 2003.

"Angela Huxham"

## 2.1.9 AIM Funds Management Inc. - MRRS Decision

### Headnote

Exemption for certain mutual funds from the self-dealing provisions to permit the mutual funds to invest in: a) insurance companies when the mutual funds are involved with the insurance companies under certain insurance product arrangements and b) banks when the mutual funds are involved in counterparty arrangements with the banks regarding RSP Clone fund arrangements.

### Applicable Statutory Provisions Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 111(2)(a), 111(2)(c)(ii), 111(3) and 113.

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,  
ONTARIO, 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  
AIM FUNDS MANAGEMENT INC. AND  
THE FUNDS LISTED IN SCHEDULE "A"**

**MRRS DECISION DOCUMENT**

**WHEREAS** the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions") has received an application (the "Application") from AIM Funds Management Inc. ("AIM") in its own capacity and on behalf of mutual funds it manages and listed in Schedule "A" (the "Current Funds") as well as such other funds as AIM may establish and advise from time to time (the "Future Funds") (the Current Funds and Future Funds being hereinafter referred to individually as a "Fund" and collectively as the "Funds") for a decision (the "Decision") pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the following prohibitions under the Legislation which result from an investment by an Insurance Company or Bank (both defined below) or an affiliate of an Insurance Company or Bank in the circumstances set out in this Decision do not apply to investments by each of the Funds:

- (a) the provision prohibiting a mutual fund from knowingly making or holding an investment in any person or company which is a substantial security holder of the mutual fund, its management

company or distribution company (the "Substantial Securityholder Restriction");

- (b) the provision prohibiting a mutual fund from knowingly making or holding an investment in an issuer in which a substantial securityholder of the mutual fund, its management company or its distribution company has a significant interest (the "Significant Interest Restriction");

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

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

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

1. The Funds are, or will be, open-ended mutual fund trusts established, or classes or series of mutual fund corporations incorporated in Canada.
2. AIM is, or will, serve as the manager of the Funds.
3. The securities of the Funds are, or will be, offered for sale in some or all of the provinces and territories of Canada pursuant to one or more simplified prospectus(es) and annual information form(s). Each of the Funds is or will be a reporting issuer under the Legislation and is not on a list of defaulting issuers maintained under the Legislation.
4. The issuers in which investment by the Funds is, or may in the future be, prohibited are a bank listed in Schedule I or II of the Bank Act (Canada), or an authorized foreign bank listed in Schedule III of the Act ( a "Bank") or a company licensed to do business as an insurance company in any Jurisdiction (an "Insurance Company") and issuers in which a Bank or an Insurance Company holds a significant interest (collectively, the "Affected Issuers" and individually, an "Affected Issuer") resulting from arrangements under which the Bank or Insurance Company or one of their respective affiliates makes a passive investment in one or more Funds for commercial purposes and not with any intent to influence the investment behaviour of AIM and/or the Funds.

**Investments in Insurance Companies that are Substantial Securityholders of the Funds as a Result of Insurance Product Arrangements**

5. There are various insurance company sponsored products that AIM and the Funds are involved in

- and among them are: 1) individual variable insurance contracts, 2) defined contribution pension plans, and 3) Universal Life products (collectively the "Insurance Product Arrangements").
6. Under the first arrangement, an investor purchases an individual variable insurance contract (an "IVIC") from an Insurance Company. Among other features, the IVIC entitles the investor to allocate the investor's investment among one or more segregated funds.
  7. Under the second arrangement, an employee of a company may participate in a defined contribution pension plan ("DC Plan") sponsored by his or her employer. In that case, the employee, as the DC Plan beneficiary, will generally be able to select from among segregated funds offered by the plan provider, typically an insurance company, which are not available to other purchasers. DC Plans usually entitle the Plan beneficiary to periodically re-allocate the capital among various investment vehicles.
  8. Under the third arrangement, a person purchases a Universal Life insurance policy from an Insurance Company. Among other features, the policy entitles the person to allocate a portion of the person's insurance premiums among one or more segregated funds.
  9. AIM has entered or will enter into Insurance Product Arrangements relationships with various Insurance Companies under which the Insurance Company invests in the Funds in accordance with an investment decision made by an investor involved in an Insurance Product Arrangement.
  10. Under applicable insurance legislation in each of the Insurance Product Arrangements, the investment in the Fund must appear on the books of the Insurance Company.
  11. An Insurance Company has little or no control over the number of securities of the Fund it must purchase and redeem on any given day as this is directed by the collective decisions of investors. Given this, an Insurance Company's investment in a Fund could be viewed as a passive investment.
  12. Under the Legislation, an Insurance Company and each of its affiliates becomes a substantial securityholder in a Fund if it holds more than 20% of the voting securities of the Fund.
  13. In the absence of this Decision, a Fund could not invest or hold securities of an Insurance Company or any of its affiliates if the Insurance Company became a substantial securityholder in the Fund as a result of an Insurance Company Arrangement.
  14. Currently, AIM American Premier Class is prohibited from investing in securities of Manulife Financial or any other issuer which is an Affected Issuer solely because Manulife Financial holds in excess of 20% of the voting securities of the Fund and therefore is a substantial securityholder. In addition, AIM American Mid-Cap Class is prohibited from investing in Manulife Financial because Manulife Financial holds in excess of 20% of the Fund.
  15. In the future, Manulife Financial or other Insurance Companies which AIM currently does business with or may do business with may hold more than 20% of the voting securities in a Fund as a passive investment under an Insurance Product Arrangement. At such time, a Fund may want to purchase or continue to hold securities of such Insurance Companies where it is in the best interests of the Fund but will be prohibited from doing so by the Substantial Securityholder Restriction in the absence of this Decision.
  16. Sun Life Financial Inc. owns 100% of Sun Life Assurance Company of Canada which has entered into Insurance Product Arrangements with AIM. Sun Life Financial Inc. together with its affiliates beneficially own in excess of 20% of Trimark Canadian Fund. Sun Life Financial Inc. and its affiliates are considered a substantial securityholder of Trimark Canadian Fund since together they beneficially own more than 20% of Trimark Canadian Fund. Sun Life Financial Inc. also owns 30% of the voting securities of CI Funds Inc. which is deemed a significant interest because it is more than 10% of the voting securities of that issuer.
  17. In the absence of this Decision, Trimark Canadian Fund is prohibited from investing in Sun Life Financial Inc. and Sun Life Assurance Company of Canada as a result of the Substantial Securityholder Restriction. Further, as a result of the Significant Interest Restriction, Trimark Canadian Fund is prohibited from investing in CI Funds Inc. in the absence of this Decision.
- Investments in Banks that are Counterparties to Forward Contracts with AIM in Connection with RSP Clone Funds**
18. AIM manages a number of RSP Clone Funds. Each RSP Clone Fund seeks to achieve its investment objective while ensuring that its units do not constitute "foreign property" under the Income Tax Act (Canada) (the "Tax Act") for registered retirement savings plans, registered retirement income plans, and deferred profit sharing plans ("Registered Plans").
  19. To achieve its investment objective, each RSP Clone Fund will invest its assets in securities of a specified underlying fund (the "Underlying Funds")

such that its units will, in the opinion of tax counsel to the RSP Clone Funds, be "qualified investments" for Registered Plans and will not constitute foreign property in a Registered Plan. This will primarily be achieved by the RSP Clone Funds entering into derivative contracts with one or more Banks or their affiliates (individually a "Counterparty" and collectively the "Counterparties") that link the returns to those of the Underlying Funds. However, each RSP Clone Fund also intends to invest a portion of its assets in securities of an Underlying Fund. This investment by an RSP Clone Fund will at all times be below the maximum foreign property limit prescribed under the Tax Act for Registered Plans.

20. Each RSP Clone Fund has obtained, or will obtain, exemptive relief from the Jurisdictions in connection with its activities as an RSP Clone Fund.
21. Each RSP Clone Fund has entered into an ISDA Master Agreement (a "Master Agreement") with the Counterparties for the purposes of entering into a series of forward contracts (each a "Forward Contract") typically one month in duration.
22. In order to hedge its obligations under the Forward Contracts, a Counterparty or its affiliate will likely, but is not required to, purchase units of the applicable Underlying Funds, directly or indirectly. Given this, the investment by the Counterparty in the Underlying Fund is a passive investment.
23. Bank of Montreal through its subsidiary BMO Nesbitt Burns Inc., a Counterparty, is deemed to beneficially own in excess of 20% of the shares outstanding in AIM Global Telecommunications Class and in excess of 20% of AIM Global Theme Class arising from hedging its position under RSP Clone Fund arrangements.
24. In the absence of this Decision, if a Counterparty owned more than 20% of the voting securities of an Underlying Fund for hedging purposes, thus becoming a substantial securityholder, the Underlying Fund would be prohibited by the Substantial Securityholder Restriction from investing in securities of the Counterparty.
25. Therefore, Bank of Montreal would be deemed a substantial securityholder of AIM Global Telecommunications Class and AIM Global Theme Class which would prohibit those funds from owning securities of Bank of Montreal.
26. In the future, Bank of Montreal or other Banks and their affiliates which AIM currently does business with or may do business with as a Counterparty may hold more than 20% of the voting securities in a Fund for hedging purposes

under a RSP Clone Fund Arrangement. At such time, a Fund may want to purchase or continue to hold securities of such Bank or its affiliates where it is in the best interests of the Fund but will be prohibited from doing so by the Substantial Securityholder Restriction in the absence of this Decision.

27. On behalf of certain funds, AIM has in the past bought for the portfolio of one or more of the Funds debt securities of companies in which Bank of Montreal owns more than 10% of the voting securities of the companies. Bank of Montreal would be considered to have a significant interest in those companies.
28. In the absence of this Decision, certain AIM funds may be prohibited by the Significant Interest Restriction from investing in the companies in which a Bank owns more than 10% of the voting securities in circumstances where a Bank, as a Counterparty, is a substantial securityholder in an AIM fund.
29. Except for the relief granted hereby, the investments by the Funds in securities of the Affected Issuers will comply in all respects with the investment restrictions in the Legislation and National Instrument 81-102.
30. AIM believes that it would be in the best interests of investors of the Funds to be permitted to invest in securities of the Affected Issuers, in keeping with the investment objectives of the Funds, though only up to the concentration limits otherwise allowed by applicable Legislation.
31. AIM believes that the investment by the Funds in the Affected Issuers will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Funds.

#### **Independent Review Committee to Oversee Holdings, Purchases or Sales of Securities of Affected Issuers**

32. AIM will create an independent review committee (the "Independent Committee"), comprised entirely of individuals who are wholly independent of AIM to oversee the holdings, purchases or sales of securities of Affected Issuers for the Funds.
33. The Independent Committee will take into consideration the best interests of unitholders of the Funds and no other factors.
34. The Independent Committee shall review the holdings, purchases or sales of securities of the Affected Issuer to ensure that they have been made free from any influence by the Affected Issuer and without taking into account any consideration relevant to an Affected Issuer.

35. Compensation to be paid to members of the Independent Committee will be paid by the Funds and this expense will be apportioned as between the Funds based on the relative size of holdings of the Affected Issuers in each Fund.

36. Within thirty days of the end of each month in which AIM purchases or sells securities of an Affected Issuer on behalf of one or more Funds, AIM shall file the report on SEDAR contemplated by paragraph (n) below disclosing the name of each Fund that purchased or sold securities of an Affected Issuer during the month, the number or amount of Affected Issuer securities purchased or sold by each Fund and the volume weighted average price paid or received for the Affected Issuer securities by each Fund.

