

**The Ontario Securities Commission**

# OSC Bulletin

November 14, 2003

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

**The Ontario Securities Commission**

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

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

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**Carswell**

One Corporate Plaza  
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M1T 3V4

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One Corporate Plaza  
2075 Kennedy Road  
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## Chapter 1

# Notices / News Releases

### 1.1 Notices

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

NOVEMBER 14, 2003

#### CURRENT PROCEEDINGS

#### BEFORE

#### ONTARIO SECURITIES COMMISSION

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

The Harry S. Bray Hearing Room  
Ontario Securities Commission  
Cadillac Fairview Tower  
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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

**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

November 17-19, 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

November 24 and 28, 2003

**Dimitrios Boulieris**

s. 21.7 and s. 8(2)

10:00 a.m.

K. Wootton in attendance for Staff

Panel: PMM/PKB/ST

December 1 to 5, 2003

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

10:00 a.m.

s. 127

Y. Chisholm in attendance for Staff

Panel: HLM/ST

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

May 2004 **Gregory Hyrniw and Walter Hyrniw**

s. 127

Y. Chisholm 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 Commission Approval – Proposed Amendments to MFDA Rule 1.1.6(b) Regarding Introducing and Carrying Arrangements**

##### **THE MUTUAL FUND DEALERS ASSOCIATION (MFDA) NOTICE OF COMMISSION APPROVAL PROPOSED AMENDMENTS TO MFDA RULE 1.1.6(b) REGARDING INTRODUCING AND CARRYING ARRANGEMENTS**

The Ontario Securities Commission approved proposed amendments to MFDA Rule 1.1.6(b) regarding introducing and carrying arrangements. In addition, the Alberta Securities Commission, Nova Scotia Securities Commission and Saskatchewan Financial Services Commission approved and the British Columbia Securities Commission did not object to the proposed amendments. The proposed amendments will provide additional disclosure to clients about the responsibilities of a level 2 introducing dealer and the carrying dealer, as well as increase the flexibility on how level 3 and level 4 introducing dealers could provide disclosure to clients. A copy and description of these amendments were published on July 11, 2003 at (2003) 26 OSCB 5401. A public comment was received, but did not result in any revisions to the proposed amendments. The MFDA's summary of public comment and response, are contained in Chapter 13 of this Ontario Securities Commission Bulletin.

### 1.1.3 CSA Staff Notice 52-306 Non-GAAP Financial Measures

#### CSA STAFF NOTICE 52-306

#### NON-GAAP FINANCIAL MEASURES

##### Purpose

This notice provides guidance to issuers who disclose financial measures other than those prescribed by Generally Accepted Accounting Principles ("GAAP"). This notice supersedes Staff Notice 52-303 dealing with non-GAAP earnings measures. Staff noted certain non-GAAP financial measures were being presented without the disclosures and reconciliations recommended for non-GAAP earnings measures. As a result, staff has decided to explicitly broaden the scope of this notice to all non-GAAP financial measures.

##### Definition

For the purpose of this staff notice, a non-GAAP financial measure is a numerical measure of an issuer's historical or future financial performance, financial position or cash flow, that is not required by GAAP, that (i) either excludes amounts that are included in the most directly comparable measure calculated and presented in accordance with GAAP; or (ii) includes amounts that are excluded from the most directly comparable measure calculated and presented in accordance with GAAP.

##### Problems Identified

Many issuers publish non-GAAP financial measures. Such measures are commonly included in press releases, Management's Discussion and Analysis ("MD&A"), prospectus filings and occasionally financial statements. Many non-GAAP financial measures are derived from net income determined in accordance with GAAP and, by omission of selected items, present a more positive picture of financial performance. Terms by which non-GAAP financial measures are identified include "pro forma earnings", "operating earnings", "cash earnings", "free cash flow", "distributable cash", "EBITDA", "adjusted earnings", and "earnings before one-time charges". These terms lack standard, agreed upon meanings and each may be used differently by different companies and even by the same company from period to period. In addition, calculations such as return on assets which use an asset base or net income that differs from amounts in the GAAP financial statements are non-GAAP financial measures.

Staff has noticed improvements in issuers' disclosures of non-GAAP financial measures but there is room for further improvement. In particular, issuers commonly present a non-GAAP financial measure without any explanation of the reasons for presenting the measure or a discussion of how management uses the measure.

Staff is concerned that investors may be confused or even misled by non-GAAP financial measures. To minimize the potential for confusion, such measures need to be

accompanied by clear disclosure that the measures do not have a standardized meaning, an explanation of their composition and a reconciliation to the most directly comparable measure in the issuer's GAAP financial statements.

Staff has observed instances of issuers reporting non-GAAP financial measures that appear to be defined differently from quarter to quarter or from year to year. For example, "one-time losses" may be excluded in one quarter but "one-time gains" may be included in a subsequent quarter.

When an issuer considers certain items to be "non-recurring" or "one-time charges", and removes them from GAAP net income or loss in calculating alternative measures of earnings, the issuer rarely discusses the nature of these charges and why they are not expected to recur in the future. Further, staff has observed items identified by issuers as non-recurring, infrequent or unusual, where a similar charge or gain occurred within the prior two years or when it would be reasonably likely to recur within the next two years.

Staff is also concerned that some issuers give greater prominence to one or more non-GAAP financial measures related to earnings than to net income determined in accordance with GAAP. Non-GAAP financial measures are sometimes the primary focus of earnings releases. Such releases commonly include comparisons of non-GAAP earnings measures to the previous quarter and to previously published estimates of earnings, both in aggregate and on a per share basis, together with absolute and percentage changes. Net income determined in accordance with GAAP is often presented as secondary to the non-GAAP measure and commonly lacks a similar level of analysis.

##### Staff's Expectations

Financial statements prepared in accordance with GAAP provide investors with a clearly defined basis for financial analysis and comparison among issuers. Staff recognizes that non-GAAP financial measures may be a useful means of providing investors with additional information to assist them in understanding critical components of an issuer's financial results. It is important, however, that such measures not be presented in a way that confuses or obscures the GAAP measures. Staff reminds issuers of their obligation to discuss in MD&A management's perspective on the results of operations. Issuers should consider whether the separate presentation of non-GAAP financial measures provides added benefit to readers. Staff suggests that a comprehensive discussion in the MD&A of operations and the impact of specific events on operations may be preferable to presenting non-GAAP financial measures.

Staff reminds issuers of their responsibility to ensure that information they provide to the public is not misleading. Selective editing of financial information may be misleading if it results in the omission of material information. Staff cautions issuers that regulatory action may be taken if

issuers disclose information in a manner considered misleading and therefore potentially harmful to the public interest.

Staff expects issuers to define clearly any non-GAAP financial measure and to explain its relevance to ensure it does not mislead investors. Issuers presenting non-GAAP financial measures should present those measures on a consistent basis from period to period. Specifically, issuers should:

1. state explicitly that the non-GAAP financial measure does not have any standardized meaning prescribed by GAAP and is therefore unlikely to be comparable to similar measures presented by other issuers;
2. present with equal or greater prominence than the non-GAAP financial measure the most directly comparable measure calculated in accordance with GAAP;
3. explain why the non-GAAP financial measure provides useful information to investors and how management uses the non-GAAP financial measure;
4. provide a clear quantitative reconciliation from the non-GAAP financial measure to the most directly comparable measure calculated in accordance with GAAP, referencing to the reconciliation when the non-GAAP financial measure first appears in the disclosure document;
5. explain any changes in the composition of the non-GAAP financial measure when compared to previously disclosed measures.

In staff's view, it is not appropriate to present non-GAAP financial measures in the GAAP financial statements.

In staff's view, non-GAAP financial measures should not reflect adjustments for items identified as non-recurring, infrequent or unusual, when a similar charge or gain is reasonably likely to occur within the next two years or occurred during the prior two years.

#### **Other Specific Matters**

##### **Distributable Cash**

Certain issuers such as income trusts may disclose information about distributable cash. While cash distributions (i.e. actual distributions) are required to be disclosed in the financial statements under GAAP, staff considers distributable cash to be a non-GAAP financial measure. If an issuer presents information about distributable cash, then the staff expectations set out in this notice are applicable.

We expect disclosure to include a reconciliation to the most directly comparable measure calculated in accordance with GAAP. Staff believes that the reconciliation should

generally begin with cash flows from operating activities as presented in the issuer's financial statements. Issuers that view distributable cash as an operating performance measure, as opposed to a cash flow measure, and therefore begin reconciliations with net income as presented in the issuer's financial statements would be expected to explain the basis for this view. A discussion of the reconciling items should be provided, especially when the reconciling items are discretionary in nature. For example, many income trusts deduct a reserve for future capital spending. A discussion of how the future capital requirements were determined and whether they relate to capital spending planned in the next twelve months or further into the future would be appropriate.

When disclosing distributable cash, the issuer should also disclose cash distributions with equal or greater prominence. If cash distributions materially exceed distributable cash, staff would expect the disclosure of distributable cash to include an explanation of how the additional distributions were financed as this impacts the issuer's liquidity. If distributable cash materially exceeds cash distributions, staff would expect the disclosure of distributable cash to include an explanation of why all the distributable cash was not distributed.

##### **Segment Disclosures**

Staff is aware that some confusion exists regarding whether certain information presented in conformity with the Canadian Institute of Chartered Accountants Handbook Section 1701, Segment Disclosures, is a non-GAAP financial measure. Since issuers are required to disclose in the financial statements specified segment information as reported to the chief operating decision maker, such information is not considered to be a non-GAAP financial measure for the purpose of this notice. If the segment information discussed in MD&A or elsewhere has been adjusted in any way from the segment disclosures in the financial statements the adjusted segment information is considered to be a non-GAAP financial measure and the staff expectations set out in this notice are applicable. Whenever segment information is discussed outside the financial statements, it is appropriate to refer readers to the financial statement note on segment information. Issuers should also explain why the segment information provides useful information to investors and how management uses the segment information.

##### **Forward-Looking Information**

The staff expectations set out in this notice apply equally to disclosure of forward-looking non-GAAP financial measures.



## Questions

Please refer your questions to any of the following individuals:

Sylvie Anctil-Bavas, Analyste  
Service de l'expertise comptable  
Commission des valeurs mobilières du Québec  
Tél: (514) 940-2199 poste 4556  
Fax: (514) 873-7455  
Courriel: Sylvie.anctil-bavas@cvmq.com

Laura Moschitto, Senior Accountant  
Office of the Chief Accountant  
Ontario Securities Commission  
Phone: (416) 593-8217  
Fax: (416) 593-3693  
E-mail: lmoschitto@osc.gov.on.ca

Fred Snell, Chief Accountant  
Alberta Securities Commission  
Phone: (403) 297-6553  
Fax: (403) 297-2082  
E-mail: fred.snell@seccom.ab.ca

Carla-Marie Hait, Chief Accountant  
British Columbia Securities Commission  
Phone: (604) 899-6726  
Fax: (604) 899-6581  
E-mail: chait@bcsc.bc.ca

**November 14, 2003.**

## 1.1.4 Correction to Amendments to OSC Rule 35-502 - Non-Resident Advisers

### **CORRECTION TO AMENDMENTS TO OSC RULE 35-502 - NON-RESIDENT ADVISERS**

The Amendment to OSC Rule 35-502 – *Non-Resident Advisers* (26 OSCB 7170) (the **Amendment**) contained an incorrect reference in section 25. A reference to subsection 1.3(1) of Rule 31-505 appeared on page 7173 in Chapter 5 of the OSC Bulletin, Volume 26, Issue 44, dated October 31, 2003. The correct reference is to subsection 1.3(2) of Rule 31-505. This section is intended to exempt international advisers from the requirement to appoint an Ultimately Responsible Person and a Chief Compliance Officer.

**1.1.5 Speech by David Brown - A Key to Economic Growth: Markets People Can Trust**

**A KEY TO ECONOMIC GROWTH:  
MARKETS PEOPLE CAN TRUST**

**REMARKS BY DAVID BROWN, Q.C.  
CHAIRMAN, ONTARIO SECURITIES COMMISSION  
OSC DIALOGUE CONFERENCE  
NOVEMBER 12, 2003**

I want to thank Charlie for his review of the OSC promises made and kept over the past year. And I especially want to thank Charlie and the entire Commission staff for working so hard to turn these promises into reality.

I'm grateful to our speakers and panel participants. I want to join Charlie in welcoming my colleagues from the Canadian Securities Administrators – Pierre Godin and Doug Hyndman. The three of us may not always agree on everything, but at least we have a good time when we disagree. I welcome both of you, and I look forward to our session.

I'm delighted at the attendance for today's session. More and more people in the market are recognizing the role regulation must play in ensuring our ability to compete.

We don't regulate in a vacuum. One of our goals is to foster dynamic capital markets. And dynamic capital markets are a key to Ontario's future.

Countries all over the world are chasing after overlapping pools of investment capital. It's important for regulators – and for all policy-makers – to continually keep in mind that our policies have an impact on job creation and standards of living. What we do has an impact on how Ontarians live.

Given the globalization of capital, regulators must continually examine our policies and operations, and apply twin tests: Are we creating a market that is attractive to Canadian and foreign investors? Are we helping our market participants compete for capital?

To do those things, it is crucial that we give people the opportunity to take a risk. But it is equally important that we seek to prevent and eliminate unfair risk.

That is a crucial distinction. It is especially important in light of the recent U.S. market scandals involving financial reporting and mutual funds.

Investors are becoming more discerning. They are becoming more vocal. To a greater extent than ever they are prepared to participate in the capital market. They are prepared to make the effort to do it thoughtfully. But they are not prepared to be taken for a ride.

Investors are willing to accept the idea of investment risk. What they are objecting to is something I will call "unfair risk".

Investment risk is what you take when you make decisions by assessing a company on its prospects, on the risks it faces in its competitive environment. That's investment risk – the type markets thrive on. The type they intermediate.

Unfair risk is what stems from the potential abuses that the investor does not – or can not – know about. These risks arise from unfair and unforeseen practices like fraud, illegal insider trading, market manipulation and other forms of malfeasance.

Fair risk is crucial to economic growth. But unfair risk contributes to stunted growth, by diminishing investor confidence. Market liquidity is reduced and capital becomes more expensive. We are determined to combat unfair risk, whether it be in the form of improper financial disclosure, illegal insider trading, or mutual fund pricing practices.

Ensuring fairness in our markets is crucial to investors, and vital to our economy.

Throughout history, one of the most important factors in determining how much material progress a society made was its ability to maintain a vigorous capital market. Creating prosperity has largely been a matter of bringing together people who are prepared to invest capital with people who are able to use it to create wealth.

Why was Florence one of the leading economic centers of the Renaissance?

What allowed the Netherlands to become an economic power in Europe in the late 15<sup>th</sup> and early 16<sup>th</sup> centuries? How was a tiny nation that had just recently won its independence able to attain such a lofty status?

Or consider Britain – which let's not forget, is a small island nation. How was it able to become one of the world's leading powers? Some would point to its navy. But battleships don't appear out of nowhere. They have to be built and paid for.

What Florence, the Netherlands, and Great Britain had in common was a status as the home of the leading capital market of its era.

A society that is able to raise capital is a society that is able to create.

One way to demonstrate the importance of capital markets to the Ontario economy is by looking at the number of jobs it generates. In that respect, it is impressive to consider the resilience of the financial sector in Ontario over the past three years – three years of considerable volatility.

Payrolls for companies in the financial sector have grown by 1 per cent a year. The growth of new financial service products – in areas such as wealth management – has created the opportunity for considerably greater job creation in the years ahead.

To get a sense of the importance of the capital markets to Ontario's economy, consider this: The OSC has over 60,000 individual registrants here in Ontario – people who work in the securities and mutual fund industries. That's about half the total for the entire country.

There are about 1,700 securities firms in Canada. More than three-quarters of them do business in Ontario.

How big a share of Ontario's economy does the financial sector make up? Financial services – including finance, insurance and real estate – accounts for 20 per cent of Ontario's GDP, one-fifth of all economic activity in the province.

Equity trading on the TSX amounted to over \$640 billion last year. That's equal to two-thirds of Canada's GDP. Bond trading across the country came to even more than the Canadian GDP, at more than a trillion dollars in value.

The numbers provide concrete proof of something that has become increasingly apparent -- capital markets are a vital element of the Canadian economy. They are an especially important part of Ontario's economy.

Dynamic capital markets make it possible for new industries to get off the ground. They make it possible for the average member of the workforce to get a financial stake in the ground. They make it possible for Ontario and Canada to attract capital.

To achieve these things, markets have to be regulated. Ultimately, the ability to attract capital depends on how our markets are perceived – both at home and abroad. One of our most important responsibilities is to avoid a market credibility gap.

If people aren't provided with reason to believe they are in a fair game, they won't play.

A growing number of Ontarians are counting on market investments to provide for their retirement. They have demonstrated confidence in our economic system. We cannot leave them out on a limb, with no protection.

But regulation has to take into account economic reality. The goal is to ensure fairness – while encouraging growth.

That is the question regulators must grapple with: What can we do to encourage the market's ability to create wealth, while ensuring a fair process for investors?

There are bound to be complaints. Compliance with regulatory requirements costs entrepreneurs money and time. Some see it as slowing down the creative business process.

Certainly it is important to eliminate unnecessary requirements. It is important to continually review regulatory requirements, and change or eliminate those that have lost their relevance. Growth must never be tied up in red tape, or tied down by obsolete rules.

