The Ontario Securities Commission

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Commodity Futures Act of Ontario (R.S.O. 1990, c.C.20)

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Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

NOVEMBER 21, 2003

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

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

The Harry S. Bray Hearing Room
Ontario Securities Commission
Cadillac Fairview Tower
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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 24 and 28, 2003 10:00 a.m.	**Demitrios Boulieris** s. 21.7 and s. 8(2) K. Wootton in attendance for Staff Panel: PMM/PKB/ST
December 1 to 5, 2003 10:00 a.m.	**Teodosio Vincent Pangia, Agostino Capista and Dallas/North Group Inc.** s. 127 Y. Chisholm in attendance for Staff Panel: HLM/ST
February 19, 2004 to March 10, 2004	**ATI Technologies Inc., Kwok Yuen Ho, Betty Ho, JoAnne Chang, David Stone, Mary de La Torre, Alan Rae and Sally Daub** s. 127 M. Britton in attendance for Staff Panel: TBA
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 Insider Trading Task Force Report - Illegal Insider Trading in Canada: Recommendations on Prevention, Detection and Deterrence

ILLEGAL INSIDER TRADING IN CANADA: RECOMMENDATIONS ON PREVENTION, DETECTION AND DETERRENCE

November, 2003

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Executive Summary

Canada's securities regulators responsible for regulating insider trading combined in September 2002 to form the Insider Trading Task Force with the objective of evaluating how best to address illegal insider trading on Canadian capital markets. Illegal insider trading involves the buying or selling of a security while in possession of undisclosed material information about the issuer, and includes related violations such as 'tipping' information and securities trading by the person 'tipped'. It erodes investor confidence by causing investors to believe that insiders have an unfair advantage.

A series of recommendations is presented in the report, focussed on addressing illegal insider trading from three directions: prevention, detection and deterrence. The recommendations are made with the objective of increasing the effectiveness of current regulatory efforts to address illegal insider trading undertaken on Canadian equities and derivatives markets. They are made in the context of an international regulatory environment that is fast becoming intolerant of practices that have assisted illegal insider trading to occur, such as the use of offshore accounts to hide beneficial ownership. They also, however, are made in recognition of a regulatory environment that is becoming increasingly complex and costly for market participants. As a result, most of the recommendations should result in little or no cost to market participants. Those with a cost attached, such as enhancing surveillance detection technologies, should result in benefits that extend beyond the regulation of insider trading to significantly improve the ability to regulate market integrity in general.

Some of the major recommendations are as follows**:**

Prevention

- issuers whose securities are listed for trading on Canadian markets be encouraged to:
    - adopt the best practices provided in the CSA's Disclosure Standards Policy and the CIRI Standards and Guidelines for Disclosure
    - only retain lawyers and accountants who have adopted best practices for information containment as developed by their professional associations
- OSFI develop regulations for the management of inside information received by banks during their credit or other relationships with issuer clients
- intermediaries be required to meet IDA-mandated best practices on information containment including maintaining records of persons solicited to participate in bought deals
- markers identifying trading by insiders be made available on a real-time basis to all investors
- guidelines be provided to market participants, and applicable legislative prohibitions enforced, for the appropriate time delay for trading by those with pre-announcement knowledge of inside information following the announcement of the material event

Detection

- securities commissions mandate and coordinate the development of an electronic database of integrated trade and client data to improve the effectiveness of market regulators to detect and prove illegal insider trading
- "shell banks" and residents of any jurisdiction that does not have a satisfactory regulatory regime not be permitted to open accounts with Canadian dealers
- offshore financial institutions be permitted to open accounts with Canadian dealers only on the condition that they consent to identify on request the individual responsible for a trade (subject to a cost/benefit analysis)
- direct access to a marketplace be prohibited for residents of jurisdictions that do not have a satisfactory regulatory regime unless confidentiality protections are waived
- Canada's market regulators (RS and the Mx) coordinate their regulation of equities and derivatives of those equities
- RS and the Mx work with regulators of other markets around the world to create a centralized international database that identifies the markets upon which equities and their derivatives trade as well as inter-market misconduct

Deterrence

- the Federal Government pass Bill C-46, amended to apply the concepts underlying the U.S. criminal law approach to illegal insider trading

- the formation of a nationally integrated working group, including representation from the securities commissions, SROs and the RCMP, be considered to focus solely on illegal insider trading, including assisting in the implementation of this report's recommendations.

1.0 Introduction

1.1. Insider Trading as a Violation

Illegal insider trading involves the buying or selling of a security while in the possession of undisclosed material information about the issuer of the security, and includes related violations such as 'tipping' information and securities trading by the person 'tipped'. A principle of securities regulation in North America is that markets operate efficiently on the basis of timely and full disclosure of all material information. Laws that require timely disclosure of material information and prohibit insider trading in the absence of full disclosure support this principle. Trading on "inside information", as defined in Appendix B, including illegal insider trading and related misconduct such as tipping, undermines this principle.

Various critics of the nature and extent of securities legislation in North America have taken the view that insider trading is an essentially victimless activity. However, trading on inside information, including illegal insider trading, does produce 'victims'. They include:

- the investor, unaware of the inside information, who transacts with a person who knows of the inside information. The person with inside information benefits from this unequal and unfair relationship by the amount the transaction price would have differed had both sides had access to the same generally disclosed information.

- market participants in general. A market that permits those with inside information to benefit to a greater extent than others results in a market that is inherently unfair, to the detriment of those participants who have no inside information.

- the issuer and its shareholders. Illegal insider trading in the securities of the issuer represents a "misappropriation" of valuable information that is the property of the issuer and, indirectly, its shareholders. In addition, when a corporate insider is found to have engaged in illegal insider trading, the perception of the integrity of the issuer's management is compromised as is the issuer's corporate reputation and its attractiveness as an investment.

- in the specific instance of insiders of an issuer structuring their acquisition of securities from treasury with knowledge of inside information, the issuer's shareholders may be victimized due to the resulting dilution of the value of their shareholdings if those treasury securities are issued at a price that is lower than would have applied had the information been disclosed. Equally, the issuer would be victimized as a result of being induced to issue undervalued securities.

- the Canadian economy to the extent that investors may avoid the Canadian securities markets due to perceptions of an unfair and poorly regulated marketplace. Canadian markets operate in a competitive international environment that generally accepts the need for not only efficient markets but fair markets. Prevalent trading on inside information results in investment capital avoiding that market and adversely impacts the market's liquidity and the cost and availability of capital. It also indirectly adversely impacts overall growth and employment in the economy.

Trading on inside information, especially illegal insider trading, can cause significant harm to the fairness and efficiency of Canadian capital markets. Even the perception that illegal insider trading is prevalent can cause harm. This is so because it undermines investor confidence in the fairness and integrity of capital markets.

1.2 Insider Trading Task Force

The regulatory structure in Canada to address illegal insider trading is depicted in the diagram below. The diagram includes all of the regulatory authorities involved in Canada in preventing, detecting and deterring illegal insider trading and summarizes the role each plays. The Insider Trading Task Force was established in September 2002 by these regulatory authorities, comprising the Ontario, British Columbia and Alberta Securities Commissions, the Commission des valeurs mobilieres du Quebec, the Investment Dealers Association of Canada, the Bourse de Montréal and Market Regulation Services Inc.

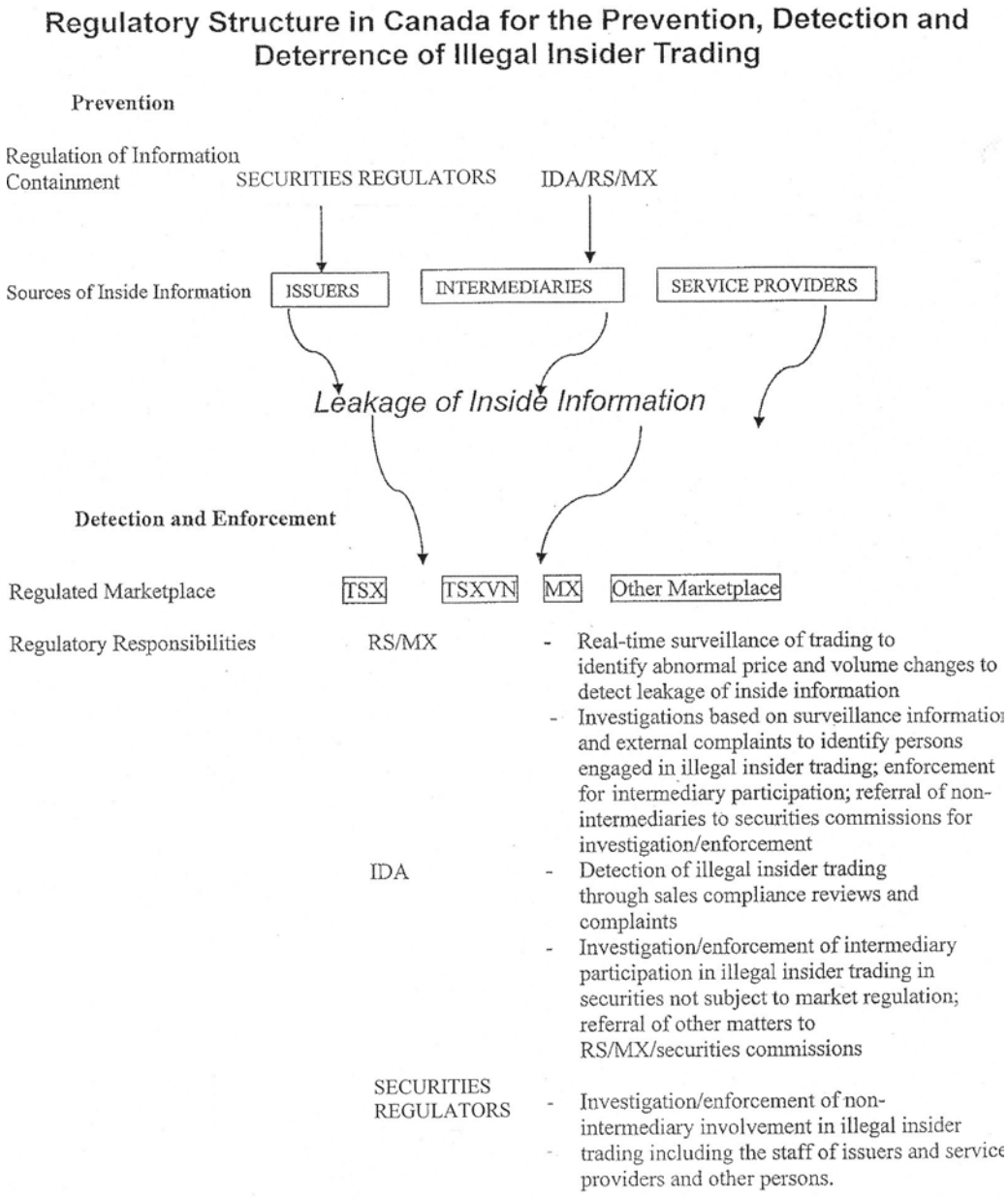
The Task Force was formed out of concerns among its participating securities regulators that:

- there is a public perception that illegal insider trading is prevalent and increasing on Canadian markets, and

- although many suspected incidences of illegal insider trading are being identified through market surveillance, there have been few successful enforcement actions.

The mandate of the Task Force was to examine illegal insider trading in the Canadian marketplace in order to determine more effective means of addressing it, including:

1. identifying means of reducing the risk of illegal insider trading occurring, such as by promulgating best practices for dealers, issuers and service providers to limit the leakage of inside information;



Note: "Securities Regulators" refers to the provincial and territorial securities commissions.

2. increasing the ability of regulators to detect illegal insider trading when it occurs, such as by addressing offshore and nominee account issues and by coordinating the regulation of equities with their derivatives; and

3. increasing the success of deterrence efforts through:

    - better coordination among regulatory agencies,

- ensuring the laws are adequate, and
- improved enforcement mechanisms and penalties.

1.3 Methodology

The review took place between February and June 2003 and included:

- a survey of market participants,
- discussions with staff at the OSC, BCSC, CVMQ, ASC, IDA and RS about regulatory processes, tools, best practices, challenges, and insight to regulation,
- inspection of relevant rules and policies of the IDA, RS and the Mx,
- review of all insider trading investigations open in Canada during calendar 2001 and 2002,
- interviews of staff at non-Canadian regulators, including the SEC, FSA, ASIC, NYSE and NASD, about regulatory processes, tools, best practices and insight to regulation,
- consultation with the ICAO, CBA, CIRI and the institutional subcommittee of the Compliance and Legal Section of the IDA about information containment,
- preparation of a bibliography of papers and articles on insider trading.

Some specific matters were beyond the scope of the project including:

- insider report filing obligations,
- the use of over-the-counter derivatives to carry out illegal insider trading,
- spread betting (i.e. bookmaking in changes in the value of securities),
- insider trading in debt securities, and
- independent benchmarking of Canadian market surveillance systems.

2.0 Quantifying the Issue

2.1 Incidence of Illegal Insider Trading

Economists have been presenting consistent empirical evidence of widespread insider trading on various markets around the world for over a decade. Economists define insider trading broadly as trading on inside information, being material facts or changes that have not been publicly disclosed through a media report or other official means of general dissemination. It is difficult, however, to determine how much of that trading would represent illegal insider trading as defined in Canada under provincial securities statutes.

The methodology used to date to quantify insider trading relies on identifying statistically abnormal changes in market price and volume before announcements of material events. These methods, however, are not sufficiently refined to do more than identify an apparent order of magnitude of trading on inside information, including for example speculative trading that derives from the leakage of inside information but does not meet the definition of illegal insider trading. Better analytical tools are becoming available and will over time yield more information about the nature and extent of illegal insider trading than traditional models are currently capable of doing.

Canadian markets are founded on the basis of fairness, which suggests that investors, whether insiders or not, should not be allowed to trade on inside information, however it was obtained. Market efficiency, the other central principle of market regulation, is directly tied to how quickly material information flows through the market and is incorporated into securities prices. Any trading on inside information that occurs on Canadian markets has a direct adverse impact on the fairness and efficiency of those markets and, as various academic research papers have concluded, consequently on market liquidity and the cost of capital.

Examples of proven illegal insider trading that has occurred over the past 15 years in Canada include: Russell J. Bennett, William R. Bennett and Harbanse S. Doman (approximately $2.3 million in losses avoided from sales of Doman Industries Ltd.

shares in 1988); Seakist Overseas Ltd., Michael G. de Groote et al (approximately $16.5 million in net profits from the short sale of Laidlaw Inc. shares in 1991); Glen Harper (approximately $3.6 million in losses avoided from selling shares of Golden Rule Resources Ltd. in 1997); and MCJC Holdings Inc. (unreported net profits from the sale of $20.4 million in Corel Corporation shares in 1997).

Due to data limitations, it is currently very difficult to establish accurately the extent of insider trading, much less illegal insider trading, that occurs on Canadian markets. Nevertheless, academic research consistently evidences trading on inside information on markets around the world. There is no reason to believe that Canadian markets would not also be victimized by these activities. With increased ease of access to offshore trading and the continued development of the options and single stock futures markets, illegal insider trading threatens to become more prevalent and profitable over time without strategies to mitigate the risk. The recommendations in this report are intended to result in a reduction in this risk by:

- decreasing the amount of inside information leakage through issuers, intermediaries and other service providers;
- improving the effectiveness of practices and procedures used to detect trading on inside information and, specifically, illegal insider trading; and
- increasing the credibility of the enforcement regime.

2.2 Cost of Regulating Insider Trading in Canada

The regulatory organizations in Canada who include within their mandates the responsibility for identifying, investigating and prosecuting illegal insider trading currently spend in aggregate approximately $8.1 million annually on that regulation. This regulatory cost can be compared to the significant damage illegal insider trading can cause to Canadian capital markets. Nevertheless, the Task Force recognizes that the cost of regulating illegal insider trading should be proportionate to the risk. Risk criteria, in addition to “profits made from illegal insider trading”, could include:

- the incidence of illegal insider trading, including in securities not addressed by this report (as referred to previously under “Methodology”),
- the impact on market price,
- the incidence of illegal insider trading as a component of other serious violations such as manipulation and corporate accounting fraud, and
- a rating of the potential for negative economic consequences, for example on market liquidity, the cost of capital and the ability to attract investment capital to the Canadian marketplace.

A risk-based approach focuses on evaluating the risks of the conduct and the value of regulatory success in limiting the specific misconduct. It provides a supportable basis for determining the proportion of scarce resources to attack the problem of illegal insider trading. A risk-based approach is a relatively long-term initiative, requiring significant analysis and evaluation by all regulatory organizations concerned. In the meantime, the recommended improvements are justifiable provided their cost is reasonable and proportionate to their value in increasing the efficiency and effectiveness of regulatory efforts to address illegal insider trading.

3.0 Prevention

Illegal insider trading can occur only when a person has access to inside information about an issuer that others do not, by virtue of some special relationship that person has with the issuer. That person can then use the information to personal advantage by buying or selling securities of the issuer before the information is generally disclosed to the public. To the extent that the flow of inside information is contained, the risk of illegal insider trading is lessened. Conversely, when information is disclosed in a timely manner, there is less risk that an individual can benefit from the information to the possible detriment of other investors.

Many individuals within issuers have access to inside information, as do service providers such as dealers, accountants, lawyers, bankers, technical specialists, analysts, actuaries and printers. This section reviews how issuers, dealers and other major service providers can best ensure that material information does not leak out prior to the information being generally disseminated. The section also reviews how best to ensure that issuers and those in possession of inside information meet the substance and intent of timely disclosure requirements. The objective of better information containment and timely disclosure practices is a reduced risk of illegal insider trading occurring.

3.1 Best Practices for Information Containment

3.1.1 Issuers

The CSA in its National Policy 51-201 entitled *Disclosure Standards* articulates detailed best practices for issuers for disclosure and information containment as well as provides a thorough interpretation of insider trading laws. CIRI, a not-for-profit association of executives responsible for communications among public corporations, investors and the financial community, also has published a set of guidelines for best practices for issuers entitled *CIRI Standards and Guidance for Disclosure and Model Disclosure Policy – Second Edition 2003*. CIRI's set of best practices is consistent with and supports the CSA's Disclosure Standards Policy as well as TSX and TSXVN guidelines and requirements on disclosure.

The CSA and CIRI recommend that issuers adopt written disclosure policies to assist directors, officers and employees and other representatives in discharging timely disclosure obligations. Written disclosure policies also should provide guidance on how to maintain the confidentiality of corporate information and to prevent improper trading on inside information. The CSA and CIRI best practices offer guidance on broad issues including disclosure of material changes, timely disclosure, selective disclosure, materiality, maintenance of confidentiality, rumours and the role of analysts' reports. In addition, guidance is offered on such specifics as responsibility for electronic communications, forward-looking information, news releases, use of the Internet and conference calls.

Adopting the CIRI and CSA best practices as a standard for issuers would assist issuers to ensure that they take all reasonable steps to contain inside information.

Recommendation #1: Canadian equity marketplaces amend their timely disclosure policies to:

- **recommend that issuers adopt the best practices provided in the CSA's Disclosure Standards Policy and the CIRI Standards and Guidelines for Disclosure; and**
- **emphasize (i) the responsibility of boards of directors and senior officers of issuers for compliance with best practices for information containment, as exemplified by the CSA and CIRI best practices, and (ii) where directors or senior officers fail to fulfil this responsibility, their suitability to act may be reviewed by the marketplace.**

A consistent concern raised by directors and officers of issuers is that, due to the complexity of the insider trading laws and associated requirements, it is difficult for them to understand how to meet their responsibilities in connection with information containment, timely disclosure and related trading restrictions. Educational activity directed to them would reduce the risk of illegal insider trading occurring by focussing on their obligations in these areas, as well as on the market integrity standards underlying insider trading restrictions, and the possible consequences of wrongdoing. Every new director and officer of an issuer is required to file a Form 4B with the exchange upon which the issuer is listed or with a provincial securities commission. A relatively simple means of ensuring that each of these directors and officers is provided with the information necessary to enable them to meet these obligations is to send each an information package upon their filing the Form 4B. The cost of preparing and sending the information package could be paid for out of various education funds accessible to the commissions and exchanges.

Recommendation #2: The CSA, with the Canadian equities markets, develop a process whereby, upon receipt of a Form 4B, the director or officer is sent an information package that includes responsibilities and guidelines applicable to information containment, timely disclosure and insider trading restrictions, as well as background on the underlying market integrity standards and potential sanctions.

3.1.2 Service Providers

It is the responsibility of the issuer, and its directors and senior officers, to take all reasonable steps to ensure the containment of inside information. Although issuers have the power to enforce best practices to contain inside information within their own organization, they are not in the same position to ensure that their service providers who have access to inside information also adopt best practices.

Issuers are permitted to disclose inside information to service providers, such as lawyers, accountants, dealers and bankers, if in the normal course of their employment, profession or duties. This exemption to the general prohibition on disclosing inside information relies on service providers being bound by their own regulations or codes of conduct to contain inside information. However, a review by the Task Force of provisions in the regulations or codes of conduct governing the major service providers found that specific requirements on containing inside information either do not exist (lawyers, accountants, banks) or were incomplete and inconsistently applied across the country (dealers). The absence of best practices on information containment

for service providers weakens the effectiveness of efforts to reduce the incidence of illegal insider trading and tipping. It also makes it very difficult for issuers, in attempting to meet their obligations on information containment, to assess the adequacy of their service providers' information containment procedures. Standards would assist issuers to meet their obligation to minimize the potential leakage of inside information through service providers by providing issuers with a means to choose service providers that have adopted these standards.

(i) Lawyers

Lawyers and their employees, including students, are often exposed to inside information in the course of acting for issuers. There are no national or provincial rules or practices for lawyers that address directly the containment of inside information. The Canadian Bar Association, as well as the provincial law societies, would be the appropriate entities to develop and obtain consensus on a set of national best practices for lawyers on containment of inside information obtained during the course of acting for issuers.

Recommendation #3: The CSA work with the CBA and the provincial law societies to develop substantive best practices for information containment for lawyers.

Recommendation #4: Canadian equity marketplaces amend their timely disclosure policies to:

- **recommend that issuers retain only lawyers who have adopted best practices on information containment; and**
- **emphasize (i) the responsibility of boards of directors and senior officers of issuers for compliance with best practices on information containment, as exemplified by using only lawyers who have adopted best practices on information containment and (ii) where directors or senior officers fail to fulfil this responsibility, their suitability to act may be reviewed by the applicable marketplace.**

(ii) Accountants

Professional accountants providing services to issuers in Canada consist of chartered accountants, certified general accountants and certified management accountants. Chartered accountants dominate the provision of audit and advisory services to issuers in Canada. Accountants and their employees, including students, gain access to inside information during the course of providing audit, tax, finance, investigation, insolvency, valuation and other advisory services to an issuer. As a result, there is the potential for misuse of such inside information.