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

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

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

1. a Fund is exempt from the Substantial Securityholder Restriction so as to enable the Fund to invest in, or continue to hold an investment in, securities of the Bank or any of its affiliates where the Fund is involved with a Bank or any of its affiliates as a Counterparty in which the Counterparty has acquired securities of the Fund to hedge its exposure under a Forward Contract;
2. a Fund is exempt from the Significant Interest Restriction so as to enable the Fund to invest in, or continue to hold an investment in, securities of an issuer in which the Bank is deemed to have a significant interest, where the Fund is involved with a Bank or any of its affiliates as a Counterparty in which the Counterparty has acquired securities of the Fund to hedge its exposure under a Forward Contract;
3. a Fund is exempt from the Substantial Securityholder Restriction so as to enable the Fund to invest in, or continue to hold an investment in, securities of the Insurance Company or any of its affiliates where the Fund is involved in an Insurance Product Arrangement with an Insurance Company;
4. a Fund is exempt from the Significant Interest Restriction so as to enable the Fund to invest in, or continue to hold an investment in, securities of an issuer in which the Insurance Company is deemed to have a significant interest, where the

Fund is involved in an Insurance Product Arrangement with the Insurance Company; and

5. this Decision, as it related to the jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation or rule of that Decision Maker dealing with mutual fund governance in a manner that conflicts with or makes inapplicable any provision of this Decision;

provided that:

- (a) AIM has appointed an Independent Committee to review the Funds' purchases, sales and continued holdings of securities of an Affected Issuer;
- (b) the Independent Committee has at least three members, none of whom is an employee, director, officer or associate of (i) AIM ; (ii) any portfolio manager of the Funds; (iii) any associate or affiliate of AIM or a portfolio manager of the Funds; or (iv) an Insurance Company involved in an Insurance Product Arrangement or a Bank that is a Counterparty or their respective affiliates;
- (c) the Independent Committee has a written mandate describing its duties and standard of care which, at a minimum, sets out the conditions of this Decision;
- (d) the members of the Independent Committee exercise their powers and discharge their duties honestly, in good faith and in the best interests of investors in the Funds and, in doing so, exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;
- (e) none of the Funds relieves the members of the Independent Committee from liability for loss that arises out of a failure to satisfy the standard of care set out in paragraph (d);
- (f) none of the Funds indemnifies the members of the Independent Committee against legal fees, judgments and amounts paid in settlement as a result of a breach of the standard of care set out in paragraph (d);
- (g) none of the Funds incurs the cost of any portion of liability insurance that insures a member of the Independent Committee for a liability for loss that arises out of a failure to satisfy the standard of care set out in paragraph (d);

- |   |   |
|---|---|
| <p>(h) the cost of any indemnification or insurance coverage paid for by AIM or any portfolio manager of the Funds, or any associate or affiliate of AIM or a portfolio manager of the Fund to indemnify or insure the members of the Independent Committee in respect of a loss that arises out of a failure to satisfy the standard of care set out in paragraph (d) is not paid either directly or indirectly by the Fund;</p> <p>(i) the Independent Committee reviews the Fund's purchases, sales and continued holdings of securities of an Affected Issuer on a regular basis, but not less frequently than every three months;</p> <p>(j) the Independent Committee forms the opinion at any time, after reasonable inquiry, that the decisions made on behalf of each Fund by AIM or the Fund's portfolio manager to purchase, sell or continue to hold securities of an Affected Issuer were and continue to be in the best interests of the Fund, and to:</p> <p style="padding-left: 40px;">(i) represent the business judgement of AIM or the Fund's portfolio manager, uninfluenced by considerations other than the best interests of the Fund;</p> <p style="padding-left: 40px;">(ii) have been made free from any improper influence by an Affected Issuer and without taking into account any consideration relevant to an Affected Issuer ; and</p> <p style="padding-left: 40px;">(iii) do not exceed the limitations of the applicable legislation;</p> <p>(k) the determination made by the Independent Committee pursuant to paragraph (j) is included in detailed written minutes provided to AIM not less frequently than every three months;</p> <p>(l) the reports required to be filed pursuant to the Legislation with respect to every purchase and sale of securities of an Affected Issuer are filed on SEDAR in respect of the relevant Fund;</p> <p>(m) the Independent Committee advises the Decision Makers in writing of:</p> <p style="padding-left: 40px;">(i) any determination by it that the condition set out in paragraph (j) has not been satisfied with respect to any purchase, sale or</p> | <p>holding of securities of an Affected Issuer;</p> <p>(ii) any determination by it that any other condition of this Decision has not been satisfied;</p> <p>(iii) any action it has taken or proposes to take following the determinations referred to above; and</p> <p>(iv) any action taken, or proposed to be taken, by AIM or a portfolio manager of the Funds in response to the determinations referred to above;</p> <p>(n) the existence, purpose, duties and obligations of the Independent Committee, the names of its members, whether and how they are compensated by the Funds, and the fact that they meet the requirements of the condition set out in paragraph (b) are disclosed:</p> <p style="padding-left: 40px;">(i) in a press release issued, and a material change report filed, prior to reliance on the Decision;</p> <p style="padding-left: 40px;">(ii) in item 12 of Part A of the simplified prospectus of the Funds; and</p> <p style="padding-left: 40px;">(iii) on AIM's internet website;</p> |
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September 5, 2003.

"Harold P. Hands"

"H. Lorne Morphy"



**Schedule "A"**

AIM American Aggressive Growth Fund	Trimark Global Endeavour Class of AIM Global Fund Inc.
AIM American Growth Fund	Trimark Global Endeavour Fund
AIM American Mid Cap Growth Class of AIM Global Fund Inc.	Trimark Global High Yield Bond Fund
AIM Canada Income Class of AIM Canada Fund Inc.	Trimark Government Income Fund
AIM Canada Money Market Fund	Trimark Income Growth Fund
AIM Canadian Balanced Fund	Trimark Interest Fund
AIM Canadian First Class of AIM Canada Fund Inc.	Trimark International Companies Fund
AIM Canadian Premier Class of AIM Canada Fund Inc.	Trimark RSP Discovery Fund
AIM Canadian Premier Fund	Trimark RSP Europlus Fund
AIM Core American Equity Class of AIM Global Fund Inc. <i>(to be renamed AIM Trimark Core American Equity Class)</i>	Trimark RSP Global Balanced Fund
AIM Core Canadian Balanced Class of AIM Canada Fund Inc. <i>(to be renamed AIM Trimark Core Canadian Balanced Class)</i>	Trimark RSP Global Endeavour Fund
AIM Core Canadian Equity Class of AIM Canada Fund Inc. <i>(to be renamed AIM Trimark Core Canadian Equity Class)</i>	Trimark RSP Global High Yield Bond Fund
AIM Core Global Equity Class of AIM Global Fund Inc. <i>(to be renamed AIM Trimark Core Global Equity Class)</i>	Trimark RSP International Companies Fund
AIM European Growth Class of AIM Global Fund Inc.	Trimark RSP Select Growth Fund
AIM European Growth Fund	Trimark RSP U.S. Companies Fund
AIM Global Financial Services Class of AIM Global Fund Inc.	Trimark Select Balanced Fund
AIM Global Health Sciences Class of AIM Global Fund Inc.	Trimark Select Canadian Growth Fund
AIM Global Health Sciences Fund	Trimark Select Growth Class of AIM Global Fund Inc.
AIM Global Technology Class of AIM Global Fund Inc.	Trimark Select Growth Fund
AIM Global Technology Fund	Trimark U.S. Companies Class of AIM Global Fund Inc.
AIM Global Theme Class of AIM Global Fund Inc.	Trimark U.S. Companies Fund
AIM Indo-Pacific Fund	Trimark U.S. Money Market Fund
AIM International Growth Class of AIM Global Fund Inc.	Trimark U.S. Small Companies Class of AIM Global Fund Inc.
AIM RSP American Growth Fund	
AIM RSP Core American Equity Fund <i>(to be renamed AIM Trimark RSP Core American Equity Fund)</i>	
AIM RSP Core Global Equity Fund <i>(to be renamed AIM Trimark RSP Core Global Equity Fund)</i>	
AIM RSP European Growth Fund	
AIM RSP Global Financial Services Fund	
AIM RSP Global Health Sciences Fund	
AIM RSP Global Technology Fund	
AIM RSP Global Theme Fund	
AIM RSP Indo-Pacific Fund	
AIM RSP International Growth Fund	
AIM Short-Term Income Class of AIM Global Fund Inc.	
Trimark Advantage Bond Fund	
Trimark Canadian Bond Fund	
Trimark Canadian Endeavour Fund	
Trimark Canadian Fund	
Trimark Canadian Resources Fund	
Trimark Canadian Small Companies Fund	
Trimark Discovery Fund	
Trimark Enterprise Fund	
Trimark Enterprise Small Cap Fund	
Trimark Europlus Fund	
Trimark Fund	
Trimark Global Balanced Class of AIM Global Fund Inc.	
Trimark Global Balanced Fund	

## 2.2 Orders

### 2.2.1 First Ontario Labour Sponsored Investment Fund Ltd. - s. 144

#### Headnote

Exemption granted to labour sponsored investment fund corporation has been revoked and replaced to permit the corporation to pay certain specified distribution costs out of fund assets contrary to section 2.1 of National Instrument 81-105 Mutual Fund Sales Practices subject to certain conditions.

#### Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am. Section 144.

#### Rules Cited

National Instrument 81-105 Mutual Fund Sales Practices.

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

**AND**

**IN THE MATTER OF  
NATIONAL INSTRUMENT 81-105  
MUTUAL FUND SALES PRACTICES ("NI 81-105")**

**AND**

**IN THE MATTER OF  
FIRST ONTARIO LABOUR SPONSORED  
INVESTMENT FUND LTD.**

**ORDER  
(Section 144)**

**UPON** the application (the "Application") of First Ontario Labour Sponsored Investment Fund Ltd. ("First Ontario") to the Ontario Securities Commission (the "Commission") for an Order pursuant to section 144 of the Act to revoke and replace a Prior Exemption (herein defined) to permit First Ontario to make certain revised distribution costs to participating dealers directly;

**AND UPON**, on January 21, 2000, the Commission granted First Ontario an exemption (the "Prior Exemption") from section 2.1 of NI 81-105 pursuant to section 9.1 of NI 81-105 permitting First Ontario to make the following distribution costs ("Permitted Distribution Costs") to participating dealers:

- (i) a sales commission of 2% of the net asset value per Class A share payable to the broker supervising the individual members of the First Ontario sponsors licensed to sell Class A shares of First Ontario pursuant to an order of the Commission dated January 31, 1997 (the

"Secondees") plus certain expenses of the supervising broker associated with those sales (provided such expenses do not result in the sales commission plus the reimbursed expenses exceeding the threshold disclosed in the Prospectus) for sales of Class A shares by the Secondees;

- (ii) a sales commission of 5.4% of the net asset value per Class A share sold pursuant to payroll deduction sales (excluding sales initiated by Secondees under the supervision of the supervising broker); and
- (iii) a sales commission of 6% of the net asset value per Class A share sold by participating dealers for all other sales.

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

**AND UPON** being represented by First Ontario to the Commission that:

1. First Ontario is a corporation incorporated under the *Business Corporations Act* (Ontario) which is registered as a labour sponsored investment fund corporation under the *Community Small Business Investment Funds Act* (Ontario) and is prescribed as a labour-sponsored venture capital corporation under the *Income Tax Act* (Canada).
2. First Ontario is a mutual fund as defined in subsection 1(1) of the Act, is a reporting issuer in the Province of Ontario and is not on the list of defaulting reporting issuers maintained pursuant to section 72(9) of the Act.
3. The authorized capital of First Ontario consists of an unlimited number of Class A shares issuable in series (the "Class A Shares") and an unlimited number of Class B shares.
4. First Ontario Management Ltd. (the "Manager") formed and organized First Ontario. The sole business of the Manager is the management of First Ontario.
5. The Class A Shares of First Ontario are sold through two distribution channels: (i) by registered brokers and dealers; and (ii) by a broker (the "Secondee Supervisor") which supervises individual members of First Ontario's sponsors (the "Secondees") who are licensed to sell Class A Shares of First Ontario pursuant to an order of the Commission dated January 31, 1997, as amended.
6. First Ontario proposes to pay certain costs of distributing the Class A Shares directly to

participating dealers or, in the case of the Secondees, directly to or on behalf of the Secondee Supervisor. These costs are:

- i) in the case of non-Secondee sales, a sales commission not exceeding 6% of the selling price of Class A Shares sold by participating brokers and dealers (including the Secondee Supervisor) directly or through the payroll deduction sales method (the "Dealer Sales Commissions");
  - ii) in the case of Secondee sales, a total amount of sales commissions and reimbursed expenses (which include Secondee salaries, Secondee expenses and certain expenses of the Secondee Supervisor associated with the sale of Class A Shares) not exceeding 6.4% of the selling price of Class A Shares sold by the Secondees (the "Secondee Sales Commissions"); and
  - iii) a maximum trailing commission of 0.5% per annum of the net asset value of Class A Shares held by clients of participating brokers and dealers including the Secondee supervisor and the Secondees (the "Trailing Commissions").
7. The Fund may also pay for the reimbursement of co-op marketing expenses (the "Co-op Expenses") incurred by dealers in promoting the sales of the Class A Shares pursuant to co-operative marketing arrangements between the Fund and such dealers.
8. The Fund can rely on the Prior Exemption to pay the Dealer Sales Commissions and the Secondee Sales Commissions, but will not be able to rely on the Prior Exemption to pay the Trailing Commissions and the Co-op Expenses.
9. The Manager is the only member of the organization of First Ontario, other than First Ontario, available to pay the Dealer Sales Commissions, Secondee Sales Commissions, the Trailing Commissions and the Co-op Expenses (the "Distribution Costs"). The Manager has insufficient resources to pay the Distribution Costs. The Manager would be obliged to finance the obligation to pay the Distribution Costs through borrowings and would thereby incur borrowing costs. The Manager is uncertain that it would be able to secure financing to pay the Distribution Costs on commercially reasonable terms.
10. In order for First Ontario to comply with section 2.1 of the NI 81-105, First Ontario would have to increase the fees payable to the Manager in an

amount equal to the actual cost to the Manager of paying such Distribution Costs.

11. First Ontario complies with all other provisions of the NI 81-105. In particular, all Distribution Costs to be paid by First Ontario will be paid in compliance with the NI 81-105.