But overall, an effective regulatory environment can and should be a spur to growth. It provides one of the essential ingredients of a free market economy. It gives investors the confidence they must have in the system if they are going to put their money into it.

There is a clear relationship between regulatory policy and the economic facts of life for people in this province.

One of the most important ways regulators contribute to Ontario's economy is by dealing with issues as they emerge, and by defusing potential crises before they become actual crises. By taking the unfairness out of risk-taking.

Taking the unfairness out of risk-taking includes examining policies and procedures that mutual funds have in place to detect and prevent trading abuses such as late trading and market timing.

Mutual funds have been one of the most important elements in the recent growth of securities markets. Their growth was one of the biggest steps toward the evolution of the new investor class, now making up more than half our society. To get a sense of their popularity among middle-class investors, consider that Canadians have about \$400 billion invested in mutual funds – a 10-fold increase in the past decade. That's despite a fair bit of cashing out during the market downturn.

While we do not have evidence that our mutual fund market has the same problems as the United States, we are moving quickly to make sure.

As a first step, last week we sent letters to managers of all conventional mutual funds available to retail investors in Ontario, asking them about policies and procedures they have in place to prevent late trading and market timing. We asked if they were aware of any of those abusive practices having taken place in their funds over the past two years.

We asked what investigative processes they have in place to determine whether or not market abuses were occurring. If they found market timing and late trading were taking place, we asked that they tell us the circumstances and sources of these practices, as well as what action they have taken to prevent recurrences.

We did not ask for an information dump -- binders of policies or disks crammed with e-mails. We asked for clear descriptions of their investigative processes. We're committed to more protection, not more bureaucracy.

And we committed to use the information obtained to inform our own investigation of these issues; to follow up on what we learn, based on the specifics of practices in our market. We will investigate issues identified by respondents and conduct random reviews.

There are other links in the mutual fund chain that we are also examining. We are now focusing on each link involved in the infrastructure of the industry as well as in the distribution of mutual funds.

For many, mutual funds have been a ladder of economic opportunity. We are not prepared to let it be knocked down.

Taking the unfairness out of risk-taking also includes addressing illegal insider trading. The report of the Insider Trading Task Force, released today, will help do that.

It is crucial to contain information so that insiders don't get rich on the basis of privileged access to information, while everyone outside the circle pays the bill. We cannot have two classes of investors in Ontario – those who are basking in the warmth of insider knowledge and those who are left out in the cold.

The task force on this issue was broad-based. It included not just securities regulators, but also self-regulating organizations such as the Investment Dealers Association, Market Regulation Services, and the Bourse de Montreal. And it came up with a collaborative, comprehensive approach.

The report includes 32 recommendations to combat illegal insider trading. These measures focus on prevention, detection and deterrence.

Prevention includes measures to contain non-public information to as small a group as possible. It includes guidance to those whose activities expose them to non-public information, such as directors, lawyers, auditors and other professionals, as well as enforcement staff. It recommends measures they can take to avoid situations in which information spills out and is taken advantage of.

The task force examined the risk of trading taking place on undisclosed information in the period that leads up to a major corporate project like a financing, an acquisition or a take-over. Corporations bring on advisors, then more advisors and still more as their projects approach maturity. With each concentric ripple of growth in the circle of insiders, the risk of illegal insider trading increases – not only from the people directly involved in the deals, but from others who may inadvertently become aware of them. By containing information, we can reduce these risks.

Detection includes increased and coordinated surveillance and use of technology to find illegal insider trades. It includes development of an electronic database of integrated trade and client data to make it easier to detect and prove illegal insider trading. It recommends improved inter-agency information-sharing, and educational programs to raise the profile of illegal insider trading in Canada and encourage market participants and the public to provide tips and complaints.

The task force found that detection efforts could be improved in each of these areas. While market surveillance in Canada is performed on the equities markets electronically, it does not include the use of specific insider trading alerts. There are no across-market insider trading alerts between the equity and derivatives markets. Current surveillance practices are hampered by the lack of data mining capability, which would allow review of trading for evidence of patterns of an organized effort to avoid

detection and enhance identification of insider trading involving nominee and offshore accounts. Few illegal insider trading investigations are initiated by complaints or tips, unlike the United States.

Improved technology, and efforts to increase cooperation, can provide the information that detection depends on.

Deterrence includes increased sanctions for insider trading. In Ontario, legislation was proclaimed earlier this year increasing maximum penalties under the Securities Act from two years to five years, and fines from a maximum of one million dollars to up to five million dollars. A recent court case has affirmed a provision of the Act that contains the formula used to determine the profit or avoided loss in illegal insider trading cases. When we take these cases to court, we are now able to seek a maximum fine that is the greater of either \$5 million or three times the profit made on the loss avoided.

Published academic research supports the position that the incidence of illegal insider trading will be reduced through successful enforcement of insider trading laws with severe penalties. However, in Canada, sanctions and remedies vary among provinces, a problem recognized by the Canadian Securities Administrators Uniform Securities Law project. There is a difference among provinces in the maximum penalties available. As well, with the enactment of Sarbanes-Oxley in the United States, a more substantial gap has opened between the maximum terms of imprisonment in the United States and in Canada.

That is why deterrence would be bolstered significantly by passage of the Federal Government's Bill C-46, which would establish new Criminal Code offences of illegal insider trading and tipping. Both the proposed federal law and the CSA's Uniform Securities Legislation project provide opportunities to establish a regulatory framework that effectively addresses illegal trading under criminal, quasi-criminal, administrative, and civil processes, sanctions and remedies.

The task force also proposed formation of a nationally integrated working group – bringing together the securities commissions, SROs, and the RCMP – to focus on illegal insider trading. This is a very encouraging development and we applaud the federal government for this commitment. We will have more to say on this development, before year-end.

I want to thank the members of the task force for their work on this issue. We look forward to working with other regulators to determine how best to implement the recommendations.

Michael Watson, our Director of Enforcement, will be chairing a panel today on enforcement issues, at 2:15. I'm sure that will be a valuable session for people who want more detail on what we are doing to prevent, detect and deter abuses in our capital market and for more information on the upcoming RCMP announcement.

Taking the unfairness out of risk-taking includes the way we have responded to the recent corporate scandals. The scandals may have taken place on the U.S. side of the border, but the need to restore investor confidence is just as clear right here. Investors wanted to be assured that all jurisdictions were acting to protect them. And they were prepared to take that into account in their investing strategy.

The truth is, every market needs the kind of defense mechanisms that the U.S. has now put in place in the form of the Sarbanes-Oxley Act. They just need to adapt them to their own unique needs.

We've done that here in Canada. We put forward three rules:

- A rule that requires CEO and CFO certification of annual reports and interim disclosures.
- A rule that spells out the role of audit committees, and their composition.
- And a rule that provides clear support for the work of the new Canadian Public Accountability Board in its oversight of auditors of public companies.

All three rules deal with potential problems. And they do it in a way that is adapted to Canadian needs.

In addition, we have worked to build investor confidence in other areas. We supported and encouraged the accounting profession to create the Canadian Public Accountability Board to provide public oversight of the audit of public companies. We have overseen the publication by the Investment Dealers Association of new standards to reduce or eliminate analysts' conflicts of interest. We have worked with the Canadian Institute of Chartered Accountants to promulgate new rules governing auditor independence.

Our next step is to issue policy direction and guidance on other corporate governance initiatives such as board independence, codes of ethics, nominating committees and compensation committees.

These measures, taken together, have helped restore investor confidence in our markets. They have been widely endorsed by market participants both here and in the United States.

What all of these measures add up to is an Ontario market that is attractive and conducive to investment. They add up to an opportunity society in which people can build their nest egg.

We are creating conditions in Ontario that will make sure investors want to invest here. And we are creating conditions that will make sure people want to raise capital here. Ontario and Ontarians have enormous potential in the global economy. Part of the job of the OSC is to make sure you get the maximum opportunity to fulfill it.

Market confidence is hard to build and easy to squander. The post-crash reforms of the 1930s were an effort to restore confidence in the markets. That time, it took about a half-century to bring middle-class investors back. Our goal is to ensure Ontarians always have options to build their portfolio – and to make sure they have a fair opportunity to obtain the maximum return. Our goal is to ensure that the world's best capital markets do indeed provide the key to Ontario's future.

Securities regulation is about maintaining a fair investment environment and eliminating unfair risk. That advances economic opportunity. And that helps create economic growth.

Thank you.

**1.3 News Releases**

**1.3.1 Investor Education Fund News Release - Investor Education Fund Launches Online Education Centre for Pension Plan Members**

**FOR IMMEDIATE RELEASE  
November 6, 2003**

**INVESTOR EDUCATION FUND LAUNCHES ONLINE EDUCATION CENTRE FOR PENSION PLAN MEMBERS**

**TORONTO** – Members of pension plans can now turn to an objective source of information to help them learn more about their pensions and the impact their decisions about these retirement plans can make.

**Focus On...Pension Decisions**, found on the Investor Education Fund's website [www.investorED.ca](http://www.investorED.ca), provides members of pension plans with plain language, unbiased information about employee savings plans. It explores and illustrates, through case studies and scenarios, the long-term affect certain decisions can have on future retirement income.

"Very often a person's pension plan is their largest asset," says Terri Williams, President of the Investor Education Fund. "Focus On...Pension Decisions is a new source of information that helps employees understand the importance of their pension plan decisions."

While the ins and outs of Defined Benefit plans are explained, the new feature is particularly aimed at helping members of Defined Contribution (DC) Plans and Groups RRSPs make appropriate investing decisions. In these types of plans, employees are often given the responsibility for making investment choices.

Research conducted by the Investor Education Fund entitled "An Analysis of Trends in Defined Contribution Market in Canada" shows membership in DC plans is growing. The number of plan members has doubled in the past decade. This growth, combined with a higher number of investment choices offered to plan members, is increasing the need for these employees to become educated investors.

In particular, the Investor Education Fund is hoping to assist smaller companies with their employee investor education programs. Our research shows that due to limited human and financial resources, employees of smaller companies are less likely to have access to educational resources - and 87% of pension assets of small companies are in DC plans. (For more stats see **By the Numbers** attached.)

The Investor Education Fund is pro-actively alerting small companies to the availability of this material. Small employers who have reviewed the information believe it will help their workers learn more about their pensions and the decisions involved.

"The information on the website is very inclusive, very educational and very easy-to-understand---a wonderful, new resource for pension information," said Susan Maracle, Human Resources Manager at the 50-employee First Nations Technical Institute located on the Tyendinaga Mohawk Territory near Deseronto, Ontario.

"Focus On...Pension Decisions is easy-to-read and follow - and with the added benefit of being online, I am sure it will be of great assistance for our employees," said Elizabeth Gaffney, Pension Administrator and General Manager of John Gaffney Construction Company Ltd., of Stratford, Ontario, which has 42 DC plan members.

**About the Investor Education Fund**

The Investor Education Fund offers trustworthy and unbiased investment education to investors via [www.investorED.ca](http://www.investorED.ca). We also enable partners to educate investors by offering them both high-quality educational content to use, and funding support. The Investor Education Fund was established by the Ontario Securities Commission, the investment industry regulator.

For more information about the Investor Education Fund visit the *About Us* section of [www.investorED.ca](http://www.investorED.ca). To view the research report "An Analysis of Trends in Defined Contribution Market in Canada" go to the Research Studies section of the *About Us* section.

**Media and Partnership Inquiries:** Terri Williams, President  
Investor Education Fund  
416-593-2350  
[twilliams@osc.gov.on.ca](mailto:twilliams@osc.gov.on.ca)

## FOCUS ON.... PENSION DECISIONS

### By the Numbers:

- ✓ **29%** – the percentage of Canadians' assets that are pension assets - compared to 32% of assets in a home (*Statistics Canada*)
- ✓ **6.3 million** – the number of Canadians who are part of a registered pension plan (*Statistics Canada*)
- ✓ **3 million** – the number of Canadians belonging to a Capital Accumulation Plan (Where employees make investment decisions) (*Joint Forum of Financial Market Regulators*)
- ✓ **60,000** – the number of CAP plans in Canada (*Joint Forum*)
- ✓ **79.9%** – percentage of 2,000 survey respondents with access to retirement education in the workplace reporting that they make use of the opportunity (*The Effects of Financial Education in the Workplace - U.S. Research*)
- ✓ **35-49** – the age of the majority of pension plan members (*An Analysis of Trends in the Defined Contribution Market in Canada – Investor Education Fund*)
- ✓ **87%** – the percentage of small company pension assets in Defined Contribution Plans (*Benefits Canada*)
- ✓ **50%** – the percentage of medium company pension assets in Defined Contribution Plans (*Benefits Canada*)
- ✓ **13%** – the percentage of large company pension assets in Defined Contribution Plans (*Benefits Canada*)
- ✓ **10-20** – the average number of fund choices including GICs which are offered to Canadian Defined Contribution Plan members (*Mercer Survey of Defined Contribution Plans 1999*)
- ✓ **35** – the number of pages of content in the Focus On...Pension Decisions section of [www.investorED.ca](http://www.investorED.ca)
- ✓ **73%** – the number of employers offering DC plans who don't provide access to professional advice to their employees. (*An Analysis of Trends...*)

**1.3.2 OSC Examines Mutual Fund Practices on Late Trading and Market Timing**

**FOR IMMEDIATE RELEASE  
November 6, 2003**

**OSC EXAMINES MUTUAL FUND PRACTICES ON LATE TRADING AND MARKET TIMING**

**TORONTO** – The Ontario Securities Commission (OSC) has sent a letter to all managers of publicly offered retail mutual funds that trade in Ontario (copy attached). The purpose of the letter is to confirm that mutual funds have effective policies and procedures in place to detect and prevent trading abuses such as late trading and market timing. Based on the responses received and on a sampling of the industry, the OSC will follow up on the industry's specific practices. In some cases, the OSC may examine funds' internal policies and procedures, as well as examine trading data or request the results of internal tests conducted by funds.

"We are requesting information from the industry about late trading and market timing issues," said OSC Chair David Brown. "There is no indication at this time that the scale of problems being experienced in the United States is replicated here, possibly because of a different market structure and of more effective controls on our industry. We are working cooperatively with the mutual fund industry to address these issues to ensure that mutual fund investors can have confidence in the industry."

Late trading is illegal and occurs when purchase or redemption orders are received after the close of business, but are filled at that day's price rather than the next day's price. Late trading is a violation of National Instrument 81-102, a nationally-adopted instrument that regulates mutual funds.

Market timing involves short-term trading of mutual fund securities to take advantage of short-term discrepancies between the price of a mutual fund's securities and the stale values of the securities within the fund's portfolio. International funds are most vulnerable to this type of trading abuse, as traders can exploit differences between time zones. Where it happens, market timing may be in violation of mutual fund policies. Further, the heavy trading creates transaction costs, which reduces returns of other longer term investors. As such, market timing arrangements may be in violation of a fund manager's fiduciary duty under section 116 of the *Ontario Securities Act*.

"We are concerned that these recent events in the U.S. may have impacted investor confidence in the Canadian mutual fund industry," Mr. Brown said in his letter to industry. "We have been assured that many mutual fund organizations are already reviewing their trading practices and internal policies and procedures in order to ensure that improper trading practices are not occurring within their organization. If you haven't already done so, we expect that you will immediately take steps to make sure that you

have effective controls in place to safeguard against these trading abuses."

**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)



**VIA COURIER**

November 5, 2003

[Company]  
[Address]

Dear:

**Re: Mutual Fund Practices on Late Trading and Market Timing**

As you are undoubtedly aware, recent investigations into the trading practices of U.S. mutual funds have uncovered a number of trading abuses, such as late trading and market timing, which benefit selected investors at the expense of others.

Late trading is illegal and occurs when purchase or redemption orders are received after the close of business, but are filled at that day's price rather than the next day's price. Market timing involves short-term trading of mutual fund securities to take advantage of short-term discrepancies between the price of a mutual fund's securities and the stale values of the securities within the fund's portfolio. International funds are most vulnerable to this type of trading abuse as traders can exploit differences between time zones.

We are concerned that these recent events in the U.S. may have impacted investor confidence in the Canadian mutual fund industry. We have been assured that many mutual fund organizations are already reviewing their trading practices and internal policies and procedures in order to ensure that improper trading practices are not occurring within their organization. If you haven't already done so, we expect that you will immediately take steps to make sure that you have effective controls in place to safeguard against these trading abuses.

In order to determine whether additional action is necessary to address this issue, I am sending this letter to you and all other managers of publicly offered retail mutual funds distributed in Ontario to request written responses to the following questions:

1. (a) Are you aware of any late trading activities in your funds at any time over the last two years?
- (b) Briefly describe the policies and procedures you have in place to prevent late trading. (Please do not send copies of your written policies and procedures).
- (c) Please describe the investigative process you used to determine whether late trading is or is not taking place in your funds.
- (d) If your answer to question (a) is "yes", please:

- (i) elaborate on the circumstances surrounding, as well as on the source(s) of, these activities; and

- (ii) describe the actions you have taken to prevent the recurrence of such activities.

2. (a) Are you aware of any market timing activities (as defined in this letter) in your funds at any time over the last two years?

- (b) Briefly describe the policies and procedures you have in place to prevent market timing. (Please do not send copies of your written policies and procedures).