There are currently no recognized best practices for accountants to follow for containment of inside information. The ICAO was asked to advise the Task Force on best practices for accountants.

In a written report, the ICAO explained that it mandates that all members govern themselves in accordance with the profession's rules of conduct. The rules of conduct state that a member of the ICAO shall not disclose any confidential information concerning the affairs of any client (including a former client, employer or former employer) except in certain circumstances. The exceptions are where a professional duty, legal or judicial process or law requires disclosure, where disclosure is necessary to defend the firm or where the client consents to disclosure. In addition, the member shall not use confidential information for personal advantage, the advantage of a third party or to the disadvantage of a client, without the consent of the client. The ICAO rules permit the use of confidential information with consent of the issuer client, however consent is irrelevant in the case of illegal insider trading.

The CICA provides guidance to accountants on complying with the profession's rules of conduct. They encourage accountants to consider implementing an internal policy regarding confidentiality, communicate the policy to personnel and at least annually have personnel confirm compliance with the policy. The CICA further recommends that the policy have detailed guidelines and examples depicting circumstances and the related problems that could occur in practice. However, the implementation of such a policy is not mandatory and cannot be enforced.

The ICAO conducted a survey in 2003 to provide the Task Force with a summary of existing practices in information containment among the large accounting firms. The practices address issues such as risk management, hiring polices, confidentiality of client information (including former clients and non-clients), affirmation of and compliance with a policy on confidentiality, codes of ethics, written policy manuals, treatment of inside information, restricted lists and information barriers. The practices vary among firms and the ICAO did not identify best practices from the existing practices and, even if it had, the best practices would not be binding.

The CICA conducts research into current business issues and sets accounting and assurance standards. A collaborative effort on the part of the CICA and the provincial institutes is required to develop a set of national best practices for accountants on containment of inside information obtained during the course of performing audit and other services for issuers.

Recommendation #5: The CSA work with the CICA and the provincial institutes of chartered accountants to develop substantive best practices for information containment for accountants.

Recommendation #6: Canadian equity marketplaces amend their timely disclosure policies to:

- **recommend that issuers retain only accountants who have adopted best practices on information containment; and**
- **emphasize (i) the responsibility of boards of directors and senior officers of issuers for compliance with best practices on information containment, as exemplified by using only accountants who have adopted best practices on information containment and (ii) where directors and senior officers fail to fulfil this responsibility, their suitability to act may be reviewed by the applicable marketplace.**

(iii) Banks

There is the potential for inside information to be disclosed as a result of a banking or other commercial-lending relationship. For example, an issuer may disclose to its banker that it requires an exemption from a loan covenant. This information may well be material information. However, not all banks have a process whereby the issuer is then put on a restricted list. Restricted lists are effective tools for monitoring potential misuse of inside information by bank employees.

This is a regulatory gap that to date has not been fully addressed in Canada. In the United States, the issue has been the subject of recent consideration within the context of credit market participants (defined as institutions that (i) maintain loan portfolios (through origination, acquisition or both) or engage in other activities that generate credit exposures, (ii) may receive inside information in connection with these credit exposures or other activities and (iii) engage in credit-portfolio-management activities).

The normal business activities of credit market participants should trigger insider trading restrictions in some circumstances. As commercial lenders, credit market participants receive inside information from borrowers, both in connection with the origination or acquisition of loans and at subsequent stages, pursuant to standard reporting covenants in their loan agreements or in accordance with normal due diligence and related lending practices.

Credit market participants should have in place information controls and related policies and procedures appropriate to their business activities and organizational structures to control, limit and monitor the inappropriate dissemination and use of inside information. Such information controls may include (i) establishing a 'wall' to prevent access to inside information by persons having responsibility for the execution of, or the decision to execute, security-based transactions, (ii) 'need-to-know' policies to limit the dissemination of information within the firm, (iii) restricted lists, watch lists and trading reviews to help restrict, monitor or control transactions when the firm possesses inside information, and/or (iv) combinations of the foregoing.

OSFI oversees Canadian banks with a focus on safety, soundness and reputation.

Recommendation #7: The CSA request that OSFI develop regulations for the management of inside information received by banks during their credit or other relationships with issuers.

(iv) Dealers

Investment dealers facilitate the buying and selling of securities of issuers and are exposed to a great deal of inside information about issuers. In Ontario, the requirements for dealers to contain inside information are covered in OSC Policy 33-601, including the use of grey lists, restricted lists and information barriers. OSC policies are non-binding statements or guidelines intended to inform and guide those subject to Ontario regulation.

Policy 33-601 states that the board of directors and senior officers of a registrant are responsible for ensuring that appropriate policies and procedures for the business activities of the registrant are adopted, maintained and enforced. A registrant of the OSC is encouraged to consider establishing written policies and procedures in the following areas:

- education of employees, including education about insider trading and ethical standards, what constitutes inside information, the legal consequences for breaches of the restrictions and ethical responsibilities of the registrant;

- containment of inside information, by limiting unauthorized transmission of inside information, such that the registrant should consider restricting access to areas that are in receipt of inside information, including the corporate finance area, and by designating departments as sensitive areas and separating those departments from others or, if restricting access to departments is not practical, then treating all of the departments as being 'behind the wall'. In addition, the registrant should assure the security of confidential information by restricting access to inside information, using code names in the place of proper names, keeping information in sensitive areas secure and ensuring electronic transmission of inside information takes place under adequate controls;

- restriction of transactions through the use of grey lists and restricted lists; and

- compliance policies and procedures to include monitoring and reviewing trading in registrants' accounts, monitoring and/or restricting trading in securities about which the registrant or its employees may possess inside information, monitoring, reviewing and/or restricting trading of all employees, requiring all employees to maintain accounts with the employer registrant only, requiring a senior officer to be responsible for the implementation and enforcement of policies and procedures and instituting a periodic review of the adequacy of policies and procedures.

A review of the compliance manuals of several major Canadian investment dealers found only one that included guidance for employees on best practices for information containment. At the request of the Task Force, the IDA developed a draft set of best practices for information containment by investment dealers modelled on OSC Policy 33-601. The IDA draft best practices detail the steps that dealers should take for information containment. Specifically, the IDA best practices address such safeguards as information barriers, grey lists and restricted lists to help ensure information containment. They were developed on the basis that a common set of mandated best practices for information containment by dealers would not only assist to ensure fairness in the marketplace for investors but would also provide a standard for dealers to meet.

Neither the IDA's draft best practices nor OSC Policy 33-601 specifically deals with information containment within the context of private placements. In March 2003, a committee of investment dealers, composed of nine Vancouver-based firms that participate in retail offerings, developed a set of best practices for information containment in non-prospectus offerings. The Task Force endorses the work of the Vancouver dealer group.

The draft IDA best practices also do not specifically address the issue of information containment in the case of a "bought deal". At present there is no requirement that a dealer maintain records about those parties that have been solicited about potential interest in a bought deal. However, there is a risk that information, disclosed to potential participants who do not eventually take part in the bought deal, may be leaked thus providing an opportunity for illegal insider trading. The maintenance of records of contacts, including individuals and their relevant affiliations, would be of assistance in investigating suspected illegal insider trading.

Recommendation #8: **The IDA mandate best practices in information containment appropriate to the nature of a member's business, modelled on OSC Policy 33-601 and specifically addressing:**

- **private placements, as developed by the Vancouver dealer group, and**

- **bought deals**.

A review of the practices of the regulators reveals a patchwork approach in Canada to regulation of information containment by dealers. The IDA has primary responsibility in the area and reviews the practices of its members with respect to grey and restricted lists and information barriers as part of its sales compliance process. RS, as part of its trade desk compliance review function, reviews trading by dealers to ensure those with inside information are not trading on the basis of such information. As well, through its market surveillance functions, RS identifies any unusual trading patterns that may signal the leakage of inside information. The Mx also deals with information containment as part of its sales compliance reviews, through its market surveillance function and through its trade-desk review function. Finally, the TSXVN plays a role in regulating information containment by dealers, specifically addressing the requirements for information containment by a sponsor, required for an issuer to list its securities on the exchange.

There is some duplication in regulators' practices regarding review for information containment by dealers. At the same time, no one regulator fully covers all of the elements of Policy 33-601. A co-ordinated effort among regulators to fully review all of the elements identified in Policy 33-601, to avoid fragmented regulation in this area and to eliminate duplication would result in a more effective and efficient regulatory regime.

Recommendation #9: **The IDA, RS, Mx and TSXVN form a committee to amend their procedures for the regulation of information containment by dealers to i) address the elements identified in OSC Policy 33-601, ii) eliminate duplication of effort and iii) rationalize the regulation of information containment.**

3.2 Timely Disclosure

3.2.1 Timely Disclosure Policies

Securities legislation in the majority of Canadian provinces and territories imposes a general timely disclosure obligation upon issuers. The rationale for timely disclosure is that all persons investing in securities must have equal access to information about issuers that may affect their investment decisions. Issuers are required to make immediate disclosure of material changes in their business, operations or capital by way of a news release. Subsequently a report explaining the material change must be filed with the appropriate securities commission. Securities regulators, however, encourage issuers to go beyond a narrow definition of what constitutes a material change to keep the marketplace advised about developments that may be relevant to investors and potential investors.

The CSA published NP51-201 Disclosure Standards in July 2002. NP51-201 describes the type of information that may be considered material to investors and that the CSA believes issuers should be disclosing on a timely basis.

Issuers that are listed on the TSX or TSXVN are subject to additional timely disclosure requirements. These issuers must make immediate disclosure not only of material changes in their business, operations or capital, but also of any material information whether or not that information constitutes a material change. Further, the TSX requirements provide that disclosure must be made upon the information becoming known to management or, in the case of information previously known, upon it becoming apparent to management that the information is material.

The TSX and TSXVN have written policies for issuers that deal with requirements for disclosure of material information on a timely basis. The TSX rules on timely disclosure are in Part IV of the TSX Company Manual, and the TSXVN rules are in Policy 3.3 of its Corporate Finance Manual. Both sets of rules detail the obligations of each of the exchange's listed issuers for timely disclosure of material information. Compliance with these rules is required in order to continue meeting listing requirements on each exchange. Consistency between exchange policies would benefit both issuers and the public in standardizing information availability and the timeliness with which it is delivered. However, TSXVN issuers often require additional guidance and, as such, it is recognized that the TSXVN policy should have additional provisions as necessary.

The Task Force compared each exchange's timely disclosure rules to identify inconsistencies. The most significant are:

- each policy defines terms differently, such as "material information", "listed securities" and "issue". The exchanges should harmonize the use and definition of these key terms.
- both policies set forth a test for when an issuer must explain to the market the impact of external, political, economic and social developments on the issuer, but the tests are inconsistent. Both policies should use the "reasonably be expected" test.
- both policies should use the concept of "immediate disclosure" throughout. Both policies should refer to a list of events as "likely" to require immediate disclosure, with an additional provision indicating where TSXVN issuers "must make" immediate disclosure to reflect the different thresholds of materiality for more junior issuers.

The TSX and TSXVN have agreed to harmonize their timely disclosure policies to address these inconsistencies.

Recommendation #10: TSXVN and TSX harmonize their timely disclosure policies.

3.2.2 Materiality

One of the elements of the offence of illegal insider trading is that the information traded on must be material. Ontario's *Five Year Review Committee Final Report* (March 2003) provided a review of many areas of securities law, including the issue of materiality. The Committee concluded that there is considerable confusion about the difference between 'material fact' and 'material change' and the purpose for which each of these terms is used in securities legislation. Clarity on what constitutes materiality will not only assist regulators to enforce insider trading prohibitions but also will assist issuers to determine when disclosure is necessary. The Task Force endorses the following recommendations contained in the March 2003 Report:

1. The CSA study whether the current definition of 'material change' and timely disclosure reporting obligations should be amended to encompass:
    - a broader scope of discloseable events;
    - itemized issuer-specific events requiring timely disclosure, similar to the SEC's Form 8-K approach; and
    - a requirement that agreements relating to the reported disclosure be filed as a schedule to the public report.

2. The existing 'market impact' materiality standard be changed for all purposes under securities legislation to a 'reasonable investor' standard.

The statutory definitions of material fact and material change, even if revised as recommended, leave open the issue that what may be material to an investor is not necessarily material to an issuer. For example, in a recent case in the United States, an investor allegedly sold securities with knowledge of an insider's sale of a significant block of securities. While the information may not necessarily meet the definition of a material fact or change for an issuer under provincial legislation, such information is arguably material information for investors that was not generally disclosed. In somewhat analogous circumstances, a recent Canadian case involved market speculation at the prospect of a take over bid that insiders knew would not occur. In that case, the market was trading on a rumour that was false and insiders sold during the speculative period. Again, in the circumstances, the fact that the take over bid would not occur was material information to the speculators but did not meet the definition of a material fact or change for the issuer under provincial legislation.

There is a relatively straightforward way to address these disclosure issues that does not require amending securities legislation to broaden the definition of material fact or material change. In accordance with UMIR, dealers are required to mark all insider trades at the time of entry and this information is available to RS in real time. These markers are currently not disclosed to the public. The disclosure of insider markers in real time to the public will level the playing field in respect of trading information that may be material to investors.

Recommendation #11: RS amend UMIR to enable the disclosure of insider trading markers in real time to the public.

3.2.3 Generally Disclosed

Provincial securities legislation prohibits trading on inside information until that information has been "generally disclosed". Most market participants interpret general disclosure to occur upon the issuance of a news release disclosing the material information. However, the intent of the general disclosure provision is that market participants not only have equal access to the information by way of the news release but that they also have sufficient time to read and digest the information in order that they can make investment decisions taking the information into account. This is exemplified in U.S. regulations that consider dissemination of information complete only "when the public has assimilated the information in the disclosure". It is also exemplified to some extent by the requirement of Canadian exchanges that issuers inform the market regulator prior to the announcement of a material event in order that trading in the securities can be halted pending the announcement. A halt lasts for, on average, approximately one hour after the announcement.

Because of the ongoing information advantage insiders and others in possession of inside information have, they should be prohibited from trading after the announcement of a material event until a sufficient time for the evaluation of the materiality of the event has passed. If a halt is not imposed by the market on which the securities trade, the prohibited trading period should be no less than the trading day upon which the material event is announced. Where a halt has been imposed, market analysis indicates that in some instances the average one hour halt may not be long enough for the significance of a material event to be fully digested by the market. The markets and RS should evaluate, and recommend to the securities commissions, the appropriate prohibited trading period after the halt is lifted for those who were in possession of the inside information. With that information, the securities commissions should clarify the meaning of "generally disclosed" under provincial securities legislation by providing guidelines on the minimum length of time those with prior knowledge of the inside information are prohibited from trading. The guidelines should be sufficiently clear to permit enforcement action to be taken against persons who trade after the issuance of a news release but before the news has been "generally disclosed".

Recommendation #12: The CSA, with input from RS and the Canadian securities markets, clarify the legislative prohibition on persons in possession of inside information trading after the announcement of the event, but before there has been sufficient time to evaluate the materiality of the event, in order that the prohibition can be enforced.

3.2.4 Exemption for Mutual Knowledge of Material Information

Under provincial legislation, a person is exempt from the insider trading prohibition where the person reasonably believed that the other party to the purchase or sale had knowledge of the material fact or change. A similar exemption exists for tipping. The 'mutual knowledge' exemption is also incorporated in the civil liability provisions. However, as the ASC pointed out in *Richard Harry Seto* (ASC, Feb.19, 2003), the legislation does not appear to address the harm that can occur when the parties to the transaction are the reporting issuer itself and an insider directing or causing the issuance of securities. The potential harm arises from the possibility that insiders can structure to their own benefit the acquisition of treasury securities at prices that do not reflect the price that would apply were the inside information generally disclosed. In such circumstances, other shareholders are harmed as a result of the issuer receiving proceeds from the sale of securities that do not reflect the market value of the securities that would have applied had the inside information been generally disclosed.

The ASC concluded in *Seto* that '*In the face of what appears to be a technical gap in the legislation and a very real prospect of public injury, if parties are to take advantage of this anomaly, we will continue to review the facts and circumstances of each case … to determine whether the circumstances warrant the exercise of our public interest jurisdiction*.' A better solution would be to limit the breadth of the exemption to exclude transactions between an insider and the issuer.

Recommendation #13: The CSA, through its USL Project, adopt a uniform approach for the exemption from the application of insider trading prohibitions when each party to the transaction has knowledge of inside information – the exemption should be limited to exclude transactions between an insider (or other persons in a special relationship) and the issuer.

4.0 Detection

Illegal insider trading is detected through the use of market surveillance and data-mining systems, complaints and tips, dealer compliance efforts and inter-agency information-sharing. Recommendations are made in this part of the report to enhance the effectiveness of each of these detection methodologies. As well, the report looks in particular at the use of nominee and offshore accounts to engage in illegal insider trading and provides recommendations to improve regulatory success at identifying the involvement of these accounts. Finally, in recognition of the increased ease of access to trading on markets around the world, the report makes recommendations to increase the level of information-sharing and investigative coordination among regulators of both equities and derivatives markets.

4.1 Detection Processes

4.1.1 Surveillance

Most illegal insider trading enforcement cases in Canada initially are detected through market surveillance systems that monitor trading on a same-day or next-day basis, looking for volume and price changes that are outside of 'normal' patterns. Equities markets in Canada are monitored by RS, an organization that is independent of these markets. The Mx provides surveillance of the derivatives market.

Derivative instruments such as options, futures and swaps are based on underlying assets such as equities and, in part, derive their value from those assets. Derivatives can be traded on an exchange or over-the-counter. OTC derivatives can be used to engage in illegal insider trading, including through monetization of stock options that is the subject of recent regulatory scrutiny in Ontario. However, the use of OTC derivatives to carry out illegal insider trading was beyond the scope of this report.

An independent assessment of the effectiveness of the insider trading surveillance systems of RS and the Mx also was beyond the scope of this report. However, this is an overview of their processes:

RS

The initial detection of possible insider trading at RS is through:

- the real-time IMM system that, using various electronic algorithms, issues alerts identifying unusual price or volume movements,
- communication with a market maker or other professional trader,
- communication with the issuer of the securities involved to determine the existence of any undisclosed material fact or change, and
- post-trade, pro-active reviews of unusual trading activity.

Upon detection, a review of trading activity typically covers a number of days prior to the date of issuance of material news. The review period can be extended if, for example, anomalies are identified on the price/volume trading chart for the previous several months.

Mx

The initial detection of possible insider-trading cases at the Mx begins in the Market Monitoring department when suspicious trades are noticed or when a market specialist files a complaint with the Market Monitoring department. A file is prepared and a report is filed with the Market Surveillance department for further investigation. Analysts in Market Surveillance manually review option-trading patterns for a number of days prior to the news release and make a determination whether to initiate an insider-trading investigation. RS contacts the Mx when there are options on the underlying security that is the subject of an insider trading investigation.

Recommendations are made in section 4.3 of this report to increase the level of cooperation between RS and the Mx.

Surveillance of the markets in Canada for illegal insider trading, although performed on the equities markets electronically, based on the identification of unusual price and volume movements prior to a material announcement, does not include the use of specific insider trading alerts, including across market insider trading alerts.

Recommendation #14: RS and the Mx evaluate the costs and benefits of enhancing their surveillance systems with electronic alerts to specifically identify insider trading.

RS, as the regulator of Canadian equities markets, often will contact the issuer of securities to determine whether unusual price or volume movements in their securities may derive from undisclosed material information that has leaked into the marketplace. It is not an infrequent occurrence that the issuer responds with a "no material change" declaration to RS staff, or the issuer fails to return the telephone call, and a major announcement is made shortly thereafter. Although it may be legally correct that the information at that time was not yet material, in many instances it would assist the market regulator in evaluating ongoing trading to know the nature and negotiation stage of developing events. The failure to make full disclosure to RS staff in these circumstances can adversely impact market integrity by delaying the regulator's understanding of market events in the context in which they are occurring, potentially resulting in illegal insider trading going undetected for some period of time.

Issuers should exercise responsibility for assisting in the prevention of illegal insider trading in their securities. However, the material change reporting requirement is currently the only one that can be enforced effectively. A greater incentive for issuers to keep the market regulator better informed, at least in relation to specific inquiries, would result from the development of an enforceable obligation of issuers to provide sufficient and timely notification to the market regulator of events that, although not technically material, may result in a material event. This enforceable obligation would alert RS staff to the significance of unusual price and volume movements as they occur and would lead to appropriate and more timely action being taken to ensure that the market is trading on the basis of equal information availability.

Recommendation #15: The CSA, RS and Mx develop an enforceable obligation of issuers to provide full disclosure of material and potentially material events to market regulators upon their request.

4.1.2 Data-Mining

Current surveillance practices are hampered by the lack of data-mining capability. Data-mining entails reviewing trading for evidence of patterns that indicate an organized effort to avoid detection. These tools work best where client data (e.g. names, addresses, affiliates, subsidiaries) can be quickly and easily integrated with trade data to enable programs to be run electronically to identify these patterns. For example, programs run on integrated data are the only consistently effective way to identify the involvement of nominee and offshore accounts in illegal insider trading.

Currently, it is not feasible for data to be integrated market-wide without significant technological improvements to data collection and retrieval software currently in use. The CSA has in place an Industry Committee on Trade Reporting and Electronic Audit Trail Standards (TREATS). TREATS is mandated, among other things, to identify and discuss issues, options and recommendations regarding technology standards and an implementation plan for an electronic audit trail for orders and trades in securities. TREATS may be the appropriate means to initiate early development of the integrated trading and client information database needed to enhance insider trading detection capabilities.

Recommendation #16: The CSA, as a priority, coordinate the development of an electronic database integrating client data with data from trading conducted on Canadian equities and derivatives markets, in order to improve surveillance, data-mining and investigative capabilities.

4.1.3 Insider Trading and Market Manipulation

The indicia of illegal insider trading in illiquid securities often differ in comparison with illegal insider trading in more liquid securities. Particularly, illegal insider trading in illiquid securities is often linked to market manipulation.

Market manipulation is believed by some to be primarily a junior market problem. More accurately, however, it is the liquidity of the security and not the nature of the market that matters. It is more difficult to manipulate widely held and liquid securities. Manipulations often include insider trading, although the converse is not true.

A typical case of manipulation/insider trading involving securities of an illiquid issuer begins with the insiders issuing securities to themselves well in advance of a promotion. The promotion often includes leaks of information before a news release to start the market moving, and the insiders sell securities into the promotion. The manipulators are in possession of inside information about the issuer, i.e. that its securities are being manipulated, and take advantage of the inside information to trade. In effect, the promotion is part of a manipulation of which the insider trading is an integral component.