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

**NOW THEREFORE** pursuant to section 144 of the Act, the Commission hereby revokes and replaces the Prior Exemption with this Order to exempt First Ontario from sections 2.1 of the NI 81-105 to permit First Ontario to pay the Distribution Costs, provided

1. the Distribution Costs (subject to the limits provide above) are permitted by, and otherwise paid in accordance with NI 81-105;
2. the Trailing Commissions and Co-op Expenses are expensed and reflected in the income statement in the fiscal period in which they are incurred for accounting purposes;
3. First Ontario's prospectus has full, true and plain disclosure explaining the services and value that the participating dealers would provide to investors in return for the Trailing Commissions payable to them; and
4. this Order shall cease to be operative on the date that a rule replacing or amending section 2.1 of NI 81-105 comes into force.

September 26, 2003.

"Robert L. Shirriff"

"Paul M. Moore"

**2.2.2 Sahelian Goldfields Inc. - s. 144**

**Headnote**

Section 144 - application for revocation of cease trade order - issuer cease traded due to failure to file with the Commission and send to shareholders annual and interim financial statements - Issuer has brought filings up to date and has placed on the public record prospectus-level disclosure - full revocation granted.

**Applicable Ontario Statutory Provisions**

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

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

**AND**

**IN THE MATTER OF  
SAHELIAN GOLDFIELDS INC.**

**ORDER  
(Section 144)**

**WHEREAS** the securities of Sahelian Goldfields Inc. (the "Company") are subject to a cease trade order issued by the Ontario Securities Commission (the "Commission") on June 14, 2000 (the "Cease Trade Order") which order extended a temporary cease trade order issued on June 1, 2000;

**AND WHEREAS** the Company has applied to the Commission pursuant to section 144 of the Act (the "Application") for a revocation of the Cease Trade Order;

**AND WHEREAS** the Company has represented to the Commission that:

1. The Company was formed under the *Business Corporations Act* (Ontario) on October 1, 1997, by the amalgamation of Sahelian Goldfields Inc. and Sahelian Goldfields Ltd.
2. The Company is a reporting issuer under the securities legislation (the "Legislation") of the provinces of British Columbia and Ontario.
3. The Company's authorized capital consists of an unlimited number of common shares (the "Common Shares"), of which approximately 57,958,945 Common Shares are issued and outstanding.
4. The Common Shares were previously quoted on the Canadian Dealing Network. The Company presently has no securities, including debt securities, listed or quoted on any exchange or market.

5. The Cease Trade Order was issued due to the failure of the Company to file with the Commission and send to its shareholders its audited annual financial statements for the period ended September 30, 1999, and its interim financial statements for the period ended December 31, 1999, as required by the Act. Subsequently, the Company failed to file its annual financial statements for the periods ending September 30, 2000, 2001 and 2002, and its interim financial statements for the three-month periods subsequent to December 31, 1999;
6. The financial statements and interim financial statements were not filed with the Commission due to the lack of funds to pay for the preparation and audit of such statements.
7. The Company is also subject to a cease trade order of the British Columbia Securities Commission (the "BCSC") dated May 21, 1999. The Company has concurrently applied to the BCSC for a revocation of its cease trade order.
8. On August 29, 2003, the Company filed on SEDAR its interim financial statements for the three-month period ended June 30, 2003. On August 28, 2003, the Company filed on SEDAR restated audited annual financial statements for the years ended September 30, 2000, 2001 and 2002. On June 17, 2003, the Company filed on SEDAR its interim financial statements for the three-month periods ended December 31, 1999, June 30, 2001, December 31, 2002 and March 31, 2003. The Company intends to mail its annual financial statements and interim financial statements to its shareholders in connection with its next annual meeting of the shareholders. Said financial statements and interim financial statements were filed with the Commission and are available on SEDAR.
9. Other than as described in paragraph 5, the Company is not otherwise in default of any requirements of the Act or the rules or regulations thereunder.
10. On April 9, 2002, the Commission issued an Order under section 144 of the Act (the "OSC 2002 Partial Revocation Order") granting a partial revocation of the Cease Trade Order to allow among other things:
  - a) the issuance of shares to the Company's creditors under a proposal made pursuant the *Bankruptcy and Insolvency Act (Canada)*;
  - b) the issuance of securities under a private placement for an amount of up to \$300,000.

11. On April 8, 2002, the British Columbia Securities Commission issued a Variation Order under section 171 of the *Securities Act (British Columbia)* (the "BC Act") (the "BCSC 2002 Partial Revocation Order") granting a partial revocation of the BCSC 1999 Cease Trade Order for the same aforementioned purposes.
12. On May 14, 2002, the Commission granted a Ruling under section 74(1) of the Act that the proposed issuances of shares to the creditors not be subject to the registration and prospectus requirements. Under the BC Act the Company benefited from an exemption.
13. On July 15, 2003, the British Columbia Securities Commission issued a Partial Revocation Order under section 171 of the BC Act, granting partial revocation of the BCSC 1999 Cease Trade Order to permit the activities listed in section 78(2) of the BC Act to be undertaken in respect of the preliminary prospectus dated June 13, 2003.
14. The Company now wishes to make application for a full revocation of the Cease Trade Order so as to permit trading of its securities generally. The Company has filed with the Commission and provided to its shareholders prospectus-level disclosure about the Company, its business, affairs and future prospects in the form of an amended preliminary prospectus that was filed on SEDAR on August 28, 2003.

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

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

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

September 15, 2003.

"Charlie MacCready"

## **2.2.3 ArvinMeritor, Inc. and Delta Acquisition Corp. - cl. 104(2)(c)**

### **Headnote**

Cash take-over bid made in Ontario - Bid made in accordance with the laws of the United States of America and the Securities Exchange Act of 1934 - *De minimis* exemption unavailable because number of Ontario holders of offeree's shares is believed to be 402, which exceeds the 50 person threshold in section 93(1)(e) of the Securities Act (Ontario)- Bid exempted from the requirements of Part XX, subject to certain conditions.

### **Statutes Cited**

Securities Act, R.S.O. 1990, c. S.5, as amended, ss. 93(1)(e), 95-100 and 104(2)(c).

### **Recognition Orders Cited**

In the Matter of the Recognition of Certain Jurisdictions Recognition Order (Clauses 93(1)(e) and 93(3)(h) of Act) (1997), 20 OSCB 1035.

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

### **AND**

### **IN THE MATTER OF ARVINMERITOR, INC. AND DELTA ACQUISITION CORP. (collectively, the "Applicants")**

### **ORDER (Clause 104(2)(c))**

**UPON** the application from the Applicants to the Ontario Securities Commission (the "Commission") for an order pursuant to clause 104(2)(c) of the Act exempting the Applicants from the requirements of sections 95 through 100 of the Act (the "Take-Over Bid Requirements") in connection with an offer, as it may be amended from time to time (the "Offer"), by Delta Acquisition Corp. (the "Purchaser") to acquire (1) the shares of common stock (the "Shares") of Dana Corporation (the "Company") that ArvinMeritor, Inc. ("ArvinMeritor") does not already own and (2) unless and until validly redeemed by the board of directors of the Company, the associated rights to purchase shares of Series A Junior Participating Preferred Stock, no par value, of the Company (the "Rights") issued pursuant to the Rights Agreement, dated as of April 25, 1996 (as amended from time to time, the "Rights Agreement"), by and between the Company and Chemical Mellon Shareholder Services L.L.C., as Rights Agent, at a price of US\$15.00 per Share, upon the terms and subject to the conditions set forth in the offer to purchase (the "Offer to Purchase") dated July 9, 2003. Unless the context otherwise requires, all references to the Shares shall be deemed to include the associated Rights, and all references to the Rights shall be deemed to include the

benefits that may inure to holders of Rights pursuant to the Rights Agreement;

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

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

1. ArvinMeritor, an Indiana corporation, is a leading global supplier of a broad range of integrated systems, modules and components serving light vehicle, commercial truck, trailer and specialty original equipment manufacturers and certain after markets. ArvinMeritor also provides coil coating applications to the transportation, appliance, construction and furniture industries. Its executive offices are located in Troy, Michigan.
2. The Purchaser, a Virginia corporation formed for the purpose of making the Offer, is a wholly-owned subsidiary of ArvinMeritor.
3. ArvinMeritor is not a reporting issuer, or its equivalent, in any Canadian jurisdiction. ArvinMeritor common stock is listed on the New York Stock Exchange.
4. The Company is a Virginia corporation and an independent supplier of automotive parts. Its executive offices are located in Toledo, Ohio. Publicly available documents indicate that it is not a reporting issuer, or its equivalent, in any Canadian jurisdiction and none of its securities are listed or quoted for trading on any Canadian stock exchange or market.
5. According to the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2003, there were 148,611,000 Shares issued and outstanding as at July 18, 2003. The Shares are listed on the New York Stock Exchange.
6. The Rights were created pursuant to implementation of the Company's "poison pill" in 1996. Each Share certificate represents shares of common stock and corresponding Rights, being rights to purchase 1/1000 of a share of Series A Junior Participating Preferred Stock per share of common stock represented by such certificate.
7. Rights are not exercisable until a "distribution" of the Rights occurs. In the event of a distribution, under the terms of the poison pill, ArvinMeritor and its affiliates will not be entitled to any Rights. Therefore, the poison pill would impede and perhaps frustrate ArvinMeritor's attempt to merge with the Company following the consummation of the Offer.
8. If a distribution does not occur, a tender of Shares includes a tender of the associated Rights. If a

distribution does occur, an offeree will have to tender one Right with each Share tendered. The Purchaser will not pay any additional consideration for the tender of a Right.

9. As at July 9, 2003, the date of the Offer to Purchase, ArvinMeritor owned 1,085,300 Shares.
10. On July 9, 2003, the Purchaser filed a Tender Offer Statement on Schedule TO with the U.S. Securities and Exchange Commission in connection with the Offer. The Offer was made to all holders of Shares, including those with addresses in Canada. The Offer was scheduled to expire at 5:00 p.m. on August 28, 2003, unless extended.
11. On July 22, 2003, the Company announced that its board of directors recommended that holders of Shares reject the Offer.
12. At 5:00 p.m. on August 28, 2003, holders of Shares had tendered and not withdrawn approximately 2,543,879 Shares.
13. On August 28, 2003, ArvinMeritor announced that it had extended the Offer until 5:00 p.m. on October 2, 2003, unless further extended.
14. To the knowledge of ArvinMeritor, as of August 20, 2003, there are 402 holders of Shares with addresses in Ontario holding an aggregate of 107,218 Shares representing an aggregate of 0.072% of the Shares.
15. The Purchaser cannot rely on the exemption set forth in clause 93(1)(e) of the Act as there are more than 50 registered holders of Shares with addresses in Ontario.
16. The Offer has been made to Ontario holders of Shares on the same terms and conditions as to all other holders of Shares.
17. The Offer to Purchase and all other documents relating to the Offer, including all amendments, sent by the Purchaser to holders of Shares with addresses outside Ontario have been and will be sent concurrently to Ontario holders of Shares and to the Commission.

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

**IT IS HEREBY ORDERED** pursuant to clause 104(2)(c) of the Act that the Applicants are exempt from the Take-Over Bid Requirements in connection with the Offer provided that:

1. the Offer and all amendments to the Offer are made in compliance with the *Securities Exchange Act of 1934* and the rules made thereunder

governing take-over bids and are not exempt therefrom; and

2. the Offer to Purchase and all other documents relating to the Offer, including any amendments, that are sent by or on behalf of the Purchaser to holders of Shares with addresses outside Ontario are concurrently sent to Ontario holders of Shares and to the Commission.

September 30, 2003.

“Wendell S. Wigle”

“H. Lorne Morphy”

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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
CD Rom Network Corp.	22 Sep 03	03 Oct 03		
ePhone Telecom, Inc.	17 Sep 03	29 Sep 03	29 Sep 03	
Goran Capital Inc.	16 Sep 03	26 Sep 03	26 Sep 03	
NSI Global Inc.	16 Sep 03	26 Sep 03	26 Sep 03	
Turbodyne Technologies Inc.	19 Sep 03	01 Oct 03	01 Oct 03	
YWL Corp.	12 Sep 03	24 Sep 03		26 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		

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## Chapter 6

# Request for Comments

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### 6.1.1 Request for Comment - Proposed Amendments to National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer and Companion Policy 54-101CP

#### REQUEST FOR COMMENT PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 54-101 *COMMUNICATION WITH BENEFICIAL OWNERS OF SECURITIES OF A REPORTING ISSUER* AND COMPANION POLICY 54-101CP

#### Introduction

We, the Canadian Securities Administrators (CSA) are publishing for comment proposed amendments to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (the Instrument) and to Companion Policy 54-101CP (the Policy).

Additional information on the proposed amendments, required for publication in Ontario, can be found in the form of notice published in the OSC Bulletin or on its Website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

#### Background

The Instrument and Policy came into effect on July 1, 2002. The Instrument is a reformulation of National Policy 41 *Shareholder Communication* (NP 41) and establishes a regulatory regime for communications with beneficial owners of securities of reporting issuers.