- (c) Please describe the investigative process you used to determine whether market timing is or is not taking place in your funds.

- (d) If your answer to question (a) is "yes", please:

- (i) elaborate on the circumstances surrounding, as well as on the source(s) of, these activities; and

- (ii) describe the actions you have taken to prevent the recurrence of such activities.

Please forward your responses to the attention of **Susan Silma, Director, Investment Funds Branch**, by no later than **December 15, 2003**. Your responses will be kept confidential to the extent permitted by law. Note however that it is our intention to summarize the feedback we receive on an overall basis and to report back to you on those results at a later date.

Based on the responses we receive and on a sampling of the industry, we will be following up with at least some mutual funds at a later date to request copies of their internal policies and procedures on the prevention of late trading and market timing. We may also ask to see the results of any testing that you have conducted for the purpose of determining whether your funds have been the subject of these trading abuses. We will also request that certain mutual funds provide us with specific trading data for our analysis.

If you have any questions regarding this letter, please contact Chantal Mainville, Legal Counsel, Investment Funds Branch at (416) 593-8168.

As is our normal practice, we ask that you provide a copy of this letter to your funds' auditors and to your funds'

and/or the manager's Board of Directors, or to the funds' trustees, as the case may be.

We look forward to working with you to reaffirm investors' confidence in the mutual fund industry. Thank you in advance for your cooperation.

Yours truly,

"David A. Brown"

**1.3.3 Media Advisory – OSC Hosts Ninth Annual Securities Industry Conference**

**FOR IMMEDIATE RELEASE  
November 7, 2003**

**MEDIA ADVISORY – OSC HOSTS NINTH ANNUAL SECURITIES INDUSTRY CONFERENCE**

**TORONTO** – The Ontario Securities Commission is hosting its annual conference, Dialogue with the OSC 2003, on Wednesday November 12, 2003. The theme of this year's conference is "**Regulating For Today's Market Realities**".

We will be presenting the policies we've developed to meet the challenges posed by recent trends and events in our capital markets, including the proposed investor confidence rules, financial disclosure standards, and harmonization efforts. OSC Chair David Brown will deliver his keynote address at 9:00 AM, following Executive Director Charlie Macfarlane's introductory remarks at 8:45 AM. A complete conference program is available at **[www.osc.gov.on.ca/dialogue](http://www.osc.gov.on.ca/dialogue)**.

Interested members of the media are encouraged to register in advance at no charge. Please enter "Media" in the "Additional comments" field.

When: Wednesday November 12, 2003  
8:00 am to 5:00 pm

Where: Sheraton Centre Hotel  
123 Queen Street West  
Toronto, Ontario

How to Register: Register online at **[www.osc.gov.on.ca/dialogue](http://www.osc.gov.on.ca/dialogue)**, or call the "Dialogue with the OSC Hotline" at 416-593-7352, or 1-800-360-0493.

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

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

**1.3.4 OSC Proceedings in Respect of Patrick Fraser  
Kenyon Pierrepont Lett, Milehouse Investment  
Management Limited and Pierrepont Trading  
Inc.**

**FOR IMMEDIATE RELEASE  
November 10, 2003**

**OSC PROCEEDINGS IN RESPECT OF  
PATRICK FRASER KENYON PIERREPONT LETT,  
MILEHOUSE INVESTMENT MANAGEMENT LIMITED  
AND  
PIERREPONT TRADING INC.**

**TORONTO** – Today, Staff of the OSC and the respondents Lett, Milehouse and Pierrepont filed with the Commission a statement of agreed facts to be filed in the hearing of this matter. As a result, the Commission has consented to an adjournment of this matter until November 17, 2003 at 10:00 am.

Copies of the Notice of Hearing and Statement of Allegations are available at 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  
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**1.3.5 CSA News Release - Regulators Release Illegal  
Insider Trading Report**

**Released: November 12, 2003**

**REGULATORS RELEASE ILLEGAL  
INSIDER TRADING REPORT**

**Calgary** – The Canadian Securities Administrators (CSA) have received a report from an independent task force which recommends practices to address illegal insider trading in Canadian capital markets. The recommendations in the report focus on addressing illegal insider trading from three directions: prevention, detection and deterrence.

The report was developed by the Illegal Insider Trading Task Force, which was established in September 2002, and included representatives from the Ontario, Quebec, British Columbia and Alberta securities commissions, the Investment Dealers Association of Canada (IDA), the Bourse de Montréal (Mx) and Market Regulation Services Inc. (RS).

"We are pleased to receive these recommendations, which have been tabled with all securities regulators in Canada," said Stephen Sibold, Chair of the Canadian Securities Administrators and of the Alberta Securities Commission. "We will be thoughtfully considering these recommendations as we devise an action plan to address the problem of illegal insider trading."

"Illegal insider trading is not a victimless crime," added Sibold. "Investors who unknowingly trade with people who have inside information lose because they are in an unequal and unfair relationship. Markets where illegal insider trading occurs can suffer a loss of liquidity if international capital flows avoid them. By coordinating our efforts, we can bolster the reputation of the Canadian capital market and assure our investors that they are dealing in a fair, level market."

Key recommendations in the report include:

- Through information and best practice recommendations, encourage strict adherence to information containment practices by senior management, corporate directors, lawyers and accountants;
- Give investors real-time access to trading data with markers used to identify trades by insiders;
- Improve surveillance capabilities through a shared database among regulators to integrate client data with data from trading on Canadian equities and derivatives markets;
- Reduce the use of offshore accounts in illegal insider trades by identifying jurisdictions that have unsatisfactory regulatory regimes and by evaluating the costs and benefits of requiring offshore financial institutions that open accounts

for Canadian investors to consent to identify individuals responsible for specific trades;

- Support the approval of proposed criminal sanctions under the Federal Bill C-46; and
- Recommend the formation of a national subgroup of the Royal Canadian Mounted Police Integrated Market Enforcement Teams to focus solely on illegal insider trading.

The recommendations are available on the CSA website at [www.csa-acvm.ca](http://www.csa-acvm.ca).

The CSA, a council of the 13 securities regulators of Canada's provinces and territories, coordinates and harmonizes regulation for the Canadian capital markets.

**For more information:**

Joni Delaurier  
Alberta Securities Commission  
403-297-4481  
[newsroom@seccom.ab.ca](mailto:newsroom@seccom.ab.ca)

[A copy of the report can be found at [www.osc.gov.on.ca](http://www.osc.gov.on.ca) and will be published in the November 21, 2003 edition of the OSC Bulletin.]

## Chapter 2

# Decisions, Orders and Rulings

## 2.1 Decisions

### 2.1.1 FuelCell Energy Inc. et al. - MRRS Decision

#### Headnote

Mutual Reliance Review System for Exemptive Relief Applications – exemptive relief granted in connection with exchangeable share structure for continuous disclosure and insider reporting requirements, subject to certain conditions.

#### Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 75, 77, 78, 80(b)(iii), 88(2)(b)(iii), 107, 108, 109, 121(2)(a)(ii).

#### Applicable National Instruments

National Instrument 55-101 Exemption from Insider Reporting Requirements.

National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI).

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

**AND**

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

**AND**

**IN THE MATTER OF  
FUELCELL ENERGY, INC., FCE CANADA INC.,  
1065918 ALBERTA LTD. AND GLOBAL  
THERMOELECTRIC INC.**

#### MRRS DECISION DOCUMENT

**WHEREAS** the Canadian securities regulatory authority or regulator (the "Decision Maker"), in each of British Columbia, Alberta, Saskatchewan, Ontario and Quebec (collectively, the "Jurisdictions") has received an application from FuelCell Energy Inc., ("FuelCell"), FCE Canada Inc. ("Exchangeco") and 1065918 Alberta Ltd. ("Calco") (collectively, the "Applicant") for a decision pursuant to the securities legislation, regulations, rules, instruments and/or policies of the Jurisdictions (the "Legislation") that:

(a) in connection with or resulting from the proposed combination (the "Transaction") of FuelCell and Global Thermoelectric, Inc. ("Global") to be effected by way of a plan of arrangement (the "Arrangement") under Section 193 of the *Business Corporations Act* (Alberta) (the "ABCA") Exchangeco be exempt from the requirements of the Legislation to issue a press release and file a report upon the occurrence of a material change, to file and deliver annual reports and, where applicable, interim and annual financial statements and to file and deliver an information circular (the "Continuous Disclosure Requirements"); and

(b) the requirement contained in the Legislation for an insider of a reporting issuer to file reports disclosing the insider's direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer and the filing requirements of Exchangeco in connection therewith (the "Insider Reporting Requirement") shall not apply to each insider of Exchangeco and Exchangeco.

**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;

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

**AND WHEREAS** the Applicant has represented to each Decision Maker that:

1. FuelCell and Global entered into a combination agreement dated August 4, 2003 (the "Combination Agreement").
2. FuelCell and Global mailed a joint management information circular and proxy statement (the "Circular") to holders of FuelCell common shares (the "FuelCell Shareholders") and holders of Global common shares (the "Global Shareholders") on October 6, 2003.
3. The Circular seeks among other things, approval by the Global Shareholders and the FuelCell Shareholders of the Arrangement at special

meetings of each of the Global Shareholders and FuelCell Shareholders to be held on October 31, 2003. Subject to the satisfaction or waiver of all closing conditions, including all required regulatory approvals, it is currently anticipated that the Transaction will be completed on November 3, 2003.

4. The authorized capital of FuelCell consists of 150,000,000 FuelCell Common Shares. As at July 31, 2003, there were 39,374,633 FuelCell Common Shares outstanding and 7,528,982 FuelCell Common Shares reserved for issuance upon the exercise of stock options (the "FuelCell Options") under FuelCell's Section 423 Stock Purchase Plan and FuelCell's 1998 Equity Incentive Plan (collectively, the "FuelCell Plans") and for the further grant of FuelCell Options under the FuelCell Plans. 5,368,266 of the FuelCell Options were outstanding, of which 3,340,390 were vested and exercisable in accordance with their terms and 2,027,876 remained unvested. There were also warrants to purchase an aggregate of 2,140,000 FuelCell Common Shares outstanding.
5. FuelCell is a public company in the United States. The FuelCell Common Shares are listed on The Nasdaq Stock Market Inc. (the "Nasdaq") under the symbol "FCEL".
6. FuelCell is currently subject to the *United States Securities Exchange Act of 1934*, as amended (the "Exchange Act").
7. On August 5, 2003, the date that the Transaction was announced, the market capitalization of FuelCell was approximately US\$294,128,509 and the trading price of a FuelCell Common Share was US\$7.47.
8. Callco is a direct wholly owned subsidiary of FuelCell incorporated under the laws of the Province of Alberta to hold the various call rights related to the Exchangeable Shares.
9. The authorized capital of Callco consists of an unlimited number of common shares of which 100 common shares are issued and outstanding. All of the outstanding common shares of Callco are held directly by FuelCell.
10. Exchangeco is an indirect subsidiary of FuelCell incorporated under the laws of the Province of Alberta for the purpose of implementing the Arrangement.
11. The authorized capital of Exchangeco consists of an unlimited number of common shares and an unlimited number of exchangeable shares (the "Exchangeable Shares"). All of the outstanding common shares of Exchangeco are held directly by Callco and indirectly by FuelCell. Upon

completion of the Arrangement, all of the outstanding Exchangeable Shares will be held by former Global shareholders who elect to receive Exchangeable Shares in exchange for their common shares in the capital of Global (the "Global Common Shares") pursuant to the Arrangement.

12. Exchangeco has applied to the Toronto Stock Exchange (the "TSX") to list the Exchangeable Shares to be issued pursuant to the Arrangement. Upon completion of the Arrangement it is anticipated that the Exchangeable Shares will be listed on the TSX and that Exchangeco will become a reporting issuer under the Legislation.
13. Global's authorized capital consists of an unlimited number of common shares and an unlimited number of preferred shares issuable in series. As of August 4, 2003, there were 1,000,000 shares of Cumulative Redeemable Convertible Preferred Shares, Series 2 issued and outstanding and 29,200,850 Global Common Shares issued and outstanding. There were 2,176,500 Global Common Shares reserved for issuance upon the exercise of stock options (the "Global Options") under the Global Amended Incentive Stock Option Plan (the "Global Incentive Plan") and for the future grant of Global Options under the Global Incentive Plan. There were also 1,307,025 Global Options outstanding, of which 514,176 had vested and were exercisable in accordance with their terms and 792,849 remained unvested. There were no Series 1 Global preferred shares issued and outstanding.
14. The Global Common Shares are listed on the TSX under the symbol "GLE".
15. Global is a reporting issuer or the equivalent in British Columbia, Alberta, Manitoba, Saskatchewan, Ontario and Quebec, and is not in default of any of the requirements of the securities legislation of any such provinces.
16. The Arrangement will be carried out under Section 193 of the ABCA. On September 30, 2003, the Applicants obtained, under Section 193 of the ABCA, an interim order (the "Interim Order"), from the Court of Queen's Bench of Alberta (the "Court") which order specifies, among other things, certain procedures and requirements to be followed in connection with the calling and holding of the meeting of Global Common Shareholders (the "Global Meeting").
17. The Circular contained prospectus-level disclosure of the business and affairs of FuelCell and Global, and a detailed description of the Arrangement and the securities to be issued.
18. The Circular sought, among other things, approval of the Global Common Shareholders of the

- Arrangement at the Global Meeting and approval of the FuelCell shareholders of the Arrangement at a meeting of FuelCell Common Shareholders. Each holder of Global Common Shares will be entitled to one vote for each Global Common Share held.
19. Upon the Arrangement becoming effective, in accordance with elections made by holders of Global Common Shares, the outstanding Global Common Shares (except those held by shareholders who exercise their rights of dissent and are ultimately entitled to be paid the fair value thereof) will be exchanged for:
    - (a) such number of FuelCell Common Shares equal to the Exchange Ratio (as described below); or
    - (b) such number of Exchangeable Shares equal to the Exchange Ratio.
  20. Only Global Common Shareholders who are residents of Canada for purposes of the *Income Tax Act* (Canada) may elect to receive Exchangeable Shares. Any election to receive Exchangeable Shares by a Global Shareholder who is not a resident of Canada will be deemed to be an election to receive FuelCell Common Shares.
  21. The Exchange Ratio will be determined by dividing U.S.\$2.72 by the weighted average trading price of FuelCell Common Shares on the Nasdaq over the 20 consecutive trading days ending on and including the third trading day next preceding the Global Meeting provided that if such weighted average trading price is less than \$7.96 it will be deemed to be \$7.96 and if such weighted average trading price is more than \$9.74 it will be deemed to be \$9.74.
  22. No fractions of Exchangeable Shares or FuelCell Common Shares will be issued in exchange for Global Common Shares pursuant to the Arrangement and such fractional interests will not entitle the owner to exercise any rights as a shareholder of Exchangeco or FuelCell. In lieu of any fractional securities, each holder otherwise entitled to a fraction of an Exchangeable Share or a FuelCell Common Share will be entitled to receive a cash payment equal to the product of the fractional interest and the weighted average trading price (as described above) of the FuelCell Common Shares.
  23. Under the Arrangement, each Global Option will represent an option to purchase the number of FuelCell Common Shares determined by multiplying the number of Global Common Shares subject to such Global Option by the Exchange Ratio, subject to rounding. The exercise price of the Global Option will be determined by dividing
    24. the exercise price per Global Common Share of the Global Option immediately prior to the effective time of the Arrangement by the Exchange Ratio, subject to rounding, expressed in U.S. dollars.
    25. As a result of the foregoing, upon the completion of the Arrangement, all of the issued and outstanding Global Common Shares will be held directly or indirectly by FuelCell and its affiliates.
    26. The Exchangeable Shares provide the holder with a security having, as nearly as practicable, economic terms and voting rights that are the same as the FuelCell Common Shares.
    27. It is expected that the Global Common Shares will be delisted from the TSX on or after the completion of the Arrangement.
    28. FuelCell has applied to the Nasdaq to list the FuelCell Common Shares to be issued pursuant to the Arrangement and issuable in exchange for the Exchangeable Shares, upon exercise of the Global Options and upon conversion of the Global Preferred Shares.
    29. The rights, privileges, conditions and restrictions attaching to the Exchangeable Shares (the "Exchangeable Share Provisions"), the terms and conditions of the voting and exchange trust agreement to be entered into between FuelCell, Exchangeco and a trustee (the "Trustee") in connection with the Arrangement (the "Voting and Exchange Trust Agreement") and the terms and conditions of the support agreement to be entered into between FuelCell, Callco and Exchangeco in connection with the Arrangement (the "Support Agreement") will be described in the Circular and are summarized below.
    30. The Exchangeable Shares will be issued by Exchangeco and will be exchangeable at any time on a one-for-one basis, at the option of the holder, for FuelCell Common Shares. An Exchangeable Share will provide a holder with economic terms and voting rights that are, as nearly as practicable, equivalent to those of a FuelCell Common Share. Global Common Shareholders who are residents of Canada and who receive Exchangeable Shares under the Arrangement may, upon filing the necessary tax elections, obtain a full or partial deferral of taxable capital gains for Canadian federal income tax purposes in certain circumstances. In addition, provided the Exchangeable Shares are listed on a prescribed stock exchange, they will be "qualified investments" for certain investors and will not constitute "foreign property", in each case, under the *Income Tax Act* (Canada) (the "ITA").
    31. Subject to applicable law and the exercise of the Retraction Call Right described below, a holder of

Exchangeable Shares will be entitled at any time following the effective time of the Arrangement to retract any or all of the Exchangeable Shares owned by the holder and to receive an amount per share equal to the current market price for a FuelCell Common Share which will be fully paid and satisfied by the delivery for each Exchangeable Share of one FuelCell Common Share plus an amount equal to all declared and unpaid dividends on each such Exchangeable Share held by such holder on any dividend record date which occurred prior to the retraction date (such aggregate amount, the "Retraction Price"). When a holder of Exchangeable Shares makes a retraction request, Callco will have an overriding call right (the "Retraction Call Right") to purchase all but not less than all of the Exchangeable Shares subject to the retraction request in exchange for the Retraction Price.