Insider trading is a relatively unsophisticated process where the key to avoiding detection is hiding beneficial ownership, keeping transactions small and timing trades. On the other hand, manipulation requires greater expertise and funding in order to move the share price of an issuer. Insider trading is a challenge to investigate, and manipulation investigations can be even more complex. However, manipulation cases are often easier to prove as they rely to a large extent on the analysis of readily available trading evidence, whereas insider trading cases usually rely on circumstantial evidence. Because it is usually easier to detect and prove manipulative trading, the detection and enforcement of illegal insider trading in illiquid securities often begins and ends with the detection and proof of manipulative trading.

4.1.4 Complaints/ Tips

Canadian regulators report that few illegal insider trading investigations begin with complaints or tips, unlike the experience in the United States where complaints and tips from the investing public and the industry are significant sources of potential cases. It is not clear why American experience differs from Canadian experience, although the high-profile of illegal insider trading prosecutions in the United States may be a contributing factor. Certainly due to the higher profile of these cases in the United States, market participants are more aware of illegal insider trading, the harm to the market it causes and the consequences of engaging in it. In Canada, market education could fill part of this role.

IOSCO, in a March, 2003 Report of the Emerging Markets Committee entitled *"Insider Trading – How Jurisdictions Regulate It*", emphasizes the need for educating market participants about why they should not engage in illegal insider trading. The Report states:

"The educational activity directed to them should be focused on promoting ethical rules and informing them about the possible consequences of wrongdoing (not only regarding sanctions that may be imposed by a supervisory authority or court, but also relating to the societal interests associated with the proper operation of markets). Market participants should be aware that insider trading is not acceptable behaviour, not only because a violator can be punished, but also because it impairs broader societal interests in the proper functioning of markets that support economic activities in the real economy. Training courses for investors, market participants and professional associations in the securities sector should stress that a necessary component of an effective civil society is the observance of ethical standards of behaviour in the marketplace, both in general terms and specifically relating to the use of inside information."

The Task Force endorses these views. The result of such educational programs should be less risk of non-compliance and greater cooperation with regulatory authorities, including by way of complaints and tips. Funding could be provided from the various investor education funds available to the provincial securities commissions.

Recommendation #17: Securities regulators encourage more complaints and tips by raising the profile of illegal insider trading in Canada through educational programs that provide market participants and the public with an understanding of how illegal insider trading and tipping happen and the harm they cause.

4.2 Nominee and Offshore Accounts

4.2.1 Incidence of Use

Nominee and offshore accounts (as defined for purposes of this report in Appendix B) are used to conduct commercial activities and hold assets for a variety of legitimate purposes. However, these vehicles also may be used for illegal purposes including illegal insider trading, market manipulation and circumvention of disclosure requirements. The ability of regulators and law enforcement agencies to obtain information on beneficial ownership of nominee and offshore accounts on a timely basis will often determine the outcome of an investigation.

Illegal insider trading is seldom conducted in the name of the insider as the insider wishes to avoid detection and uses a nominee for that purpose. A nominee account can be represented to be resident in Canada or offshore. An offshore account may be utilized in combination with holding companies, international business corporations and trusts located in offshore financial centres. Offshore accounts especially are a barrier to the investigation of illegal insider trading because of the difficulty of obtaining information on a timely basis on beneficial ownership and flow of assets. They represent a means for sophisticated market players to avoid detection of their illegal insider trading activities. Without a consistently effective means of identifying the involvement of these accounts in insider trading and obtaining sufficient evidence to take disciplinary action against the beneficial owner of the account, the credibility of the regulatory regime suffers as do investors' perceptions of the market's fairness.

A survey of Canada's investment dealers conducted by securities regulators in Canada in 2001 found that Canadian brokerage firms were operating approximately 13,000 offshore brokerage accounts for their clients in 23 countries, approximately 3000 of which were in countries blacklisted by the FATF because of their secrecy laws and lack of regulation. Of these accounts, 2,647 were opened in the name of the beneficial owner and 353 in the name of various institutions and other entities where the

beneficial owner was not fully disclosed. Of the 353 accounts, it was determined that the firm knew the beneficial owner for 211 of the accounts, leaving 142 outstanding for which beneficial ownership was unknown.

There were two hundred and eighty-nine insider trading matters open with the Commissions during 2001 and 2002. Of these, fifteen cases are known to have involved the use of offshore accounts and four cases are known to have involved the use of nominees. The offshore accounts identified by the commissions in illegal insider trading matters were in several jurisdictions with the largest numbers in United Kingdom dependencies, the Bahamas, and Switzerland.

The SROs (IDA, Mx and RS) are excluded from the above analysis because they refer insider trading cases to a commission, which results in double counting the nominee and offshore accounts in those referred cases. RS, due to its responsibility for undertaking surveillance of the Canadian equity markets, provided all but one of these referrals. The RS referrals with offshore accounts represented approximately 10% of all insider trading case referrals by RS. The number of referrals with offshore accounts involved is significant and likely understated.

Most persons who engage in illegal insider trading are not in a position, or do not have the financial sophistication and resources, to open an offshore account prior to trading on inside information. It is worth noting, however, that the number of these cases in Canada is considerably lower than in the United States where regulators estimate that up to 25% of insider trading investigations involve offshore accounts.

4.2.2 Detection of Insider Trading by Nominee and Offshore Accounts

(i) Markers

Currently, dealers who engage in trades for insiders and significant shareholders must identify those trades to RS and the Mx with a marker. The marker assists the market regulators to evaluate trading patterns for illegal insider trading. A nominee or offshore account used to hide beneficial ownership may deceive the dealer and result in a trade that, although conducted by an insider, is not identified by the marker. The development and implementation of an integrated data-mining capability for trade and client data will enhance the ability of market regulators to identify the participation in illegal insider trading by nominee and offshore accounts. However, pending the development of an integrated database, the addition of a marker for offshore accounts could assist RS and the Mx in evaluating the use of offshore accounts in apparent insider trading patterns.

Recommendation #18: RS and the MX evaluate the costs and benefits of incorporating a marker for trades by offshore accounts.

(ii) Red Flags

The Task Force requested that RS and the IDA develop a set of 'red flags' for dealers to promote early detection of possible illegal insider trading, including when it is conducted through the use of nominee or offshore accounts. This information will be provided to IDA member firms to assist them to enhance their compliance review procedures.

Recommendation #19: The IDA provide to its member firms a set of red flags for detection of possible insider trading, including where conducted through the use of nominee and offshore accounts, to assist them to enhance their compliance review procedures.

(iii) International Information Sharing

Improved cross-border cooperation with securities investigations, including more timely and comprehensive responses, would be of assistance in regulating illegal insider trading by offshore and nominee accounts. Particularly, some jurisdictions that meet the FATF's recommended best practices for financial institutions in identifying beneficial ownership do not make this information available for the purposes of securities investigations. Timely access to information on beneficial ownership is vital for effectively addressing the use of nominee and offshore accounts to engage in illegal insider trading. Securities commissions internationally have recognized this need and, through IOSCO, which represents a membership of more than 110 jurisdictions, recently have developed a Memorandum of Understanding concerning Consultation, Cooperation and the Exchange of Information. The MOU specifically addresses insider dealing and encompasses the agreement to share not only trading information but also any information that is related to trading, including banking information and information on beneficial ownership. The OSC, CVMQ, ASC and BCSC are members or associate members of IOSCO and are MOU signatories.

Prior to signing the MOU, member regulators must establish that they have the legal capability to meet its information sharing requirements. The intention is that member states, such as certain tax havens, with legal impediments to information sharing, amend their legislation to remove those barriers. As a result, obtaining signatories to the MOU is an ongoing process. As this process evolves, those jurisdictions unable to meet the terms and conditions of the MOU, as well as non-IOSCO member jurisdictions and those countries on the FATF's blacklist, likely would represent the jurisdictions from which Canadian securities regulators would be unable to obtain timely access to information on beneficial ownership.

(iv) Know Your Client (KYC) Requirements

Experience in obtaining information on offshore accounts has improved since the tragic events of September 11, 2001, but delay, secrecy and inexperience of staff in some offshore jurisdictions can impede securities investigations. Better than attempting to determine beneficial ownership after the fact is to deter the use of offshore accounts, other than for legitimate purposes. One way to do so is by instituting and enforcing effective know-your-client requirements for investment dealers.

The IDA requirement for KYC is found in the IDA's Regulation 1300. The IDA requires all registrants to make a diligent and business-like effort to learn the essential financial and personal circumstances and the investment objectives of each client. The rule, in combination with other IDA by-laws, ensures that the client account documentation includes all material information about the client's status, and that it is updated to reflect any material changes to the client's status in order to assure suitability of investment recommendations.

Amendments to Regulation 1300 as approved by the IDA Board on June 22, 2003 require, other than for exempted persons including certain offshore financial institutions, that an investment dealer learn and verify the identity of the beneficial owner of all non-individual accounts, including offshore accounts. If the identity of the beneficial owner cannot be obtained, the account cannot be opened. Where the offshore accountholder is a "shell bank" or is located in a FATF blacklisted jurisdiction, the amendments also prohibit the opening of an account. The amendments respond to FATF recommendations issued on June 20, 2003 on best practices to address money-laundering. The amendments do not become effective until the expiration of a 30 day public comment period and further comment and approval by the CSA.

Recommendation #20: The CSA approve the IDA's revised Regulation 1300 that:

- **prohibits accounts being opened where the accountholder is a "shell bank" or located in a jurisdiction that does not have a satisfactory regulatory regime, and**
- **requires, other than for exempted persons including certain offshore financial institutions, learning and verifying the identity of the beneficial owner of the account.**

The proposed amendments do not apply to a foreign financial institution in a jurisdiction with a 'satisfactory regulatory regime'. Canadian securities regulators have not provided guidance on jurisdictions that should not qualify for this exemption. The IDA has indicated that, at a minimum, countries on the FATF's blacklist would not qualify. A more complete list would also include non-IOSCO members and IOSCO members who, after a reasonable period of time, have not signed the MOU previously discussed. Canadian regulators would use the list to determine both whether a jurisdiction has a satisfactory regulatory regime and, if not, the need for restrictions on offshore client brokerage accounts to address insider trading regulatory concerns.

Recommendation #21: The provincial securities commissions, in consultation with the federal government and the IDA, use the list of IOSCO MOU signatories, once established, in addition to the FATF blacklist, to maintain a list of jurisdictions that do not have a satisfactory regulatory regime, and require that the IDA use that list to identify the offshore accountholders to which account opening and related restrictions apply.

Recommendation #22: To address the potential for illegal insider trading through offshore financial institutions, the IDA evaluate the costs and benefits of revising Regulation 1300 to require that members have at least the following account-opening condition for these offshore financial institutions:

- **consent to identify on request, to the firm or to the appropriate Canadian regulator, the individual responsible for the trade.**

Regulation 1300, other than for exempted persons, requires the identification of the beneficial owner of a non-individual account, including offshore accounts, prior to opening the account, and verification of ownership as soon as practicable or within six months. If the identity of the beneficial owner cannot be verified within the six month period, the account must be restricted after the expiry of the six month period to liquidating trades. The six month verification period was chosen to match the applicable period for securities dealers under federal money-laundering legislation. The potential consequence of the six-month verification period for insider trading regulation is that trading can occur for six months prior to verification of identity, providing an opportunity for illegal insider trading to occur and resultant profits to disappear before beneficial ownership is established.

Recommendation #23: The IDA consult with the federal government and IDA members to determine whether to retain a six month verification period or to revise Regulation 1300 to prohibit trading in an account until beneficial ownership of the account is verified or, alternatively, to require that assets accumulated in the account be retained in the account until beneficial ownership is verified.

TSX Rule and Policy 2-501 permit approved participant dealers to grant access to the TSX's order routing system to qualified domestic and offshore institutional and retail clients through order execution accounts (essentially accounts for which the dealer is not required to review orders for suitability). In effect, eligible clients are provided with direct access to the exchange's trading system. Proposed amendments to UMIR will require that "direct access" clients comply with certain UMIR provisions, including the requirement to conduct business on a marketplace openly and fairly in accordance with just and equitable principles of trade. Although this will provide RS with jurisdiction over Rule 2-501 client trading, its ability to regulate a client's compliance with UMIR, including for illegal insider trading, is severely restricted if the client resides in a secrecy jurisdiction. The ability of such a client to withhold information from the regulator also is inequitable in relation to other direct access clients resident in non-secrecy jurisdictions. These same issues apply to subscribers to an ATS and to persons granted direct access to a QTRS.

Recommendation #24: Direct access to a marketplace be prohibited for persons who do not reside in a jurisdiction with a satisfactory regulatory regime unless the person agrees in writing to make available to the market regulator on request all information, including bank account information, relating to trading conducted through that account.

4.3 Inter-Market Insider Trading

Equities traded on Canada's equities markets, and their derivatives, can trade on various equities and derivatives markets around the world. Current technologies make access to trading on these markets relatively simple. As a result, the same or related parties can engage in patterns of illegal insider trading across markets. Effective detection of illegal insider trading requires that:

- market regulators know the markets upon which equities and their derivatives trade; and
- market regulators cooperate on detection and investigation of illegal inside trading involving securities that are inter-listed, or where a related security trades on one or more other markets.

There is no central database of information identifying the markets upon which an equity and its derivatives trade. The ISG is currently in the process of attempting to create such a database.

Recommendation #25: RS and the Mx work with the ISG to develop and participate in a centralized international database that identifies the markets upon which equities and their derivatives trade.

Through the ISG, as well, there is growing coordination of information-sharing and investigations among member market regulators. For example, the ISG has implemented an "unusual activity" database that members crosscheck to assist in identifying insider trading patterns and illegal inter-market insider trading. The database currently is used only by U.S. based markets.

Recommendation #26: RS and the Mx participate in the ISG's "unusual activity" database to identify illegal inter-market insider trading.

Derivatives of the securities of approximately 78 TSX-listed issuers trade on the Mx. Greater coordination of detection and investigation between the Mx and RS, the market regulator for the TSX, would reduce the risk of inter-market illegal insider trading going undetected.

Recommendation #27: RS and the Mx coordinate their analysis of equities and derivatives to identify patterns of suspicious trading that involve related securities and establish formal procedures for ongoing communication.

5.0 Deterrence

Published academic research supports the position that the incidence of illegal insider trading will be reduced through the successful enforcement of insider trading laws with severe penalties. This part of the report considers, in section 5.1, the adequacy of current and proposed laws dealing with illegal insider trading and related misconduct in Canada, including the recent proposal by the federal government to create a criminal offence of illegal insider trading and tipping. Section 5.2 evaluates the effectiveness of current enforcement practices by Canadian securities regulators, including in comparison to other jurisdictions, and proposes a more coordinated enforcement model.

5.1 Insider Trading Laws

At present, illegal insider trading and related misconduct are addressed primarily under provincial securities legislation; there is no comparable offence under the *Criminal Code*. While the provincial legislation in this area is generally harmonized, recent initiatives of the CSA and federal government present opportunities to improve the overall regulatory framework.

First, in January 2003 the CSA published a 'concept proposal' for the USL Project to provide a national framework for securities regulation. The CSA proposal does not recommend changes to the law regarding insider trading and tipping but suggests greater harmonization of insider reporting obligations. Second, in June 2003 the federal government introduced Bill C-46 to Parliament. This Bill proposes to establish new *Criminal Code* offences of illegal insider trading and tipping.

Both the USL Project and Bill C-46 provide an opportunity for the CSA and federal government to establish a regulatory framework that effectively addresses illegal insider trading under criminal, quasi-criminal, administrative and civil processes, sanctions and remedies.

This section does not address the regulation by SROs of illegal insider trading and related misconduct. SROs generally regulate under contractually-based requirements for regulated persons to comply with applicable legislation and prohibitions against 'conduct unbecoming' and 'conduct inconsistent with just and equitable principles of trade'.

5.1.1 Approaches: Specific Conduct vs. Market Abuse and Fraud

In general terms, there are two different approaches to laws that provide the basis for enforcement action against persons who trade with knowledge of inside information. In some jurisdictions, illegal insider trading and related misconduct are specifically prohibited through legislation that focuses on particular conduct. This specific conduct approach is taken in Canadian provinces, Australia, and in Part V of the United Kingdom CJA. Rule 14e-3 of the United States *Exchange Act* is comparable in that it deals specifically with transactions in securities on the basis of non-public information in the context of tender offers.

In other jurisdictions, illegal insider trading and related misconduct are included within a broad range of prohibited conduct. This broad approach is taken in Part VIII of the United Kingdom *Financial Services and Markets Act* (prohibiting 'market abuse'), the CESR's 'Market Abuse' Directive, section 17(a) of the United States *Securities Act* (prohibiting 'fraud or deceit' on a purchaser of securities), and section 10b and Rule 10b-5 of the *Exchange Act* (prohibiting 'manipulative and deceptive devices'). The broad approach is justified, in part, on the basis that both manipulation and illegal insider trading harm the integrity of the market and are closely related.

The specific conduct approach is firmly entrenched in Canadian provincial legislation. This section discusses provincial legislation within that context and an appropriate approach for the proposed federal criminal legislation.

5.1.2 Rationale for Insider Trading Laws

Various rationales provide the basis for laws in different countries addressing illegal insider trading and related misconduct. The most common are:

- equal access to information
- fiduciary duty
- property misappropriation
- market fairness and
- market efficiency.

The prohibition of illegal insider trading and related misconduct in provincial legislation is consistent with the rationales for securities regulation generally – investor protection, the fair and efficient operation of capital markets and fostering and maintaining public confidence in the markets. The insider trading prohibitions are intended to ensure the integrity of capital markets by preventing those who have an informational advantage from benefiting unfairly. As a result, those individuals who have access to inside information are restricted from trading or informing others to the disadvantage of investors who do not have that same information.

The concerns that the insider trading prohibitions are intended to address were described by a recommendation set out in the *Report of the Attorney General's Committee on Securities Legislation in Ontario* – March, 1965 (the '*Kimber Report*'). The *Kimber Report* states as follows:

> *'In our opinion, it is not improper for an insider to buy or sell securities in his own company. Indeed, it is generally accepted that it is beneficial to a company to have officers and directors purchase securities in the company as they thereby acquire a direct financial interest in the welfare of the company. It is impossible to justify the proposition that an investment so made can never be realized or liquidated merely because the investor is an insider. However, in our view it is improper for an insider to use confidential information acquired by him by virtue of his position as an insider to make profits by trading in the securities of his company. The ideal securities market should be a free and open market*

with the prices thereon based upon the fullest possible knowledge of all relevant facts among traders. Any factor which tends to destroy or put in question this concept lessens the confidence of the investing public in the marketplace and is, therefore, a matter of public concern.'

The *Kimber Report* recommendations formed the basis for the insider trading provisions first introduced into securities legislation in Ontario and on which comparable legislation in other provinces was modelled.

5.1.3 Provincial Law - 'Information Connection' vs. 'Person Connection'

Insider trading laws in Canadian provinces provide that no insider or person or company in a special relationship with a reporting issuer, with knowledge of a material fact or material change that has not been generally disclosed, may sell or purchase securities of the reporting issuer; similarly no such person may disclose such fact or change to another person, other than in the necessary course of business. This approach relies on an 'information connection' test, defined by possession of inside information, and an additional 'person connection' test. The 'person connection' test requires either some connection or relationship to the issuer or, alternatively, obtaining the material information from a person in a special relationship with the issuer. In the latter circumstance, the tippee must know or ought reasonably to have known at the time of acquiring the information that the source of the information was in a special relationship with the issuer. The 'person connection' test is not difficult to meet for insiders but becomes more difficult to meet for persons who have knowledge of inside information having acquired that knowledge from persons in a 'special relationship' with the issuer.

An alternative to this approach depends on the 'information connection' test alone. That is, no person with knowledge of inside information may sell or purchase securities of an issuer. This approach does not require that the person with knowledge of such information hold any position with an issuer or have knowledge of the source or owner of information. The appeal of this approach is that it emphasizes the 'equal access to information' rationale for a prohibition against trading with inside information. It does not depend on a finding that a person was in a 'special relationship with an issuer' or any similar 'person connection'. From a perspective of market fairness, the prohibition appropriately applies to all persons who have unfair access to inside information. The 'information connection' approach has been the law in Australia since 1991. The United Kingdom *Financial Services and Markets Act* has followed a similar approach by proscribing 'market abuse' which includes behaviour based on information that is not generally available to the market.

IOSCO, in its March, 2003 Report of the Emerging Markets Committee referred to previously, states that:

"Best practice is that all the persons trading on inside information should be subject to sanctions. Obviously, broad definitions of insider trading can be criticized if innocent people, without knowledge of the confidentiality and materiality of information, are subjected to criminal penalties. However, the behaviour of such investors generally indicates whether they had knowledge that they were trading on inside information…"

The Report goes on to address the circumstances of an "accidental" insider, being "a person that neither has access to inside information, nor was tipped by a person who has access to such information, but learned inside information due to special circumstances". Special circumstances could include "… overhearing a conversation…, finding confidential documents in a rubbish bin, receiving a fax sent to a wrong number, etc." The Report indicates that the liability of such a person for trading on that information would depend on "their degree of knowledge and intent to trade on inside information generally" and that "… the behaviour of such investors generally indicates whether they had knowledge that they were trading on inside information."

The adoption of the 'information connection' model in Canada would not affect the statutory defence, in provincial securities legislation, that a person does not contravene the insider trading prohibition if the person proves on a balance of probabilities that, at the time of the purchase or sale, the person reasonably believed that the inside information had been generally disclosed. As well, the model would permit trading on information:

- that is 'readily observable', as the 'information connection' model is not intended to impose liability on persons who discover inside information that is not generally disclosed in a technical sense but is readily observable to anyone who happens upon or is looking for the information, or

- obtained through bona fide investigative research, in order to protect analysts, reporters and others who seek out and publish information from non-confidential sources about issuers.

Adopting the 'information connection' model will simplify the language of the prohibitions against trading with inside information. This approach will bring the prohibitions in line with the fundamental proposition that all persons trading on Canadian marketplaces should do so with the fullest possible knowledge of material information. Enforcement action will not be dependent on proof of a special relationship with an issuer.

Recommendation #28: The CSA, through its USL Project, consider the adoption of a uniform 'information-connection' approach to replace the current more complex model.

5.1.4 Federal Law - Criminal Deterrent

In June 2003 the Federal Government introduced Bill C-46 to Parliament; this Bill proposes to establish new offences of illegal insider trading and tipping as section 382.1 of the *Criminal Code*.

A requirement for a mental element, sometimes referred to as an element of fault, is an essential component of criminal liability. This is a constitutional requirement protected under section 7 of the Charter as a 'principle of fundamental justice'. The minimum fault requirement may be demonstrated by proof of a positive state of mind such as intent, recklessness, or wilful blindness.