#### Substance and Purpose of the Proposed Amendments

We have been monitoring the Instrument and Policy since they came into effect. We have also published CSA Staff Notice 54-301 *Frequently Asked Questions*. The proposed amendments are intended to make the Instrument and Policy clearer and also improve the regulatory regime set out in the Rule.

#### Summary of the Proposed Amendments to the Instrument

- *Legal proxies*

We propose to amend the definition of “legal proxy” in section 1.1 and the text of the legal proxy (Form 54-101F8) to clarify that a beneficial owner may designate a person to have voting power under a legal proxy.

- *Types of proxy-related materials that a beneficial owner may decline to receive*

The explanation to clients and client response form (Form 54-101F1) currently permit a beneficial owner to decline proxy-related materials only if they relate to meetings involving “routine business”. We propose that beneficial owners be permitted to decline to receive all proxy-related materials. We also propose that beneficial owners be able to choose to receive only proxy-related materials relating to special meetings, i.e. meetings where shareholder approval of fundamental changes to the issuer is being sought.

We therefore propose to:

- (i) repeal the definition of “routine business” in section 1.1;
- (ii) add definitions of “special meeting” and “special resolution” in section 1.1
- (iii) delete the third paragraph under the heading “Receiving Securityholder Materials” in the “Explanation to Clients” portion of Form 54-101F1 and substitute a new paragraph explaining that a beneficial owner can decline to receive all types of securityholder materials;
- (iv) delete Part 2 of the “Client Response Form” portion of Form 54-101F1 and replace it with a new Part 2 that gives beneficial owners the following three choices:

- (a) receive all securityholder materials sent to beneficial owners;
- (b) receive no securityholder materials sent to beneficial owners; or
- (c) receive only proxy-related materials sent in connection with a special meeting,

and add text to explain that the instructions on the Client Response Form will not apply to annual reports and financial statements of an investment fund if an investment fund chooses to obtain instructions from the client on whether the client wishes to receive those documents.

- (v) replace paragraph 2.2(2)(h) with a paragraph that references “special meeting” instead of “routine business”; and
- (vi) replace items 7.5(a) and 9.3(a) in Part 1 of Form 54-101F2 in order to remove the references to “routine business”.

- *Abridging time*

We propose to amend section 2.20 to permit a reporting issuer to also abridge the time for fixing a record date for notice of meeting in subsection 2.1(b).

- *Electronic delivery*

We propose to amend paragraph 3.2(b)(iii) and the “Explanation to Clients” portion of Form 54-101F1 to clarify that an intermediary need only seek consent for electronic delivery of documents from a client if applicable, i.e. only if the intermediary offers electronic delivery.

- *Transitional instructions*

We propose to delete section 3.3 in its entirety and replace it with a new section 3.3. The main differences from the previous section 3.3 are:

- (i) new paragraph 3.3(b)(ii) permits intermediaries to treat a deemed NOBO under NP41 as a NOBO under the Instrument;
- (ii) new paragraph 3.3(b)(iv) deems clients who chose not to receive material relating to annual or special meetings of securityholders or audited financial statements, to have declined to receive all securityholder materials; and
- (iii) new subparagraph 3.3(b)(v) provides that where an intermediary was permitted not to provide material relating to annual meetings of securityholders or audited financial statements (as a result of the client failing to return instructions), the client is deemed to have declined to receive all securityholder materials except proxy-related materials relating to a special meeting.

- *Obligations of persons or companies that are not reporting issuers*

We propose to clarify the obligations of persons or companies that are not reporting issuers through the following amendments:

- (i) substitute the current subsection 6.2(1) to clarify that a person or company who takes any action permitted to be taken by a reporting issuer is subject to the same rights and obligations of a reporting issuer unless the Instrument specifies otherwise;
- (ii) add a subsection 6.2(6) to specify that a person or company other than a reporting issuer that sends materials indirectly to beneficial owners must pay the proximate intermediary a fee, and add a corresponding section 4.8 to provide that a proximate intermediary is not required to forward securityholder materials received from a person or company that is not a reporting issuer unless the proximate intermediary receives reasonable assurance of payment; and
- (iii) amend subsection 6.2(3) to provide that subsections 6.1(1) and (2) also do not apply to paragraphs 2.12(1)(a) and 2.12(1)(b) and section 2.14.

- *Permitted purposes for communicating with beneficial owners*

We propose to repeal Part 7 of the Instrument and replace it with a new Part 7 that sets out both permitted uses for a NOBO list in section 7.1 and permitted uses of the indirect delivery scheme of section 2.12 in section 7.2.

- *Correction of instructions regarding disclosure of beneficial ownership information*

We propose to correct the instructions in the “Explanation to Clients” portion of Form 54-101F1 regarding which boxes to check to object or not object to disclosure of beneficial ownership information.

### **Authority for the Proposed Amendments**

In Ontario, paragraph 143(1)26 of the *Securities Act* authorizes the Commission to make rules describing requirements for the validity and solicitation of proxies. Paragraph 143(1)27 authorizes the Commission to make rules providing for the application of Part XVIII (Continuous Disclosure) and Part XIX (Proxies and Proxy Solicitation) of the Act in respect of registered or beneficial owners of voting securities of reporting issuers or other persons or companies on behalf of whom the securities are held, including requirements for reporting issuers, recognized clearing agencies, registered holders, registrant and other persons or companies who hold securities on behalf of persons or companies but who are not the registered holders. Paragraph 143(1)39 authorizes the Commission to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Act or the regulations or the rules made thereunder, and all documents determined by the regulations or the rules made under the Act to be ancillary to the documents, including interim financial statements and financial statements, proxies and information circulars, take-over bid circulars, issuer bid circulars and directors' circulars.

### **Related Instruments**

The Instrument and the Policy are related to each other and to Part XIX of the Act.

### **Unpublished Materials**

No unpublished materials were relied on.

### **Anticipated Costs and Benefits**

We anticipate that the benefits of the proposed amendments will outweigh the costs, if any.

### **Request for Comments**

We welcome your comments on the proposed amendments to the Instrument and Policy.

We also request comments on the following specific issues:

- The proposed amendments will permit beneficial owners to decline to receive all proxy-related materials or to receive only proxy-related materials relating to special meetings. We would like comments on whether the definition of special meeting should be broader so that all meetings where shareholders are asked to approve fundamental changes to the issuer, including those meetings where minority approval is sought, would be defined as a special meeting.
- We would also like your comments on whether proxy-related materials relating to meetings where shareholders are being asked to approve fundamental changes to the issuer should be sent to all beneficial holders, that is, the beneficial holder would not be given the choice to decline to receive proxy-related materials relating to special meetings.
- Proposed National Instrument 51-102 and proposed National Instrument 81-106 both deal to a certain extent with how issuers are supposed to obtain instructions from beneficial owners of their securities regarding the sending of financial statements. We would like comments on how these proposed instruments should interact with the shareholder communication regime in the Instrument.
- The proposed amendments include a number of text changes to forms that are prepared by intermediaries. We would like comments as to whether the costs associated with these changes (e.g. reprinting) outweigh the anticipated benefit of greater shareholder choice in what materials shareholders receive.

Please submit your comments in writing on or before January 2, 2004. If you are not sending your comments by email, a diskette containing the submissions (in Windows format, Word) should also be forwarded.

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**Request for Comments**

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Address your submission to all of the CSA member commissions, as follows:

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Securities Commission  
Manitoba Securities Commission  
Ontario Securities Commission  
Office of the Administrator, New Brunswick  
Registrar of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Newfoundland and Labrador Securities Commission  
Registrar of Securities, Northwest Territories  
Registrar of Securities, Yukon Territory  
Registrar of Securities, Nunavut

Deliver your comments **only** to the two addresses that follow. Your comments will be forwarded to the remaining CSA member jurisdictions.

c/o John Stevenson, Secretary  
Ontario Securities Commission  
20 Queen Street West  
Suite 800, Box 55  
Toronto, Ontario M5H 3S8  
e-mail: [jstevenson@osc.gov.on.ca](mailto:jstevenson@osc.gov.on.ca)

Denise Brosseau, Secretary  
Commission des valeurs mobilières du Québec  
Stock Exchange Tower  
800 Victoria Square  
P.O. Box 246, 22nd Floor  
Montréal, Québec  
H4Z 1G3  
Fax : (514) 864-6381  
e-mail : [consultation-en-cours@cvmq.com](mailto:consultation-en-cours@cvmq.com)

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

### **Questions**

Please refer your questions to any of:

Karen Wiwchar  
Senior Legal Counsel  
Alberta Securities Commission  
4th Floor, 300 - 5th Avenue S.W.  
Calgary, Alberta T2P 3C4  
Tel: (403) 297-4732  
e-mail: [karen.wiwchar@seccom.ab.ca](mailto:karen.wiwchar@seccom.ab.ca)

Rosetta Gagliardi  
Conseillère en réglementation  
Commission des valeurs mobilières du Québec  
Tel: (514) 940-2199 ext. 4554  
[rosetta.gagliardi@cvmq.com](mailto:rosetta.gagliardi@cvmq.com)

Veronica Armstrong  
Senior Policy Advisor  
Legal and Market Initiatives  
British Columbia Securities Commission  
Tel: (604) 899-6738  
e-mail: [varmstrong@bcsc.bc.ca](mailto:varmstrong@bcsc.bc.ca)

## **Request for Comments**

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Winnie Sanjoto  
Legal Counsel  
Corporate Finance Branch  
Ontario Securities Commission  
wsanjoto@osc.gov.on.ca  
Tel: (416) 593-8119  
e-mail: wsanjoto@osc.gov.on.ca

The text of the proposed amendments follows or can be found elsewhere on a CSA member website.

October 3, 2003.

**6.1.2 Amendments to National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer**

**AMENDMENTS TO NATIONAL INSTRUMENT 54-101  
COMMUNICATION WITH BENEFICIAL OWNERS  
OF SECURITIES OF A REPORTING ISSUER**

**PART ONE – AMENDMENTS**

- 1.1 (a) The definition of “legal proxy” in section 1.1 of National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer (the National Instrument) is repealed and the following substituted:**

“legal proxy” means a voting power of attorney, in the form of Form 54-101F8, granted to a beneficial owner or to a person designated by the beneficial owner by either an intermediary or a reporting issuer under a written request of the beneficial owner;

- (b) The definition of “routine business” in section 1.1 of the National Instrument is repealed;**

- (c) Section 1.1 of the National Instrument is amended by adding the following definitions:**

“special resolution” for a meeting,

- (a) has the same meaning given to the term “special resolution” under corporate law, or
- (b) if no such term exists under corporate law, means a resolution that is required to be passed by at least two-thirds of the votes cast.

“special meeting” means a meeting at which a special resolution is being submitted to the securityholders of a reporting issuer;

- 1.2 (a) Paragraph 2.2(2)(h) of the National Instrument is repealed and the following substituted:**

- (h) whether the meeting is a special meeting.

- (b) Section 2.20 of the National Instrument is amended by inserting “2.1(b),” in between the words “subsections” and “2.2(1)”.**

- 1.3 (a) Paragraph 3.2(b)(iii) of the National Instrument is amended by inserting the words “if applicable,” before the word “enquire” at the beginning of the paragraph.**

- (b) Section 3.3 of the National Instrument is repealed and the following substituted:**

**3.3 Transitional – Instructions from Existing Clients –** An intermediary that holds securities on behalf of a client in an account that was opened before the coming into force of this Instrument

- (a) may seek new instructions from its client in relation to the matters to which the client response form pertains; and
- (b) in the absence of new instructions from the client, shall rely on the instructions previously given or deemed to have been given by the client under NP41 in respect of that account, on the following basis:
  - (i) If the client chose to permit the intermediary to disclose the client’s name and security holdings to the issuer of the security or other sender of material, the client is a NOBO under this Instrument;
  - (ii) If the client was deemed to have permitted the intermediary to disclose the client’s name and security holdings to the issuer of the security or other sender of material, the intermediary may choose to treat the client as a NOBO under this Instrument;



- (iii) If the client chose not to permit the intermediary to disclose the client's name and security holdings to the issuer of the security or other sender of material, the client is an OBO under this Instrument;
- (iv) If the client chose not to receive material relating to annual or special meetings of securityholders or audited financial statements, the client is considered to have declined under this Instrument to receive:
  - (A) proxy-related materials that are sent in connection with a securityholder meeting;
  - (B) financial statements and annual reports that are not part of proxy-related materials; and
  - (C) materials sent to securityholders that are not required by corporate or securities law to be sent to registered securityholders.
- (v) If the intermediary was permitted not to provide material relating to annual meetings of securityholders or audited financial statements, the client is considered to have declined under this Instrument to receive:
  - (A) proxy-related materials that are sent in connection with a securityholder meeting that is not a special meeting;
  - (B) financial statements and annual reports that are not part of proxy-related materials; and
  - (C) materials sent to securityholders that are not required by corporate or securities law to be sent to registered securityholders.
- (vi) If the client chose to receive material relating to annual or special meetings of securityholders and audited financial statements, the client is considered to have chosen under this Instrument to receive all securityholder materials sent to beneficial owners of securities.
- (vii) The client is considered to have chosen under this Instrument as the client's preferred language of communication the language that has been customarily used by the intermediary to communicate with the client.