31. Subject to applicable law and the Redemption Call Right described below, at any time on or after the fifth anniversary of the date shown on the Articles of Arrangement filed with the Registrar under the ABCA giving effect to the Arrangement, (the "Effective Date"), Exchangeco may, or earlier in the event of certain circumstances as will be described in the Circular, redeem all but not less than all of the then outstanding Exchangeable Shares for an amount per share equal to the current market price of a FuelCell Common Share, which will be fully paid and satisfied by the delivery for each Exchangeable Share of one FuelCell Common Share, plus an amount equal to all declared and unpaid dividends on each such Exchangeable Share held by such holder on any dividend record date which occurred prior to the redemption date (such aggregate amount, the "Redemption Price"). Callco will have an overriding right (the "Redemption Call Right") to purchase all but not less than all of the Exchangeable Shares then outstanding (other than Exchangeable Shares held by FuelCell and its affiliates) for a purchase price per share equal to the Redemption Price.

32. Except as required by law or under the Support Agreement, the terms of the Exchangeable Share Provisions or the Voting and Exchange Trust Agreement, the holders of Exchangeable Shares will not be entitled to receive notice of, attend or vote at any meeting of shareholders of Exchangeco.

33. On the Effective Date, FuelCell, Exchangeco and the Trustee will enter into the Voting and Exchange Trust Agreement pursuant to which FuelCell will issue to the Trustee a number of FuelCell Common Shares equal to the number of Exchangeable Shares issued and outstanding (other than Exchangeable Shares held by FuelCell and its affiliates) (the "Trustee Shares"), which will be held by the Trustee to enable the holders of

Exchangeable Shares to have voting rights that are equivalent to those of holders of FuelCell Common Shares. Each registered holder of Exchangeable Shares (other than FuelCell and its affiliates) (a "Beneficiary") on the record date for any meeting at which shareholders of FuelCell are entitled to vote will be entitled to instruct the Trustee to vote one FuelCell Common Share held by the Trustee for each Exchangeable Share held by the Beneficiary. The Exchangeable Shares are subject to adjustment or modification in the event of a stock consolidation, subdivision or other change to the capital structure of FuelCell so as to maintain the initial one-to-one relationship between the Exchangeable Shares and the FuelCell Common Shares.

34. The Exchangeable Share Provisions will provide that each Exchangeable Share will entitle the holder to dividends from Exchangeco payable at the same time as, and the same as or economically equivalent to, each dividend paid by FuelCell on a FuelCell Common Share.

35. On the liquidation, dissolution or winding-up of Exchangeco or any other distribution of the assets of Exchangeco among its shareholders for the purpose of winding-up its affairs, holders of the Exchangeable Shares will have, subject to applicable law, preferential rights to receive from Exchangeco the Liquidation Amount (as described below) for each Exchangeable Share held. When a liquidation, dissolution or winding-up occurs, Callco will have an overriding right (the "Liquidation Call Right") to purchase all of the outstanding Exchangeable Shares (other than Exchangeable Shares held by FuelCell and its affiliates) from the holders of Exchangeable Shares on the effective date of such liquidation (the "Liquidation Date") for a purchase price per share equal to the current market price of a FuelCell Common Share which will be fully paid and satisfied by the delivery of one FuelCell Common Share, plus an amount equal to all declared and unpaid dividends on each such Exchangeable Share held by such holder on any dividend record date which occurred prior to the Liquidation Date (such aggregate amount, the "Liquidation Amount"). On the liquidation, dissolution or winding-up of Exchangeco or to effect any other distribution of the assets of FuelCell among its shareholders for the purpose of winding-up its affairs, each holder of Exchangeable Shares (other than FuelCell and its affiliates) will be entitled to instruct the Trustee to exercise the exchange right (the "Exchange Right") granted to the Trustee in the Voting and Exchange Trust Agreement to require FuelCell to purchase from such holder all or any part of the Exchangeable Shares held by the holder for a purchase price per share equal to the current market price of a FuelCell Common Share which will be fully paid and satisfied by the delivery of



one FuelCell Common Share, plus an amount equal to all declared and unpaid dividends on each such Exchangeable Share.

36. A holder of Exchangeable Shares will be entitled at any time after failure of Callco to exercise the Liquidation Call Right, the Redemption Call Right or the Retraction Call Right, to instruct the Trustee to exercise the exchange put right (the "Exchange Put Right") granted to the Trustee in the Voting and Exchange Trust Agreement to require FuelCell to purchase all or any part of the Exchangeable Shares of the holder for a purchase price per share equal to the current market price of a FuelCell Common Share which will be fully paid and satisfied by the delivery of one FuelCell Common Share, plus an amount equal to all declared and unpaid dividends on each such Exchangeable Share.
37. In order for the holders of the Exchangeable Shares to participate on a pro rata basis with the holders of FuelCell Common Shares, immediately prior to the effective time of the liquidation, dissolution or winding-up of FuelCell or to effect any other distribution of the assets of FuelCell among its shareholders for the purpose of winding-up its affairs, each Exchangeable Share will, pursuant to the automatic exchange right (the "Automatic Exchange Right") granted to the Trustee in the Voting and Exchange Trust Agreement, automatically be exchanged for FuelCell Common Shares equal to the Exchangeable Share Price under the Voting and Exchange Trust Agreement.
38. The Exchangeable Shares will have a preference over the common shares of Exchangeco and any other shares ranking junior to the Exchangeable Shares with respect to the payment of dividends and the distribution of assets in the event of a liquidation, dissolution or winding-up of Exchangeco, whether voluntary or involuntary, or any other distribution of the assets of Exchangeco among its shareholders for the purpose of winding-up its affairs.
39. On the Effective Date, FuelCell, Exchangeco and Callco will enter into the Support Agreement which will provide that FuelCell will not declare or pay any dividends on the FuelCell Common Shares unless Exchangeco on the same day declares or pays an equivalent dividend on the Exchangeable Shares, and that FuelCell will ensure that Exchangeco and Callco will be able to honour the redemption and retraction rights and dissolution entitlements that are attributes of the Exchangeable Shares under the Exchangeable Share provisions and the Redemption Call Right, Retraction Call Right and Liquidation Call Right. The Support Agreement will also provide that, without the prior approval of Exchangeco and the holders of the Exchangeable Shares, FuelCell will

not issue or distribute FuelCell Common Shares, securities exchangeable for or convertible into or carrying rights to acquire FuelCell Common Shares, rights, options or warrants to subscribe for or to purchase FuelCell Common Shares, evidences of indebtedness or other assets of FuelCell to the holders of FuelCell Common Shares nor will FuelCell subdivide, redivide or change the FuelCell Common Shares unless the same or an economically equivalent distribution or change is simultaneously made to the Exchangeable Shares.

40. The Circular disclosed that applications have been made for exemptions from the continuous disclosure requirements. The Circular specified the disclosure requirements from which Exchangeco has applied to be exempted and identified the disclosure that would be made in substitution therefore if such exemptions are granted.
41. A small number of Canadian residents currently own FuelCell Common Shares. However, upon completion of the Arrangement, Global Common Shareholders who are Canadian residents will own between approximately 16% and 19% of the outstanding FuelCell Common Shares.
42. Following completion of the Arrangement, FuelCell will concurrently send to holders of Exchangeable Shares and FuelCell Common Shares resident in the Jurisdictions all disclosure material it sends to holders of FuelCell Common Shares resident in the United States pursuant to the Exchange Act.

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

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

- (a) the Continuous Disclosure Requirements shall not apply to Exchangeco, provided that:
  - (i) FuelCell sends concurrently to all holders of Exchangeable Shares resident in Canada all disclosure material furnished to holders of FuelCell common shares resident in the United States, including, without limitation, copies of its proxy solicitation materials and its interim and annual financial statements, which financial

- statements will be prepared solely in accordance with US GAAP;
- (ii) FuelCell files with each Decision Maker copies of all documents required to be filed by it with the SEC under the Exchange Act, as amended and such filings are made under Exchangeco's SEDAR profile and the filing fees which would otherwise be payable by Exchangeco in connection with such filings are paid;
  - (iii) FuelCell complies with the requirements of the Nasdaq in respect of making public disclosure of material information on a timely basis and without delay issues in Canada and files with the Decision Makers any press release that discloses a material change in FuelCell's affairs;
  - (iv) Exchangeco complies with the material change reporting requirements in respect of material changes in the affairs of Exchangeco that would be material to holders of Exchangeable Shares but would not be material to holders of FuelCell Common Shares;
  - (v) FuelCell includes in all future mailings of proxy solicitation materials (if any) to holders of Exchangeable Shares a clear and concise statement explaining the reason for the mailed material being solely in relation to FuelCell and not in relation to Exchangeco, such statement to include a reference to the economic equivalency between the Exchangeable Shares and the FuelCell Common Shares and the right to direct voting at FuelCell's shareholders' meetings pursuant to the Voting and Exchange Trust Agreement (without taking into account tax effects);
  - (vi) FuelCell remains the direct or indirect beneficial owner of all of the issued and outstanding common shares of Exchangeco;
- (vii) Exchangeco does not issue any securities to the public other than the Exchangeable Shares in connection with the Arrangement;
- (b) the Insider Reporting Requirements and the requirement to file an insider profile under National Instrument 55-102 – System for Electronic Disclosure by Insiders, shall not apply to Exchangeco and each insider of Exchangeco, provided that:
    - (i) such insider of Exchangeco does not receive or have access to, in the ordinary course, information as to material facts or material changes concerning FuelCell before the material facts or material changes are generally disclosed;
    - (ii) such insider of Exchangeco is not a director or senior officer of FuelCell, or a "major subsidiary" of FuelCell, as such term is defined in National Instrument 55-101 – Exemptions from Certain Insider Reporting Requirements as if FuelCell were a reporting issuer.

October 31, 2003.

"Agnes Lau"

## 2.1.2 FuelCell Energy Inc. et al. - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief granted in connection with exchangeable share structure in respect of annual information form and management's discussion and analysis requirements, subject to certain conditions.

### Ontario Rules

Rule 51-501 AIF and MD&A.

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
SASKATCHEWAN, ONTARIO AND QUEBEC**

**AND**

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

**AND**

**IN THE MATTER OF  
FUELCELL ENERGY, INC., FCE CANADA INC.,  
1065918 ALBERTA LTD. AND GLOBAL  
THERMOELECTRIC INC.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the Canadian securities regulatory authority or regulator (the "Decision Maker"), in each of Saskatchewan, Ontario and Quebec (collectively, the "Jurisdictions") has received an application from FuelCell Energy Inc. ("FuelCell"), FCE Canada Inc. ("Exchangeco") and 1065918 Alberta Ltd. ("Callco") (collectively, the "Applicant") for a decision pursuant to the securities legislation, regulations, rules, instruments and/or policies of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation:

- (a) that Exchangeco file with such Decision Makers an annual information form; and
- (b) that Exchangeco file with such Decision Makers and, where applicable, send to its securityholders management's discussion and analysis of financial condition and results of operations with respect to its audited annual financial statements and its unaudited interim financial statements;

(collectively, the AIF Requirements) shall not apply to Exchangeco;

**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 Quebec Commission Notice 14-101;

**AND WHEREAS** the Applicant has represented to each Decision Maker that:

1. FuelCell and Global Thermoelectric, Inc. ("Global") entered into a combination agreement dated August 4, 2003 (the "Combination Agreement"). The proposed combination (the "Transaction") of FuelCell and Global is to be effected by way of a plan of arrangement (the "Arrangement") under Section 193 of the *Business Corporations Act* (Alberta) (the "ABCA").
2. FuelCell and Global mailed a joint management information circular and proxy statement (the "Circular") to holders of FuelCell common shares (the "FuelCell Shareholders") and holders of Global common shares (the "Global Shareholders") on October 6, 2003.
3. The Circular seeks among other things, approval by the Global Shareholders and the FuelCell Shareholders of the Arrangement at special meetings of each of the Global Shareholders and FuelCell Shareholders to be held on October 31, 2003. Subject to the satisfaction or waiver of all closing conditions, including all required regulatory approvals, it is currently anticipated that the Transaction will be completed on November 3, 2003.
4. The authorized capital of FuelCell consists of 150,000,000 FuelCell Common Shares. As at July 31, 2003, there were 39,374,633 FuelCell Common Shares outstanding and 7,528,982 FuelCell Common Shares were reserved for issuance upon the exercise of stock options (the "FuelCell Options") under FuelCell's Section 423 Stock Purchase Plan and FuelCell's 1998 Equity Incentive Plan (collectively, the "FuelCell Plans") and for the further grant of FuelCell Options under the FuelCell Plans. There were warrants to purchase an aggregate of 2,140,000 FuelCell Common Shares outstanding and 5,368,266 of the FuelCell Options were outstanding, of which 3,340,390 were vested and are exercisable in accordance with their terms and 2,027,876 remained unvested.
5. FuelCell is a public company in the United States. The FuelCell Common Shares are listed on The Nasdaq Stock Market Inc. (the "Nasdaq") under the symbol "FCEL".
6. FuelCell is currently subject to the *United States Securities Exchange Act of 1934*, as amended (the "Exchange Act").

7. On August 5, 2003, the date that the Transaction was announced, the market capitalization of FuelCell was approximately US \$294,128,509 and the trading price of a FuelCell Common Share was US \$7.47.
8. Callco is a direct wholly owned subsidiary of FuelCell incorporated under the laws of the Province of Alberta to hold the various call rights related to the Exchangeable Shares.
9. The authorized capital of Callco consists of an unlimited number of common shares of which 100 common shares are issued and outstanding. All of the outstanding common shares of Callco are held directly by FuelCell.
10. Exchangeco is an indirect subsidiary of FuelCell incorporated under the laws of the Province of Alberta for the purpose of implementing the Arrangement.
11. The authorized capital of Exchangeco consists of an unlimited number of common shares and an unlimited number of exchangeable shares (the "Exchangeable Shares"). All of the outstanding common shares of Exchangeco are held directly by Callco and indirectly by FuelCell. Upon completion of the Arrangement, all of the outstanding Exchangeable Shares will be held by former Global shareholders who elect to receive Exchangeable Shares in exchange for their common shares in the capital of Global (the "Global Common Shares") pursuant to the Arrangement.
12. Exchangeco has applied to the Toronto Stock Exchange (the "TSX") to list the Exchangeable Shares to be issued pursuant to the Arrangement. Upon completion of the Arrangement it is anticipated that the Exchangeable Shares will be listed on the TSX and that Exchangeco will become a reporting issuer under the Legislation.
13. Global's authorized capital consists of an unlimited number of common shares and an unlimited number of preferred shares issuable in series. As of August 4, 2003, there were 1,000,000 shares of Cumulative Redeemable Convertible Preferred Shares, Series 2 issued and outstanding and 29,200,850 Global Common Shares issued and outstanding. There were 2,176,500 Global Common Shares reserved for issuance upon the exercise of stock options (the "Global Options") under the Global Amended Incentive Stock Option Plan (the "Global Incentive Plan") and for the future grant of Global Options under the Global Incentive Plan. There were also 1,307,025 Global Options outstanding, of which 514,176 have vested and were exercisable in accordance with their terms and 792,849 remained unvested. There were no Series 1 Global preferred shares issued and outstanding.
14. The Global Common Shares are listed on the TSX under the symbol "GLE".
15. Global is a reporting issuer or the equivalent in British Columbia, Alberta, Manitoba, Saskatchewan, Ontario and Quebec, and is not in default of any of the requirements of the securities legislation of any such provinces.
16. The Arrangement will be carried out under Section 193 of the ABCA. On September 30, 2003, the Applicants obtained, under Section 193 of the ABCA, an interim order (the "Interim Order"), from the Court of Queen's Bench of Alberta (the "Court") which order specifies, among other things, certain procedures and requirements to be followed in connection with the calling and holding of the meeting of Global Common Shareholders (the "Global Meeting").
17. The Circular contained prospectus-level disclosure of the business and affairs of FuelCell and Global, a detailed description of the Arrangement and the securities to be issued.
18. The Circular sought, among other things, approval of the Global Common Shareholders of the Arrangement at the Global Meeting and approval of the FuelCell shareholders of the Arrangement at a meeting of FuelCell Common Shareholders. Each holder of Global Common Shares will be entitled to one vote for each Global Common Share held.
19. Upon the Arrangement becoming effective, in accordance with elections made by holders of Global Common Shares, the outstanding Global Common Shares (except those held by shareholders who exercise their rights of dissent and are ultimately entitled to be paid the fair value thereof) will be exchanged for:
  - (a) such number of FuelCell Common Shares equal to the Exchange Ratio (as described below); or
  - (b) such number of Exchangeable Shares equal to the Exchange Ratio.
20. Only Global Common Shareholders who are residents of Canada for purposes of the *Income Tax Act* (Canada) may elect to receive Exchangeable Shares. Any election to receive Exchangeable Shares by a Global Shareholder who is not a resident of Canada will be deemed to be an election to receive FuelCell Common Shares.
21. The Exchange Ratio will be determined by dividing U.S.\$2.72 by the weighted average trading price of FuelCell Common Shares on the Nasdaq over the 20 consecutive trading days ending on and including the third trading day next

preceding the Global Meeting provided that if such weighted average trading price is less than \$7.96 it will be deemed to be \$7.96 and if such weighted average trading price is more than \$9.74 it will be deemed to be \$9.74.