Among the challenges of criminalizing insider trading in Canada is to define an offence that does not run afoul of the principles of fundamental justice. It must contain the requisite element of fault and not impose so high a burden on the Crown that it will be incapable of proof. The recently proposed section 382.1 requires 'knowing use' of inside information by what is, in effect, a person in a special relationship with an issuer. In substance, this is a provincial quasi-criminal offence with a mental element of 'knowing use'. However, the experience with other insider trading enactments has been that 'knowing use' type language results in an 'insurmountable evidentiary obstacle'. An alternative approach would be to establish an offence generally based on the American model or the United Kingdom model.

The criminal model in the United States derives from the Exchange Act, particularly section 10b and Rule 10b5, and court opinions that have interpreted these enactments. This model is based on the broad approach outlined in section 5.1.1. It relies on two complementary theories, each addressing purchases or sales of securities on the basis of inside information. These are the 'classical theory' and the 'misappropriation theory'. Illegal insider trading in the United States refers generally to buying or selling a security, in breach of a fiduciary duty or other relationship of trust and confidence, while in possession of material, non-public information about the security. The 'classical theory' targets a corporate insider's breach of duty to shareholders with whom the insider transacts; it applies not only to officers, directors and other insiders, but also lawyers, accountants and others who temporarily become fiduciaries to a corporation. Insider trading violations may also include 'tipping' such information, securities trading by the person 'tipped,' and securities trading by those who misappropriate such information. The 'misappropriation theory' is designed to protect the integrity of the securities markets against abuses by 'outsiders' to a corporation who have access to confidential information that will affect the corporation's security price when revealed, but who owe no fiduciary or other duty to that corporation's shareholders.

Concepts of 'fiduciary duty' (and to whom a duty is owed) differ between the United States and Canada. However, this is not a fundamental objection to the adaptation of the 'classical theory' to the Canadian context. In any event, the 'misappropriation theory' does not require a fiduciary duty to shareholders – it requires a duty to the source of the inside information and that concept is understood in Canadian law.

The United Kingdom model in Part V of the CJA is based on the specific conduct approach outlined in section 5.1.1. Illegal insider dealing occurs when an individual, who has information as an insider, deals in securities that are price-affected in relation to the information. The 'dealing' may involve either a securities transaction on a regulated market or an off-market transaction effected through a professional intermediary. Like the American approach, the CJA does not require proof that a defendant used inside information. Instead, an insider has a defence if the accused shows that he or she would have done what was done if he or she had not had the information. Like the Canadian provincial offences, the prosecution must satisfy a 'person connection' and an 'information connection' test.

While the United Kingdom approach is not limited by fiduciary or misappropriation principles, it is similar to the provincial quasi-criminal approach and, therefore, would not provide a sufficient distinction between the provincial and proposed federal offence. In addition, convictions for insider dealing under the CJA and its predecessor legislation have been low. In the last 10 years there have only been 17 successful convictions. By contrast, adopting the U.S. approach would distinguish the federal offence from the quasi-criminal provincial offences. U.S. authorities also have obtained more convictions during the comparable period. Another advantage of the American approach is consistency throughout the North American market.

By adapting the United States model to the Canadian context, the Federal Government will avoid the challenges of a 'knowing-use' requirement (as proposed in Bill C-46) and, in terms of substantive content, satisfy Charter requirements.

Recommendation #29: The Federal Government re-consider the approach in Bill C-46 and look to the model in the United States (with changes as required for the Canadian legal environment) to avoid the difficulties with a 'knowing use' requirement and, in terms of substantive content, satisfy Charter requirements.

5.1.5 Sanctions and Remedies

Research by the Task Force included a review of the sanctions and remedies available in proceedings under Canadian, U.S., U.K. and Australian law. Depending on the governing legislation, sanctions may be imposed by courts or securities commissions.

Courts

Under provincial legislation, which is not uniform, courts may impose compliance orders (including, in B.C. for instance, disgorgement orders and civil penalties), monetary fines and imprisonment. Monetary penalties may be imposed in B.C. for illegal insider trading or tipping. The amount of the penalty is the money obtained or losses avoided as a result of the contravention. In Alberta, the civil court may award damages to the issuer or to those defrauded in the amount obtained as a result of the contravention. In quasi-criminal proceedings, courts in various provinces may impose fines ranging from $1,000,000 to $5,000,000, or a multiple of the profits (whichever is greater), and imprisonment of between 3 to 5 years. In Australia, courts may impose fines and imprisonment for up to 5 years. In the United States, courts may impose civil penalties (including disgorgement), officer/director bars, fines, imprisonment and injunctions. Civil penalties may be imposed under section 21A of the Exchange Act for illegal insider trading or tipping; the penalty is to be determined by the court in light of the facts but may not exceed three times the profit gained or loss avoided. In criminal proceedings, the court may impose fines as high as $5,000,000 (for an individual) and imprisonment may be up to 20 years. In the U.K., courts may impose imprisonment not exceeding 7 years.

Based on this review, it appears that the general structure of sanctions and remedies in Canada, although not uniform, is comparable to the structures in the countries reviewed. However, the maximum term of imprisonment available under provincial legislation is clearly significantly less than under U.S. and, to a lesser extent, U.K. legislation [Note: Bill C-46 proposes a maximum prison sentence of 10 years]. As well, the monetary penalty available from the civil courts in Canada is significantly less severe than the multiple gain/loss avoided monetary penalty that can be imposed by U.S. courts in civil proceedings. In Canada, the multiple gain/loss avoided fines may only be imposed in quasi-criminal proceedings.

Securities Commissions

Under provincial legislation, which is not uniform, securities commission regulatory proceedings may impose administrative penalties, cease trade orders, compliance orders and officer/director bars. Administrative penalties range from $100,000 to $1,000,000 (for individuals) and $500,000 to $1,000,000 (for corporations). In the United States, the SEC may impose monetary penalties of up to $100,000 (for individuals) and $500,000 (for corporations) and cease and desist orders. Sanctions under U.S. and provincial legislation are comparable.

At least three significant points derive from this review of sanctions and remedies:

1. Sanctions and remedies vary between provinces and a greater degree of consistency is appropriate. This has already been recognized by the CSA's USL Project that notes that the USL should harmonize the types of enforcement orders that may be made by securities commissions. Some provinces do not grant their commissions the power to order a monetary administrative penalty or to obtain compliance orders (including disgorgement or restitution orders) from the courts. These sanctions and remedies are significant options for securities regulators. Disgorgement and restitution orders, in particular, ought to be a civil alternative (with a lower standard of proof) to the monetary fines that may be imposed for quasi-criminal offences.

2. There is a difference among provinces in the maximum penalties available. In its USL Project 'concept proposal', the CSA suggests uniformity for the penalties available from provincial courts, but that administrative penalties need not be identical in all jurisdictions. This approach is suggested on the basis that jurisdictions with larger markets and issuers may need a higher maximum in order to have a meaningful enforcement power. However, as insider trading takes place on national markets, the residence of the insider should not determine the amount of an administrative penalty. Uniform administrative penalties still provide sufficient flexibility for commissions to impose sanctions that fit the circumstances of each case.

3. With the enactment of the Sarbanes-Oxley Act in the United States, there is now a more substantial gap between the maximum term of imprisonment under U.S. securities legislation and provincial securities laws. The current sanctions under provincial legislation (with a maximum term of imprisonment between 3 - 5 years) appear to be at the upper end of sanctions for quasi-criminal offences. Longer terms of imprisonment will be difficult to justify, especially if the offence is reformulated on the "information connection" only approach. More severe sanctions should be left to the federal criminal law.

Recommendation #30: Provincial securities legislation be amended to provide uniformity among provinces, including for administrative penalties, enforcement orders and compliance orders.

Recommendation #31: The proposed criminal sanctions under Bill C-46 be approved.

5.2 Enforcement Practices

5.2.1 Investigation Techniques

The work of the Task Force included gathering and comparing information from securities regulators in Canada, Australia, the United States and the United Kingdom on enforcement of prohibitions on illegal insider trading to assess best practices and identify gaps in Canadian processes. As part of this process, the Task Force reviewed all insider trading cases open at securities regulators in Canada in 2001 and 2002 in order to gain insight into the nature and results of enforcement activity. On-site interviews of staff were undertaken at each of the following regulators:

Canada	BCSC, ASC, OSC, CVMQ, RS
United States	SEC, NASD, NYSE
United Kingdom	FSA
Australia	ASIC

The comparison found that, in general, enforcement practices in Canada are similar to those in other jurisdictions. Differences identified resulted in a number of recommendations for improved enforcement techniques. Details of these recommendations have not been provided in this report. The recommendations involve means of increasing the coordination and integration of regulatory efforts to address illegal insider trading, including enhanced case assessment criteria, integrated procedures for quickly addressing and fast-tracking insider trading cases and specialized training.

5.2.2 IMETS

The federal government, as part of its efforts to coordinate and strengthen enforcement against capital markets fraud, including illegal insider trading, is in the process of creating Integrated Market Enforcement Teams (IMETS) in Toronto, Vancouver, Montreal and Calgary dedicated solely to investigating capital markets fraud cases. The intention is for the IMETS to work closely with Canadian securities regulatory authorities, including the securities commissions and the SROs, particularly to identify capital markets cases to pursue. The IMETS, in combination with the proposed Criminal Code offences of insider trading and tipping, will represent an additional enforcement route that should be included in a coordinated and integrated regulatory approach to illegal insider trading.

Previous recommendations in this section of the report have emphasized the need for a coordinated and integrated approach across securities regulatory organizations to address illegal insider trading effectively. These recommendations include the development and enhancement of case assessment criteria, integrated procedures for quickly addressing and fast-tracking insider trading cases and specialized training. These criteria, procedures and training, once the IMETS are operational and the Criminal Code has been amended, should be expanded to encompass potential criminal enforcement and IMETS criteria, procedures and staff training.

Criminal enforcement of illegal insider trading will be one end of an enforcement continuum that starts with identification of possible illegal insider trading by the market regulator and its assessment for referral and subsequent investigation by a securities commission or IMET. The report's recommendations to increase the effectiveness of enforcement would be implemented most efficiently and effectively if consolidated in one nationally integrated group focussed on, and accountable for success in, enforcing insider trading laws. The IMETS, as proposed to be national in scope, could easily be adapted to such a purpose.

An effective process within the IMETS structure to address illegal insider trading would incorporate securities commission and SRO participation, most likely as a subgroup of the IMETS, in case assessment, using assessment criteria that would identify insider trading cases best suited to criminal enforcement under the Criminal Code, quasi-criminal enforcement under provincial securities legislation or administrative disciplinary action under provincial securities legislation or SRO rules. This IMET subgroup for illegal insider trading ideally would be the recipient of insider trading case referrals and would assess each for retention for criminal investigation and prosecution. As a national, integrated and accountable group focussed solely on illegal insider trading, it would also provide a means to assist in administering and ensuring implementation of the other recommendations made in this report. In that connection, for example, it could participate in the development and initiation of a national training program for investigating and prosecuting illegal insider trading, the development of appropriate benchmarks to measure the success of the report's recommendations, coordination of additional research into the incidence of illegal insider trading on Canadian capital markets and promotion of the development of better detection tools.

Recommendation # 32: The CSA, in consultation with IMETS participants, consider recommending that a nationally integrated subgroup of the IMETS be formed to focus solely on illegal insider trading, including:

- **receipt and assessment of insider trading cases;**
- **criminal investigations and prosecution; and**
- **assisting in administering implementation of this report's recommendations.**

Appendix A – Summary of Recommendations

		Page Ref.	Implementation
Prevention			
1	**Canadian equity marketplaces amend their timely disclosure policies to:** • **recommend that issuers adopt the best practices provided in the CSA's Disclosure Standards Policy and the CIRI Standards and Guidelines for Disclosure; and** • **emphasize (i) the responsibility of boards of directors and senior officers of issuers for compliance with best practices for information containment, as exemplified by the CSA and CIRI best practices, and (ii) where directors or senior officers fail to fulfil this responsibility, their suitability to act may be reviewed by the marketplace.**	11	**TSX** **TSX VN**
2	**The CSA, with the Canadian equities markets, develop a process whereby, upon receipt of a Form 4B, the director or officer is sent an information package that includes responsibilities and guidelines applicable to information containment, timely disclosure and insider trading restrictions, as well as background on the underlying market integrity standards and potential sanctions.**	11	**TSX** **TSX VN** **CSA**
3	**The CSA work with the CBA and the provincial law societies to develop substantive best practices for information containment for lawyers.**	12	**CSA**
4	**Canadian equity marketplaces amend their timely disclosure policies to:** • **recommend that issuers retain only lawyers who have adopted best practices on information containment; and** • **emphasize (i) the responsibility of boards of directors and senior officers of issuers for compliance with best practices on information containment, as exemplified by using only lawyers who have adopted best practices on information containment and (ii) where directors or senior officers fail to fulfil this responsibility, their suitability to act may be reviewed by the applicable marketplace.**	13	**TSX** **TSX VN**
5	**The CSA work with the CICA and the provincial institutes of chartered accountants to develop substantive best practices for information containment for accountants.**	14	**CSA**
6	**Canadian equity marketplaces amend their timely disclosure policies to:** • **recommend that issuers retain only accountants who have adopted best practices on information containment; and** • **emphasize (i) the responsibility of boards of directors and senior officers of issuers for compliance with best practices on information containment, as exemplified by using only accountants who have adopted best practices on information containment and (ii) where directors and senior officers fail to fulfil this responsibility, their suitability to act may be reviewed by the applicable marketplace.**	14	**TSX** **TSX VN**

7	**The CSA request that OSFI develop regulations for the management of inside information received by banks during their credit or other relationships with issuers.**	15	**CSA**
8	**The IDA mandate best practices in information containment appropriate to the nature of a member's business, modelled on OSC Policy 33-601 and specifically addressing:** • **private placements, as developed by the Vancouver dealer group, and** • **bought deals.**	17	**IDA**
9	**The IDA, RS, Mx and TSXVN form a committee to amend their procedures for the regulation of information containment by dealers to i) address the elements identified in OSC Policy 33-601, ii) eliminate duplication of effort and iii) rationalize the regulation of information containment.**	18	**IDA** **RS** **MX** **TSX VN**
10	**TSXVN and TSX harmonize their timely disclosure policies.**	19	**TSX** **TSX VN**
11	**RS amend UMIR to enable the disclosure of insider trading markers in real time to the public.**	20	**RS**
12	**The CSA, with input from RS and the Canadian securities markets, clarify the legislative prohibition on persons in possession of inside information trading after the announcement of the event, but before there has been sufficient time to evaluate the materiality of the event, in order that the prohibition can be enforced.**	21	**CSA**
13	**The CSA, through its USL project, adopt a uniform approach for the exemption from the application of insider trading prohibitions when each party to the transaction has knowledge of inside information – the exemption should be limited to exclude transactions between an insider (or other persons in a special relationship) and the issuer.**	22	**CSA**
	Detection		
14	**RS and the Mx evaluate the costs and benefits of enhancing their surveillance systems with electronic alerts to specifically identify insider trading.**	24	**RS** **MX**
15	**The CSA, RS and Mx develop an enforceable obligation of issuers to provide full disclosure of material and potentially material events to market regulators upon their request.**	25	**CSA** **RS** **Mx**
16	**The CSA, as a priority, coordinate the development of an electronic database integrating client data with data from trading conducted on Canadian equities and derivatives markets, in order to improve surveillance, data-mining and investigative capabilities.**	25	**CSA**
17	**Securities regulators encourage more complaints and tips by raising the profile of illegal insider trading in Canada through educational programs that provide market participants and the public with an understanding of how illegal insider trading and tipping happen and the harm they cause.**	27	**CSA**
18	**RS and the MX evaluate the costs and benefits of incorporating a**	29	

	marker for trades by offshore accounts.		**RS MX**
19	**The IDA provide to its member firms a set of red flags for detection of possible insider trading, including where conducted through the use of nominee and offshore accounts, to assist them to enhance their compliance review procedures.**	29	**IDA**
20	**The CSA approve the IDA's revised Regulation 1300 that:** • **prohibits accounts being opened where the accountholder is a "shell bank" or located in a jurisdiction that does not have a satisfactory regulatory regime, and** • **requires, other than for exempted persons including certain offshore financial institutions, learning and verifying the identity of the beneficial owner of the account.**	31	**CSA**
21	**The provincial securities commissions, in consultation with the federal government and the IDA, use the list of IOSCO MOU signatories, once established, in addition to the FATF blacklist, to maintain a list of jurisdictions that do not have a satisfactory regulatory regime, and require that the IDA use that list to identify the offshore accountholders to which account opening and related restrictions apply.**	31	**ASC BCSC CVMQ OSC**
22	**To address the potential for illegal insider trading through offshore financial institutions, the IDA evaluate the costs and benefits of revising Regulation 1300 to require that members have at least the following account-opening condition for these offshore financial institutions:** • **consent to identify on request, to the firm or to the appropriate Canadian regulator, the individual responsible for the trade.**	32	**IDA**
23	**The IDA consult with the federal government and IDA members to determine whether to retain a six month verification period or to revise Regulation 1300 to prohibit trading in an account until beneficial ownership of the account is verified or, alternatively, to require that assets accumulated in the account be retained in the account until beneficial ownership is verified.**	32	**IDA**
24	**Direct access to a marketplace be prohibited for persons who do not reside in a jurisdiction with a satisfactory regulatory regime unless the person agrees in writing to make available to the market regulator on request all information, including bank account information, relating to trading conducted through that account.**	33	**TSX**
25	**RS and the Mx work with the ISG to develop and participate in a centralized international database that identifies the markets upon which equities and their derivatives trade.**	33	**RS MX**
26	**RS and the Mx participate in the ISG's "unusual activity" database to identify illegal inter-market insider trading.**	34	**RS MX**
27	**RS and the Mx coordinate their analysis of equities and derivatives to identify patterns of suspicious trading that involve related securities and establish formal procedures for ongoing communication.**	34	**RS MX**
	Deterrence		

28	**The CSA, through its USL Project, consider the adoption of a uniform 'information-connection' approach to replace the current more complex model.**	39	**CSA**
29	**The Federal Government re-consider the approach in Bill C-46 and look to the model in the United States (with changes as required for the Canadian legal environment) to avoid the difficulties with a 'knowing use' requirement and, in terms of substantive content, satisfy Charter requirements.**	41	**FED. GOV'T**
30	**Provincial securities legislation be amended to provide uniformity among provinces, including for administrative penalties, enforcement orders and compliance orders.**	43	**CSA**
31	**The proposed criminal sanctions under Bill C-46 be approved.**	43	**FED. GOV'T**
32	**The CSA, in consultation with IMETS participants, consider recommending that a nationally integrated subgroup of the IMETS be formed to focus solely on illegal insider trading, including:** • **receipt and assessment of insider trading cases;** • **criminal investigations and prosecution; and** • **assisting in administering implementation of this report's recommendations.**	45	**CSA**

Appendix B – Definitions

ASC	Alberta Securities Commission
ATS	Alternative Trading System
ASIC	Australian Securities & Investments Commission
BCSC	British Columbia Securities Commission
Bought deal	An entire issue of securities bought from the issuer by an investment dealer, frequently acting alone, for resale to its clients
CBA	Canadian Bar Association
CESR	Committee of European Securities Regulators
Charter	Canadian Charter of Rights and Freedoms
CICA	Canadian Institute of Chartered Accountants, of which the members are the provincial institutes of chartered accountants
CIRI	Canadian Investor Relations Institute
CJA	United Kingdom *Criminal Justice Act* of 1993.
CSA	Canadian Securities Administrators composed of the thirteen provincial and territorial securities regulatory authorities
CVMQ	Commission des valeurs mobilières du Québec
Dealer	An investment dealer that is a member of the IDA
Derivative	An instrument such as a future, option or swap, whose value is based on underlying assets such as securities. A derivative derives its value from the underlying asset. Derivatives can be traded on an exchange such as the Mx or over the counter (OTC).
Exchange Act	The United States *Securities Exchange Act* of 1934 and related Rules
FATF	Financial Action Task Force is an inter-governmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering
Five Year Review Committee Final Report (March 2003)	The report produced by an independent committee established by the Ontario provincial government to review the regulation of securities under the Ontario Securities Act and by the OSC and to recommend improvements
FSA	Financial Services Authority of the United Kingdom
Generally disclosed	Information has been generally disclosed if (a) the information has been disseminated in a manner calculated to effectively reach the marketplace; and (b) public investors have been given a reasonable amount of time to analyze the information
Grey list	A list of securities selected for special surveillance by a registrant. Issuers on the list are often takeover targets, companies planning to issue new securities, or stocks showing unusual activity. Trading is not prohibited by the dealer but is subject to close scrutiny by the firm's compliance department. Also known as a 'watch list'.