**1.4 Part 4 of the National Instrument is amended by adding the following section 4.8:**

**4.8 Fees from Persons or Companies other than Reporting Issuers**

A proximate intermediary that receives securityholder materials from a person or company that is not a reporting issuer for sending to beneficial owners is not required to send the securityholder materials to any beneficial owners or intermediaries that are clients of the proximate intermediaries unless the proximate intermediary receives reasonable assurance of payment for the delivery of the securityholder materials.

**1.5 (a) Subsection 6.2(1) of the National Instrument is repealed and the following substituted:**

- (1) A person or company may take any action permitted under this Instrument to be taken by a reporting issuer and, in so doing, has all the rights, and is subject to all of the obligations, of a reporting issuer in connection with that action, unless this Instrument specifies a different right or obligation.

**(b) Subsection 6.2(3) of the National Instrument is amended by deleting the words "section 2.18" and substituting the words "paragraphs 2.12(1)(a) and 2.12(1)(b), sections 2.14 and 2.18".**

**(c) Section 6.2 of the National Instrument is amended by adding the following subsection 6.2(6):**

- (6) A person or company other than a reporting issuer to which the request relates that sends materials indirectly to beneficial owners shall pay to the proximate intermediary a fee for sending the securityholder materials to the beneficial owners.

**1.6 Part 7 of the National Instrument is repealed and the following substituted:****Part 7 USE OF NOBO LIST AND INDIRECT SENDING OF MATERIALS**

**7.1 Use of NOBO List** – No reporting issuer or other person or company shall use a NOBO list or a report prepared under section 5.3 relating to the reporting issuer and obtained under this Instrument, except in connection with:

- (a) sending securityholder materials to NOBOs in accordance with this Instrument;
- (b) an effort to influence the voting of securityholders of the reporting issuer;
- (c) an offer to acquire securities of the reporting issuer; or
- (d) any other matter relating to the affairs of the reporting issuer.

**7.2 Indirect Sending of Materials** –No person or company other than the reporting issuer shall send any materials indirectly to beneficial owners of a reporting issuer under section 2.12 of this Instrument except in connection with:

- (a) an effort to influence the voting of securityholders of the reporting issuer;
- (b) an offer to acquire securities of the reporting issuer; or
- (c) any other matter relating to the affairs of the reporting issuer.

**1.7 (a) The “Explanation to Clients” portion of Form 54-101F1 is amended by deleting the second and third paragraphs under the heading “Disclosure of Beneficial Ownership Information” and substituting the following:**

If you **DO NOT OBJECT** to the disclosure of your beneficial ownership information, please mark the first box on Part 1 of the form. In those circumstances, you will not be charged with any costs associated with sending securityholder materials to you.

If you **OBJECT** to the disclosure of your beneficial ownership information by us, please mark the second box in Part 1 of the form. If you do this, all materials to be delivered to you as a beneficial owner of securities will be delivered by us. *[Instruction: Disclose particulars of any fees or charges that the intermediary may require an objecting beneficial owner to pay in connection with the sending of securityholder materials.]*

**(b) The “Explanation to Clients” portion of Form 54-101F1 is amended by deleting the third paragraph under the heading “Receiving Securityholder Materials” and substituting the following:**

Securities law permits you to decline to receive securityholder materials. The three types of material that you may decline to receive are:

- (a) proxy-related materials, including annual reports and financial statements, that are sent in connection with a securityholder meeting.
- (b) annual reports and financial statements that are not part of proxy-related materials; and
- (c) materials that a reporting issuer or other person or company sends to securityholders that are not required by corporate or securities law to be sent to registered holders.

**(c) The “Explanation to Clients” portion of Form 54-101F1 is amended by deleting the instruction in the first paragraph under the heading “Electronic Delivery of Documents” and substituting the following:**

*[Instruction: If applicable, either state (1) if the client wishes to receive documents by electronic delivery from the intermediary, the client should complete, sign and return an enclosed consent form with the client response form or (2) inform the client that electronic delivery of documents by the intermediary may be available upon his or her consent, and provide information as to how the client may provide that consent.]*

- (d) The “Client Response Form” portion of Form 54-101F1 is amended by deleting the text under the heading “Part 2 – Receiving Securityholder Materials” and substituting the following:

*Please mark the corresponding box to show what materials you want to receive. Securityholder materials sent to beneficial owners of securities consist of the following materials: (a) proxy-related materials for annual and special meetings; (b) annual reports and financial statements that are not part of proxy-related materials; and (c) materials sent to securityholders that are not required by corporate or securities law to be sent.*

- |   |  |
|---|--|
| Y | I WANT to receive ALL securityholder materials sent to beneficial owners of securities.  |
| Y | I DECLINE to receive ALL securityholder materials sent to beneficial owners of securities. <i>(Even if I decline to receive these types of materials, I understand that a reporting issuer or other person or company is entitled to send these materials to me at its expense.)</i> |
| Y | I WANT to receive ONLY proxy-related materials that are sent in connection with a special meeting.   |

(Important note: These instructions do not apply to any specific request you give or may have given to a reporting issuer concerning the sending of interim financial statements of the reporting issuer. In addition, in some circumstances, the instructions you give in this client response form will not apply to annual reports or financial statements of an investment fund that are *not* part of proxy-related materials. An investment fund is entitled to obtain specific instructions from you on whether you wish to receive its annual report or financial statements.)

- 1.8 (a) Item 7.5(a) of Part 1 of Form 54-101F2 is deleted and the following substituted:

(a) the type of meeting (annual, special or annual and special);

- (b) Item 9.3(a) of Part 1 of Form 54-101F2 is deleted and the following substituted:

(a) the type of meeting (annual, special or annual and special);

- 1.9 Form 54-101F8 is amended by deleting the fourth paragraph beginning “By voting...” and the following substituted:

By voting the securities represented by this legal proxy, you will be acknowledging that you are the beneficial owner of such securities or a person designated by the beneficial owner to vote such securities, and that you are entitled to vote such securities.

## **PART TWO – EFFECTIVE DATE**

- 2.1 These amendments come into effect on [\*, 2004].

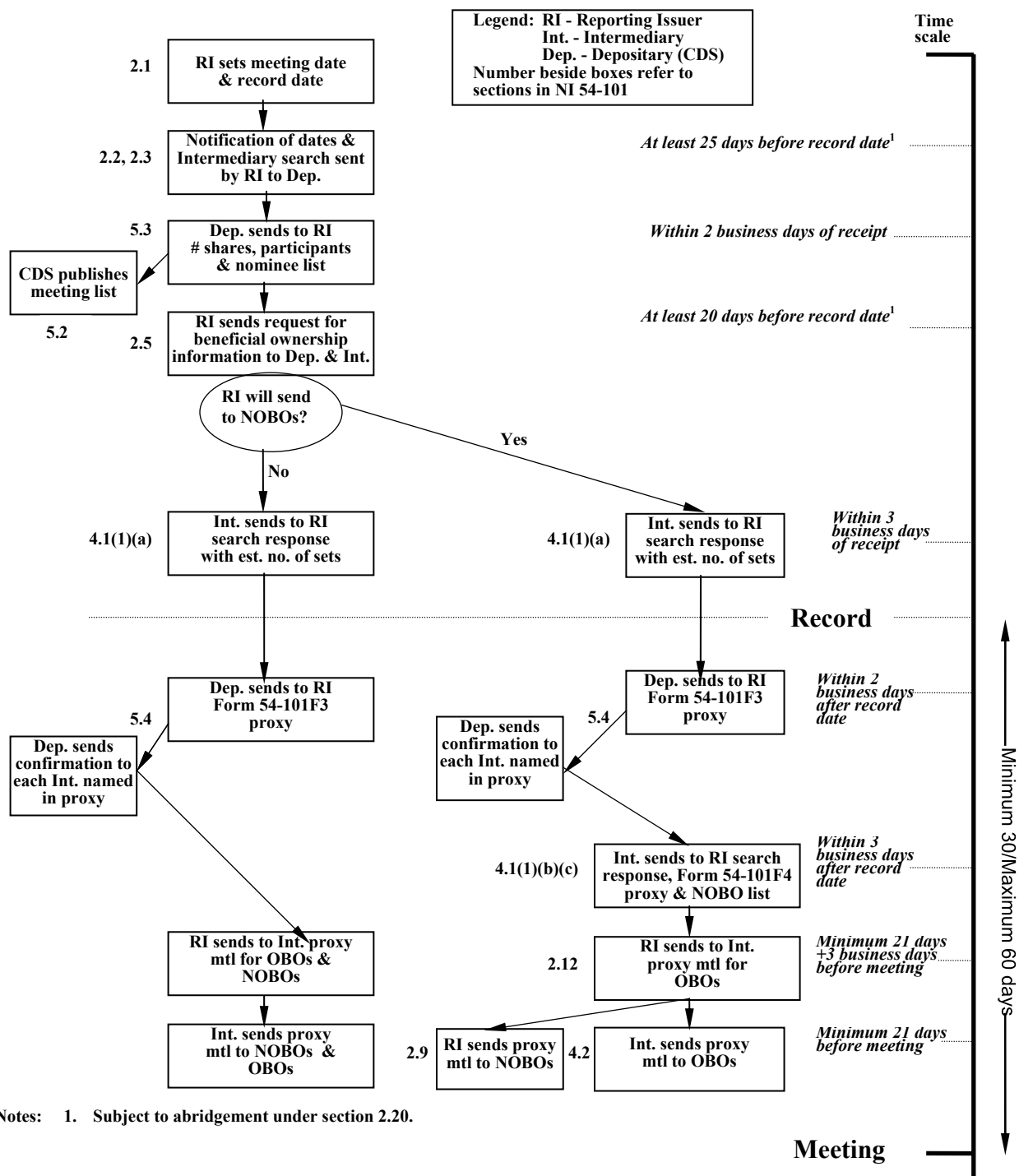
**AMENDMENTS TO COMPANION POLICY 54-101CP**

**PART ONE - AMENDMENTS**

- 1.1 (a) Subsection 2.1(1) of the Companion Policy 54-101CP (the Companion Policy) is amended by deleting from the final sentence the words “; an example of these types of materials would be corporate communications containing product information.”**
- (b) Subsection 2.2(1) of the Companion Policy is amended by adding the following sentence to the end of the subsection:**
- Subsection 2.12(3) does not require a reporting issuer to send proxy-related materials to all beneficial owners outside Canada. A reporting issuer need only send proxy-related materials to beneficial owners who hold through proximate intermediaries that are either participants in a recognized depository, or intermediaries on the depository's intermediary master list.
- (c) Subsection 2.4(2) of the Companion Policy is repealed and the following substituted:**
- (2) For the purposes of the Instrument, if an intermediary that holds securities has discretionary voting authority over the securities, it will be the beneficial owner of those securities for purposes of providing instructions in a client response form, and would not also be an “intermediary” with respect to those securities.
- 1.2 Part 4 of the Companion Policy is amended by adding the following section 4.8:**
- 4.8 Instructions from Existing Clients –** A client deemed to be a NOBO under NP41 can continue to be treated as a NOBO under paragraph 3.3(b)(ii) of this Instrument. However, intermediaries are responsible for ensuring that they comply with their obligations under privacy legislation with respect to their clients' personal information. Intermediaries may find that, notwithstanding paragraph 3.3(b)(ii), privacy legislation requires that they take measures to obtain their clients' consent before they disclose their clients' names and security holdings to a reporting issuer or other sender of material.
- 1.3 Subsection 5.4(4) of the Companion Policy is amended by deleting the first sentence of that subsection and substituting the following:**
- Section 3.2 of the Instrument requires intermediaries that hold securities on behalf of a client in an account to obtain the electronic mail address of the client, if available, and if applicable, to enquire whether the client wishes to consent to electronic delivery of documents by the intermediary to the client.
- 1.4 Appendix A of the Companion Policy is deleted in its entirety and the following substituted:**