22. No fractions of Exchangeable Shares or FuelCell Common Shares will be issued in exchange for Global Common Shares pursuant to the Arrangement and such fractional interests will not entitle the owner to exercise any rights as a shareholder of Exchangeco or FuelCell. In lieu of any fractional securities, each holder otherwise entitled to a fraction of an Exchangeable Share or a FuelCell Common Share will be entitled to receive a cash payment equal to the product of the fractional interest and the weighted average trading price (as described above) of the FuelCell Common Shares.
23. Under the Arrangement, each Global Option will represent an option to purchase the number of FuelCell Common Shares determined by multiplying the number of Global Common Shares subject to such Global Option by the Exchange Ratio, subject to rounding. The exercise price of the Global Option will be determined by dividing the exercise price per Global Common Share of the Global Option immediately prior to the effective time of the Arrangement by the Exchange Ratio, subject to rounding, expressed in U.S. dollars.
24. As a result of the foregoing, upon the completion of the Arrangement, all of the issued and outstanding Global Common Shares will be held directly or indirectly by FuelCell and its affiliates.
25. The Exchangeable Shares provide the holder with a security having, as nearly as practicable, economic terms and voting rights that are the same as the FuelCell Common Shares.
26. It is expected that the Global Common Shares will be delisted from the TSX on or after the completion of the Arrangement.
27. FuelCell has applied to the Nasdaq to list the FuelCell Common Shares to be issued pursuant to the Arrangement and issuable in exchange for the Exchangeable Shares, upon exercise of the Global Options and upon conversion of the Global Preferred Shares.
28. The rights, privileges, conditions and restrictions attaching to the Exchangeable Shares (the "Exchangeable Share Provisions"), the terms and conditions of the voting and exchange trust agreement to be entered into between FuelCell, Exchangeco and a trustee (the "Trustee") in connection with the Arrangement (the "Voting and Exchange Trust Agreement") and the terms and conditions of the support agreement to be entered

into between FuelCell, Callco and Exchangeco in connection with the Arrangement (the "Support Agreement") will be described in the Circular and are summarized below.

29. The Exchangeable Shares will be issued by Exchangeco and will be exchangeable at any time on a one-for-one basis, at the option of the holder, for FuelCell Common Shares. An Exchangeable Share will provide a holder with economic terms and voting rights that are, as nearly as practicable, equivalent to those of a FuelCell Common Share. Global Common Shareholders who are residents of Canada and who receive Exchangeable Shares under the Arrangement may, upon filing the necessary tax elections, obtain a full or partial deferral of taxable capital gains for Canadian federal income tax purposes in certain circumstances. In addition, provided the Exchangeable Shares are listed on a prescribed stock exchange, they will be "qualified investments" for certain investors and will not constitute "foreign property", in each case, under the *Income Tax Act* (Canada) (the "ITA").
30. Subject to applicable law and the exercise of the Retraction Call Right described below, a holder of Exchangeable Shares will be entitled at any time following the effective time of the Arrangement to retract any or all of the Exchangeable Shares owned by the holder and to receive an amount per share equal to the current market price for a FuelCell Common Share which will be fully paid and satisfied by the delivery for each Exchangeable Share of one FuelCell Common Share plus an amount equal to all declared and unpaid dividends on each such Exchangeable Share held by such holder on any dividend record date which occurred prior to the retraction date (such aggregate amount, the "Retraction Price"). When a holder of Exchangeable Shares makes a retraction request, Callco will have an overriding call right (the "Retraction Call Right") to purchase all but not less than all of the Exchangeable Shares subject to the retraction request in exchange for the Retraction Price.
31. Subject to applicable law and the Redemption Call Right described below, at any time on or after the fifth anniversary of the date shown on the Articles of Arrangement filed with the Registrar under the ABCA giving effect to the Arrangement, (the "Effective Date"), Exchangeco may, or earlier in the event of certain circumstances as will be described in the Circular, redeem all but not less than all of the then outstanding Exchangeable Shares for an amount per share equal to the current market price of a FuelCell Common Share, which will be fully paid and satisfied by the delivery for each Exchangeable Share of one FuelCell Common Share, plus an amount equal to all declared and unpaid dividends on each such Exchangeable Share held by such holder on any

dividend record date which occurred prior to the redemption date (such aggregate amount, the "Redemption Price"). Callco will have an overriding right (the "Redemption Call Right") to purchase all but not less than all of the Exchangeable Shares then outstanding (other than Exchangeable Shares held by FuelCell and its affiliates) for a purchase price per share equal to the Redemption Price.

32. Except as required by law or under the Support Agreement, the terms of the Exchangeable Share Provisions or the Voting and Exchange Trust Agreement, the holders of Exchangeable Shares will not be entitled to receive notice of, attend or vote at any meeting of shareholders of Exchangeco.
33. On the Effective Date, FuelCell, Exchangeco and the Trustee will enter into the Voting and Exchange Trust Agreement pursuant to which FuelCell will issue to the Trustee a number of FuelCell Common Shares equal to the number of Exchangeable Shares issued and outstanding (other than Exchangeable Shares held by FuelCell and its affiliates) (the "Trustee Shares"), which will be held by the Trustee to enable the holders of Exchangeable Shares to have voting rights that are equivalent to those of holders of FuelCell Common Shares. Each registered holder of Exchangeable Shares (other than FuelCell and its affiliates) (a "Beneficiary") on the record date for any meeting at which shareholders of FuelCell are entitled to vote will be entitled to instruct the Trustee to vote one FuelCell Common Share held by the Trustee for each Exchangeable Share held by the Beneficiary. The Exchangeable Shares are subject to adjustment or modification in the event of a stock consolidation, subdivision or other change to the capital structure of FuelCell so as to maintain the initial one-to-one relationship between the Exchangeable Shares and the FuelCell Common Shares.
34. The Exchangeable Share Provisions will provide that each Exchangeable Share will entitle the holder to dividends from Exchangeco payable at the same time as, and the same as or economically equivalent to, each dividend paid by FuelCell on a FuelCell Common Share.
35. On the liquidation, dissolution or winding-up of Exchangeco or any other distribution of the assets of Exchangeco among its shareholders for the purpose of winding-up its affairs, holders of the Exchangeable Shares will have, subject to applicable law, preferential rights to receive from Exchangeco the Liquidation Amount (as described below) for each Exchangeable Share held. When a liquidation, dissolution or winding-up occurs, Callco will have an overriding right (the "Liquidation Call Right") to purchase all of the outstanding Exchangeable Shares (other than

Exchangeable Shares held by FuelCell and its affiliates) from the holders of Exchangeable Shares on the effective date of such liquidation (the "Liquidation Date") for a purchase price per share equal to the current market price of a FuelCell Common Share which will be fully paid and satisfied by the delivery of one FuelCell Common Share, plus an amount equal to all declared and unpaid dividends on each such Exchangeable Share held by such holder on any dividend record date which occurred prior to the Liquidation Date (such aggregate amount, the "Liquidation Amount"). On the liquidation, dissolution or winding-up of Exchangeco or to effect any other distribution of the assets of FuelCell among its shareholders for the purpose of winding-up its affairs, each holder of Exchangeable Shares (other than FuelCell and its affiliates) will be entitled to instruct the Trustee to exercise the exchange right (the "Exchange Right") granted to the Trustee in the Voting and Exchange Trust Agreement to require FuelCell to purchase from such holder all or any part of the Exchangeable Shares held by the holder for a purchase price per share equal to the current market price of a FuelCell Common Share which will be fully paid and satisfied by the delivery of one FuelCell Common Share, plus an amount equal to all declared and unpaid dividends on each such Exchangeable Share.

36. A holder of Exchangeable Shares will be entitled at any time after failure of Callco to exercise the Liquidation Call Right, the Redemption Call Right or the Retraction Call Right, to instruct the Trustee to exercise the exchange put right (the "Exchange Put Right") granted to the Trustee in the Voting and Exchange Trust Agreement to require FuelCell to purchase all or any part of the Exchangeable Shares of the holder for a purchase price per share equal to the current market price of a FuelCell Common Share which will be fully paid and satisfied by the delivery of one FuelCell Common Share, plus an amount equal to all declared and unpaid dividends on each such Exchangeable Share.
37. In order for the holders of the Exchangeable Shares to participate on a pro rata basis with the holders of FuelCell Common Shares, immediately prior to the effective time of the liquidation, dissolution or winding-up of FuelCell or to effect any other distribution of the assets of FuelCell among its shareholders for the purpose of winding-up its affairs, each Exchangeable Share will, pursuant to the automatic exchange right (the "Automatic Exchange Right") granted to the Trustee in the Voting and Exchange Trust Agreement, automatically be exchanged for FuelCell Common Shares equal to the Exchangeable Share Price under the Voting and Exchange Trust Agreement.

38. The Exchangeable Shares will have a preference over the common shares of Exchangeco and any other shares ranking junior to the Exchangeable Shares with respect to the payment of dividends and the distribution of assets in the event of a liquidation, dissolution or winding-up of Exchangeco, whether voluntary or involuntary, or any other distribution of the assets of Exchangeco among its shareholders for the purpose of winding-up its affairs.
39. On the Effective Date, FuelCell, Exchangeco and Calco will enter into the Support Agreement which will provide that FuelCell will not declare or pay any dividends on the FuelCell Common Shares unless Exchangeco on the same day declares or pays an equivalent dividend on the Exchangeable Shares, and that FuelCell will ensure that Exchangeco and Calco will be able to honour the redemption and retraction rights and dissolution entitlements that are attributes of the Exchangeable Shares under the Exchangeable Share provisions and the Redemption Call Right, Retraction Call Right and Liquidation Call Right. The Support Agreement will also provide that, without the prior approval of Exchangeco and the holders of the Exchangeable Shares, FuelCell will not issue or distribute FuelCell Common Shares, securities exchangeable for or convertible into or carrying rights to acquire FuelCell Common Shares, rights, options or warrants to subscribe for or to purchase FuelCell Common Shares, evidences of indebtedness or other assets of FuelCell to the holders of FuelCell Common Shares nor will FuelCell subdivide, redivide or change the FuelCell Common Shares unless the same or an economically equivalent distribution or change is simultaneously made to the Exchangeable Shares.
40. A small number of Canadian residents own FuelCell Common Shares. However, upon completion of the Arrangement, Global Common Shareholders who are Canadian residents will own between approximately 16% and 19% of the outstanding FuelCell Common Shares.
41. Following completion of the Arrangement, FuelCell will concurrently send to holders of Exchangeable Shares and FuelCell Common Shares resident in the Jurisdictions all disclosure material it sends to holders of FuelCell Common Shares resident in the United States pursuant to the Exchange Act.

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

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the AIF Requirements shall not apply to Exchangeco, so long as:

- (a) FuelCell will send concurrently to all holders of Exchangeable Shares resident in Canada all disclosure material furnished to holders of FuelCell Common Shares resident in the United States, including, without limitation, copies of its proxy solicitation materials and its interim and annual financial statements, which financial statements will be prepared solely in accordance with US GAAP;
- (b) FuelCell files with each Decision Maker copies of all documents required to be filed by it with the SEC under the Exchange Act, as amended and such filings are made under Exchangeco's SEDAR profile and the filing fees which would otherwise be payable by Exchangeco in connection with such filings are paid;
- (c) FuelCell complies with the requirements of the Nasdaq in respect of making public disclosure of material information on a timely basis and without delay issues in Canada and files with the Decision Makers any press release that discloses a material change in FuelCell's affairs;
- (d) Exchangeco complies with the material change reporting requirements in respect of material changes in the affairs of Exchangeco that would be material to holders of Exchangeable Shares but would not be material to holders of FuelCell Common Shares;
- (e) FuelCell includes in all future mailings of proxy solicitation materials (if any) to holders of Exchangeable Shares a clear and concise statement explaining the reason for the mailed material being solely in relation to FuelCell and not in relation to Exchangeco, such statement to include a reference to the economic equivalency between the Exchangeable Shares and the FuelCell common shares and the right to direct voting at FuelCell's shareholders' meetings pursuant to the Voting and Exchange Trust Agreement (without taking into account tax effects);
- (f) FuelCell remains the direct or indirect beneficial owner of all of the issued and outstanding common shares of Exchangeco; and
- (g) Exchangeco does not issue any securities to the public other than the

Exchangeable Shares in connection with  
the Arrangement.

October 31, 2003.

"Iva Vranic"

### 2.1.3 BridgePoint International Inc. - MRRS Decision

#### Headnote

Mutual Reliance Review System for Exemptive Relief Applications – issuer bids – issuer is not a going concern – issuer bid being used as a means of winding up the business affairs of the company before it is dissolved – issuer offering shares of publicly traded corporation and warrants as consideration under issuer bid – number of shares to be delivered as consideration determined on a prorated basis and not based on the value of issuer's shares – applicant exempt from valuation requirement.

#### Applicable Rule

61-501 – Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions, ss. 3.3, 3.4 and 9.1.

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

**AND**

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

**AND**

**IN THE MATTER OF  
BRIDGEPOINT INTERNATIONAL INC.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "**Decision Maker**") in each of Quebec, British Columbia, Alberta, Manitoba and Ontario (the "**Jurisdictions**") has received an application (the "**Application**") from BridgePoint International Inc. (the "**Company**" or "**BridgePoint**") for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") that the requirements contained in the Legislation to obtain a Valuation (the "**Valuation Requirement**") shall not apply to the proposed issuer bid for all issued and outstanding BridgePoint Class A common shares ("**BridgePoint Common Shares**"). In consideration therefore the Company will deliver on a prorated basis the 4,500,000 Units of Afcan Mining Corporation ("**Afcan**" and the "**Afcan Units**") held by the Company.

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

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



1. On December 2, 1999, the shareholders of Mines Vauquelin Ltée, a mining company continued under *Part 1A of the Companies Act (Quebec)*, approved a transaction by virtue of which Mines Vauquelin Ltée acquired all the shares of a company doing business under the name of BridgePoint Entreprises and changed its mission to a company which, through neutral telehousing or co-location facilities provided central office and outsourcing services, Internet management services and technical support services. Mines Vauquelin Ltée changed its name to BridgePoint International inc. To operate its business, the Company set up a wholly-owned Canadian subsidiary (**BridgePoint International (Canada) inc.**) and a wholly-owned American subsidiary (**BridgePoint International (USA) inc.**).
2. The Company is authorized to issue an unlimited number of BridgePoint Common Shares. As of the date hereof, there are 58,058,311 BridgePoint Common Shares issued and outstanding.
3. BridgePoint is a reporting issuer in Quebec, British Columbia, Alberta, Manitoba and Ontario and is not on the list of defaulting reporting issuer maintained pursuant to such legislation, where applicable. Its head office is located at Saint-Laurent, Quebec.
4. On November 13, 2001, as a consequence of the severe financial woes experienced worldwide by all telecommunications companies, BridgePoint International (Canada) inc., filed a notice of intention to make a proposal to its creditors under the *Bankruptcy and Insolvency Act (Canada)*.
5. During the months of December 2001 and January 2002, BridgePoint International (USA) inc., disposed of all its assets in the United States of America.
6. On January 31, 2002, the TSX advised the Company that trading on its shares had been suspended. The shares were delisted a year later.
7. The proposal to creditors, funded by the sale of all of the assets of BridgePoint International (Canada) inc., was approved by said creditors on February 12, 2002.
8. As a result of the disposition of the assets of its subsidiaries, the Company, as one of the major creditor of said subsidiaries, received sums totaling in excess of \$1,000,000.
9. In view of the uncertain future of the Company, a number of shareholders had, on different occasions, advised the directors of their preference for obtaining shares of another publicly traded company rather than cash, in lieu of their BridgePoint Common Shares.
10. At a shareholders' meeting held on March 3, 2003, the shareholders of the Company approved a resolution authorizing the Company to realise an investment in an amount of \$800,000 to \$1,000,000 (mainly all available cash less certain amounts required for maintaining the Company in good order) with Afcan.
11. The acquisition by BridgePoint, through a Private Placement, of 4,500,000 Afcan Units at \$0.20 per unit was completed on April 1st, 2003. Each Afcan Unit is comprised of one Afcan common share (the "**Afcan Share**") and one half of one warrant. Each whole warrant entitles its holder to subscribe before October 1<sup>st</sup>, 2004, one (1) Afcan Share at a price of \$0.31 per share.
12. The Company proposes to effect a formal issuer bid (the "**Proposed Issuer Bid**"), by way of a Circular, for all issued and outstanding BridgePoint Common Shares and deliver in consideration therefore, the 4,500,000 Afcan Units held by BridgePoint on the basis of one (1) Afcan Unit for each twelve and nine tenth (12.9) BridgePoint Common Shares.
13. The number of Afcan Shares to be delivered to a BridgePoint shareholder is a prorated number based on the number of BridgePoint Common Shares held by the shareholder and the number of Afcan Units held by BridgePoint ( $58,058,311 \text{ BridgePoint Common Shares} / 4,500,000 \text{ Afcan Units} = \text{One (1) Afcan Units for each 12.9 BridgePoint Common Shares}$ ).
14. The number of Afcan Units to be delivered is not based on the value of the BridgePoint Common Shares nor is it based on the value of the Afcan Shares.
15. As at the date hereof, to the knowledge of the Company, no person, company or entity beneficially owns or exercises control or direction over more than 10% of the BridgePoint Common Shares except for PGL Capital Inc. and other related entities over which control is indirectly exercised by Messrs. Benoit La Salle and Yves Grou, which hold directly and indirectly 6,440,000 (11%) BridgePoint Common Shares. Mr. Benoit La Salle is a director of the Company and the Chairman of the Board of Afcan. Mr. Yves Grou is the President of BridgePoint and a Director and Chief Financial Officer of Afcan.
16. No directors or senior officer of the Company or their respective associates and no persons holding 10% or more of the BridgePoint Common Shares will receive a direct or indirect benefit as a result of tendering or not his or her BridgePoint Common Shares pursuant to the Proposed Issuer Bid, other than the benefits which will be received by any other holder of BridgePoint Common Shares.