ICAO	Institute of Chartered Accountants of Ontario, a self-regulatory organization
IDA	The national self-regulatory organization and representative of dealers that regulates the activities of investment dealers in terms of capital adequacy and conduct of business other than for trading activities on regulated equities and derivatives marketplaces in Canada
IMM	The RS 'Intelligent Market Monitoring' system that tracks volume and price data
Inside information	Material fact or material change that has not been generally disclosed
Insider trading	A prohibited activity defined in provincial securities legislation as the purchase or sale of securities of a reporting issuer (including trading puts, calls and options) by a person in a special relationship with a reporting issuer who knows of material information with respect to that issuer, which information has not been generally disclosed. Note that insider trading, as a proscribed activity, varies from jurisdiction to jurisdiction.
IOSCO	International Organization of Securities Commissions, of which the OSC and CVMQ are ordinary members, and the BCSC and ASC are associate members.
ISG	The Intermarket Surveillance Group, which has the objective of providing a framework for the sharing of information and the coordination of regulatory efforts among securities and commodities markets and market regulators in North America, Europe and Asia to address intermarket trading abuses and to develop best practices
Issuer	A company whose securities trade on a stock exchange or other marketplace
ITTF	Insider Trading Task Force
KYC	Know your client, also referred to as 'enhanced due diligence' in the United States
Manipulation	Intentional interference with the free forces of supply and demand on the marketplace including conduct designed to deceive or defraud investors by controlling or artificially affecting the price of securities
Material change	Where used in relation to the activities of an issuer, a change in the business, operations, assets or ownership of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer.
Material fact	Where used in relation to securities issued or proposed to be issued, means a fact that significantly affects, or would reasonably be expected to have a significant effect on, the market price or value of such securities
Material information	Collectively refers to 'material facts' and 'material changes', both of which are based on a market-impact test
MOU	Memorandum of Understanding that describes a formal process for information sharing between regulators

Mx	Bourse de Montréal Inc., an exchange that specializes in options
Nominee account	An account where the legal owner of the securities, as far as the issuer and its share registrar are concerned, is the nominee who can be an individual or legal entity. However, a third party has the 'beneficial interest' in the securities (i.e. the securities are really owned by the third party who is entitled to all income and capital gains arising from the investment). The discussion and recommendations concerning nominee accounts in this report relate to their use to engage in insider trading while concealing the true ownership of the securities acquired or sold.
Offshore account	A brokerage account at a Canadian dealer for which the accountholder, often a nominee financial institution, trust or holding company, is resident outside Canada in a jurisdiction whose laws applicable to non-residents effectively allow non-resident beneficiaries of brokerage accounts in their jurisdiction of domicile to avoid disclosure in that jurisdiction. Typically, the jurisdiction is one where income and inheritance taxes do not exist, where there are no currency exchange controls, and where bank and corporation secrecy laws significantly impede inquiries into the ownership of securities, companies and bank accounts.
OSC	Ontario Securities Commission
OTC	Over-the-counter market
Person in a special relationship	Such persons include, but are not limited to (a) insiders as defined under securities legislation, (b) directors, officers and employees of the issuer, (c) persons engaged in professional or business activities for or on behalf of the issuer, (d) anyone (a tippee) who learns of material information from someone that the tippee knows or should know is a person in a special relationship with the issuer
Private placement	The sale of securities by an issuer from treasury under an exemption from prospectus disclosure to a limited number of buyers, participated in by a dealer as underwriter or agent
QTRS	Quotation and Trade Reporting System
Restricted list	A list, compiled by a registrant, of issuers about which the registrant has inside information. Trading and research is restricted.
RS	Market Regulation Services Inc.
SEC	United States Securities and Exchange Commission
Secrecy jurisdiction	A country that shields the identity of beneficial owners of investments from securities regulators
SRO	Self-regulatory organization, specifically for the purposes of this report being the IDA, RS and the Mx
Tipping	A prohibited activity defined in provincial securities legislation - when a person or company in a special relationship with a reporting issuer informs, other than in the necessary course of business, anyone of a material fact or a material change (or privileged information in Québec) before that material information has been generally disclosed. .
TSX	Toronto Stock Exchange

TSXVN	TSX Venture Exchange
UMIR	Universal Market Integrity Rules, governing trading on Canadian equity markets and administered and enforced by RS
United States Securities Act	The United States *Securities Act* of 1933 and related Rules
USL	Uniform Securities Law project of the CSA
Watch list	A list of securities selected for special surveillance by a registrant. Issuers on the list are often takeover targets, companies planning to issue new securities, or stocks showing unusual activity. Trading is not prohibited by the dealer but is subject to close scrutiny by the firm's compliance department. Also known as a 'grey list'.

1.1.3 Notice of Commission Approval - Amendments to MFDA Rule 2.2.1 - "Know-Your-Client"

THE MUTUAL FUND DEALERS ASSOCIATION (MFDA)
NOTICE OF COMMISSION APPROVAL
AMENDMENTS TO MFDA RULE 2.2.1
"KNOW-YOUR-CLIENT"

The Ontario Securities Commission approved amendments to MFDA Rule 2.2.1, the "Know-Your-Client" rule. In addition, the Alberta Securities Commission, Nova Scotia Securities Commission and Saskatchewan Financial Services Commission approved; and the British Columbia Securities Commission did not object to the amendments. The amendments to MFDA Rule 2.2.1 clarify the Member's obligations when a transaction proposed by a client is not suitable for the client. A copy and description of these amendments were published on July 11, 2003 at (2003) 26 OSCB 5419. A summary of the public comments received and the final amendments to Rule 2.2.1 are contained in Chapter 13 of this Bulletin.

1.1.4 CNQ Request for Comments – Registration Requirements and Appeals of CNQ Decisions

CANADIAN TRADING AND QUOTATION SYSTEM INC.

PROPOSED AMENDMENTS TO CNQ RULES
REGISTRATION REQUIREMENTS
FOR CNQ DEALERS AND APPROVED TRADERS AND
APPEALS OF CNQ DECISIONS

REQUEST FOR COMMENTS

A request for comments on proposed amendments to the CNQ Rules, relating to the registration requirements for CNQ Dealers and Approved Traders and relating to appeals of CNQ decisions, is published in Chapter 13 of the Bulletin.

1.1.5 Notice of Commission Approval – Amendments to CNQ Issuer Policies – Out of Province Issuers

CANADIAN TRADING AND QUOTATION SYSTEM INC. (CNQ)

AMENDMENTS TO CNQ ISSUER POLICIES – OUT OF PROVINCE ISSUERS

NOTICE OF COMMISSION APPROVAL

On September 9, 2003, the Commission approved amendments to CNQ Issuer Policies, relating to out of province issuers. The amendments allow companies that are reporting issuers in good standing in British Columbia, Alberta or Quebec to be eligible to be CNQ Issuers without having to become reporting issuers in Ontario, provided the company does not have a substantial connection to Ontario. The notice and request for comment was published on July 18, 2003 at (2003) 26 OSCB 5654. Two comment letters were received. CNQ's summary of the comment letters and CNQ's responses are attached to this notice.

September 4, 2003

Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, ON
MM5H 3S8

Attention: *Margo Paul, Director, Corporate Finance and Barbara Fydell, Legal Counsel, Market Regulation*

Dear Ms. Paul and Ms. Fydell:

Re: Canadian Trading and Quotation System Inc. ("CNQ") — Amendments to Allow Out-of-Province Issuers to be Eligible for Quotation

The comment period for the above-noted policy amendment has now closed. CNQ received two comments strongly in support of the proposal from Canaccord Capital Corporation and Brandy Outlon. No comments were received that were opposed to the proposal.

While expressing support, Canaccord was opposed to the proposed requirement that a company be required to become an Ontario reporting issuer if it had a significant connection to Ontario. While we sympathize with a concern about the higher fees that this entails, we believe that it is appropriate that a company traded on an Ontario-based marketplace with a substantial number of Ontario shareholders become a reporting issuer and be subject to the full jurisdiction of the Commission.

We request that the commission approve the amendment. If you have any questions, please contact me at 416-572-2000 x2282.

Yours truly,

CANADIAN TRADING AND QUOTATION SYSTEM INC.

Timothy Baikie
General Counsel & Secretary

1.1.6 OSC Staff Notice 31-710 - National Registration Database (NRD) Extension of Certain Filing Deadlines

ONTARIO SECURITIES COMMISSION
STAFF NOTICE 31-710 -
NATIONAL REGISTRATION DATABASE (NRD)
EXTENSION OF CERTAIN FILING DEADLINES

On June 20, 2003 staff published Notice 31-709 to extend certain filing deadlines in the transition sections of the NRD and Registration Information rules to November 15, 2003. Following further consultation with industry, staff will extend certain deadlines to December 15, 2003 and certain other deadlines to March 31, 2006. Staff will not take any action against firms or individuals that make NRD submission under the following sections after the time required in the sections so long as the filing is made by the date indicated.

Deadlines extended to December 15, 2003

(a) section 7.6 of Multilateral Instrument 31-102 (individuals missing from the original data set); and

(b) section 7.6 of OSC Rule 31-509 *(Commodity Futures Act)*(individuals missing from the original data set).

Deadlines extended to March 31, 2006

(a) section 7.4 (missing or inaccurate business location information) and paragraph 7.9(1)(a) (change in an individual's registration category) of Multilateral Instrument 31-102;

(b) section 7.4 (missing or inaccurate business location information) and paragraph 7.9(1)(a) (change in an individual's registration category) of OSC Rule 31-509 (*Commodity Futures Act*);

(c) section 7.7 (changes to registered individual information) and section 7.8 (changes to non-registered individual information) of Multilateral Instrument 31-102 but only with respect to changes reported for any item of Form 33-109F4 other than:

  (i) Item 1 Name;

  (ii) Item 2 Residential address - where the change is a move out of a province;

  (iii) Item 14 Criminal Disclosure;

  (iv) Item 15 Civil Disclosure; and

  (v) Item 16 Financial Disclosure; and

(d) section 7.7 (changes to registered individual information) and section 7.8 (changes to non-registered individual information) of OSC Rule 31-509 *(Commodity Futures Act)*) but only with respect to changes reported for any item of Form 33-506F4 other than:

  (i) Item 1 Name;

  (ii) Item 2 Residential address - where the change is a move out of a province;

  (iii) Item 14 Criminal Disclosure;

  (iv) Item 15 Civil Disclosure; and

  (v) Item 16 Financial Disclosure.

Questions

Dina Dizon
Assistant Manager
Registrant Regulation
Ontario Securities Commission
416-593-3660
ddizon@osc.gov.on.ca

November 14, 2003.

1.1.7 CNQ Application for Recognition as a Stock Exchange - Request for Comment

CANADIAN TRADING AND QUOTATION SYSTEM

APPLICATION FOR RECOGNITION AS A STOCK EXCHANGE

REQUEST FOR COMMENT

Canadian Trading and Quotation System (CNQ) has applied to the Commission for recognition as a stock exchange under section 21 of the *Securities Act* (Ontario).

The Commission is publishing for comment the following documents in Chapter 13 of this Bulletin:

1. Notice and request for comment
2. CNQ's application
3. CNQ rule amendments
4. Draft recognition order

1.1.8 Revised CSA Staff Notice 52-306 Non-GAAP Financial Measures

REVISED 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, which is withdrawn, 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 21, 2003.

1.2 Notices of Hearing

1.2.1 John Alexander Cornwall and CGC Financial Services Inc. - s. 127

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

AND

IN THE MATTER OF
JOHN ALEXANDER CORNWALL and
CGC FINANCIAL SERVICES INC.

NOTICE OF HEARING
(Section 127)

TAKE NOTICE that the Ontario Securities Commission will hold a hearing pursuant to section 127 of the *Securities Act*, at the offices of the Ontario Securities Commission, 20 Queen Street West, 17th Floor Hearing Room, Toronto, Ontario, on November 21, 2003 at 10:00 a.m. or as soon thereafter as the hearing can be held:

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

(a) to extend the temporary order made November 7, 2003 until the conclusion of this hearing pursuant to s. 127(7);

(b) at the conclusion of this hearing, to make an order pursuant to clause 2 of s. 127(1) that trading in any securities by Cornwall cease until further ordered by this Commission; and

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

BY REASON OF the allegations set out in the Statement of Allegations dated November 7, 2003, as against the Respondents John Alexander Cornwall and CGC Financial Services Inc., and such additional allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that any party to the proceeding may be represented by counsel at the hearing;

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

November 10, 2003.

"John Stevenson"

1.3 News Releases

1.3.1 Appeal from Sentence in the Matter of Glen Harvey Harper

FOR IMMEDIATE RELEASE
November 13, 2003

APPEAL FROM SENTENCE IN THE MATTER OF GLEN HARVEY HARPER

TORONTO – On October 31, 2003, the Court of Appeal for Ontario released its decision on the sentence appeal in this matter.

On July 21, 2000, Glen Harvey Harper was convicted in the Ontario Court of Justice on two counts of insider trading in relation to his trading of shares in Golden Rule Resources Inc., a junior mineral exploration company listed on the Toronto Stock Exchange. The trial judge sentenced Mr. Harper to one year's imprisonment on each count, to be served concurrently, and a fine of approximately $4 million based on the application of specific fine provisions in the *Securities Act* governing insider trading offences.

On appeal by Mr. Harper to the summary conviction appeals court, Mr. Harper's term of imprisonment was reduced to six months on each count, to be served concurrently, and the fine was reduced to $1 million on each count. The summary conviction appeals court reduced the fine on the ground that based on the summary conviction appeals court's interpretation of the specific fine provisions, those provisions could not be applied.

The Court of Appeal granted the Crown leave to appeal on the issue of the interpretation of the specific fine provisions governing insider trading offences under the *Securities Act*. The Court of Appeal agreed with the Crown that the summary conviction appeals court had erred in its interpretation of the fine provisions. However, the Court of Appeal dismissed the Crown's request to restore the original fine imposed by the trial judge on the basis that the trial judge had erred in including trading accounts beneficially owned by Mr. Harper's wife and children in the application of the specific fine provisions. As a result, despite upholding the Crown's appeal on the primary issue of the application of the fine provisions for insider trading offences, the Court of Appeal affirmed the fine imposed by the summary conviction appeals court judge of $2 million, in addition to a $400,000 victim fine surcharge. Mr. Harper has already served his six month term of imprisonment.

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

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

1.3.2 OSC Seeks Leave to Appeal Divisional Court Decision in Donnini Matter

FOR IMMEDIATE RELEASE
November 14, 2003

OSC SEEKS LEAVE TO APPEAL DIVISIONAL COURT DECISION IN DONNINI MATTER

Toronto – The Ontario Securities Commission filed today its notice seeking leave to appeal to the Ontario Court of Appeal two aspects (sanctions and costs) of the decision of the Ontario Divisional Court in respect of Piergiorgio Donnini.

For Media Inquiries: Michael Watson
Director, Enforcement Branch
416-593-8156

Eric Pelletier
Manager, Media Relations
416-595-8913

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

1.3.3 Scam Artists Can Hide Behind Impressive Names, Addresses and Websites

FOR IMMEDIATE RELEASE
November 17, 2003

SCAM ARTISTS CAN HIDE BEHIND IMPRESSIVE NAMES, ADDRESSES AND WEBSITES

Toronto - What's in a business name? Does it conjure up images of a successful company in a city center skyscraper? Does the name impress upon you the company's established history and solid reputation? Though a business name is often created to do all of these things, you may want to look into what business really goes on behind the name, before you invest. Your investigation could save you from becoming a victim of fraud.

Scam artists and fictional entities can go to huge lengths to gain your trust. Fronted-up names, addresses, and websites are tools that scam artists can use to pull the wool over your eyes. These entities try to use the integrity of other companies to bolster their own reputation. Though a company may claim to be associated with a well-known financial organization, they may be name-dropping under false pretences. A little research will help you get to the bottom of their real relationship.

A con artist may try to borrow parts of another company's name and reputation. For example, let's say that "National Investing Solutions" is a well-known, legitimate business. The con artist might name their company "National Investing Solutions & Trust Co.", or even "National Investing Solutions Inc." You might associate the fraudulent company with the legitimate company – and the misconception could cost you.

Company addresses can also lead you to the truth about whether or not a company is actually a scam operation. A fictional entity may use an address that is incorrectly spelled, but close enough to a real address to go unnoticed. Fraudulent financial companies may use a fake address in the financial district to further your trust in them. That fancy address on an upper floor of a Bay Street bank tower might be a suite or floor that doesn't exist.

Company websites can also mislead you about the company's reputation - remember that the internet is unregulated. In one case, a high-rent company address listed on an attractive financial website actually led to a one-room office where one secretary fielded calls to a variety of scam operations.

How can you protect yourself?

- The Office of the Superintendent of Financial Institutions Canada posts warning notices on the website www.osfi-bsif.gc.ca about "entities that it believes may be of concern to the business community and the public." The warning notices show the company name and address, their web address and related entities, and the agency to contact if you have any further information to report.
- Check the registration of an investment, and the person or company offering it - call the OSC Contact Centre toll-free at 1-877-785-1555, or check the registrants' listing at **www.osc.gov.on.ca**.
- Check the credibility of company information. The documents that public companies file with securities regulators are available on www.sedar.com. Verify any information you receive with a credible source before investing your money.

If you suspect a scam, or have information pertaining to this or a similar scam, contact the Ontario Securities Commission at 1-877-785-1555. You can learn more about investment fraud and other investment topics on-line at www.investorED.ca.

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

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

1.3.4 OSC Proceedings in Respect of John Alexander Cornwall and CGC Financial Services Inc.

FOR IMMEDIATE RELEASE
November 18, 2003

OSC PROCEEDINGS IN RESPECT OF JOHN ALEXANDER CORNWALL AND CGC FINANCIAL SERVICES INC.

TORONTO – The Ontario Securities Commission will hold a hearing pursuant to section 127 of the *Securities Act*, to consider whether it is in the public interest for the Commission to extend the Temporary Cease Trade Order made November 7, 2003 until the conclusion of this hearing pursuant to s. 127(7).

The hearing will be held at the offices of the Ontario Securities Commission, 20 Queen Street West, 17th Floor Hearing Room, Toronto, Ontario, on November 21, 2003 at 10:00 a.m. or as soon thereafter as the hearing can be held.

A copy of the Notice of Hearing is available at the Commission's website at **www.osc.gov.on.ca**.

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

Michael Watson
Director, Enforcement Branch
416-593-8156

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

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 ATI Technologies Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – issuer adopted restricted share unit plan – plan involves trustee or broker distributing securities of issuer to employees, officers and directors – such shares acquired by trustee or broker on the secondary market – an exemption from registration requirement not available for such trades for technical reasons – decision to expire upon coming into force of amendments to Multilateral Instrument 45-105.

Ontario Statutes

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

Ontario Rules

Multilateral Instrument 45-105 Trades to Employees, Senior Officers, Directors, and Consultants (2003) 26 OSCB 4179.

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA AND ONTARIO

AND

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

AND

IN THE MATTER OF
ATI TECHNOLOGIES INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in British Columbia and Ontario (the "Jurisdictions") has received an application from ATI Technologies Inc. (the "Company") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the requirement contained in the Legislation to be registered to trade in a security (the "Registration Requirement") shall not apply to certain trades in securities of the Company made in connection with the Company's Restricted Share Unit Plan for Canadian Directors and Employees (the "Canadian Plan") and the Company's Restricted Share Plan for the U.S. Directors and Employees (the "U.S. Plan", and collectively with the Canadian Plan, the "Plans");

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

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

1. The Company was incorporated under the laws of Ontario. The Company has been a reporting issuer in each of the jurisdictions of Canada which recognizes the reporting issuer concept since November 1993 and is not in default of its obligations as a reporting issuer thereunder. The Company has a current Annual Information Form for the purposes of National Instrument 44-101.

2. The Company is a foreign private issuer in the United States and is subject to the reporting requirements of the United States *Securities Exchange Act* of 1934 as they apply to foreign companies. The Company has filed its annual report on Form 40-F and other information required under applicable United States law with the United States Securities and Exchange Commission ("SEC").

3. The Company's authorized share capital consists of an unlimited number of common shares ("Shares") and an unlimited number of non-voting preference shares. As of August 31, 2003, the Company's issued share capital consisted of 241,742,113 Shares. No non-voting preference shares have been issued. The Shares are listed on the Toronto Stock Exchange and quoted on the NASDAQ.

4. The Plans form part of the incentive compensation package for employees of the Company in Canada and for employees of its subsidiaries in the United States (collectively, the "Employees"), certain officers of the Company in Canada and of its subsidiaries in the United States ("Officers" and together with the Employees, the "Participants"). The Board of the Directors of the Company approved the Plans subject to the approval of the applicable regulatory authorities on August 12, 2003. Participation in the Plans is voluntary and Participants will not be induced to participate in the Plans by expectation of employment or continued employment.

5. The Plans will be administered by the compensation committee of the board of directors of the Company.

6. The Employees are resident in the provinces of Ontario, British Columbia, Quebec and the United States. Certain of the Employees resident in the province of British Columbia may be eligible to receive awards through the U.S. Plan and certain Employees resident in the United States may be eligible to receive awards through the Canadian Plan. The Officers of the Company are residents of Ontario and British Columbia. Approximately 85% of Participants will be Employees, the remaining 15% of Participants will be Officers.

7. The Canadian Plan provides for awards by the Company to Participants in the Canadian Plan (the "Canadian Plan Participants") of restricted share units ("RSU Awards") which will vest over a three-year period. Restricted share units ("RSUs") represent a promise to deliver Shares on a future date provided that the RSU Award has vested on or before such date. In the case of the Canadian Plan, the delivery date for any Share in respect of an RSU is the same date as the date the corresponding RSU Award vests (the "Vesting Date"). The Canadian Plan requires that all Shares in respect of vested RSU Awards be delivered to Canadian Plan Participants no later than December 31 of the third calendar year after the date the RSU Award was made.

8. Subsequent to an award of RSUs, the Company will provide funds by way of one or more payments to an independent trust (the "Canadian Trust") to enable the trustee of the Canadian Trust (the "Trustee") to arrange for the purchase of Shares on the open market corresponding to the number of RSUs awarded to Canadian Plan Participants prior to their Vesting Date. All such Shares will be acquired through the facilities of the TSX, NASDAQ or any other stock exchange on which the Shares are listed and posted for trading (any such exchange, a "Stock Exchange") by the Trustee or a Stock Exchange participating organization retained by the Trustee. The aggregate number of Shares that may be purchased for all purposes pursuant to the Canadian Plan may not exceed 1.8 million Shares.

9. The Trustee is a trust company existing under the laws of Canada and has its head office in Ontario.

10. Shares acquired pursuant to the Canadian Plan will be registered in the name of the Trustee and held by the Trustee for the benefit of Canadian Plan Participants. The Trustee will hold the Shares in the Canadian Trust until such time as any corresponding RSU Awards vest, in which case the Trustee will deliver the corresponding number of Shares from its holdings to Canadian Plan Participants or to a trustee, custodian or administrator acting on their behalf.

11. If a Canadian Plan Participant resigns or his or her employment with the Company is terminated for any reason, the Canadian Plan Participant shall forfeit all RSUs relating to unvested RSU Awards effective the date of resignation or termination. In the event that a Canadian Plan Participant dies, all unvested RSU Awards of the Canadian Plan Participant shall immediately vest.

12. The Company does not have any interest in the Shares held by the Trustee. To the extent that the vesting conditions of an RSU Award are not met and there are excess Shares in the Canadian Trust, the Trustee may apply such Shares to meet obligations relating to other RSU Awards or may sell the Shares and apply the net proceeds from sale to the payment of its costs. Upon termination of the Canadian Plan, if there are any funds remaining after payment of the Trustee's costs, the excess funds are returned to the Company.

13. The U.S. Plan provides for awards ("Restricted Share Awards") by the Company to participants in the U.S. Plan ("U.S. Plan Participants") of Shares ("Restricted Shares") subject to forfeiture over a three-year period (the "Forfeiture Period").

14. Subsequent to granting an award of Restricted Shares, the Company will provide funds to a broker registered in the United States (the "Broker") to acquire the number of Shares on the open market in the United States corresponding to the number of Restricted Shares awarded. All such Shares will be acquired through the facilities of a Stock Exchange by the Broker or a Stock Exchange participating organization retained by the Broker. The aggregate number of Shares that may be purchased for all purposes pursuant to the U.S. Plan must not exceed 1.2 million Shares.

15. The Broker will be registered with the SEC under applicable legislation in the United States and a member of the National Association of Securities Dealers. The Broker is not registered in any of the Jurisdictions and does not operate through the services of a registrant in each of the Jurisdictions. The Company may replace the Broker at some point in the future, and any such successor may not be registered for trading in securities in each of the Jurisdictions.