## Appendix A

### Proxy Solicitation under NI 54-101



## PART TWO – EFFECTIVE DATE

2.1 These amendments come into effect on [\*, 2004].

## **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>
18-Sep-2003 to 25-Sep-2003	James Vidal and Frederick Hacking	Acuity Pooled Fixed Income Fund - Trust Units	300,577.00	21,908.00
18-Sep-2003	147 Purchasers	Adelaide Income Fund - Trust Units	1,666,535.00	265,390.00
19-Sep-2003	Barrick Gold Corporation	Agnico-Eagle Mines Limited - Common Shares	1,999,994.00	125,612.00
10-Sep-2003	3 Purchaser	Arctic Star Diamond Corp. - Units	245,000.00	408,500.00
12-Sep-2003	Clare R. Copeland;Byrnwood Management Ltd.	Avenue Financial Corporation - Convertible Debentures	200,000.00	300,000.00
18-Sep-2003	3 Purchasers	AVVAA World Health Care Products, Inc. - Units	28,546.00	81,800.00
16-Sep-2003	6 Purchasers	Bay Street High Yield Mortgage Limited Partnership - Limited Partnership Units	23,000,000.00	23,000,000.00
22-Sep-2003	Jefferson Partners Fund IV;L.P.	BorderWare Technologies Inc. - Preferred Shares	3,404,041.00	1,981,397.00
18-Sep-2003	136 Purchasers	Caledonia Income Fund - Trust Units	1,636,530.00	284,440.00
22-Sep-2003	16 Purchasers	Campbell Resources Inc. - Common Shares	2,179,100.00	4,012,000.00
19-Sep-2003	WB Family Foundation	CareVest First Mortgage Investment Corporation - Preferred Shares	500,000.00	500,000.00
18-Sep-2003	David Currie	Coast Mountain Power Corp. - Common Shares	40,000.00	44,444.00
17-Sep-2003	6 Purchasers	Conquest Resources Limited - Units	449,469.00	2,365,629.00



**Notice of Exempt Financings**

22-Nov-2002	3938778 Canada Inc.	Crystal Clear (C.C.) Window Works Inc. - Common Shares	0.20	20.00
07-Sep-2003	OFG Crystal Clear Venture Inc.	Crystal Clear (C.C.) Window Works Inc. - Common Shares	36,000.00	4.00
09-Sep-2003	3938778 Canada Inc.	Crystal Clear (C.C.) Window Works Inc. - Common Shares	40,000.00	5.00
18-Aug-2003	OFG Crystal Clear Venture Inc.	Crystal Clear (C.C.) Window Works Inc. - Common Shares	9,000.00	1.00
07-Sep-2003	OFG Crystal Clear Venture Inc.	Crystal Clear (C.C.) Window Works (Canada) Inc. - Common Shares	37,672.00	35,208.00
18-Aug-2003	OFG Crystal Clear Venture Inc.	Crystal Clear (C.C.) Window Works (Canada) Inc. - Common Shares	12,557.52	11,736.00
09-Sep-2003	393878 Canada Inc.	Crystal Clear (C.C.) Window Works (Canada) Inc. - Common Shares	40,000.00	37,383.00
24-Sep-2003	3938778 Canada Inc.	Crystal Clear (C.C.) Window Works (Canada) Inc. - Common Shares	300,000.00	169,000.00
15-Sep-2003	7 Purchasers	DK Energy Fund Limited Partnership - Limited Partnership Units	2,350,000.00	27.00
11-Sep-2003	3 Purchasers	Enerworks Inc. - Convertible Debentures	1,000,000.00	3.00
22-Sep-2003	Pergola International Holdings Corporation	G7 Gravure Inc. - Common Shares	250,000.00	250,000.00
18-Sep-2003	41 Purchasers	Glencairn Gold Corporation - Special Warrants	3,849,000.00	8,553,333.00
31-Aug-2003	Mrabaud Canada Inc.	Haussmann Holdings N.V. Reg. -B- - Common Shares	23,646.88	11.00
22-Sep-2003	T.A.L. Investment Counsel;Ltd.	Hines Nurseries, Inc. - Notes	336,800.00	1.00
23-Sep-2003	Harold Smith	Intercative Enterprises Inc. - Common Shares	7,500.00	100,000.00
15-Sep-2003	Ralph Govan and Irene Govan	Kingwest U.S. Equity Portfolio - Units	615,875.00	60,144.00
22-Sep-2003	Hospitals of Ontario Pension Plan	Levine Leichtman Capital Partners III, L.P. - Limited Partnership Interest	13,493,000.00	1.00
16-Sep-2003	15 Purchasers	Linear Resources Inc. - Units	1,310,000.00	1,310,000.00
29-Aug-2003	Mirabaud Canada Inc.	Lynx Selection Holdings - Preferred Shares	24,366.79	70.00

**Notice of Exempt Financings**

12-Sep-2003	5 Purchasers	Marauder Energies Inc. - Warrants	1,760,000.00	1,943,040.00
02-Sep-2003	6 Purchasers	MCAN Performance Strategies - Limited Partnership Units	989,480.00	6,954.00
22-Sep-2003	SCR Canada Inc.	Meritus Realty Advisors Inc. - Preferred Shares	500,000.00	5,000.00
17-Sep-2003	Paul Dimora	Microsource Online, Inc. - Common Shares	4,800.00	800.00
17-Sep-2003	William Mount	Microsource Online, Inc. - Common Shares	1,200.00	200.00
19-Sep-2003	Six and Eight Trading Co/Ltd.	Microsource Online, Inc. - Common Shares	60,000.00	10,000.00
01-Sep-2003	Mirabaud Canada Inc.	Miralt North America - Z- USD - Common Shares	23,813.22	160.00
01-Sep-2003	Mrabaud Canada Inc.	Miralt Sicav Europe Z EUR - Common Shares	24,305.48	320.00
04-Sep-2003	Gowlings Canada Inc.	Mitel Networks Corporation - Common Shares	1,512.50	550.00
16-Sep-2003	16 Purchasers	Molson Inc. - Notes	106,000,000.00	16.00
15-Sep-2003	Creststreet 2002 Limited Partnership	Mount Copper Wind Power Energy Inc. - Common Shares	27,162.54	26,348.00
16-Sep-2003	3414850 CANADA INC.	NETISTIX TECHNOLOGIES CORPORATION - Common Shares	100,000.00	200,000.00
15-Sep-2003	11 Purchasers	NFX Gold Inc. - Common Shares	300,000.00	6,800,000.00
22-Sep-2003	William F. Hilton	Oxford Software Developers Inc. - Common Shares	1,500.00	1,500.00
18-Sep-2003	129 Purchasers	Patuca 2003-1 Income Fund - Trust Units	83,850.00	12,900.00
15-Sep-2003	13 Purchasers	Patricia Mining Corp. - Flow-Through Shares	2,187,000.00	5,874,375.00
16-Sep-2003	Canaccord Capital Corporation	PBB Global Logist Income Fund - Trust Units	4,042,500.00	350,000.00
17-Sep-2003	16 Purchasers	Peregrine Diamonds Ltd. - Special Warrants	810,000.00	810,000.00
24-Sep-2003	3 Purchasers	Petrobank Energy and Resources Ltd. - Flow-Through Shares	7,758,000.00	2,155,000.00
10-Sep-2003	12 Purchasers	PharmaGap Inc. - Units	95,350.00	190,700.00
15-Sep-2003	Nesbitt Burns In Trust for Dynamic Power Hedge Fund;BMO Nesbitt Burns	Queenstake Resources Ltd. - Common Shares	650,000.00	1,000,000.00

**Notice of Exempt Financings**

15-Sep-2003	Royal Trust - In Trust for : Sceptre Pooled Small Cap	Queenstake Resources Ltd. - Warrants	269,490.00	414,600.00
15-Sep-2003	Royal Trust - In Trust for: Sceptre Pooled Small Cap.	Queenstake Resources Ltd. - Warrants	788,320.00	1,212,800.00
15-Sep-2003	Royal Trust - In Trust for: Sceptre Pooled Small Cap	Queenstake Resources Ltd. - Warrants	100,750.00	155,000.00
15-Sep-2003	Royal Trust - In Trust for: Sceptre Pooled Small Cap.	Queenstake Resources Ltd. - Warrants	42,835.00	65,900.00
15-Sep-2003	Royal Trust - In Trust for: Sceptre Pooled Small Cap.	Queenstake Resources Ltd. - Warrants	13,065.00	20,100.00
15-Sep-2003	Royal Trust - In Trust for: Sceptre Pooled Small Cap.	Queenstake Resources Ltd. - Warrants	355,095.00	546,300.00
15-Sep-2003	Royal Trust - In Trust for: Sceptre Pooled Small Cap	Queenstake Resources Ltd. - Warrants	55,445.00	85,300.00
25-Sep-2003	4 Purchasers	Rider Resources Ltd. - Flow-Through Shares	4,971,250.00	1,025,000.00
25-Sep-2003	Bank of Nova Scotia	Royalty Fund - Units	70,386,560.00	1,549,000.00
15-Sep-2003	Canadain Imperial Bank of Commerce;Kensington Fund of Funds LP	TriWest Capital Growth Fund Limited Partnership No.II - Limited Partnership Interest	15,000,000.00	2.00
19-Sep-2003	63 Purchasers	Vigil Health Solutions Inc. - Units	2,141,125.00	6,117,500.00
28-Aug-2003	2000800 Ontario Ltd.	Western Keltic Mines Inc. - Units	200,000.00	200,000.00
15-Sep-2003	7 Purchasers	Western Wind Energy Corp. - Units	238,875.00	227,500.00

**RESALE OF SECURITIES - (FORM 45-501F2)**

<u>Transaction Date</u>	<u>Seller</u>	<u>Security</u>	<u>Total Selling Price</u>	<u>Number of Securities</u>
10-Sep-2003	Christopher Corbin	NBC TEAM LTD. - Common Shares	600,000.00	1,714,286.00
10-Sep-2003	Timothy Leach	NBC TEAM LTD. - Common Shares	775,000.00	2,214,286.00
10-Sep-2003	Philip O'Dell	NBC TEAM LTD. - Common Shares	775,000.00	2,214,286.00
10-Sep-2003	Maurice Clermont	NBC TEAM LTD. - Common Shares	775,000.00	2,214,286.00
10-Sep-2003	Douglas Eaton	NBC TEAM LTD. - Common Shares	775,000.00	2,214,286.00

**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>
Douglas O. Vanderkerkhove	ACD Systems International Inc. - Common Shares	20,000.00
John Buhler	Buhler Industries Inc. - Shares	192,322.00
Aaron Serruya	Coolbrands International Inc. - Shares	395,156.00
Estill Holdings Limited ("EHL")	EMJ Data Systems Ltd. - Common Shares	344,500.00
Exploration Capital Partners 2000 Limited Partnership	General Minerals Corporation - Common Shares	827,000.00
Pinetree Capital Corp.	Genevest Inc. - Common Shares	500,000.00
Trilwood Limited	Global Railway Industries Ltd. - Common Shares	2,500,000.00
Douglas Quantz Trust	Husky Injection Molding Systems Ltd. - Common Shares	165,630.00
Lili Schad	Husky Injection Molding Systems Ltd. - Common Shares	70,577.00
Schad Family Trust	Husky Injection Molding Systems Ltd. - Common Shares	19,545.00
1257754 Ontario Inc.	Husky Injection Molding Systems Ltd. - Common Shares	34,441.00
1257755 Ontario Inc.	Husky Injection Molding Systems Ltd. - Common Shares	34,441.00
Brownstone Resources Inc.	Maple Minerals Inc. - Common Shares	2,000,000.00
Susan M.S. Gastle	Microbix Biosystems Inc. - Common Shares	7,548.00
William J. Gastle	Microbix Biosystems Inc. - Common Shares	477,133.00
Paros Enterprises Limited	Morguard Corporation - Common Shares	2,000,000.00

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

<u><b>Issuer</b></u>	<u><b>Date the Company Ceased to be a Private Company or Private Issuer</b></u>
NBC TEAM LTD.	9/9/03

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## Chapter 11

# IPOs, New Issues and Secondary Financings

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**Issuer Name:**

ARIUS Research Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated September 29, 2003  
Mutual Reliance Review System Receipt dated September 30, 2003

**Offering Price and Description:**

Minimum: \$ \* (\* Units); Maximum: \$ \* (\* Units) Price : \$ \* per Unit

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

Canaccord Capital Corporation  
Dlouhy Merchant Group Inc.

**Promoter(s):**

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**Project #576962**

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**Issuer Name:**

Brascan SoundVest Diversified Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated September 26, 2003  
Mutual Reliance Review System Receipt dated September 26, 2003

**Offering Price and Description:**

Maximum: \$ \* (\* Units)  
Price: \$10.00 per Unit

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

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

**Promoter(s):**

Brascan Diversified Income Management Ltd.  
**Project #576515**

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**Issuer Name:**

Brookfield Properties Corporation  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated September 29, 2003  
Mutual Reliance Review System Receipt dated September 29, 2003

**Offering Price and Description:**

\$200,000,000.00 - 8,000,000 Class AAA Preference Shares, Series H Price: \$25.00 per Series H Preference Share

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

Scotia Capital Inc.  
CIBC World Markets Inc.  
RBC Dominion Securities Inc.  
TD Securities Inc.  
BMO Nesbitt Burns Inc.  
National Bank Financial Inc.  
HSBC Securities (Canada) Inc.  
Desjardins Securities Inc.  
Research Capital Corporation  
Trilon Securities Corporation  
Westwind Partners Inc.