17. The exemptive relief if granted will not be prejudicial to the protection of investors.

**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 the Jurisdictions pursuant to the Legislation is that the Valuation Requirement shall not apply to the Proposed Issuer Bid.

October 20, 2003.

"Josée Deslauriers"

## **2.1.4 Toronto Hydro Corporation - MRRS Decision**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief from requirement that issuer must be a reporting issuer for a least 12 months to permit issuer to distribute non-convertible debt securities under the POP system – issuer is a debt-only issuer with a substantial market presence because of its size, position and public disclosure record.

### **Applicable National Instruments**

National Instrument 44-101 Short Form Prospectus Distributions.

National Instrument 44-102 Shelf Distributions.

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

**AND**

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

**AND**

**IN THE MATTER OF  
TORONTO HYDRO CORPORATION**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island (the "Jurisdictions") have received an application from Toronto Hydro Corporation (the "Filer") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirement contained in the Legislation that an issuer shall have been a reporting issuer or equivalent in the Jurisdictions for the 12 calendar months preceding the date of filing of its initial annual information form ("Initial AIF") (the "Eligibility Requirement") to permit offerings of approved rating non-convertible securities in the Jurisdictions under National Instrument 44-101 Short Form Prospectus Distributions ("NI 44-101") and National Instrument 44-102 Shelf Distributions ("NI 44-102") shall not apply to the Filer;

**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, capitalized terms used herein have the meanings given to them in National Instrument 14-101 Definitions or Quebec Commission Notice 14-101;

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

1. The Filer was incorporated under the *Business Corporations Act* (Ontario) on June 23, 1999. Its registered office is located at 14 Carlton Street, Toronto, Ontario, M5B 1K5.
2. The Filer is a holding company which, through its wholly-owned subsidiaries, distributes electricity, manages an existing portfolio of electricity and natural gas contracts and is engaged in the development and sale of energy efficiency products and services and leases fibre optic cable capacity and provides managed data services.
3. The Filer and its subsidiaries have approximately \$2.3 billion of assets and approximately \$661 million of shareholders' equity.
4. The City of Toronto is the sole shareholder of the Filer.
5. The Filer became a reporting issuer (or equivalent) under the Legislation on May 1, 2003 in connection with its initial public offering of \$225,000,000 principal amount of senior unsecured debentures due 2013 (the "Debentures"). The Filer is not in default of any of the requirements of the Legislation.
6. The Debentures have been assigned ratings of "A (low)" and "A-" by Dominion Bond Rating Service Limited and Standard & Poor's Ratings Services, respectively.
7. The Filer currently has indebtedness of \$980.2 million owing to the City of Toronto under the terms of a promissory note (the "City Note") dated May 7, 2003. The principal amount of the City Note, together with accrued interest thereon, will be payable.
  - (a) on demand on not less than 90 days written notice at any time on or after June 2, 2003 until May 7, 2006; and
  - (b) in accordance with a payment schedule to be delivered by the City of Toronto at least 90 days before May 7, 2006.

provided that the Filer will not be required to pay more than \$330 million of the principal amount of the City Note during any twelve-month period. The maximum term of the City Note is ten years.
8. The City Note is also convertible in whole or in part at any time and from time to time into debt

securities issued by the Filer (subject to applicable law and compliance by the Filer with covenants contained in its outstanding indebtedness).

9. The Filer's primary sources of liquidity and capital resources are from cash provided by operations, debt capital market borrowings and bank financing.
10. The Filer:
  - (a) does not believe that equity contributions from the City of Toronto, its sole shareholder, will constitute a source of capital;
  - (b) is not aware of any plan or decision by the City of Toronto to permit the Filer to sell equity to the public or other investors;
  - (c) expects to borrow to repay the City Note when required to do so under the terms of the City Note; and
  - (d) wishes to establish a medium term note program to issue approved rating non-convertible securities to, among other things, facilitate the repayment of the City Note.
11. The Filer proposes to file an Initial AIF pursuant to NI 44-101 in respect of its financial year ended December 31, 2002.
12. The Filer's primary sources of liquidity and capital resources are from cash provided by operations, debt capital market borrowings and bank financing.
13. Assuming that the Initial AIF is accepted by the securities regulatory authorities in the Jurisdictions, the Filer would be qualified to file a prospectus for approved rating non-convertible securities pursuant to section 2.4 of NI 44-101 and section 2.4 of NI 44-102, but for the fact that it has not been a reporting issuer for 12 months.

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

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

**THE DECISION** of the Decision Makers under to the Legislation is that the Eligibility Requirement shall not apply to the Filer in connection with the issuance of approved rating non-convertible securities under NI 44-101 and NI 44-102, provided that the Filer complies with the other requirements and procedures and each of the other eligibility requirements of NI 44-101 and NI 44-102.

November 7, 2003.

"Iva Vranic"

## **2.1.5 APF Energy Inc. - MRRS Decision**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - issuer meets the requirements set out in CSA Staff Notice 12-307 - issuer deemed to have ceased to be a reporting issuer.

### **Applicable Ontario Statutory Provisions**

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

October 29, 2003

### **Parlee McLaws LLP**

3400, 150 – 6<sup>th</sup> Avenue S.W.  
Calgary, Alberta T2P 3Y7

Attention: Anthony S. Rasoulis

Dear Mr. Rasoulis:

**Re: APF Energy Inc. (Applicant) - Application to Cease to be a Reporting Issuer under the securities legislation of – Alberta, Saskatchewan, Ontario, Québec and Nova Scotia (Jurisdictions)**

The Applicant has applied to the local securities regulatory authority or regulator (Decision Maker) in each of the Jurisdictions for a decision under the securities legislation (Legislation) of the Jurisdictions to be deemed to have ceased to be a reporting issuer in the Jurisdictions.

As the Applicant has represented to the Decision Makers that,

- the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by less than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders in total in Canada;
- no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 Marketplace Operation;
- the Applicant is applying for relief to cease to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and
- the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

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 and orders that the Applicant is deemed to have ceased to be a reporting issuer.

"Patricia M. Johnston"

## 2.2 Orders

### 2.2.1 Kicking Horse Resources Ltd. - s. 144

#### Headnote

Section 144 - application for revocation of cease trade order - issuer subject to cease trade order as a result of its failure to file with the Commission and send to its shareholders annual and interim financial statements - issuer has brought filings up to date - 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, CHAPTER S.5, AS AMENDED (the "Act")**

**AND**

**IN THE MATTER OF  
KICKING HORSE RESOURCES LTD.**

**ORDER  
(Section 144)**

**WHEREAS** the securities of Kicking Horse Resources Ltd. (the "Issuer") are subject to a cease trade order (the "Cease Trade Order") issued by the Ontario Securities Commission (the "Commission") on August 28, 2002, pursuant to paragraph 2 of subsection 127(1) and subsection 127(5) of the Act;

**AND WHEREAS** the Issuer has now applied to the Commission for an order pursuant to section 144 of the Act to revoke the Cease Trade Order;

**AND WHEREAS** the Issuer has represented to the Commission as follows:

1. The Issuer is a corporation amalgamated under the *Business Corporations Act* (Alberta) pursuant to a certificate of Amalgamation dated August 13, 1999.
2. The head office of the Issuer is in Calgary, Alberta.
3. The Issuer is a reporting issuer in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario and Quebec.
4. The Issuer is authorized to issue an unlimited number of common shares ("Common Shares"). As of October 16, 2003, the Issuer had 47,757,3000 Common Shares and warrants outstanding.
5. The outstanding Common Shares are listed for trading on the TSX Venture Exchange (the "TSX

Venture"). Trading of the Common Shares is currently suspended by the TSX Venture due to the Cease Trade Order and the other similar cease trade orders issued by the securities regulatory authorities or regulators in each of British Columbia, Manitoba, Alberta and Quebec.

6. The Cease Trade Order was issued as a result of the Issuer's failure to file and deliver annual audited financial statements for the year ended December 31, 2001 and the first quarter interim unaudited financial statements for the period ended March 31, 2002.
7. Over the past year, the Issuer issued to one of its principal shareholders, now a director, \$2,500,000 of debentures (originally unsecured, now secured) due September 20, 2004 (the "Debentures"). In conjuncture with the Debentures, the Corporation committed to issue up to a total of 1,300,000 warrants ("Warrants") to purchase Common Shares, conditional upon (i) the revocation of the Cease Trade Order, and the similar orders of the securities regulatory authorities or regulators in British Columbia, Manitoba, Alberta and Quebec, and (ii) the approval of the TSX Venture. Each Warrant has an exercise price based on the average closing market price of the Common Shares for the first twenty days of trading following the resumption of trading and is exercisable until May 14, 2005. In issuing the Debentures, the Issuer contravened the terms of the Cease Trade Order. In committing to the issuance of the Warrants, the Issuer may have contravened the terms of the Cease Trade Order.
8. The Issuer has reorganized its affairs, including arranging the adequate financing, and has filed the following on the System for Electronic Document Analysis and Retrieval (SEDAR):
  - (a) on June 11, 2003, the annual audited financial statements for the years ended December 31, 2001 and December 31, 2002 and its first quarter interim unaudited financial statements for the period ending March 31, 2003;
  - (b) on August 22, 2003, its second quarter interim unaudited financial statements for the period ending June 30, 2003; and
  - (c) on October 16, 2003, a Form 13-502F1 and the appropriate participating fee for its 2003 financial year.
9. Except as noted in paragraphs 6 and 7, the Issuer is not otherwise in default of any requirement of the Act or the regulations made thereunder.
10. The securities regulatory authority or regulator in each of British Columbia, Alberta, Manitoba and

Quebec have now revoked their respective cease trade orders.

**AND WHEREAS** the Commission has considered the application and the recommendation of staff;

**AND UPON** the Commission 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.

October 27, 2003.

“Erez Blumberger”

## Chapter 3

# Reasons: Decisions, Orders and Rulings

### 3.1 Reasons for Decision

#### 3.1.1 Rampart Investment Management Company

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

**AND**

**IN THE MATTER OF  
RAMPART INVESTMENT MANAGEMENT COMPANY**

**WRITTEN SUBMISSIONS TO THE DIRECTOR  
PURSUANT TO SUBSECTION 26(3) OF THE  
SECURITIES ACT**

Date: November 11, 2003

Director: Winfield Liu  
Senior Legal Counsel  
Market Regulation

Submissions: Marianne Bridge Manager, Compliance  
Capital Markets Branch

Garth Foster Counsel for the  
Registrant

#### DECISION AND REASONS FOR DECISION

The decision of the Director is to impose terms and conditions on the registration of Rampart Investment Management Company ("Rampart" or "Registrant") due to its failure to deliver its audited annual financial statements for the year ended June 30, 2003 within the timeframes prescribed by the Regulation ("Regulation") made under the Securities Act ("Act"). Furthermore, Rampart's request for an exemption from the requirement to pay late filing fees is denied. The reasons for the decision are set out below.

#### Background

Rampart is registered as a Non-Canadian Advisor Investment Counsel Portfolio Manager. It was initially registered on June 24, 2002 and its financial year end is June 30. Under section 139 of the Regulation, Rampart was obligated to deliver its annual audited financial statements for the year ended June 30, 2003 no later than September 30. It failed to do so and was notified by staff in a letter dated October 3, 2003 of its deficiency. Rampart was also advised that as a result of its failure to deliver the financial statements that staff would recommend to the Director that Rampart's registration be subject to terms and conditions as set out in Schedule "A" attached. The

audited financial statements were delivered to the Commission on or about October 23, 2003.

Under subsection 26(3) of the Act "the Director shall not refuse to grant, renew, reinstate or amend registration or impose terms and conditions thereon without giving the applicant an opportunity to be heard". Rampart has requested an opportunity to be heard under subsection 26(3) by way of written submissions. In addition, Rampart is seeking an exemption from the requirement to pay the late filing fees that are required under section M(1)(a) of Appendix C to OSC Rule 13-502 – Fees, resulting from the late filing of the financial statements.

#### Summary of the Registrant's Submission

The Registrant submits that its failure to file the audited annual financial statements was inadvertent and that there was no intention by the corporation not to comply with Ontario securities laws. It was initially registered as a non-resident advisor to pursue certain business opportunities in Ontario which have ultimately not materialised, and as a result the corporation's intention is to let its registration lapse at the end of the year. Rampart is not required to file financial statements with any other regulators in the United States or elsewhere which contributed to management's failure to realise its obligations under Ontario securities laws. Upon becoming aware of the deficiency Rampart immediately contacted its auditors and proceeded to complete and deliver to the Commission the audited financial statements. Furthermore, Rampart submits that to date it has not provided advisory services to any person in Ontario, and, as it intends to allow its registration to lapse, there is no prejudice to the public interest to granting the requested relief.

#### Summary of Staff's Submission

Staff does not believe that the failure to file the financial statements on a timely basis could properly be characterised as inadvertent. In particular, staff notes that Rampart was late in filing its financial statements for the period ending June 30, 2002 and had had discussions with staff at that time regarding the imposition of terms and conditions on its registration. Also, staff had provided copies of the relevant section of the Regulation relating the filing of financial statements to an individual connected with Rampart prior to the filing deadline.

#### Director's Findings

I agree with staff's position. Although Rampart submits that the failure to deliver its financial statements on time was completely inadvertent, its previous failure to deliver financial statements for the period ended June 30, 2002 on time and, the subsequent discussions it had with staff,

should have been sufficient notice to Rampart to fully understand its filing obligations as a registrant. I find the Rampart knew or should have known its filing obligations and its failure to meet those obligations was a result of insufficient attention to and importance placed on those obligations.

The filing of annual financial statements by registrants is one of the most important regulatory requirements in the Act. Financial solvency is one of the essential components of a dealer or adviser's continued suitability for registration. Financial statements are the principal tool enabling staff to monitor a registrant's financial viability and its capital position. As a result, the late filing (or non-filing) of annual financial statements raises serious potential regulatory concerns and needs to be addressed in a serious fashion. Accordingly, I find that the imposition of the terms and conditions as set out in Schedule "A" to be appropriate in this case.

In the circumstances I also find that it would be inappropriate to exempt Rampart from the requirement to pay the late filing fees due under section M(1)(a) of Appendix C to OSC Rule 13-502. The penalty for late filings was intended to reflect the importance that is placed on the obligation that each registrant has to make timely filings and in furthering that notion, to provide registrants with the appropriate incentive to ensure that proper attention is given to the matter and that the registrant does not fail to meet its filing obligations whether deliberately or through inadvertence. Granting an exemption in situations where the failure was not deliberate would remove any incentive for registrants to assume responsibility for meeting their obligations. The request for an exemption to pay the late filing fees is denied.

November 11, 2003.

"Winfield Liu"

## **SCHEDULE "A"**

### **TERMS AND CONDITIONS OF REGISTRATION ON Rampart Investment Management Company, Inc. (the "Registrant")**

The Registrant shall file on a monthly basis with the Compliance Section of the Ontario Securities Commission, attention Financial Analyst, effective with the month ending November 30, 2003, the following information:

- (1) year-to-date unaudited financial statements, which includes a balance sheet and income statement prepared in accordance with generally accepted accounting principles; and
- (2) month end calculation of excess free capital;

no later than three weeks after each month end.