16. Shares purchased by the Broker will be delivered to an independent custodian (the "Custodian"). The Shares will be registered in the name of the Custodian and the Custodian will hold the Shares as nominee for the benefit of U.S. Plan Participants until such time as the Forfeiture Period has expired and, upon expiry of the Forfeiture Period, will deliver to the U.S. Plan Participants, or to a trustee, custodian or

administrator acting on their behalf, the corresponding number of Shares from the holdings of the Custodian.

17. Initially, the Custodian will be located in the province of Ontario. CIBC Mellon Trust Company will serve as the initial Custodian under the U.S. Plan.

18. Until the Forfeiture Period in respect of a Restricted Share expire, a U.S. Plan Participant's rights to the Restricted Share may not be sold, assigned, transferred, pledged or otherwise encumbered and no attempt to transfer the Share, whether voluntary or involuntary, by operation of law or otherwise, will vest the transferee with any interest or right in or with respect to the Restricted Share.

19. The Company does not have any interest in the Shares held by the Custodian. To the extent that the Restricted Shares are forfeited, the Custodian shall sell such Shares and return the proceeds to the Company. In the event of death, disability, termination of employment or retirement, the Restricted Shares will be subject to forfeiture on substantially the same terms as the RSUs in the Canadian Plan.

20. The exemption from the Registration Requirement contained in Section 2.4 of Multilateral Instrument 45-105 ("MI 45-105") is not available for certain trades in Shares acquired by the Trustee or Broker unless the securities were acquired under an exemption that makes the first trade of the security subject to Section 2.6 of Multilateral Instrument 45-102. The Shares acquired by the Trustee or Broker in accordance with the Plans will not be acquired under such an exemption.

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

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

THE DECISION of the Decision Makers under the Legislation is that the Registration Requirement shall not apply to trades in Shares made by a Broker, Trustee, Custodian or Participant, or their legal representatives, provided that

(a) the trades are made in accordance with the Plans, and

(b) the Decision will terminate upon the coming into force of amendments to MI 45-105, substantially in the form of the amendments published by the Ontario Securities Commission on September 5, 2003.

October 27, 2003.

"Paul K. Bates" "Wendell S. Wigle"

2.1.2 FuelCell Energy, Inc. and Global Thermoelectric Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from the requirement to reconcile to Canadian GAAP, certain financial statements included in an information circular that were prepared in accordance with US GAAP.

Ontario Rules

Rule 41-501 General Prospectus Requirements.
Rule 54-501 Prospectus Disclosure.

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

AND

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

AND

IN THE MATTER OF
FUELCELL ENERGY, INC.

AND

IN THE MATTER OF
GLOBAL THERMOELECTRIC INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the Decision Makers") in each of British Columbia, Alberta, Ontario, Quebec and Newfoundland and Labrador (the "Jurisdictions") has received an application from FuelCell Energy, Inc. ("FuelCell") and Global Thermoelectric Inc. ("Global") (collectively the "Applicants") for a decision (the "Decision") under the securities legislation of the Jurisdictions (the "Legislation"), that the Applicants be exempt from the following requirements with respect to FuelCell in the joint management information circular and proxy statement (the "Circular") to be sent to FuelCell and Global shareholders:

(a) the requirement that historical and *pro forma* financial statements of FuelCell prepared in accordance with U.S. GAAP be accompanied by a note to explain and quantify the effect of material differences between Canadian GAAP and U.S. GAAP that relate to measurements and provide a reconciliation of such financial statements to Canadian GAAP;

(b) the requirement that the FuelCell auditor's report disclose any material differences in the form and content of its auditor's report as compared to a Canadian auditor's report and confirming that the auditing standards applied are substantially equivalent to Canadian generally accepted auditing standards; and

(c) the requirement that the FuelCell MD&A provide a restatement of those parts of the FuelCell MD&A that would read differently if the FuelCell MD&A were based on statements prepared in accordance with Canadian GAAP and the requirement that the FuelCell MD&A provide a cross-reference to the notes in the financial statements that reconcile the differences between U.S. GAAP and Canadian GAAP.

(collectively, the "GAAP Reconciliation Requirements")

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Alberta Securities Commission is the principal jurisdiction 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 Applicants have represented to the Decision Makers that:

1. Pursuant to a combination agreement dated August 4, 2003 between FuelCell and Global, FuelCell intends to acquire all of the outstanding common shares of Global (the "Global Common Shares") in a transaction (the "Transaction") to be effected pursuant to a plan of arrangement (the "Arrangement"). The Arrangement will be carried out under section 193 of the *Business Corporations Act* (Alberta) (the "ABCA").

2. The effect of the Arrangement will be to provide holders of Global Common Shares (other than Global Common Shares held by dissenting shareholders or by FuelCell or its affiliates) with exchangeable shares ("Exchangeable Shares") of a wholly-owned subsidiary of FuelCell to be incorporated ("Exchangeco") or shares of FuelCell common stock ("FuelCell Common Shares").

3. The exchange ratio will be determined by dividing US$2.72 by the product of the weighted average trading price of FuelCell Common Shares on Nasdaq over the 20 consecutive trading days ending on and including the third trading day next preceding the Global shareholders meeting

provided that if such weighted average trading price is less than US$7.96 it will be deemed to be $7.96 and if such weighted average trading price is more than US$9.74 it will be deemed to be US$9.74 (the "Exchange Ratio").

4. Global's authorized capital consists of an unlimited number of Global 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 (the "Global Preferred Shares") issued and outstanding and 29,200,850 Global Common Shares issued and outstanding. As of August 4, 2003, 2,176,500 Global Common Shares were reserved for issuance upon the exercise of stock options (the "Global Options") under the Global Amended Incentive Stock Option Plan. As of August 4, 2003, 1,307,025 of the Global Options were outstanding. There are no Series 1 Global preferred shares issued and outstanding.

5. Pursuant to the Arrangement, all of the outstanding Global Common Shares (other than those held by dissenting shareholders, or those held by FuelCell or its affiliates) will be transferred to and acquired by Exchangeco, such that upon completion of the Transaction, FuelCell will own indirectly all of the Global Common Shares.

6. 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.

7. Under the Arrangement, the Global Preferred Shares will remain preferred shares of Global and FuelCell will assume the obligation to issue FuelCell Common Shares upon their conversion.

8. Global is a company incorporated under the ABCA and is a reporting issuer in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario and Quebec. The Global Common Shares are listed on The Toronto Stock Exchange (the "TSX") under the symbol "GLE". Global is not in default of any of the requirements of the securities legislation in any of the Jurisdictions except for the requirement to mail its December 31, 2002 comparative financial statements. This situation will be remedied when the Circular is mailed, as the December 31, 2002 comparative financial statements will be included in the mailing.

9. FuelCell is a Delaware company based in Connecticut, the common stock of which is listed for trading on The Nasdaq Stock Market Inc. ("Nasdaq") under the symbol "FCEL".

10. FuelCell is currently subject to the *United States Securities Exchange Act of 1934*, as amended (the "Exchange Act").

11. Subject to the terms of an interim order (the "Interim Order") to be sought from the Alberta Court of Queen's Bench (the "Court"), it is anticipated that the required approval of the holders of the Global Common Shares of the Arrangement will be not less than 66 2/3% of the votes cast in person or by proxy at the special meeting (the "Special Meeting") of Global Common Shareholders called to consider the Arrangement, at which each Global Common Shareholder will be entitled to one vote for each Global Common Share held by them.

12. The Special Meeting of Global common shareholders is anticipated to be held on October 31, 2003 at which Global will, among other things, seek the requisite Global common shareholder approval for the special resolution approving the Arrangement.

13. In connection with the Special Meeting, Global will mail to each Global common shareholder (i) a notice of special meeting, (ii) a form of proxy, (iii) the Circular, (iv) a letter of transmittal and election form by which Global shareholders will be entitled to elect the consideration to be received in exchange for their Global Common Shares. It is anticipated that the Circular will be mailed in early October 2003. The Circular will, in accordance with the Legislation, contain prospectus-level disclosure regarding FuelCell and Global (subject to such exemptive relief as may be granted by the appropriate securities regulatory authorities) and a description of the Arrangement.

14. The Circular will contain the following financial statements:

    (a) unaudited *pro forma* condensed combined balance sheet of FuelCell as of July 31, 2003 and unaudited condensed combined *pro forma* condensed combined statements of operations for the year ended October 31, 2002 and for the nine months ended July 31, 2003 and the compilation reports thereon, all in accordance with U.S. GAAP;

    (b) audited annual financial statements of FuelCell for each of the three fiscal years ended October 31, 2000, October 31, 2001 and October 31, 2002 together with balance sheets as at the end of such periods and the auditor's reports thereon,

and unaudited comparative interim financial statements for the nine months ended July 31, 2003, all in accordance with U.S. GAAP; and

(c) audited annual financial statements of Global for the fiscal years ended December 31, 2002 and December 31, 2001, and the nine month period ended December 31, 2000, together with balance sheets as at the end of such periods and the auditor's reports thereon, and unaudited comparative interim statements for the period ended June 30, 2003, all in accordance with Canadian GAAP with a reconciliation to U.S. GAAP.

15. An application will be made to list the Exchangeable Shares on the TSX. There is no current intention to list the Exchangeable Shares on any other stock exchange. It is expected that the Global Common Shares will be delisted from the TSX on or after the completion of the Arrangement.

16. FuelCell will apply to 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.

17. 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.

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

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 the Legislation that the GAAP Reconciliation Requirements shall not apply to the Applicants in connection with the disclosure pertaining to FuelCell in the Circular.

September 30, 2003.

"Agnes Lau"

2.1.3 Energy Split Corp. Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Relief granted to an issuer from requirement to deliver annual financial statements and an annual report where applicable. The annual financial statements covered a short operating period.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am. s. 80(b)(iii).

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

AND

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

AND

IN THE MATTER OF
ENERGY SPLIT CORP. INC.

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia, Newfoundland and Labrador (the "Jurisdictions") has received an application from Energy Split Corp. Inc. (the "Issuer") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the Issuer be exempt from the requirement to send its annual financial statements and annual report, where applicable, for its fiscal year ended September 16, 2003 to its security holders, as would otherwise be required pursuant to the Legislation;

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

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

AND WHEREAS the Issuer has represented to the Decision Maker as follows:

1. On August 28, 2003, the Issuer filed a final prospectus (the "Prospectus") relating to the

offering of ROC Preferred Shares (the "ROC Preferred Shares") and Capital Yield Shares (the "Capital Yield Shares") with all of the provincial and territorial securities regulatory authorities. A receipt for this prospectus was issued on August 29, 2003. The Issuer issued 1,549,000 ROC Preferred Shares and 3,098,000 Capital Yield Shares pursuant to the offering on September 18, 2003 (the "Offering").

2. The Issuer was amalgamated under the laws of the Province of Quebec on September 17, 2003. Scotia Capital Inc. ("Scotia Capital") acts as administrator of the Issuer. The fiscal year end of the Issuer is September 16, with the first fiscal year end to occur on September 16, 2003. Pursuant to the requirements of the Legislation, and subject to any relief obtained pursuant to this application, the Issuer would be required to prepare and file in the Jurisdictions and deliver to its security holders its annual financial statements and annual report for the fiscal year ended September 16, 2003.

3. The authorized capital of the Issuer consists of an unlimited number of Capital Yield Shares, of which 3,098,000 are issued and outstanding, an unlimited number of ROC Preferred Shares, of which 1,549,000 are issued and outstanding, an unlimited number of Class B, Class C, Class D and Class E capital shares issuable in series, none of which are issued and outstanding, an unlimited number of Class B, Class C, Class D and Class E preferred shares, issuable in series, none of which are issued and outstanding, and an unlimited number of Class F Shares issuable in series, of which 100 are issued and outstanding. There were not any Capital Yield Shares or ROC Preferred Shares outstanding as at the year end date of September 16, 2003.

4. The Class F Shares are the only class of voting securities of the Issuer. ESC Holdings Limited ("ESC Holdings") owns all of the issued and outstanding Class F Shares.

5. The Issuer has been created in order to generate fixed cumulative preferential tax efficient distributions for the holders of the ROC Preferred Shares and to enable the holders of the Capital Yield Shares to receive leveraged tax efficient distributions from a fixed portfolio (the "Royalty Trust Portfolio") consisting of 17 oil and gas royalty trusts listed on the Toronto Stock Exchange. The Capital Yield Shares will also have a leveraged exposure to any changes in the value of the Royalty Trust Portfolio. The Issuer will use the net proceeds of the Offering to acquire a portfolio consisting primarily of common shares of Canadian public companies and will enter into a forward purchase and sale agreement (the "Forward Agreement") on this portfolio with a Canadian chartered bank (the "Counterparty") pursuant to which the Counterparty will agree to pay to the Issuer on September 16, 2006, the economic return provided by the Royalty Trust Portfolio which will be held by the Royalty Fund (the "Fund").

6. In order to achieve its investment objectives, the Issuer will enter into the Forward Agreement, which will provide holders of ROC Preferred Shares and Capital Yield Shares with exposure to the returns of the Royalty Trust Portfolio which will be held by the Fund.

7. The Fund is a newly created investment trust that was established on August 28, 2003 under the laws of Ontario pursuant to a declaration of trust. The Fund is authorized to issue an unlimited number of redeemable, transferable units, each of which represents an equal undivided beneficial interest in the net assets of the Fund. ESC Holdings acts as the trustee of the Fund and Scotia Capital acts as administrator. The holder of units of the Fund will be the Counterparty. The Fund has been established for the purpose of acquiring the Royalty Trust Portfolio.

8. The Prospectus included an audited balance sheet of the Issuer as at August 28, 2003 and an unaudited pro forma balance sheet prepared on the basis of the completion of the sale and issue of ROC Preferred Shares and Capital Yield Shares of the Issuer. There are no material differences in the financial position of the Issuer as at September 16, 2003 and, as such, the financial position of the Issuer as at September 16, 2003 will have been substantially reflected in the pro forma financial statements contained in the Prospectus.

9. The Issuer is an inactive company, the sole purpose of which is to provide a vehicle through which different investment objectives with respect to participation in the Royalty Trust Portfolio may be satisfied.

10. The benefit to be derived by the security holders of the Issuer from receiving a hard copy of the annual financial statements and annual report for the fiscal year ended September 16, 2003 would be minimal in view of (i) the short operating period (i.e. 19 days) from the date of the Prospectus to September 16, 2003; (ii) the pro forma financial statements contained in the Prospectus; (iii) the fact that, no ROC Preferred Shares or Capital Yield Shares had been issued as at the Issuer's initial fiscal year end on September 16, 2003 as the closing of the offering occurred on September 18, 2003; and (iv) the nature of the minimal business carried on by the issuer.

11. The expense to the Issuer of sending to its security holders the financial statements and the annual report for the fiscal year ended September

16, 2003 would not be justified in view of the benefit to be derived by the security holders from receiving such statements.

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

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

THE DECISION of the Decision Makers pursuant to the Legislation is that the Issuer is exempted from the requirement to deliver to its security holders its annual financial statements for its fiscal year ended September 16, 2003 and is exempted from preparing, filing and sending to its security holders an annual report, where applicable, for its fiscal year ended September 16, 2003, provided that,

(i) the Issuer issue, and file on SEDAR, a press release informing security holders of their right to receive such annual financial statements and annual report upon request; and

(ii) the Issuer send a copy of such annual financial statements and annual report to any security holder of the Issuer who so requests.

October 20, 2003.

"Robert L Shirriff" "Robert W. Davis"

2.1.4 National Bank Securities Inc. - MRRS Decision

Headnote

Investment by a Top Fund in securities of Underlying Funds under an actively managed fund-of-fund structure exempted from the mutual fund self dealing prohibitions and management reporting requirements of the Securities Act.

Statutes Cited

Securities Act (Ontario), R.S.O. c. S.5, as am., ss. 111(2)(b), 111(3), 113, 117(1)(a), 117(1)(d) and 121(2)(a)(ii).

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

AND

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

AND

IN THE MATTER OF
NATIONAL BANK SECURITIES INC.
("NBS" or the "Manager")

AND

IN THE MATTER OF
NATIONAL BANK MONTHLY INCOME FUND
(The "Top Fund")

MRRS DECISION DOCUMENT

WHEREAS the securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan and Ontario (the "Jurisdictions") has received an application from NBS as manager of the Top Fund for a decision by each Decision Maker under the securities legislation of the Jurisdictions (the "Legislation") that the following provisions of the Legislation (the "Applicable Requirements ") shall not apply to the Top Fund or NBS, as the case may be, in respect of the Top Fund's investments in securities of National Bank High Yield Bond Fund or of other mutual funds, managed by NBS or any of its affiliates, in which the Top Fund may choose to invest (individually, the "Underlying Fund", collectively, the "Underlying Funds"):

1. the restrictions contained in the Legislation that prohibit a mutual fund from knowingly making or holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial securityholder; and

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

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

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

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

1. The Top Fund will be an open-end mutual fund trust established under the laws of the Province of Ontario, and will be a reporting issuer in each of the Jurisdictions. Units of the Top Fund will be qualified for distribution under a simplified prospectus and annual information form (the "Prospectus") filed in each of the Jurisdictions. A preliminary prospectus has been filed in the Jurisdictions under SEDAR Project No. 577869.

2. The Underlying Funds are open-end mutual fund trusts established under the laws of the Province of Ontario, and are reporting issuers in each of the Jurisdictions. Securities of the Underlying Funds are qualified for distribution under a simplified prospectus and annual information form filed in each of the Jurisdictions.

3. The Manager is a corporation incorporated under the *Canada Business Corporations Act.* The Manager's head office is located in Montreal, Quebec. The Manager is the manager of the Top Fund and the Underlying Funds.

4. The Prospectus will disclose the relationship of the Manager to the Top Fund and the Underlying Funds, the fact that the Top Fund may purchase securities of the Underlying Funds, the approximate percentage of net assets that may be dedicated to these purchases, and the criteria for selection of funds in which assets of the Top Fund may be invested.

5. The Top Fund will be actively managed, and may seek to achieve its investment objective by investing a portion of its assets in National Bank High Yield Bond Fund. The remaining portion of the assets of the Top Fund will be invested primarily in bonds, debentures, mortgage-backed securities, money market instruments, preferred and common shares and income trust units issued by both Canadian and foreign companies. The Top Fund may choose to invest more than 10% of its assets in securities of National Bank High Yield Bond Fund in order to achieve its investment objective. The portfolio manager of the Top Fund will have the discretion to vary the Top Fund's asset mix in response to market conditions in order to achieve the best overall return. The portfolio manager of the Top Fund will also have the discretion to buy and sell securities of other Underlying Funds, selected in accordance with the Top Fund's investment objective, as well as alter its holdings in any of the Underlying Funds in which it invests.

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

7. In the absence of this Decision, the Top Fund would be prohibited from knowingly making or holding an investment in Underlying Funds in which the Top Fund, alone or together with one or more related mutual funds, is a substantial security holder.

8. In the absence of this Decision, NBS would be required to file a report of every transaction of purchase or sale by the Top Fund of the securities of the Underlying Funds.

9. The Top Fund's investment in securities of the Underlying Funds will represent the business judgement of responsible persons uninfluenced by considerations other than the best interests of the Top Fund.

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

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

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

PROVIDED IN EACH CASE THAT:

1. The Decision, as it relates to the jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation or rule of

that Decision Maker dealing with matters in section 2.5 of NI 81-102.

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

(a) Each Underlying Fund is subject to NI 81-102 and National Instrument 81-101 – Mutual Fund Prospectus Disclosure;

(b) The securities of the Top Fund and the securities of an Underlying Fund are qualified for distribution in the local jurisdiction;

(c) At the time the Top Fund purchases securities of an Underlying Fund, the Underlying Fund does not hold more than 10% of the market value of its net assets in securities of other mutual funds. An Underlying Fund may however hold more than 10% of the market value of its net assets in securities of other mutual funds where the Underlying Fund (i) is an RSP clone fund, or (ii) purchases or holds securities of a money market fund or securities that are index participation units issued by a mutual fund;

(d) The Top Fund shall disclose in its simplified prospectus under the "Fees and Expenses" section, that there are fees and expenses payable by the Underlying Fund in addition to the fees and expenses payable by the Top Fund;

(e) No management fees or incentive fees are payable by the Top Fund that, to a reasonable person, would duplicate a fee payable by an Underlying Fund for the same service and this information is disclosed in the simplified prospectus of the Top Fund under the "Fees and Expenses" section;

(f) No sales fees or redemption fees are payable by the Top Fund in relation to its purchases or redemptions of the securities of an Underlying Fund and this information is disclosed in the simplified prospectus of the Top Fund under the "Fees and Expenses" section;

(g) No sales fees or redemption fees are payable by the Top Fund in relation to its purchases or redemptions of the securities of an Underlying Fund that, to a reasonable person, would duplicate a fee payable by an investor in the Top Fund and this information is disclosed in the simplified prospectus of the Top Fund under the "Fees and Expenses" section;

(h) If the Top Fund holds securities of an Underlying Fund, the Top Fund,

1. shall not vote any of those securities;

2. may, if the Manager so chooses, arrange for all of the securities it holds of the Underlying Fund to be voted by the beneficial holders of securities of the Top Fund; and

3. shall disclose the above information in the simplified prospectus of the Top Fund under the "Organization and Management Details" section;

(i) The Top Fund and the Underlying Fund must have dates for the calculation of net asset value that are compatible;

(j) The Top Fund shall disclose in its simplified prospectus under the "Investment Strategies" section:

1. whether the Top Fund intends to purchase securities of, or enter into specified derivative transactions for which the underlying interest is based on securities of, one or more Underlying Funds;

2. that the Underlying Funds are managed by the Manager or an affiliate of the Manager;

3. what percentage of net assets of the Top Fund is dedicated to the investment in the securities of, or the entering into of specified derivative transactions for which the underlying interest is based on the securities of, Underlying Funds; and

4. the process or criteria used to select an Underlying Fund;

(k) The Top Fund shall disclose in its simplified prospectus under the "Top Ten Holdings" section, a statement to the effect that the simplified prospectus and other information about the Underlying Funds are available on the internet at www.sedar.com; and

(l) If more than 10% of the securities of an Underlying Fund is held by the Top Fund, the Underlying Fund must disclose under the "Risks" section of its simplified prospectus, the percentage of securities held by the Top Fund as at a date within 30 days of the date of the simplified prospectus of the Top Fund. The Underlying Fund must also disclose the risks associated with a possible redemption requested by the Top Fund.

November 14, 2003.