**Promoter(s):**

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**Project #576909**

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**Issuer Name:**

CryoCath Technologies Inc.  
Principal Regulator - Quebec

**Type and Date:**

Preliminary Short Form Prospectus dated September 24, 2003  
Mutual Reliance Review System Receipt dated September 24, 2003

**Offering Price and Description:**

\$25,200,000.00 - 4,500,000 Common Shares Price: \$5.60 per Common Share

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

Orion Securities Inc.  
BMO Nesbitt Burns Inc.  
National Bank Financial Inc.  
RBC Dominion Securities Inc.  
Dlouhy Merchant Group Inc.

**Promoter(s):**

-

**Project #576016**

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**Issuer Name:**

Dundee Real Estate Investment Trust  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated September 23, 2003  
Mutual Reliance Review System Receipt dated September 24, 2003

**Offering Price and Description:**

\$ \* - \* REIT Units, Series A Price: \$ \* per Unit

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

TD Securities Inc.  
Scotia Capital Inc.  
BMO Nesbitt Burns Inc.  
Dundee Securities Corporation  
National Bank Financial Inc.

**Promoter(s):**

Dundee Realty Corporation  
**Project #575874**

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**Issuer Name:**

Dundee Wealth Management Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated September 26, 2003  
Mutual Reliance Review System Receipt dated September 29, 2003

**Offering Price and Description:**

\$ \* - \* Common Shares Price: \$ \* per Share

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

Grtffiths McBurney & Partners  
National Bank Financial Inc.  
Dundee Securities Corporation  
Scotia Capital Inc.  
TD Securities Inc.

**Promoter(s):**

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**Project #576820**

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**Issuer Name:**

Financial 15 Split Corp.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated September 30, 2003  
Mutual Reliance Review System Receipt dated September 30, 2003

**Offering Price and Description:**

\$ \* (Maximum) - \* Preferred Shares and \* Class A Shares  
Price: \$10.00 per Preferred Share and \$15.00 per Class A Share

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

CIBC World Markets Inc.  
BMO Nesbitt Burns Inc.  
RBC Dominion Securities Inc.  
TD Securities Inc.  
Bieber Securities Inc.  
Canaccord Capital Corp.  
Desjardins Securities Inc.  
Dundee Securities Corporation  
First Associates Investments Inc.

**Promoter(s):**

Quadravest Capital Management Inc.  
**Project #577284**

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**Issuer Name:**

Golden Credit Card Trust  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated September 25, 2003  
Mutual Reliance Review System Receipt dated September 25, 2003

**Offering Price and Description:**

\$\* \*\*% Credit Card Receivables-Backed Senior Notes,  
Series 2003-1 Expected Final Payment Date of \*, 200 \* - \$  
\*\* % Credit Card Receivables-Backed Subordinated  
Notes, Series 2003-1 Expected Final Payment Date of \*,  
200\*

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

RBC Dominion Securities Inc.  
BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
Scotia Capital Inc.  
TD Securities Inc.  
Merrill Lynch Canada Inc.  
National Bank Financial Inc.  
HSBC Securities (Canada) Inc.  
Desjardins Securities Inc.  
Laurentian Bank Securities Inc.

**Promoter(s):**

-

**Project #576194**

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**Issuer Name:**

Goose River Resources Ltd.  
Principal Regulator - Alberta

**Type and Date:**

Second Amended and Restated Preliminary Prospectus  
dated September 25, 2003  
Mutual Reliance Review System Receipt dated September 25, 2003

**Offering Price and Description:**

Maximum Offering: \$5,000,000 (9,090,909 Flow-Through  
Shares)  
Minimum Offering: \$4,000,000 (7,272,728 Flow-Through  
Shares)  
Price: \$0.55 per Flow-Through Share

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

First Associates Investments Inc.

**Promoter(s):**

Curtis A. Hartzler  
Leonard D. Arcovio  
**Project #564436**

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**Issuer Name:**

Hathaway High Yield Bond Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified dated September 26, 2003  
Mutual Reliance Review System Receipt dated September 29, 2003

**Offering Price and Description:**

Series A Units

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

Dynamic Mutual Funds Ltd.  
Dynamic Mutual Funds Ltd.

**Promoter(s):**

Dynamic Mutual Funds Ltd.

**Project #576649**

**Issuer Name:**

IMAX Corporation  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Shelf Prospectus dated September 24, 2003  
Mutual Reliance Review System Receipt dated September 25, 2003

**Offering Price and Description:**

US\$250,000,000.00 - Debt Securities Preferred Shares  
Common Shares Warrants Stock Purchase Contracts  
Units

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

-

**Promoter(s):**

-

**Project #576096**

**Issuer Name:**

Industry Opportunities Split Corp.  
Principal Regulator - Ontario

**Type and Date:**

Amended and Restated Preliminary Prospectus dated September 29, 2003  
Mutual Reliance Review System Receipt dated September 30, 2003

**Offering Price and Description:**

\$ \* - \$ \* \* Capital Shares \* Preferred Shares Price: \* per  
Capital Share and \$ \* per Preferred Share

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

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

**Promoter(s):**

RBC Dominion Securities Inc.

**Project #575583**

**Issuer Name:**

Mackenzie Cundill Canadian Security Capital Class  
Mackenzie Maxxum Canadian Equity Growth Capital Class  
Mackenzie Maxxum Dividend Capital Class  
Mackenzie Universal U.S. Growth Leaders Capital Class  
Mackenzie Ivy Canadian Capital Class  
Mackenzie Universal Canadian Growth Capital Class  
Mackenzie Universal Future Capital Class  
Mackenzie Universal U.S. Blue Chip Capital Class  
Mackenzie Cundill Value Capital Class  
Mackenzie Ivy Foreign Equity Capital Class  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectuses and Annual  
Information Forms dated September 26, 2003  
Mutual Reliance Review System Receipt dated September 29, 2003

**Offering Price and Description:**

Series A, F, I, O and R Shares

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

Mackenzie Financial Corporation

**Promoter(s):**

-

**Project #576528**

**Issuer Name:**

Northern Property Real Estate Investment Trust  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated September 29, 2003  
Mutual Reliance Review System Receipt dated September 30, 2003

**Offering Price and Description:**

\$25,045,500.00 - 1,770,000 Units Price: \$14.15 per Unit

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

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

**Promoter(s):**

Urbco Inc.

**Project #577210**

**Issuer Name:**

Oncolytics Biotech Inc.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated September 25, 2003  
Mutual Reliance Review System Receipt dated September 26, 2003

**Offering Price and Description:**

\$5,000,000.00 - 1,000,000 Units Price: \$5.00 per Unit

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

Canaccord Capital Corporation

**Promoter(s):**

-

**Project #576439**



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**Issuer Name:**

Priszm Canadian Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated September 25, 2003  
Mutual Reliance Review System Receipt dated September 26, 2003

**Offering Price and Description:**

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

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

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

**Promoter(s):**

priszm brandz LP  
**Project #576549**

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**Issuer Name:**

Select 50 S-1 Income Trust II  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated September 25, 2003  
Mutual Reliance Review System Receipt dated September 26, 2003

**Offering Price and Description:**

Maximum: \$ \* ( \* Units) - Minimum: \$ \* ( \* Units) Price:  
\$10.00 per Unit

Minimum Purchase: 200 Units

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

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

**Promoter(s):**

Sentry Select Capital Corp.  
**Project #576407**

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**Issuer Name:**

ShawCor Ltd.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated September 24, 2003  
Mutual Reliance Review System Receipt dated September 24, 2003

**Offering Price and Description:**

\$80,080,000.00 - 5,600,000 Class A Subordinate Voting  
Shares Price: \$14.30 per Class A Subordinate Voting  
Share

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

TD Securities Inc.  
Scotia Capital Inc.  
BMO Nesbitt Burns Inc.  
National Bank Financial Inc.  
RBC Dominion Securities Inc.  
Sprott Securities Inc.  
Griffiths McBurney & Partners

**Promoter(s):**

-  
**Project #575984**

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**Issuer Name:**

Strategic Energy Fund (formerly NCE Strategic Energy  
Fund)  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated September 25, 2003  
Mutual Reliance Review System Receipt dated September 30, 2003

**Offering Price and Description:**

Maximum: \$10,000,000 (\* Units); Minimum: \$2,500,000 (\*  
Units) Price: \$ \* per Unit Minimum Subscription : 300 Units

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

First Associates Investments Inc.  
National Bank Financial Inc.  
TD Securities Inc.  
Canaccord Capital Corporation  
HSBC Securities (Canada) Inc.  
Desjardins Securities Inc.  
Dundee Securities Corporation  
Raymond James Ltd.  
FirstEnergy Capital Corp.  
Research Capital Corporation

**Promoter(s):**

Petro Assets Inc.  
**Project #576942**

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**Issuer Name:**

TD Short Term Bond Fund  
TD Global RSP Bond Fund  
TD Income Advantage Portfolio  
TD Dividend Income Fund  
TD International Equity Fund  
(Advisor Series Units)  
TD High Yield Income Fund  
TD Canadian Blue Chip Equity Fund  
TD U.S. Large-Cap Value Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectus dated September 26, 2003  
Mutual Reliance Review System Receipt dated September 30, 2003

**Offering Price and Description:**

Advisor Series Units and F-Series Units

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

TD Investment Services Inc.

**Promoter(s):**

TD Asset Management Inc.

**Project #576933**

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**Issuer Name:**

TD Private Income Trust Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectus dated September 30, 2003  
Mutual Reliance Review System Receipt dated September 30, 2003

**Offering Price and Description:**

Offering Units

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

-

**Promoter(s):**

TD Asset Management Inc.

**Project #577404**

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**Issuer Name:**

VSM MedTech Ltd.  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Prospectus dated September 26, 2003  
Mutual Reliance Review System Receipt dated September 26, 2003

**Offering Price and Description:**

\$ \* - \* Common Shares Price: \$ \* per Common Share

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

Clarus Securities Inc.  
First Associates Investments Inc.  
Orion Securities Inc.  
Canaccord Capital Corporation

**Promoter(s):**

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**Project #576564**

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**Issuer Name:**

WestJet Airlines Ltd.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated September 24, 2003  
Mutual Reliance Review System Receipt dated September 24, 2003

**Offering Price and Description:**

\$125,008,750.00 - 5,155,000 Common Shares Price:  
\$24.25 per Common Share

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

CIBC World Markets Inc.  
RBC Dominion Securities Inc.  
Raymond James Ltd.  
Merrill Lynch Canada Inc.  
BMO Nesbitt Burns Inc.  
Scotia Capital Inc.  
Canaccord Capital Corporation  
Desjardins Securities Inc.  
Dlouhy Merchant Group Inc.  
Octagon Capital Corporation

**Promoter(s):**

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**Project #576039**

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**Issuer Name:**

Wheaton River Minerals Ltd.  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Prospectus dated September 26, 2003  
Mutual Reliance Review System Receipt dated September 26, 2003

**Offering Price and Description:**

Cdn.\$100,012,500.00 - 31,750,000 Units Price: \$3.15 per Unit

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

Griffiths McBurney & Partners  
BMO Nesbitt Burns Inc.  
Canaccord Capital Corporation  
Orion Securities Inc.  
Sprott Securities Inc.  
Research Capital Corporation  
Fort House Inc.

**Promoter(s):**

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**Project #576601**

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**Issuer Name:**

AGF Managed Futures Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated September 29, 2003  
Mutual Reliance Review System Receipt dated September 30, 2003

**Offering Price and Description:**

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

AGF Funds Inc.

**Promoter(s):**

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**Project #569786**

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**Issuer Name:**

Aliant Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated September 29, 2003  
Mutual Reliance Review System Receipt dated September 30, 2003

**Offering Price and Description:**

\$339,833,312.00 - 26,141,024 Subscription Receipts to acquire Common Shares of Price: \$13.00 per Subscription Receipt, of which \$6.50 is Payable on Closing

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

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

**Promoter(s):**

-

**Project #575445**

---

**Issuer Name:**

Angiotech Pharmaceuticals, Inc.  
Principal Regulator - British Columbia

**Type and Date:**

Final Short Form PREP Prospectus dated September 25, 2003  
Mutual Reliance Review System Receipt dated September 25, 2003

**Offering Price and Description:**

\$\*.\*\* - 5,000,000 Common Shares @ \$\*.\*\* per Common Share

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

BMO Nesbitt Burns Inc.  
Credit Sussie First Boston Canada Inc.  
Raymond James Ltd.  
Desjardins Securities Inc.  
Merrill Lynch Canada Inc.  
Sprott Securities Inc.  
Merrill Lynch & Co  
Lehman Brothers

**Promoter(s):**

-

**Project #574860**

---

**Issuer Name:**

Arctic Glacier Income Fund  
Principal Regulator - Manitoba

**Type and Date:**

Final Short Form Prospectus dated September 29, 2003  
Mutual Reliance Review System Receipt dated September 29, 2003

**Offering Price and Description:**

\$40,400,000 - 4,000,000 Units @\$10.00 per Unit

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

TD Securities Inc.  
RBC Dominion Securities Inc.  
Scotia Capital Inc.  
Wellington West Capital Inc.