## Chapter 4

# Cease Trading Orders

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### 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
Agro Pacific Industries Ltd.	11 Nov 03	21 Nov 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		
RTICA Corporation	21 Oct 03	03 Nov 03	03 Nov 03		
Saturn (Solutions) Inc.	21 Oct 03	03 Nov 03	03 Nov 03		

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## **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>
29-Oct-2003	E2 Venture Fund Inc.	4040392 Canada Inc. - Common Shares	189,999.81	999,999.00
30-Oct-2003	Canadian Mental Health Association	Acuity Pooled Balanced Fund - Trust Units	1,888,728.00	110,054.00
24-Oct-2003 to 30-Oct-2003	9 Purchasers	Acuity Pooled High Income Fund - Trust Units	2,123,375.00	125,496.00
23-Oct-2003	25 Purchasers	American Bonanza Gold Mining Corp. - Units	4,455,532.04	15,912,614.00
31-Oct-2003	4 Purchasers	American Natural Energy Corporation - Debentures	220,000.00	4.00
03-Nov-2003	4 Purchasers	American Towers, Inc. - Notes	8,665,800.00	31.00
27-Oct-2003	Dynamic Canadian Precious Metals Fund	AMI Resources Inc. - Common Shares	500,000.00	1,111,111.00
29-Oct-2003	Rodger Gray	Bitterroot Resources Ltd. - Units	50,000.00	250,000.00
07-Oct-2003	Acuity Investment Management Inc.	Breakwater Resources Ltd. - Common Shares	420,000.00	1,000,000.00
08-Apr-2003	19 Purchasers	Caledonia Mining Corporation - Units	1,925,093.00	13,276,503.00
01-Nov-2003	Sonrise Investments Limited	Calloway Real Estate Investment Trust - Units	31,005,250.00	1,000,000.00
29-Oct-2003	David & Lisette Sangster	CareVest Second Mortgage Investment Corporation - Preferred Shares	30,000.00	30,000.00
08-Oct-2003	Stan Bharti	Castillian Resources Corp. - Units	35,000.00	100,000.00
28-Oct-2003	9 Purchasers	Coniagas Resources Limited - Units	381,465.00	1,089,000.00

**Notice of Exempt Financings**

31-Oct-2003	68 Purchasers	Cranston, Gaskin, O'Reilly & Vernon - Units	96,652.67	1,173,090.00
31-Oct-2003	6 Purchasers	Cranston, Gaskin, O'Reilly & Vernon - Units	69,893.19	5,704.00
31-Oct-2003	14 Purchasers	Cranston, Gaskin, O'Reilly & Vernon - Units	335,490.53	26,861.00
20-Oct-2003	the Vernon Consulting Group-281134	Cranston, Gaskin, O'Reilly & Vernon - Units	41,210.26	3,549.00
28-Oct-2003	Arthur Dalfen	Crossroads Explorations Inc. - Common Shares	3,750.00	75,000.00
27-Oct-2003	First Associates Invetments Inc.	Crystallex International Corporation - Common Shares	339,148.48	96,800.00
03-Nov-2003	Canadian Mortgage;Dundee Bancorp Inc	DB Mortgage Investment Corporation #1 - Common Shares	285,000.00	284.00
03-Nov-2003	Canadian Mortgage Capital Corporation;Dundee Bancorp Inc.	DB Mortgage Investment Corporation #1 - Common Shares	1,215,000.00	1,215.00
17-Oct-2003	11 Purchasers	Destiny Solutions Inc. - Common Shares	475,000.00	1,484,375.00
31-Oct-2003	Yore Management	Dia Bras Exploration Inc. - Units	150,000.00	234,375.00
31-Oct-2003	3 Purchasers	Dynamic Fuel Systems Inc. - Common Shares	36,244.00	4,264.00
31-Oct-2003	439246 Ontario Inc.	EK3 Technologies Inc. - Units	500,000.00	100.00
27-Oct-2003	MRF 2003 Limited Partnership	Extreme Energy Corporation - Flow-Through Shares	400,000.00	800,000.00
31-Oct-2003	3 Purchasers	Falls Management Company - Notes	57,000,000.00	5,000,000.00
27-Oct-2003	12 Purchasers	Full Riches Investments Ltd. - Special Warrants	915,000.00	9,150,000.00
30-Oct-2003	3 Purchasers	Gentry Resources Ltd. - Common Shares	3,675,000.00	2,100,000.00
29-Oct-2003	The Manufacturers Life insurance Company	Golf Town Canada Inc. - Debentures	6,000,000.00	1.00
28-Oct-2003	11 Purchasers	Hanfeng Evergreen Inc. - Units	900,000.00	450,000.00
30-Oct-2003	35 Purchasers	Hawk Energy Corp. - Special Warrants	3,820,000.00	1,910,000.00
06-Nov-2003	Cinram International inc.	HSBC Short Term Investment Fund - Units	3,000,000.00	299,347.00
31-Oct-2003	Hamblin Watsa Investment Counsel Ltd.	H&R Real Estate Investment Trust - Units	25,000,001.51	1,860,133.00
17-Oct-2003	Accenture Inc.	Innovapost Inc. - Shares	2,500,000.00	2,500,000.00

**Notice of Exempt Financings**

28-Oct-2003	Donald B. Bainbridge	Internetsecure Inc. - Common Shares	29,300.00	48,834.00
28-Oct-2003	Donald B. Bainbridge	Internetsecure Inc. - Common Shares	28,400.00	47,333.00
31-Oct-2003	9 Purchasers	Jonpol Explorations Limited - Common Shares	313,300.00	6,266,000.00
29-Oct-2003	17 Purchasers	July Resources Corp. - Common Shares	1,105,000.00	27,500,000.00
29-Oct-2003	Children's Hospital Foundation of Manitoba Inc.	KBSH - Income Trust Fund - Units	1,800,000.00	180,000.00
30-Oct-2003	Alla Levine	KBSH Income Trust Fund - Units	100,000.00	9,998.00
31-Oct-2003	James Gardiner	KBSH Private - Global Leading Companies Fund - Units	200,013.90	25,347.00
27-Oct-2003	Paul Gobeil	KBSH Private - Global Leading Fund - Units	71,700.00	9,337.00
30-Oct-2003	James Gardiner	KBSH Private - Money Market Fund - Units	200,000.00	20,000.00
27-Oct-2003	Paul Gobeil	KBSH Private - Pacific Basin Fund - Units	71,502.32	5,438.00
27-Oct-2003	Paul Gobeil	KBSH Private - Private Emerging Fund - Units	35,217.55	4,066.00
31-Oct-2003	Elizahar Holdings Inc.	KFA Balanced Pooled Fund - Units	150,000.00	15,143.00
21-Oct-2003	Donald Scott Smith	Longbow Capital Limited Partnership - Limited Partnership Units	100,000.00	100.00
27-Oct-2003	6 Purchasers	Longbow Capital Limited Partnership - Limited Partnership Units	800,000.00	800.00
31-Oct-2003	John Van Dommelen	Microsource Online, Inc. - Common Shares	3,000.00	500.00
31-Oct-2003	Suzanne Tremblay	Microsource Online, Inc. - Common Shares	24,000.00	4,000.00
31-Oct-2003	S. Grant Hall	Microsource Online, Inc. - Common Shares	3,000.00	500.00
31-Oct-2003	Micheal Marino	Microsource Online, Inc. - Common Shares	3,000.00	500.00
31-Oct-2003	Leo Klein	Microsource Online, Inc. - Common Shares	6,000.00	1,000.00
01-Nov-2003	4 Purchasers	MMCAP Limited Partnership Fund - Limited Partnership Units	1,500,000.00	1,800.00

**Notice of Exempt Financings**

01-Nov-2003	Performance Group	MMCAP Limited Partnership Fund - Limited Partnership Units	200,000.00	200.00
30-Oct-2003	Normand Glaude	NETISTIX TECHNOLOGIES CORPORATION - Common Shares	50,000.00	100,000.00
23-Oct-2003	Delta One Energy Fund LP	Northern Rivers Innovation Fund L.P - Common Shares	125,000.00	125,000.00
29-Oct-2003	16 Purchasers	Nuinsco Resources Limited - Units	380,279.99	1,833,476.00
24-Oct-2003	9 Purchasers	O'Donnell Emerging Companies Fund - Units	800,000.00	102,151.00
03-Jan-2003	Gregg Levis	Olympus United Funds Corporation - Shares	150,000.00	12,765.00
23-Oct-2002 to 8-Nov-2003	42 Purchasers	Olympus United Funds Corporation - Shares	1,884,810.00	179,922.00
25-Oct-2003	564 Purchasers	Olympus United Funds Corporation - Shares	44,104,564.00	3,819,481.00
28-Oct-2003	11 Purchasers	Opawica Explorations Inc. - Shares	294,000.00	2,000,000.00
27-Oct-2003	27 Purchasers	Orezone Resources Inc. - Units	2,964,000.00	3,293,000.00
28-Oct-2003	Bankton Financial Corporation	Passion Media Inc. - Shares	80,250.00	535,000.00
04-Nov-2003	Rosseau Limited Partnership	Pele Mountain Resources Inc. - Units	500,000.00	1,000,000.00
20-Oct-2003	18 Purchasers	Phoenix Matachewan Mines Inc. - Units	209,016.00	1,741,800.00
24-Oct-2003	Mark P. Eaton; Peter Dunlop	Pioneer Metals Corporation - Units	72,000.00	600,000.00
31-Oct-2003	15 Purchasers	PointShot Wireless Inc. - Preferred Shares	855,637.00	876,151.00
23-Oct-2003	7 Purchasers	Predator Exploration Ltd. - Common Shares	160,000.00	320,000.00
05-Nov-2003	Bank of Motreal	Premcor Refining Group Inc. (The) - Notes	3,331,000.00	15.00
30-Sep-2003	Absolute Return Concepts Fund	RBC Asset Management - Units	505,400.00	4,584.00
31-Oct-2003	Nursing Homes and Related Industries Pension Plan	Real Assets US Social Equity Index Fund - Units	512,317.91	75,787.00
24-Oct-2003	4 Purchasers	Red Black Mining NL - Shares	3,320,596.00	8,100,002.00
04-Nov-2003	60 Purchasers	SKN Resources Ltd. - Units	4,950,000.00	2,750,000.00

**Notice of Exempt Financings**

06-Nov-2003	EdgeStone Capital Venture Fund and 1113598 Ontario Inc.	Slipstream Data Inc. - Preferred Shares	1,915,999.00	1,651,724.00
28-Oct-2003	Galileo Equity Mangement Inc.	Sparton Resources Inc. - Special Warrants	200,000.00	500,000.00
06-Nov-2003	Credit Risk Advisors	Tabletop Holdings, Inc. - Notes	1,469,902.72	13.00
23-Oct-2003	Allan H. Voth	Tango Energy Inc. - Common Shares	19,500.00	30,000.00
31-Oct-2003	8 Purchasers	TD Harbour Capital Balanced Fund - Trust Units	9,163,921.90	88,549.00
31-Oct-2003	14 Purchasers	Temagami Forest Products Inc. - Shares	328,000.00	3,280.00
24-Oct-2003	8 Purchasers	Thundermin Resources Inc. - Units	139,000.00	1,390,000.00
24-Oct-2003	Ontario Municipal Employees	TPG Partners IV, L.P. - Limited Partnership Interest	75,000,000.00	1.00
28-Oct-2003	Genevest Inc.	Ursa Major Minerals Incorporated - Shares	170,000.00	200,000.00
28-Oct-2003	8 Purchasers	Ursa Major Minerals Incorporated - Units	1,479,850.00	1,935,100.00
24-Oct-2003	Crystallex International Corporation	Uruguay Mineral Exploration Inc. - Convertible Debentures	2,614,400.00	1.00
31-Oct-2003	4 Purchasers	Venture West 8 Limited Partnership - Limited Partnership Units	90,000,000.00	90,000.00
31-Oct-2003	Sherfam Inc.	World Heart Corporation - Warrants	1.00	530,000.00

**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>
30-Oct-2003	United Reef Limited	AXMIN Inc. - Common Shares	\$104,592.00	100,000.00
27-Oct-2003	Shaul kuper	Destiny Solutions Inc. - Common Shares	\$74,999.00	256,696.00

**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>Seller</u>	<u>Security</u>	<u>Number of Securities</u>
Ian Greenberg	Astral Media Inc. - Shares	100,000.00
Sidney Greenberg	Astral Media Inc. - Shares	75,000.00
Pinetree Capital Corp.	Brownstone Resources Inc. - Common Shares	1,000,000.00



**Notice of Exempt Financings**

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Larry Melnick	Champion Natural Health.com Inc. - Shares	425,000.00
Chengfeng Zhou	China Ventures Inc. - Common Shares	7,874,000.00
Brownstone Resources	Maple Minerals Corp. - Common Shares	100,000.00
Ashraf Zaghloul	NTG Clarity Networks Inc. - Common Shares	2,500,000.00

**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**

<b><u>Issuer</u></b>	<b><u>Date the Company Ceased to be a Private Company or Private Issuer</u></b>
EK3 Technologies Inc.	10/30/03
Workbrain Corporation	12/27/00

## Chapter 11

# IPOs, New Issues and Secondary Financings

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**Issuer Name:**

407 International Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Shelf Prospectus dated November 10, 2003

Mutual Reliance Review System Receipt dated November 10, 2003

**Offering Price and Description:**

\$1,000,000,000.00 - Medium-Term Notes (Secured)

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

BMO Nesbitt Burns Inc.  
RBC Dominion Securities Inc.  
TD Securities Inc.  
Scotia Capital Inc.

National Bank Financial Inc.  
Casgrain & Company Limited  
CIBC World Markets Inc.  
Merill Lynch Canada Inc.

**Promoter(s):**

-

**Project #587273**

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**Issuer Name:**

AFL Capital Ventures Inc.  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary CPC Prospectus dated October 27, 2003  
Mutual Reliance Review System Receipt dated November 7, 2003

**Offering Price and Description:**

\$300,000.00 - 1,000,000 Common Shares Price: \$0.30 per Common Share

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

Canaccord Capital Corporation

**Promoter(s):**

Tory Lalonde  
Stephen Headford  
Wayne Newson

**Project #584027**

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**Issuer Name:**

Altruista Fund Inc.

**Type and Date:**

Preliminary Prospectus dated November 7, 2003  
Receipted on November 11, 2003

**Offering Price and Description:**

CLASS A SHARES

\$10 per Class A Share - Continuous Offering: Net Asset Value per Class A Share

Minimum Subscription: \$1,000 initially and \$500 subsequently

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

-

**Promoter(s):**

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**Project #587390**

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**Issuer Name:**

Certicom Corp.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated November 10, 2003

Mutual Reliance Review System Receipt dated November 11, 2003

**Offering Price and Description:**

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

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

TD Securities Inc.  
Research Capital Corporation

**Promoter(s):**

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**Project #587587**

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**Issuer Name:**

Dimethaid Research Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated November 10, 2003

Mutual Reliance Review System Receipt dated November 11, 2003

**Offering Price and Description:**

14,377,668 Common Shares – Issuable upon the exercise of 14,377,688 Special Warrants

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

Paradigm Capital Inc.

**Promoter(s):**

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**Project #587598**

**Issuer Name:**

Dynamic Focus + Diversified Income Trust Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectus dated November 5, 2003  
Mutual Reliance Review System Receipt dated November 6, 2003

**Offering Price and Description:**

(Series I Units)

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

Dynamic Mutual Funds Ltd.  
Dynamic Mutual Funds Ltd.

**Promoter(s):**

Dynamic Mutual Funds Ltd.

**Project #586034**

**Issuer Name:**

Emerald Bay Energy Inc.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Prospectus dated November 4, 2003  
Mutual Reliance Review System Receipt dated November 5, 2003

**Offering Price and Description:**

Minimum: \* Shares (\$1,000,000)  
Maximum: \* Shares (\$2,000,000)  
Price: \$ \* per Share

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

Union Securities Ltd.

**Promoter(s):**

Leonard D. Rice

**Project #585866**

**Issuer Name:**

Glacier Credit Card Trust  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated November 6, 2003  
Mutual Reliance Review System Receipt dated November 6, 2003

**Offering Price and Description:**

\$ \* % Asset-Backed Senior Notes, Series 2003-1  
Expected Repayment Date \*, 200 \*  
\$\* % Asset-Backed Subordinated Notes, Series 2003-1  
Expected Repayment Date \*, 200 \*

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

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

**Promoter(s):**

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**Project #586343**

**Issuer Name:**

Hathaway Money Market Fund  
(New Issuer)  
Hathaway High Yield Bond Fund  
(Existing Issuer)  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectus (New Issuer) and  
Amended and Restated Preliminary  
Simplified Prospectus (Existing Issuer) dated November 5th, 2003  
Mutual Reliance Review System Receipt dated November 6, 2003

**Offering Price and Description:**

Series A Units

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

Dynamic Mutual Funds Ltd.,  
Dynamic Mutual Funds Ltd.  
Dynamic Mutual Funds Ltd.

**Promoter(s):**

Dynamic Mutual Funds Ltd.,

**Project #586064**

**Issuer Name:**

HSBC Chinese Equity Fund  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Simplified Prospectus dated November 6, 2003  
Mutual Reliance Review System Receipt dated November 7, 2003

**Offering Price and Description:**

Investor Series, Advisor Series, Manager Series and  
Institutional Series Units

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

HSBC Investment Funds (Canada) Inc.  
HSBC Investment Funds (Canada) Inc.

**Promoter(s):**

HSBC Investment Funds (Canada) Inc.

**Project #586841**

**Issuer Name:**

Inflazyme Pharmaceuticals Ltd.  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Prospectus dated November 6, 2003  
Mutual Reliance Review System Receipt dated November 6, 2003

**Offering Price and Description:**

\$15,015,000.00 - 13,650,000 Common Shares Price:  
\$1.10 per Common Share

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

Orion Securities Inc.  
RBC Dominion Securities Inc.