"Robert W. Davis" "Wendell S. Wigle"

2.1.5 Canbras Communications Corp. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Exemption granted from requirements in the legislation to disclose executive compensation and indebtedness of directors, executive officers and senior officers in connection with the mailing of a proxy circular for a special shareholders' meeting. Relief granted because the excluded information had just been publicly disclosed in connection with the issuer's annual meeting, there had been no material change in the excluded information since it was publicly disclosed, and the excluded information was not relevant to the matters under consideration at the special meeting.

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

AND

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

AND

IN THE MATTER OF
CANBRAS COMMUNICATIONS CORP.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Newfoundland and Labrador, Saskatchewan, Ontario and Nova Scotia (the "Jurisdictions") has received an application from Canbras Communications Corp. ("Canbras") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that Canbras be exempted from the requirement to include disclosure in the Proxy Circular (as defined below) regarding executive compensation and indebtedness of directors and officers as otherwise required by the Legislation (collectively, the "Required Disclosure");

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

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

AND WHEREAS Canbras has represented to the Decision Makers that:

1. Canbras is a corporation continued under the laws of Canada and is a reporting issuer in each of the provinces of Canada in which such concept exists. Canbras is not in default of any of the requirements of the securities legislation in each of the provinces of Canada.

2. The authorized capital of Canbras consists of an unlimited number of common shares (the "Common Shares"). As of October 15, 2003, there were 55,098,071 Common Shares issued and outstanding.

3. The Common Shares of Canbras are listed on the Toronto Stock Exchange under the symbol "CBC".

4. Canbras has entered into a definitive agreement with Horizon Cablevision do Brasil, S.A., a privately-owned Brazilian company ("Horizon"), for the sale of Canbras' broadband communications operating subsidiaries (all Brazilian companies) in the greater metropolitan city of Sao Paulo, in Sao Paulo State, Brazil (the "Horizon Sale").

5. In a related transaction, Canbras has agreed to sell to Cia. Tecnicaa de Engenharia Eletrica, a privately-owned Brazilian company ("Alusa"), all of Canbras' interests in its cable television subsidiaries (all Brazilian companies) operating in Parana State, Brazil (including certain related, non-operating predecessor companies) (the "Alusa Sale").

6. The consummation of the transactions described above are subject to a number of conditions, including the obtaining of all required regulatory approvals from the Brazilian telecommunications regulatory agency and the Brazilian antitrust regulatory agency, other third-party approvals and the approval of the shareholders of Canbras.

7. Canbras intends to call a special meeting of holders of Common Shares (the "Special Meeting") to consider a special resolution approving the sale of substantially all of the assets of Canbras pursuant to the Horizon Sale and the Alusa Sale collectively, the "Disposition"); and a special resolution approving the voluntary liquidation and dissolution of Canbras pursuant to the Canada Business Corporations Act (the "Dissolution").

8. To be implemented, each of the Disposition and the Dissolution must be approved by not less than two-thirds of the votes cast by the holders of the Common Shares present in person or represented by proxy at the Special Meeting.

9. The management proxy circular of Canbras (the "Proxy Circular") in connection with the Special Meeting will be mailed to the holders of the Common Shares in early November 2003.

10. The Required Disclosure was provided to the holders of the Common Shares in the management proxy circular dated March 7, 2003 (the "Annual Meeting Circular") that was mailed to shareholders and filed in the Jurisdictions, in connection with the holding of the annual meeting of shareholders on April 28, 2003, and there has been no material change to the Required Disclosure as contained in the Annual Meeting Circular.

11. The Legislation in the Jurisdictions requires that, subject to the relief referred to herein being granted, the Proxy Circular include the Required Disclosure.

12. The Required Disclosure is not relevant to a shareholder's decision whether or not to vote in favour of the Disposition or the Dissolution because the matters to be determined at the Special Meeting do not relate to performance or compensation of the directors or officers of Canbras and would result in an unnecessary expense if required to be included in the Proxy Circular.

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 Maker pursuant to the Legislation is that Canbras be exempted from the requirement to include the Required Disclosure in the Proxy Circular provided that:

(a) Canbras includes a statement in the Proxy Circular informing Canbras shareholders that the Required Disclosure can be found in the Annual Meeting Circular; and

(b) The Annual Meeting Circular is available on SEDAR.

November 14, 2003.

"Paul M. Moore" "Suresh Thakrar"

2.1.6 CDI Education Corporation - MRRS Decision

Headnote

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

Applicable Ontario Statutory Provisions and Rules

Securities Act, R.S.O. 1990, c. S.5, as am., s. 83.
National Instrument 21-101 Marketplace Operation, (2001) 24 OSCB 6591.

November 6, 2003

Osler Hoskin & Harcourt
Barristers & Solicitors
Box 50
1 First Canadian Place
Toronto, ON M5X 1B8

Attention: Joseph N. Cosentino

Dear Mr Cosentino:

Re: CDI Education Corporation (the "Applicant") - application to cease to be a reporting issuer under the securities legislation of Alberta, Ontario, Manitoba, Newfoundland and Labrador, Nova Scotia, Québec and Saskatchewan (the "Jurisdictions")

The Applicant has applied to the local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions for a decision under the securities legislation (the 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.

"Iva Vranic"

2.1.7 The VenGrowth Advanced Life Sciences Fund Inc. - MRRS Decision

Headnote

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

Applicable Ontario Provisions

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

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

AND

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

AND

IN THE MATTER OF
THE VENGROWTH ADVANCED LIFE SCIENCES FUND INC.

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of Canada, except Manitoba (the "Jurisdictions") has received an application (the "Application") from The VenGrowth Advanced Life Sciences Fund Inc. (the "Fund") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the lapse date for the renewal of the current prospectus dated December 10, 2002 (the "Prospectus") for the Class A shares of the Fund (the "Class A Shares") be extended to those time limits that would be applicable if the lapse date of the Prospectus was January 31, 2004;

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

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

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

1. The Fund is a corporation incorporated under the *Canada Business Corporations Act* by articles of incorporation dated October 18, 1999, as amended.

2. The Fund is registered as a labour-sponsored investment fund corporation under the *Community Small Business Investment Funds Act* (Ontario) and a labour-sponsored venture capital corporation under the *Income Tax Act* (Canada). The Fund is a mutual fund pursuant to the Legislation.

3. The Fund is a reporting issuer under the Legislation and is not in default of any requirements of the Legislation or the regulations made thereunder.

4. Pursuant to the Legislation or the regulations made thereunder, the lapse date (the "Lapse Date") for distribution of Class A Shares is December 10, 2003, except for Quebec and New Brunswick, for which it is December 12, 2003.

5. Since December 10, 2002, the date of the Prospectus, no material change has occurred and no amendments have been made to the Prospectus. Accordingly, the Prospectus represents up-to-date information regarding the Class A Shares offered therein. The extension request will not affect the currency of the information contained in the Prospectus.

6. The Fund has set a shareholders meeting for January 7, 2004 for the approval of certain amendments to the management agreement or a new agreement between the Fund and the Manager, which, if the requested Lapse Date extension is not granted, will require an amendment to any new prospectus filed within days of obtaining a receipt, generating undue costs for the Fund.

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

AND WHEREAS the Decision Makers are 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 the Legislation is that the time limits provided by the Legislation as they apply to a distribution of securities under a prospectus are hereby extended to the time limits that would be applicable if the Lapse Date for the distribution of Class A Shares under the Prospectus was January 31, 2004 provided that:

a) the Fund shall file a prospectus amendment prior to January 1, 2004 describing the proposed mechanism to pay and account for sales commissions payable on the sales of Class A Shares, which mechanism is subject to shareholder approval; and

b) the Fund shall use its best efforts to have any prospectus it files receipted by the Lapse Date.

November 17, 2003.

"Susan Silma"

2.1.8 ARC Energy Trust - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Royalty Trust exempt from prospectus and registration requirements in connection with issuance of units to existing unitholders under a distribution reinvestment plan and optional trust unit purchase plan, subject to certain conditions. First trade relief provided for units acquired pursuant to this decision, subject to certain conditions.

Statutes Cited

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

Rules Cited

Rule 45-502 Dividend or Interest Reinvestment and Stock Dividend Plans Ontario Securities Commission.

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

AND

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

AND

IN THE MATTER OF
ARC ENERGY TRUST

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland and Labrador (collectively, the "Jurisdictions") has received an application from ARC Energy Trust ("ARC") for a decision, under the securities legislation of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation to be registered to trade in a security and to file and to obtain a receipt for a preliminary prospectus and a prospectus (the "Registration and Prospectus Requirements") shall not apply to certain trades in trust units of ARC ("Units") issued pursuant to ARC's distribution reinvestment and optional trust unit purchase plan (the "Plan");

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

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

AND WHEREAS ARC has represented to the Decision Makers that:

1. ARC is an unincorporated royalty trust created by a declaration of trust dated May 7, 1996, as amended and restated as of May 16, 2003.

2. The authorized capital of ARC consists of an unlimited number of Units.

3. ARC became a reporting issuer under the Legislation in July 1996 when it obtained a receipt for a prospectus in connection with its initial public offering and continues to be a reporting issuer under the Legislation not in default of any requirements of the Legislation.

4. The Units are listed and posted for trading on the Toronto Stock Exchange (the “TSX”).

5. Under the distribution policy adopted by ARC, ARC distributes on the 15th day (or if such date is not a business day, on the next business day) following the end of each month (the "Distribution Date"), the distributable income of ARC to the holders of Units (the "Unitholders") of record as of the last day of the month preceding the distribution (the "Record Date"). The distributable income includes the amount of royalty income or other income received by the Trust less the Trust's share of Crown royalties and direct expenses of the Trust.

6. Pursuant to the Plan, Unitholders (other than those resident in the United States or those who are citizens of the United States) (“Eligible Unitholders”) may, at their option, invest cash distributions paid on their Units in new Units. The Plan also enables Eligible Unitholders to make additional cash investments through optional cash payments ("Optional Cash Payments") which are invested in new Units on the same basis as distributions are invested under the Plan. Any Eligible Unitholder may contribute by way of Optional Cash Payment a minimum of $500 and a maximum of $3,000 in respect of each Distribution Date.

7. Distributions due to participants in the Plan ("Plan Participants") are paid to Computershare Trust Company of Canada in its capacity as agent under the Plan (the "Plan Agent") and applied to purchase new Units.

8. The new Units are purchased through the facilities of the TSX or, at the discretion of ARC Resources Ltd. (“ARC Resources”), directly from ARC. ARC Resources is a corporation incorporated under the laws of the Province of Alberta. ARC Resources is a reporting issuer in all Provinces of Canada. Under the terms of ARC's trust indenture, ARC has delegated all decision-making and management functions relating to the issuance of Units to ARC Resources.

9. Subject to the right of ARC Resources to elect to issue Units from treasury as described in paragraph 10 below, the average market price (the "Market Purchase Price") at which the participants purchase new Units with cash distributions on their Units is based upon the average price for which Units are acquired through the facilities of the TSX for the purposes of the Plan following the Distribution Date.

10. In the event that ARC Resources elects not to purchase any Units through the facilities of the TSX in respect to any Distribution Date, but to issue new Units from treasury, the price at which the new Units are issued will be 95% of the weighted average price of all Units traded on the TSX on the 10 trading days preceding a Cash Distribution Date (the "Treasury Purchase Price").

11. The price of new Units purchased with Optional Cash Payments will also be the Treasury Purchase Price.

12. Units purchased under the Plan are registered in the name of the Plan Agent, as agent for the Plan Participants.

13. No commissions, service charges or brokerage fees are payable by Plan Participants in connection with the Plan.

14. Plan Participants may terminate their participation in the Plan at any time by written notice to the Plan Agent. A notice received at least 3 business days prior to a Record Date will be effective for the following Distribution Date.

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

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

THE DECISION of the Decision Makers under the Legislation is that the Registration and Prospectus Requirements shall not apply to the trades of Units by ARC to the Plan Agent for the account of Participants pursuant to the Plan provided that:

(a) at the time of the trade ARC is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation;

(b) no sales charge is payable in respect of the trade;

(c) ARC has caused to be sent to the person or company to whom the Units are traded, not more than 12 months before the trade, a statement describing:

(i) their right to withdraw from the Plan and to make an election to receive cash instead of Units on the making of a distribution of income by ARC, and

(ii) instructions on how to exercise the right referred to in paragraph (c)(i);

(d) the aggregate number of Units issued under the Cash Payment Option of the Plan in any financial year of ARC shall not exceed 2% of the aggregate number of Units outstanding at the start of that financial year;

(e) except in Québec, the first trade in Units acquired pursuant to this Decision will be a distribution or primary distribution to the public unless the conditions in subsection 2.6(3) of Multilateral Instrument 45-102 - Resale of Securities are satisfied; and

(f) in Québec, the first trade in Units acquired pursuant to this Decision will be a distribution unless:

(i) the issuer is and has been a reporting issuer in Québec for the 12 months preceding the alienation;

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

(iii) no extraordinary commission or other consideration is paid in respect of the alienation; and

(iv) if the seller of the securities is an insider of the issuer, the seller has no reasonable grounds to believe that the issuer is in default of any requirement of securities legislation.

November 7, 2003.

"Paul M. Moore" "Suresh Thakrar"

2.1.9 BelAir Energy Corporation - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications. Issuer deemed to have ceased to be a reporting issuer. Issuer does not intend to seek public financing by way of an offering of its securities.

Applicable Ontario Statutory Provisions

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

October 17, 2003

Burnet, Duckworth & Palmer LLP
1400, 350- 7th Avenue S.W.
Calgary, Alberta T2P 3N9

Attention: Michael D. Sandrelli

Dear Mr. Sandrelli:

Re: BelAir Energy Corporation (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 Venturelink Diversified Income Fund Inc. - ss. 62(5)

Headnote

Extension of lapse date for mutual fund prospectus.

Statutes Cited

Securities Act, R.S.O. 1990 c. S.5, as amended, ss. 62(2) and 62(5).

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

AND

IN THE MATTER OF
VENTURELINK DIVERSIFIED INCOME FUND INC.
(the Fund)

ORDER
(Subsection 62(5))

UPON an application from the Fund to the Ontario Securities Commission (the Commission) for an order pursuant to subsection 62(5) of the Act that the time periods referred to under subsection 62(2) of the Act be extended to the time periods that would be applicable if the lapse date for the distribution of securities of the Fund was December 17, 2003;

AND UPON the Fund having represented that:

1. The Fund is a labour sponsored investment fund (LSIF) which was incorporated under the *Business Corporations Act* (Ontario) by articles of incorporation dated September 26, 2002.

2. The Fund currently distributes Class A Shares, Series I and Class A Shares, Series II in Ontario pursuant to a prospectus dated November 29, 2002 (the Prospectus), as amended by a prospectus amendment dated October 28, 2003 (the Amendment).

3. The Fund is a reporting issuer as defined in the securities legislation of Ontario and is not in default of any of the requirements of such legislation.

4. The lapse date of the Prospectus under the Act is November 29, 2003.

5. Other than the proposed Acquisition (defined below), there have been no material changes in the affairs of the Fund since the filing of the Prospectus, as amended by the Amendment. Accordingly, the Prospectus and Amendment represent current information regarding the Fund.

6. On August 21, 2003, CI Fund Management Inc. (CI) entered into an agreement pursuant to which CI has agreed to purchase (the Acquisition) the business of Skylon Capital Corp. and VentureLink Capital Corp. The Acquisition closed on November 7, 2003.

7. The Fund is currently in the process of revising the Prospectus to include information about CI, the Acquisition and any new individuals that will act as directors and officers of the above-mentioned entities. As the Acquisition was very recently completed, Skylon Funds Management Inc. (Skylon), the manager of the Fund, will require additional time to revise the disclosure in the Prospectus to reflect the changes that will occur as a result of the Acquisition so that the disclosure in the renewal prospectus of the Fund (the Renewal Prospectus) is accurate, complete and in compliance with securities legislation.

8. In addition to changes to the Fund resulting from the Acquisition, in July 2003, the Canadian Institute of Chartered Accountants (the CICA) issued a new Handbook Section, Section 1100, which effectively changed the definition of generally accepted accounting practices (GAAP). The revised definition of GAAP indicates that accounting practices cannot be considered to comply with GAAP merely by virtue of their use in similar circumstances by a significant number of entities in Canada.

9. The Fund, and virtually all other LSIFs, have, to date, relied on industry practice to treat sales commissions as deferred charges and to account for them by adding them to the statement of net assets. The result of the changes proposed by the CICA to the definition of GAAP is that, for financial years beginning on or after October 1, 2003, the LSIF industry will no longer be able to treat the sales commissions paid by the LSIF as an asset on their statement of net assets.

10. Skylon, on behalf of each of the mutual funds in the VentureLink Capital family of funds, is currently in the process of examining and deciding on an alternative structure (the Alternative Structure) to deal with the CICA's new Handbook Section respecting the revised meaning of GAAP and the Commission's response to that change with respect to sales commissions. The requested lapse date extension would allow Skylon more time to make a reasoned decision and would allow for the Alternative Structure adopted to be described accurately in the Renewal Prospectus.

11. Skylon intends to submit a *pro forma* prospectus as soon as possible, but in any event no later than November 17, 2003 to provide the Commission with at least 30 days, as contemplated by subsection 62(2) of the Act, to review the changes

to the Prospectus resulting from the Acquisition and the Alternative Structure.

12. If the relief requested herein is not granted, the Fund might be required to file a prospectus amendment in order to accurately describe details relating to the Acquisition and the Alternative Structure which are currently not finalized. The financial cost and time involved in producing and filing a prospectus amendment would be unduly costly.

13. The requested extension will not affect the accuracy of information in the Prospectus and therefore will not be prejudicial to the public interest.

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

IT IS ORDERED, pursuant to subsection 62(5) of the Act, that the time periods referred to in subsection 62(2) of the Act, as they apply to the distribution of securities under the Prospectus, are hereby extended as if the lapse date was December 17, 2003, provided that a Renewal Prospectus in respect of the Fund is filed by November 17, 2003.

November 13, 2003.

"Leslie Byberg"

2.2.2 George Weston Limited - cl. 104(2)(c)

Headnote

Relief from issuer bid requirements –Reporting issuer received irrevocable offer to purchase 2 million of its common shares from its controlling shareholder at below market price. Controlling shareholder does not need the protections afforded by the issuer bid requirements. Market for the issuer's shares is extremely liquid, other shareholders able to sell their common shares on the TSX at a price higher than the price received by the controlling shareholder under the transaction. Other shareholders also able to sell their common shares to the issuer under its existing normal course issuer bid. Transaction is a related party transaction; issuer is complying with the requirements of OSC Rule 61-501. Relief granted under clause 104(2)(c) of the Securities Act (Ontario).

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 95, 96, 97, 98, and 104(2)(c).

Rules Cited

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

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

AND

IN THE MATTER OF
GEORGE WESTON LIMITED

ORDER
(Clause 104(2)(c))

UPON the application (the "Application") of George Weston Limited ("GWL") to the Ontario Securities Commission (the "Commission") for an order pursuant to clause 104(2)(c) of the Act exempting GWL from the requirements of sections 95, 96, 97, 98 and 100 of the Act (the "Issuer Bid Requirements") in connection with the proposed acquisition by GWL of approximately 2 million of its common shares (the "Common Shares") from Wittington Investments Limited ("Wittington");

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

AND UPON GWL having represented to the Commission that:

1. GWL is a corporation incorporated under the laws of Canada. It is a reporting issuer (or the equivalent) in all provinces of Canada. GWL is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

2. As of September 30, 2003, there were approximately 132,117,834 Common Shares outstanding. The Common Shares are traded on the Toronto Stock Exchange ("TSX").

3. Wittington is a corporation incorporated under the laws of Canada. It is not a reporting issuer in any jurisdiction. Wittington owns directly or indirectly approximately 82,693,979 Common Shares, representing 62.5% of all the Common Shares outstanding.

4. GWL is in the process of unwinding certain currency swaps and interest rates swaps, which were established for hedging purposes in 2001. The gross proceeds from unwinding these swaps are expected to be approximately $338,000,000.

5. The board of directors of GWL (the "Board") has determined that the best use for the net proceeds of the unwinding of these swaps would be to buy back Common Shares.

6. After Wittington expressed an interest in selling some of its Common Shares to GWL, the Board established a committee of independent directors (the "Independent Committee") to consider whether, and on what terms, GWL should purchase Common Shares from Wittington.

7. Wittington has made an irrevocable offer (the "Offer") to GWL to sell, or cause a wholly-owned subsidiary to sell, approximately 2 million Common Shares to GWL at a price equal to 96% of the lesser of (a) the volume weighted average price on the TSX for the 20 business days prior to the receipt by Wittington of notice of acceptance by GWL of the Offer, and (b) the volume weighted average closing price for the Common Shares traded on the TSX for the three trading days (the "Previous 3 Day Price") immediately prior to the closing of the proposed acquisition of the Common Shares under the Offer (the "Transaction"). The Offer is open for acceptance until November 11, 2003 and has not as yet been accepted by GWL. The Offer is subject to the price under the Transaction not being less than $95.

8. If GWL accepts the Offer, GWL proposes to announce prior to the opening of the TSX on November 12th 2003 that it has unwound its swaps and intends to use some of the resulting proceeds to complete the Transaction. The Transaction will close on November 17, 2003, unless on such day 96% of the Previous 3 Day Price is less than $95, in which case the Transaction will close on the first trading day thereafter and on or before December 1, 2003 on which 96% of the Previous 3 Day Price is not less than $95.

9. The Independent Committee has, subject to obtaining any regulatory approvals, approved the Transaction on the terms set out in the Offer and has determined that the Transaction is in the best interests of GWL. In particular, the Independent Committee is of the view that GWL could purchase Common Shares pursuant to the Transaction at a price lower than the price at which GWL could purchase Common Shares under its existing normal course issuer bid. The Independent Committee is also of the view that all other shareholders of GWL would be able to sell their Common Shares on the TSX at a price that, after commissions, would be no less than the price Wittington would receive under the Transaction.

10. The Transaction does not adversely affect GWL or the rights of any of GWL's security holders and it does not materially affect control of GWL.

11. The market for the Common Shares is extremely liquid with the average active aggregate daily trades on the TSX for the period of June 18 to September 18, 2003 being in excess of 57,000 shares, with a value in excess of $6,000,000. The market for the Common Shares is a "liquid market" within the meaning of section 1.3 of Commission Rule 61-501.

12. At the time that the price for the Common Shares under the Transaction was negotiated, Wittington was not aware of any undisclosed material information in respect of GWL or the Common Shares that could reasonably be expected to affect the value of the Common Shares.

13. Wittington has advised GWL that it does not object to the granting of this order by the Commission.

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

IT IS ORDERED pursuant to clause 104(2)(c) of the Act that GWL be exempt from the Issuer Bid Requirements in connection with the Transaction.

October 31, 2003.