**Promoter(s):**

-

**Project #574816**

---

**Issuer Name:**

Barclays Advantaged Equal Weighted Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated September 26, 2003  
Mutual Reliance Review System Receipt dated September 29, 2003

**Offering Price and Description:**

-

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

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

**Promoter(s):**

Barclays Global Investors Canada Limited  
**Project #566927**

---

**Issuer Name:**

Bio Angel I Corporation  
Principal Regulator - Quebec

**Type and Date:**

Final CPC Prospectus dated September 26, 2003  
Mutual Reliance Review System Receipt dated September 30, 2003

**Offering Price and Description:**

Minimum Offering: \$500,001 or 3,333,340 common shares;  
Maximum Offering: \$1,500,000 or 10,000,000 common shares  
Price: \$0.15 per common share

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

CTI Capital Inc.  
Leede Financial Markets Inc.

**Promoter(s):**

M. Clément C. Gagnon  
**Project #562281**

---

**Issuer Name:**

Perigee International Equity Fund  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated September 23, 2003 to the Final  
Simplified Prospectus and Annual Information Form dated  
September 27, 2002  
Mutual Reliance Review System Receipt dated September  
29, 2003

**Offering Price and Description:**

-

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

Perigee Investment Counsel Inc.

**Promoter(s):**

Perigee Investment Counsel Inc.

**Project #**472103

---

**Issuer Name:**

Business Trust Equal Weight Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated September 26, 2003  
Mutual Reliance Review System Receipt dated September  
29, 2003

**Offering Price and Description:**

Maximum 15,000,000 units @ \$10 per unit = \$150,000,000  
Minimum of 3,500,00 units @ \$10 = \$35,000,000

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

RBC Dominion Securities Inc.  
CIBC World Markets Inc.  
BMO Nesbitt Burns Inc.  
National Bank Financial Inc.  
Scotia Capital Inc.  
TD Securities Inc.  
HSBC Securities (Canada) Inc.  
Canaccord Capital Corporation  
Desjardins Securities Inc.  
Dundee Securities Corporation  
First Associates Investments Inc.  
Raymond James Ltd.  
Acadian Securities Incorporated  
Newport Securities Inc.  
Research Capital Corporation

**Promoter(s):**

Brompton Business Trust Management Limited

**Project #**570912

---

**Issuer Name:**

Clarington Income Trust Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus dated September 25, 2003  
Mutual Reliance Review System Receipt dated September  
30, 2003

**Offering Price and Description:**

Mutual Fund Units

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

ClaringtonFunds Inc.  
ClaringtonFunds Inc.

**Promoter(s):**

ClaringtonFunds Inc.

**Project #**567182

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**Issuer Name:**

ConjuChem Inc.  
Principal Regulator - Quebec

**Type and Date:**

Final Short Form Prospectus dated September 26, 2003  
Mutual Reliance Review System Receipt dated September  
26, 2003

**Offering Price and Description:**

\$21,663,000.00 - 5,220,000 Common Shares @\$4.15 per  
Common Share

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

Orion Securities Inc.  
Sprott Securities Inc.  
BMO Nesbitt Burns Inc.

**Promoter(s):**

-

**Project #**575209

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**Issuer Name:**

Convertible & Yield Advantage Trust  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated September 24, 2003  
Mutual Reliance Review System Receipt dated September  
25, 2003

**Offering Price and Description:**

Units

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

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

**Promoter(s):**

Skylon Advisors Inc.  
Skylon Capital Corp.

**Project #**567478

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**Issuer Name:**

Fortis Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated September 29, 2003  
Mutual Reliance Review System Receipt dated September 29, 2003

**Offering Price and Description:**

\$350,205,000 - 6,310,000 Subscription Receipts, each representing the right to receive one Common Share:  
Price: \$55.50 per Subscription Receipt

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

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

**Promoter(s):**

-

**Project #573843**

---

**Issuer Name:**

Gloucester Credit Card Trust  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated September 24, 2003  
Mutual Reliance Review System Receipt dated September 24, 2003

**Offering Price and Description:**

\$422,500,000.00 - 4.274% Series 2003-2 Class A Notes, Expected Final Payment Date of October 15, 2008 and \$77,500,000.00 - 6.035% Series 2003-2 Collateral Notes, Expected Final Payment Date of October 15, 2008

**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):**

-

**Project #573540**

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**Issuer Name:**

Goose River Resources Ltd.  
Principal Regulator - Alberta

**Type and Date:**

Final Prospectus dated September 26, 2003  
Mutual Reliance Review System Receipt dated September 26, 2003

**Offering Price and Description:**

Maximum Offering: \$5,000,000 (9,090,909 Flow-Through Shares) Minimum Offering: \$4,000,000 (7,272,728 Flow-Through Shares) @\$0.55 per Flow-Through Share

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

First Associates Investments Inc.

**Promoter(s):**

Curtis A. Hartzler  
Leonard D. Arcovio

**Project #564436**

---

**Issuer Name:**

InnVest Real Estate Investment Trust  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated September 30, 2003  
Mutual Reliance Review System Receipt dated September 30, 2003

**Offering Price and Description:**

9.75% Convertible Unsecured Subordinated Debentures due June 30, 2007

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

RBC Dominion Securities Inc.

**Promoter(s):**

-

**Project #575740**

---

**Issuer Name:**

NCE Flow-Through (2003-2) Limited Partnership  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated September 23, 2003  
Mutual Reliance Review System Receipt dated September 24, 2003

**Offering Price and Description:**

Maximum 2,000,000 Limited Partnership Units @ \$25 per Unit for a total of \$50,000,000  
Minimum 200,000 Limited Partnership Units @ \$25 per Unit for a total of \$5,000,000

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

-

**Promoter(s):**

Petro Assets Inc.

**Project #571815**

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**Issuer Name:**

NovaGold Resources Inc.  
Principal Regulator - British Columbia

**Type and Date:**

Final Short Form Prospectus dated September 25, 2003  
Mutual Reliance Review System Receipt dated September 25, 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 @\$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):**

-

**Project #573938**

---

**Issuer Name:**

ScotiaMcLeod Canadian Core Portfolio  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus dated September 29, 2003  
Mutual Reliance Review System Receipt dated September 30, 2003

**Offering Price and Description:**

Series A and Series F Units

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

First Defined Portfolio Management Co.

**Promoter(s):**

First Defined Portfolio Management Co.

**Project #561773**

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**Issuer Name:**

Tax Optimized Return Oriented Securities Trust  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated September 29, 2003  
Mutual Reliance Review System Receipt dated September 30, 2003

**Offering Price and Description:**

-

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

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

**Promoter(s):**

Lawrence Asset Management Inc.

**Project #566667**

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**Issuer Name:**

VFC Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated September 26, 2003  
Mutual Reliance Review System Receipt dated September 26, 2003

**Offering Price and Description:**

-

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

Sprott Securities Inc.  
TD Securities Inc.  
First Associates Investments Inc.  
Research Capital Corporaton

**Promoter(s):**

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**Project #569759**

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**Issuer Name:**

Hamilton Airlines 2000 Inc.  
(Formerly, Hamilton Airlines Inc.)  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated March 1, 2000  
Closed September 29, 2003

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**Project #575152**

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**Issuer Name:**

Yamana Gold Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated September 29, 2003  
Mutual Reliance Review System Receipt dated September 30, 2003

**Offering Price and Description:**

Cdn.\$55,500,000.00 - 46,250,000 Common Shares and  
23,125,000 Common Share Purchase Warrants  
issuable upon the exchange of 46,250,000 previously  
issued Subscription Receipts

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

Canaccord Capital Corporation  
BMO Nesbitt Burns Inc.  
Westwind Partners Inc.

**Promoter(s):**

Santa Elina Mines Corporation

**Project #571149**

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## Chapter 12

# Registrations

### 12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Blair Franklin Capital Markets Inc. Attention: Gordon Cheesbrough 26 Wellington Street East Suite 610 Toronto ON M5E 1S2	Limited Market Dealer Investment Counsel & Portfolio Manager	Sep 26/03
New Registration	Macquarie North America Ltd. Attention: Katherine Howard 121 King Street West 8 <sup>th</sup> Floor Toronto ON M5H 3T9	Limited Market Dealer	Oct 01/03
New Registration	Mawer Investment Management Ltd. Attention: Donald Ferris 900, 603 – 7 <sup>th</sup> Avenue SW Calgary AB T2P 2T5	Limited Market Dealer Investment Counsel & Portfolio Manager	Sep 30/03
Change in Category (Categories)	Meridian Global Investors Inc. Attention: Richard Kang 100-221 Spadina Road Toronto ON M5R 2T9	From: Limited Market Dealer Investment Counsel & Portfolio Manager  To: Limited Market Dealer Investment Counsel & Portfolio Manager Commodity Trading Manager	Sep 24/03



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## Chapter 13

# SRO Notices and Disciplinary Proceedings

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### 13.1.1 IDA Charge Brought Against Pierre Gloutney Not Sustained – Alleged Violations of Regulation 1300.1(a) & By-law 29.1

Contact:  
Elsa Renzella  
Enforcement Counsel  
(416) 943-5877

**BULLETIN #3195**  
September 25, 2003

#### DISCIPLINE

#### CHARGE BROUGHT AGAINST PIERRE GLOUTNEY NOT SUSTAINED ALLEGED VIOLATIONS OF REGULATION 1300.1(A) & BY-LAW 29.1

##### Nature of Proceeding

On August 26, 2003, a discipline hearing was held before the Ontario District Council ("District Council") of the Investment Dealers Association ("the Association") in relation to an allegation that Pierre Gloutney, President and Director of Refco Futures (Canada) Ltd. ("Refco"), failed to exercise due diligence when approving a corporate account of Mark Valentine, contrary to Association Regulation 1300.1(a) and By-law 29.1.

The facts of this case were not in dispute and were presented to District Council by way of an agreed statement of facts. The only issue for District Council was whether or not the facts constituted a regulatory violation.

##### Summary of Agreed Statement of Facts

In July 22, 2002, Mark Valentine opened an electronic futures trading account at Refco in the name of Q Capital. At the time, Mr. Valentine was subject to a Temporary Cease Trade Order issued by the Ontario Securities Commission. The Order provided for certain exceptions to his trading restrictions, which included trading in securities listed on the Toronto Stock Exchange or the New York Stock Exchange.

Mr. Gloutney was responsible for approving all new accounts at Refco and in particular approved the opening of the Q Capital account. At the time of approving the Q Capital account, Mr. Gloutney was generally aware from media coverage of Valentine's Cease Trade Order but did not obtain a copy of the Order or make any inquiries with the Ontario Securities Commission or Mr. Valentine himself. He assumed that the Order did not apply to U.S. Exchange traded futures contracts because the Order permitted Mr. Valentine to trade securities listed on the New York Stock Exchange, which constituted almost all of the securities included in the E-Mini Standard & Poors futures contracts.

The trading activity in the account took place between July 25 and August 16, 2002, inclusive and involved trading in E-mini Standard & Poors Stock Price Index Futures and E-Mini Nasdaq 100 Index Futures on the Chicago Mercantile Exchange. The account was ultimately closed on August 16, 2002, as a result of another Refco representative learning of Mr. Valentine's indictment in the U.S. for securities fraud and money laundering.

##### Decision of District Council

In its written decision dated September 18, 2003, District Council found that the charge had not been made out and dismissed the case. While District Council acknowledged that Mr. Gloutney's awareness of the trading ban should at least have prompted him to ask some questions, they were not prepared to conclude that his conduct was in violation of any Association Rules or By-laws. In arriving at its decision, District Council stated "The line is thin, and where there is doubt, he is entitled to benefit."

Kenneth A. Nason  
Association Secretary

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## Chapter 25

# Other Information

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### 25.1 Exemptions

#### 25.1.1 Perigee Investment Counsel Inc. - cl. 213(3)(b) of the LTCA

##### Headnote

Clause 213(3)(b) of the Loan and Trust Corporations Act – application for approval to act as trustee.

##### Statutes Cited

Loan and Trust Corporations Act, R.S.O. 1990, c. L.25, as am., clause 213(3)(b).

September 26, 2003  
Borden Ladner Gervais LLP  
40 King Street West  
Scotia Plaza  
Toronto, Ontario M5H 3Y4

Dear Leslie Erlich:

**Re: Application by Perigee Investment Counsel Inc. (“Perigee”) for approval to act as trustee of the existing and new pooled funds that may be established by Perigee in the future (together, the “Perigee Pooled Funds”).  
App. No. # 571/03**

Further to the application dated August 20, 2003 (the “Application”) filed on behalf of Perigee, and based on the facts set out in the Application, pursuant to the authority conferred on the Ontario Securities Commission (the “Commission”) in clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that Perigee may act as trustee of the Perigee Pooled Funds which Perigee manages and distributes pursuant to prospectus exemptions.

“Robert L. Sherriff”

“Paul M. Moore”

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