**Promoter(s):**

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**Project #586685**

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**Issuer Name:**

IPC US Income Commercial Real Estate Investment Trust  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated November 10, 2003

Mutual Reliance Review System Receipt dated November 10, 2003

**Offering Price and Description:**

US \$20,000,000.00 - (Cdn \$26,675,000) 2,500,000 Units  
Price: US\$8.00 (Cdn \$10.67 per Unit)

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

CIBC World Markets Inc.  
Scotia Capital Inc.  
Desjardins Securities Inc.  
National Bank Financial Inc.  
RBC Dominion Securities Inc.  
TD Securities Inc.  
Canaccord Capital Corporation  
HSBC Securities (Canada) Inc.  
Raymond James Ltd.

**Promoter(s):**

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**Project #587271**

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**Issuer Name:**

JJR Capital Ventures Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary CPC Prospectus dated November 7, 2003  
Mutual Reliance Review System Receipt dated November 11, 2003

**Offering Price and Description:**

\$600,000 (6,000,000 Common Shares) Price: \$0.10 per Common Share

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

First Associates Investments Inc.

**Promoter(s):**

Ron D. Schmeichel

**Project #587493**

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**Issuer Name:**

Mackenzie Universal Canadian Tactical Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectus dated November 10, 2003

Mutual Reliance Review System Receipt dated November 11, 2003

**Offering Price and Description:**

Series A, F, I and O Units

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

Quadrus Investment Services Inc.  
Quadrus Investment Services Ltd.

**Promoter(s):**

Mackenzie Financial Corporation

**Project #587479**

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**Issuer Name:**

Merrill Lynch Financial Assets Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated November 10, 2003

Mutual Reliance Review System Receipt dated November 10, 2003

**Offering Price and Description:**

\$256,970,000.00 (Approximate) - Commercial Mortgage  
Pass-Through Certificates, Series 2003-Canada 11

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

Merrill Lynch Canada Inc.  
RBC Dominion Securities Inc.

**Promoter(s):**

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**Project #587141**

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**Issuer Name:**

Northgate Exploration Limited  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Prospectus dated November 7, 2003

Mutual Reliance Review System Receipt dated November 7, 2003

**Offering Price and Description:**

\$218,731,188.00 - 82,540,071 Common Shares Price:  
\$2.65 per Common Share

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

RBC Dominion Securities Inc.  
CIBC World Markets Inc.  
Griffiths McBurney & Partners  
BMO Nesbitt Burns Inc.  
Scotia Capital Inc.  
TD Securities Inc.  
Canaccord Capital Corporation  
Sprott Securities Inc.  
Westwind Partners Inc.  
Trilon Securities Corporation

**Promoter(s):**

-

**Project #586905**

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**Issuer Name:**

PetroWorth Resources Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated November 4, 2003  
Mutual Reliance Review System Receipt dated November 6, 2003

**Offering Price and Description:**

Maximum Offering: \$8,435,000  
Minimum Offering: \$3,500,000  
Up to 3,500,000 A Units and Up to 7,700,000 B Units  
Prices: \$0.65 per A Unit and \$0.80 for B Unit  
- and -  
3,400,000 Common Shares Issuable Upon the Exercise of  
3,400,000 Special Warrants

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

Brawley Cathers Limited

**Promoter(s):**

David Fisher  
Patrick Herne  
David Young

**Project #586132**

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**Issuer Name:**

Shoppers Drug Mart Corporation  
Principal Regulator - Ontario

**Type and Date:**

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

**Offering Price and Description:**

\$924,000,000.00 - 33,000,000 Common Shares Price:  
\$28.00 per Common Share

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

CIBC World Markets Inc.  
Merrill Lynch Canada Inc.  
RBC Dominion Securities Inc.  
Scotia Capital Inc.  
BMO Nesbitt Burns Inc.  
TD Securities Inc.  
National Bank Financial Inc.  
Credit Suisse First Boston Canada Inc.  
Morgan Stanley Canada Limited

**Promoter(s):**

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**Project #587182**

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**Issuer Name:**

Summit Real Estate Investment Trust  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated November 10, 2003  
Mutual Reliance Review System Receipt dated November 11, 2003

**Offering Price and Description:**

\$75,000,100.00 - 4,298,000 Units Price: \$17.45 per Unit

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

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

**Promoter(s):**

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**Project #587489**

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**Issuer Name:**

Triumph Acquisition Corporation Inc.  
Principal Regulator - Quebec

**Type and Date:**

Preliminary CPC Prospectus dated November 5, 2003  
Mutual Reliance Review System Receipt dated November 6, 2003

**Offering Price and Description:**

Minimum Offering: \$1,200,000 or 6,000,000 Common  
Shares

Maximum Offering: \$1,900,000 or 9,500,000 Common  
Shares

Price: \$0.20 per Common Share

Minimum Subscription: \$1,000 or 5,000 Common Shares

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

Canaccord Capital Corporation

**Promoter(s):**

Clifford Albert

**Project #586401**

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**Issuer Name:**

UE WATERHEATER INCOME FUND  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated November 10, 2003  
Mutual Reliance Review System Receipt dated November 10, 2003

**Offering Price and Description:**

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

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

CIBC World Markets Inc.  
TD Securities Inc.

**Promoter(s):**

Epcor Utilities Inc.

**Project #587173**

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**Issuer Name:**

Volume Services America Holdings, Inc.  
Principal Regulator - Ontario

**Type and Date:**

Fifth Amended Preliminary Prospectus dated November 11, 2003  
Mutual Reliance Review System Receipt dated November 11, 2003

**Offering Price and Description:**

US\$ (\$C) - 16,785,450 Income Deposit Securities (IDSs)  
Price: US\$ (C\$) per IDS

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

CIBC World Markets Inc.  
UBS Securities Canada Inc.  
RBC Dominion Securities Inc.  
BMO Nesbitt Burns Inc.  
TD Securities Inc.

**Promoter(s):**

-

**Project #513442**

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**Issuer Name:**

ARC Energy Trust  
Principal Regulator - Alberta

**Type and Date:**

Final Short Form Prospectus dated November 10, 2003  
Mutual Reliance Review System Receipt dated November 10, 2003

**Offering Price and Description:**

\$147,400,000.00 - 11,000,000 Trust Units @\$13.40 per Unit

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

RBC Dominion Securities Inc.  
BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
Scotia Capital Inc.  
National Bank Financial Inc.  
TD Securities Inc.  
FirstEnergy Capital Corp.  
Canaccord Capital Corporation  
Desjardins Securities Inc.  
Dundee Securities Corporation  
Raymond James Ltd.

**Promoter(s):**

-

**Project #585419**

---

**Issuer Name:**

Cominar Real Estate Investment Trust  
Principal Regulator - Quebec

**Type and Date:**

Final Short Form Prospectus dated November 5, 2002  
Mutual Reliance Review System Receipt dated November 5, 2003

**Offering Price and Description:**

\$69,000,000.00 - 5,000,000 Units @\$13.80 per Unit

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

National Bank Financial Inc.  
Scotia Capital Inc.  
BMO Nesbitt Burns Inc.  
Canaccord Capital Corp.  
CIBC World Markets Inc.  
Desjardins Securities Inc.

**Promoter(s):**

-

**Project #583886**

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**Issuer Name:**

Diplomat Maximum Growth Portfolio  
Diplomat Growth Portfolio  
Diplomat Balanced Portfolio  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus dated November 3, 2003  
Mutual Reliance Review System Receipt dated November 5, 2003

**Offering Price and Description:**

Mutual Fund Units @ Net Asset Value

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

-

**Promoter(s):**

Opus 2 Financial Inc.

**Project #577917**

---

**Issuer Name:**

GGOF American Growth Fund  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated November 4, 2003 to the Final Simplified Prospectus and Annual Information Form dated July 15, 2003

Mutual Reliance Review System Receipt dated November 7, 2003

**Offering Price and Description:**

Mutual Fund Units and Class F Units

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

Guardian Group of Funds Ltd.  
Guardian Group of Funds Ltd.  
Jones Heward Investment Management Inc.

**Promoter(s):**

Guardian Group of Funds Ltd.

**Project #548985**

---

**Issuer Name:**

Newmont Mining Corporation  
Principal Regulator - Ontario

**Type and Date:**

Amended and Restated MJDS Prospectus dated  
November 5, 2003  
Mutual Reliance Review System Receipt dated November  
6, 2003

**Offering Price and Description:**

U.S. \$1,102,400,000.00

We may offer by this prospectus the following securities for  
sale:

- \* Common Stock
- \* Preferred Stock
- \* Warrants to purchase Common Stock
- \* Senior Debt Securities guaranteed by our subsidiary,  
Newmont USA Limited
- \* Subordinated Debt Securities guaranteed by our  
subsidiary, Newmont USA  
Limited
- \* Warrants to purchase Debt Securities

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

-

**Promoter(s):**

-

**Project #461809**

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**Issuer Name:**

Sierra Wireless, Inc.  
Principal Regulator - British Columbia

**Type and Date:**

Final Short Form Prospectus (NI 44-101) dated November  
10, 2003  
Mutual Reliance Review System Receipt dated November  
10, 2003

**Offering Price and Description:**

US\$ \* - 4,000,000 Common Shares @US\$ \* per Common  
Share

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

CIBC World Markets Inc.

**Promoter(s):**

-

**Project #585535**

---

**Issuer Name:**

SouthernEra Resources Limited  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated November 10, 2003  
Mutual Reliance Review System Receipt dated November  
10, 2003

**Offering Price and Description:**

\$64,000,000.00 - 10,000,000 Units @\$6.40 per Unit

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

RBC Dominion Securities Inc.  
BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
Griffiths McBurney & Partners  
Sprott Securities Inc.

**Promoter(s):**

-

**Project #584851**

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**Issuer Name:**

Sovereign Canadian Equity Pool  
Sovereign US Equity Pool  
Sovereign Overseas Equity Pool  
Sovereign Global Equity RSP Pool  
Sovereign Emerging Markets Equity Pool  
Sovereign Canadian Fixed Income Pool  
Sovereign Money Market Pool  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated October 30, 2003  
Mutual Reliance Review System Receipt dated November  
5, 2003

**Offering Price and Description:**

Class A, Class B and Class F Units

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

Frank Russell Canada Limited  
RBC Dominion Securities Inc.  
RBC Dominion Securities Inc.

**Promoter(s):**

Frank Russell Canada Limited

**Project #578772**

---

**Issuer Name:**

Sprott Canadian Equity Fund  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated October 30, 2003 to the Final  
Simplified Prospectuses and Annual Information Forms  
dated October 7, 2003  
Mutual Reliance Review System Receipt dated November  
5, 2003

**Offering Price and Description:**

-

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

Sprott Asset Management Inc.  
Sprott Securities Inc.

**Promoter(s):**

Sprott Asset Management Inc.

**Project #569938**

---

**Issuer Name:**

Sterling Leaf Income Trust  
Principal Regulator - Alberta

**Type and Date:**

Final Prospectus dated November 4, 2003  
Mutual Reliance Review System Receipt dated November  
7, 2003

**Offering Price and Description:**

Minimum Offering: 500,000 Units (\$5,000,000); Maximum  
Offering: 1,000,000 Units (\$10,000,000) - Price: \$10.00 per  
Unit

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

Investpro Securities Inc.

**Promoter(s):**

Mount Real Financial Management Services Corporation

**Project #558396**

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**Issuer Name:**

Synergy Canadian Small Cap Class  
Synergy Canadian Value Class  
Synergy Canadian Style Management Class  
Synergy Global Style Management Class  
Synergy Global Value Class  
Synergy Tactical Asset Allocation Fund  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated November 3, 2003 to the Final  
Simplified Prospectuses and Annual Information Forms  
dated August 25, 2003  
Mutual Reliance Review System Receipt dated November  
10, 2003

**Offering Price and Description:**

-

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

-

**Promoter(s):**

CI Mutual Funds Inc.  
**Project #558906**

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**Issuer Name:**

Venturelink Brighter Future (Equity) Fund Inc.  
Venturelink Financial Services Innovation Fund Inc.  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated October 28, 2003 to the Final  
Prospectuses dated December 16, 2002  
Mutual Reliance Review System Receipt dated November  
5, 2003

**Offering Price and Description:**

(Class A Shares, Series I and Class A Shares, Series II)

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

-

**Promoter(s):**

CFPA Sponsor Inc.  
Skylon Funds Management Inc.  
**Project #493139**

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**Issuer Name:**

Pheromone Sciences Corp.

**Type and Date:**

Rights Offering Circular dated November 10, 2003  
Accepted on November 11, 2003

**Offering Price and Description:**

19,419,771 Rights to Subscribe for up to 4,854,982  
Common Shares at a Price of \$0.11 per Share

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

-

**Promoter(s):**

-

**Project #582694**

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**Issuer Name:**

PetroGlobe Inc.

**Type and Date:**

Rights Offering Circular dated November 7, 2003  
Accepted on November 10, 2003

**Offering Price and Description:**

Offer of Rights to Subscribe for up to 1,451,867 Common  
Shares at a Subscription Price of \$0.40 per Common Share

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

-

**Promoter(s):**

-

**Project #587687**



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## Chapter 12

# Registrations

### 12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Graydon Elliott Capital Corporation Attention: Roy Johnston 432-10th Street Courtenay BC V9N 1A0	Investment Dealer	Nov 07/03
New Registration	KBC Asset Management International Limited Attention: Heather Zordel c/o Fraser Milner Casgrain LLP 1 First Canadian Place 100 King Street West Toronto ON M5X 1B2	International Adviser (Investment Counsel & Portfolio Manager)	Nov 05/03
New Registration	Mustang Capital Partners Inc. Attention: Robert William Gibson Suite 2400, 205 – 5 <sup>th</sup> Ave. SW Calgary AB T2P 2V7	Limited Market Dealer	Nov 05/03
New Registration	Marsh Canada Securities Limited Attention: James Abernethy 161 Bay Street, Suite 1400 Canada Trust Tower, BCE Place Toronto ON M5J 2S4	Limited Market Dealer	Oct 30/03
New Registration	North Growth Management Ltd. Attention: Rudolph North 505 Burrard Street Suite 830 One Bentall Centre Vancouver BC V7X 1M4	Limited Market Dealer	Oct 24/03
Change in Category (Categories)	Norshield Asset Management (Canada) Ltd. Attention: Clinton Alexander Maxwell 630 Rene-Levesque Blvd. West Suite 3050 Montreal QC H3B 5C7	From: Investment Counsel & Portfolio Manager  To: Investment Counsel & Portfolio Manager Commodity Trading Counsel Commodity Trading Manager	Nov 05/03
Change of Name	Legg Mason Canada Inc. Attention: Owen Douglas Phillips 320 Bay Street Box 9, Suite 1400 Toronto ON M5H 4A6	From: Perigee Investment Counsel Inc.  To: Legg Mason Canada Inc.	Oct 27/03

**Registrations**

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Type	Company	Category of Registration	Effective Date
Change of Name	HSBC InvestDirect Inc. Attention: Jacques Fleurant 250 University Avenue 3 <sup>rd</sup> Floor Toronto ON M5H 3E5	From: Merrill Lynch HSBC Canada Inc.  To: HSBC InvestDirect Inc.	Nov 01/03

## SRO Notices and Disciplinary Proceedings

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### 13.1.1 Summary of Public Comments Respecting Proposed Amendments to MFDA Rule 1.1.6(b) (Introducing and Carrying Arrangement) and Response of the MFDA

#### **SUMMARY OF PUBLIC COMMENTS RESPECTING PROPOSED AMENDMENTS TO MFDA RULE 1.1.6(b) (INTRODUCING AND CARRYING ARRANGEMENT) AND RESPONSE OF THE MFDA**

On July 11, 2003, the Ontario Securities Commission published for public comment proposed amendments to MFDA Rule 1.1.6(b) - Introducing and Carrying Arrangements (the "**Proposed Amendments**"). The MFDA proposal was published in Volume 28, Issue 26 of the Ontario Securities Commission Bulletin, dated July 11, 2003.

The public comment period expired on August 11, 2003.

One submission was received during the public comment period from Performa Financial Group Limited.

Copies of comment submissions may be viewed at the offices of the MFDA, 121 King Street West, Suite 1600, Toronto, Ontario by contacting Laurie Gillett, Corporate Secretary and Membership Services Manager, (416) 943-5827.

The comment letter expressed support for the intention of the Proposed Amendments to make clients aware of the identity and role of the carrying dealer. However, the commentator was of the view that the requirement in Rule 1.1.6(b)(x) for Level 3 and 4 introducing dealers to provide annual disclosure of the relationship between the introducing dealer and the carrying dealer and the relationship between the client and the carrying dealer was excessive.

#### **MFDA Response**

Rule 1.1.6(b)(x) will provide flexibility for Level 3 and 4 introducing dealers by allowing them to choose between providing written disclosure to clients of the relationship between the introducing dealer and the carrying dealer and the relationship between the client and the carrying dealer on an annual basis or disclosing the carrying dealer's name and role on an ongoing basis on all contracts, account statements and trade confirmations in accordance with Rule 1.1.6(b)(ix). The disclosure requirement under Rule 1.1.6(b)(x) for Level 3 and 4 introducing dealers is consistent with the IDA's disclosure requirements for Type 3 and 4 introducing/carrying brokers.

September 19, 2003.

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