"Paul M. Moore" "Suresh Trakrar"

2.2.3 Sprucegrove Investment Management Ltd. - s. 147

Headnote

Exemption for pooled funds from the requirement to file with the Commission interim financial statements under section 77(2) of the Act and comparative financial statements under section 78(1) of the Act, subject to conditions.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5 as am., ss. 74(1).
National Instrument 13-101 – System for Electronic Document Analysis and Retrieval (SEDAR), s. 2.1(1)1.

Regulations Cited

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

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

AND

IN THE MATTER OF
SPRUCEGROVE INVESTMENT MANAGEMENT LTD.

AND

SPRUCEGROVE INTERNATIONAL POOLED FUND
SPRUCEGROVE GLOBAL POOLED FUND
SPRUCEGROVE SPECIAL INTERNATIONAL POOLED FUND
(The "Existing Pooled Funds")

ORDER
(Subsection 147 of the Act)

UPON the application (the "Application") of Sprucegrove Investment Management Ltd. ("Sprucegrove"), the manager of the Existing Pooled Funds and other pooled funds established and managed by Sprucegrove from time to time (collectively, the "Pooled Funds"), to the Ontario Securities Commission (the "Commission") for an order pursuant to subsection 147 of the Act exempting the Pooled Funds from filing with the Commission the interim and annual financial statements prescribed by sections 77(2) and 78(1), respectively, of the Act;

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

AND UPON Sprucegrove having represented to the Commission that:

1. Sprucegrove is a corporation under the laws of Ontario with its head office in Ontario. Sprucegrove is, or will be, the manager of the Pooled Funds. Sprucegrove is registered with the Commission as an adviser in the categories of investment counsel and portfolio manager and as a dealer in the category of limited market dealer.

2. The Pooled Funds are, or will be, open-end mutual fund trusts established under the laws of Ontario. The Pooled Funds will not be reporting issuers in any province or territory of Canada. Units of the Pooled Funds are, or will be, distributed in each of the provinces and territories of Canada without a prospectus pursuant to exemptions from the prospectus delivery requirements of applicable securities legislation.

3. The Pooled Funds fit within the definition of "mutual fund in Ontario" in section 1(1) of the Act and are thus required to file with the Commission interim financial statements under section 77(2) of the Act and comparative annual financial statements under section 78(1) of the Act (collectively, the "Financial Statements").

4. While the Pooled Funds are structured as mutual funds, they are not public mutual funds. The Pooled Funds are not reporting issuers and are not sold to the general public.

5. Unitholders of the Pooled Funds ("Unitholders") receive the Financial Statements for the Pooled Funds they hold. The Financial Statements are prepared and delivered to Unitholders in the form and for the periods required under the Act and the regulation or rules made thereunder (the "Regulation"). Sprucegrove and the Pooled Funds may continue to rely on subsection 94(1) of the Regulation and will omit statements of portfolio transactions from the Financial Statements (such statements from which the statements of portfolio transactions have been omitted, the "Permitted Financial Statements").

6. As required by subsection 94(1) of the Regulation, the Permitted Financial Statements will contain a statement indicating that additional information as to portfolio transactions will be provided to a Unitholder without charge on request to a specified address and,

   (a) the omitted information shall be sent promptly and without charge to each Unitholder that requests it in compliance with the indication; and

   (b) where a person or company requests that such omitted information be sent routinely to the Unitholder, the request shall be carried out while the information continues to be omitted from the subsequent Financial Statements until the Unitholder requests, or agrees to, termination of the arrangement or is no longer a Unitholder.

7. Section 2.1(1)1 of National Instrument 13-101 - System for Electronic Document Analysis and Retrieval (SEDAR) ("Rule 13-101") requires that every issuer required to file a document under securities legislation make its filing through SEDAR. The Financial Statements filed with the Commission thus become publicly available.

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

IT IS ORDERED by the Commission pursuant to subsection 147 of the Act that the Pooled Funds be exempted from the requirements in sections 77(2) and 78(1) of the Act to file the Financial Statements with the Commission provided:

(a) In the absence of other regulatory relief, the Pooled Funds will prepare and deliver to the Unitholders, the Permitted Financial Statements, in the form and for the periods required under the Act and the Regulation;

(b) The Pooled Funds will retain the Financial Statements indefinitely;

(c) The Pooled Funds will provide the Financial Statements to the Commission or any member, employee or agent of the Commission immediately upon request of the Commission or any member, employee or agent of the Commission;

(d) The Pooled Funds will provide a list of the Pooled Funds relying on this Order to the Investment Funds Branch of the Commission on an annual basis;

(e) Unitholders will be notified that the Pooled Funds are exempted from the requirements in sections 77(2) and 78(1) of the Act to file the Financial Statements with the Commission;

(f) In all other aspects, the Pooled Funds will comply with the requirements in Ontario securities law for financial statements; and

(g) This decision, as it relates to the Commission, will terminate after the coming into force of any legislation or rule of the Commission dealing with the matters regulated by sections 77(2) and 78(1) of the Act.

November 14, 2003.

"H. Lorne Morphy" "Robert W. Korthals"

2.2.4 CDI Education Corporation - ss. 1(6) of the OBCA

Headnote

Subsection 1(6) of the OBCA - issuer deemed to have ceased to be offering its securities to the public under the Business Corporations Act (Ontario).

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 1(6).

IN THE MATTER OF
THE BUSINESS CORPORATIONS ACT
R.S.O. 1990, CHAPTER B. 16, AS AMENDED
(the "OBCA")

AND

IN THE MATTER OF
CDI EDUCATION CORPORATION

ORDER
(Subsection 1(6) of the OBCA)

UPON the application of CDI Education Corporation (the "Applicant") to the Ontario Securities Commission for an order pursuant to subsection 1(6) of the OBCA that the Applicant be deemed to have ceased to be offering its securities to the public;

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is a corporation incorporated under the OBCA with its head office in Toronto, Ontario.

2. The authorized capital of the Applicant consists of an unlimited number of common shares ("Common Shares") of which 10,270,901 are issued and outstanding as at October 6, 2003.

3. The Applicant is an "offering corporation" as defined in the OBCA. The Applicant has applied for relief to cease to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer;

4. The Applicant is not in default of any of the requirements of the *Securities Act* (Ontario).

5. As a result of a take-over bid and subsequent compulsory acquisition, all of the outstanding Common Shares of the Applicant have been acquired by Corinthian Colleges, Inc., indirectly through its direct and indirect wholly-owned subsidiaries Corinthian Canada Acquisition Inc. and 2020584 Ontario Limited.

6. Other than the Common Shares, the Applicant has no outstanding securities, including debt securities.

7. No securities of the Applicant are listed or quoted on any exchange or market in Canada or elsewhere.

8. The Applicant does not intend to seek public financing by way of an offering of its securities.

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

IT IS ORDERED, pursuant to subsection 1(6) of the OBCA, that the Applicant is deemed to have ceased to be offering its securities to the public for the purposes of the OBCA.

November 7, 2003.

"Paul M. Moore" "Paul K. Bates"

2.2.5 Windsor Trust 2002-A - s. 6.1 of OSC Rule 13-502

Headnote

Calculation of participation fees payable by special purpose trust. Only outstanding securities of the trust are asset backed securities in the form of "pass-through notes" and "pay-through notes". Because there is only one holder of the pass-through notes and there is no intention to transfer such notes, the pass-through notes are not an accurate proxy for the trust's use of the Ontario capital markets. The pass-through notes should not be included in the calculation of the capitalization of the trust.

Ontario Rules

Ontario Securities Commission Rule 13-502 - Fees.

IN THE MATTER OF
THE SECURITIES ACT R.S.O. 1990, c. S.5,
AS AMENDED (THE "ACT")
AND ONTARIO SECURITIES COMMISSION
RULE 13-502 FEES
("RULE 13-502")

AND

IN THE MATTER OF
WINDSOR TRUST 2002-A

ORDER
(Section 6.1 of Rule 13-502)

WHEREAS the Ontario Securities Commission (the "Commission") has received an application from Windsor Trust 2002-A (the "Trust"), pursuant to section 6.1 of Rule 13-502, for an order exempting, in part, the Trust from the requirement to pay participation fees calculated in the manner prescribed by Part 2 of Rule 13-502.

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

AND WHEREAS the Trust has represented to the Commission that:

1. The Trust was established by The Canada Trust Company ("Canada Trust"), pursuant to a declaration of trust made as of May 16, 2002 (the "Declaration of Trust"), under the laws of the Province of Ontario. Canada Trust is the issuer trustee of the Trust.

2. The Trust is a special purpose entity with no independent business activities other than as follows. The Declaration of Trust restricts the activities of the Trust to: (a) acquiring from DaimlerChrysler Services Canada Inc. ("DCSCI") (i) a pool of receivables consisting of loans to various obligors used to finance the purchase of automobiles and light-duty trucks ("Vehicles")

originated in Canada by various automobile dealers of DaimlerChrysler Canada Inc. and other automobile manufacturers that meet certain eligibility requirements ("Receivables"), (ii) the interest of DCSCI in such Vehicles and all guarantees or other security interests and property subject thereto purporting to secure payment of the Receivables, (iii) all collections with respect thereto, and (iv) all proceeds of the foregoing (collectively, the "Purchased Assets"), (b) funding such acquisition, and (c) engaging in related activities.

3. On June 26, 2002, the Trust purchased the Purchased Assets from DCSCI pursuant to a receivables purchase agreement made as of June 26, 2002, between DCSCI, as seller, and the Trust.

4. The purchase by the Trust of the Purchased Assets was funded through the issuance of $200,000,000, 4.124% Auto Loan Receivables-Backed Class A-1 Pay-Through Notes (the "Pay-Through Notes") due March 15, 2006, and $104,583,456, 4.124% Auto Loan Receivables-Backed Class A-2 Pass-Through Notes (the "Pass-Through Notes" and together with the Pay-Through Notes, the "Notes"), pursuant to a trust indenture dated June 26, 2002, between the Trust and The Trust Company of Bank of Montreal. The Pay-Through Notes were offered pursuant to a long-form prospectus dated June 19, 2002, filed with and receipted by the local securities regulatory authority or regulator in each of the Provinces of Canada on June 19, 2002. The Pass-Through Notes were distributed to BNY Trust Company of Canada (the successor of The Trust Company of Bank of Montreal) in its capacity as trustee of Canadian Master Trust (the "Purchaser") pursuant to an exemption from the registration requirement and the prospectus requirement of the Act.

5. The Trust currently has no securities issued and outstanding other than the Notes. The trustee of the Purchaser is the only registered holder of the Pass-Through Notes.

6. There is no exchange or quotation system through which the Notes may be sold.

7. The Trust does not presently, and will not, carry on any business other than satisfying its rights and obligations arising from the acquisition of the Purchased Assets and the issuance of the Notes. Accordingly, the Trust will not be accessing the capital markets in Canada or elsewhere through a further public issue of securities.

8. The Trust is a reporting issuer in, among other provinces, Ontario and is not in default of any of the requirements of the securities legislation of Ontario.

9. Pursuant to section 2.2 of Rule 13-502, a reporting issuer in Ontario must pay, for each of its financial years, the participation fee shown in Appendix A to Rule 13-502 that applies to the reporting issuer according to the capitalization of the reporting issuer, as determined as at the end of its previous financial year.

10. The Trust is a "Class 2 reporting issuer" within the meaning of Rule 13-502. The capitalization of the Trust for each of its financial years will include the Pass-Through Notes, unless this order is made.

IT IS ORDERED, pursuant to section 6.1 of Rule 13-502, that for purposes of calculating the capitalization of the Trust pursuant to Part 2 of Rule 13-502, the Pass-Through Notes shall not be included in any such calculation, provided that the Pass-Through Notes continue to be held by the trustee of the Purchaser or any person or company over which the trustee of the Purchaser provides, directly or indirectly, the principal direction or influence over the business and affairs of such person or company by virtue of being the trustee of the Purchaser.

November 14, 2003.

"Ralph Shay"

2.2.6 Windsor Trust 2002-B - s. 6.1 of OSC Rule 13-502

Headnote

Calculation of participation fees payable by special purpose trust. Only outstanding securities of the trust are asset backed securities in the form of "pass-through notes" and "pay-through notes". Because there is only one holder of the pass-through notes and there is no intention to transfer such notes, the pass-through notes are not an accurate proxy for the trust's use of the Ontario capital markets. The pass-through notes should not be included in the calculation of the capitalization of the trust.

Ontario Rules

Ontario Securities Commission Rule 13-502 - Fees.

IN THE MATTER OF
THE SECURITIES ACT R.S.O. 1990, c. S.5,
AS AMENDED (THE "ACT")
AND ONTARIO SECURITIES COMMISSION RULE
13-502 FEES
("RULE 13-502")

AND

IN THE MATTER OF
WINDSOR TRUST 2002-B

ORDER
(Section 6.1 of Rule 13-502)

WHEREAS the Ontario Securities Commission (the "Commission") has received an application from Windsor Trust 2002-B (the "Trust"), pursuant to section 6.1 of Rule 13-502, for an order exempting, in part, the Trust from the requirement to pay participation fees calculated in the manner prescribed by Part 2 of Rule 13-502.

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

AND WHEREAS the Trust has represented to the Commission that:

1. The Trust was established by The Canada Trust Company ("Canada Trust"), pursuant to a declaration of trust made as of October 10, 2002 (the "Declaration of Trust"), under the laws of the Province of Ontario. Canada Trust is the issuer trustee of the Trust.

2. The Trust is a special purpose entity with no independent business activities other than as follows. The Declaration of Trust restricts the activities of the Trust to: (a) acquiring from DaimlerChrysler Services Canada Inc. ("DCSCI") (i) a pool of receivables consisting of loans to various obligors used to finance the purchase of automobiles and light-duty trucks ("Vehicles") originated in Canada by various automobile dealers of DaimlerChrysler Canada Inc. and other automobile manufacturers that meet certain eligibility requirements ("Receivables"), (ii) the interest of DCSCI in such Vehicles and all guarantees or other security interests and property subject thereto purporting to secure payment of the Receivables, (iii) all collections with respect thereto, and (iv) all proceeds of the foregoing (collectively, the "Purchased Assets"), (b) funding such acquisition, and (c) engaging in related activities.

3. On November 13, 2002, the Trust purchased the Purchased Assets from DCSCI pursuant to a receivables purchase agreement made as of November 13, 2002, between DCSCI, as seller, and the Trust.

4. The purchase by the Trust of the Purchased Assets was funded through the issuance of $225,000,000, 3.584% Auto Loan Receivables-Backed Class A-1 Pay-Through Notes (the "Pay-Through Notes") due August 15, 2006, and $191,676,826, 3.584% Auto Loan Receivables-Backed Class A-2 Pass-Through Notes (the "Pass-Through Notes" and together with the Pay-Through Notes, the "Notes"), pursuant to a trust indenture dated November 13, 2002, between the Trust and The Trust Company of Bank of Montreal. The Pay-Through Notes were offered pursuant to a long-form prospectus dated November 7, 2002, filed with and receipted by the local securities regulatory authority or regulator in each of the Provinces of Canada on November 7, 2002. The Pass-Through Notes were distributed to CIBC Mellon Trust Company in its capacity as trustee of Plaza Trust (the "Purchaser") pursuant to an exemption from the registration requirement and the prospectus requirement of the Act.

5. The Trust currently has no securities issued and outstanding other than the Notes. The trustee of the Purchaser is the only registered holder of the Pass-Through Notes.

6. There is no exchange or quotation system through which the Notes may be sold.

7. The Trust does not presently, and will not, carry on any business other than satisfying its rights and obligations arising from the acquisition of the Purchased Assets and the issuance of the Notes. Accordingly, the Trust will not be accessing the capital markets in Canada or elsewhere through a further public issue of securities.

8. The Trust is a reporting issuer in, among other provinces, Ontario and is not in default of any of the requirements of the securities legislation of Ontario.

9. Pursuant to section 2.2 of Rule 13-502, a reporting issuer in Ontario must pay, for each of its financial years, the participation fee shown in Appendix A to Rule 13-502 that applies to the reporting issuer according to the capitalization of the reporting issuer, as determined as at the end of its previous financial year.

10. The Trust is a "Class 2 reporting issuer" within the meaning of Rule 13-502. The capitalization of the Trust for each of its financial years will include the Pass-Through Notes, unless this order is made.

IT IS ORDERED, pursuant to section 6.1 of Rule 13-502, that for purposes of calculating the capitalization of the Trust pursuant to Part 2 of Rule 13-502, the Pass-Through Notes shall not be included in any such calculation, provided that the Pass-Through Notes continue to be held by the trustee of the Purchaser or any person or company over which the trustee of the Purchaser provides, directly or indirectly, the principal direction or influence over the business and affairs of such person or company by virtue of being the trustee of the Purchaser.

November 14, 2003.

"Ralph Shay"

2.2.7 The Bank of Nova Scotia and Scotia Mortgage Investment Corporation - s. 6.1 of OSC Rule 13-502

Headnote

A closed-ended trust established to comply with regulatory requirements of the Office of the Superintendent of Financial Institutions is exempt from having to pay corporate finance participation fees, subject to certain conditions.

Applicable Ontario Statutory Provisions

Ontario Securities Commission Rule 13-502 Fees 26 OSCB 890, s. 2.2 and 6.1

IN THE MATTER OF
ONTARIO SECURITIES COMMISSION
RULE 13-502 FEES

AND

IN THE MATTER OF
THE BANK OF NOVA SCOTIA
SCOTIA MORTGAGE INVESTMENT CORPORATION

ORDER
(Section 6.1 of Rule 13-502)

WHEREAS the Director has received an application from The Bank of Nova Scotia (the "Bank") and Scotia Mortgage Investment Corporation ("SMIC") for an order, pursuant to Section 6.1 of Ontario Securities Commission Rule 13-502 *Fees* (the "Fees Rule"), that the requirement to pay a participation fee under Section 2.2 of the Fees Rule shall not apply to SMIC, subject to certain terms and conditions.

AND WHEREAS the Bank and SMIC have represented to the Director that:

1. SMIC is a corporation established under the *Trust and Loan Companies Act* (Canada).

2. SMIC has a financial year-end of October 31.

3. SMIC is a reporting issuer in Ontario and, to its knowledge, is not in default of any requirement under the securities legislation of the Province of Ontario.

4. The outstanding securities of SMIC consist of: (i) 250,000 Bank-Originated Over-Collateralized Mortgage Securities, each consisting of one non-cumulative Preferred Share Class A of SMIC (the "Scotia BOOMS"), and (ii) 62,500 common shares. All outstanding common shares of SMIC are held by the Bank. SMIC distributed 250,000 Scotia BOOMS in a public offering pursuant to a prospectus dated October 23, 1997 (the "Offering"). The Scotia BOOMS are listed on the Toronto Stock Exchange.

5. SMIC is a special purpose vehicle established solely for the purpose of effecting the Offering in order to provide the Bank with a cost-effective means of raising capital for Canadian financial institution regulatory purposes. The assets and liabilities of SMIC are reported on the consolidated balance sheet of the Bank. SMIC does not carry on any independent business activities other than to acquire and hold assets to generate income for distribution to holders of the Scotia BOOMS.

6. Pursuant to the MRRS Decision Document dated March 13, 2002 (the "Continuous Disclosure Exemption") granted to SMIC by the Ontario Securities Commission ("OSC"), as principal regulator, on behalf of itself and other decision makers (collectively, the "Decision Makers"), the Decision Makers determined that the requirement contained in the securities legislation of the Province of Ontario and in other applicable jurisdictions (collectively, the "Legislation"):

   (a) to file interim financial statements and audited annual financial statements with the Decision Makers and deliver such statements to securityholders of SMIC;

   (b) to make an annual filing, where applicable, with the Decision Makers in lieu of filing an information circular;

   (c) to file an annual report and an information circular with the Decision Maker in the Province of Québec and deliver such report or information circular to securityholders of SMIC resident in the Province of Québec;

   shall not apply to SMIC for so long as:

   (i) the Bank remains a reporting issuer under the Legislation;

   (ii) the Bank sends its annual financial statements, interim financial statements, annual management's discussion and analysis and interim management's discussion and analysis to holders of Scotia BOOMS and its annual report to holders of Scotia BOOMS resident in the Province of Québec at the same time and in the same manner as if the holders of Scotia BOOMS were holders of the common shares of the Bank;

   (iii) all outstanding securities of SMIC are either Scotia BOOMS or common shares;

   (iv) the rights and obligations of holders of additional series of Scotia BOOMS are the same in all material respects as the rights and obligations of the holders of the Scotia BOOMS as of the date of the Continuous Disclosure Exemption; and

   (v) the Bank or its affiliates are the beneficial owners of all outstanding common shares of SMIC;

   provided that if a material change occurs in the affairs of SMIC the Continuous Disclosure Exemption shall expire 30 days after the date of such change.

   It was further determined by the decision makers in Ontario, Québec and Saskatchewan that the requirement to file and send and deliver to the registered holders of Scotia BOOMS, as the case may be, the annual information form, annual management's discussion and analysis and interim management's discussion and analysis, shall not apply to SMIC.

7. SMIC was established by the Bank in order to comply with the regulatory requirements of the Office of the Superintendent of Financial Institutions ("OSFI") relating to the issuance of innovative Tier 1 capital instruments.

8. OSFI maintains strict guidelines and standards with respect to the capital adequacy requirements of federally regulated financial institutions, including the Bank, and, in particular, specifies minimum required amounts of Tier 1 capital to be maintained by such institutions. Tier 1 capital consists of common shareholders' equity, qualifying non-cumulative perpetual preferred shares, qualifying innovative instruments and qualifying non-controlling interests arising on consolidation from Tier 1 capital instruments. Innovative instruments, such as the Scotia BOOMS, must satisfy the detailed requirements of OSFI to be included in Tier 1 capital. Accordingly, the innovative instruments (Scotia BOOMS) must be issued by a special purpose vehicle (Scotia Mortgage Investment Corporation), which is a consolidated non-operating entity whose primary purpose is to raise innovative Tier 1 capital (SMIC is included in the financial statements of the Bank on a fully-consolidated basis). OSFI approved the inclusion of the Scotia BOOMS as Tier 1 capital of the Bank on October 29, 1997.

9. No continuous disclosure documents concerning only SMIC will be filed with the OSC.

10. SMIC is a "Class 1 reporting issuer" under the Fees Rule and would be required (but for this Order) to pay participation fees under such rule.

11. The Bank will not issue additional securities through SMIC.

THE ORDER of the Director under the Fees Rule is that the requirement to pay a corporate finance participation fee under Section 2.2 of the Fees Rule shall not apply to SMIC, for so long as:

(i) the Bank and SMIC continue to satisfy all of the conditions contained in the Continuous Disclosure Exemption;

(ii) the Bank does not issue further securities out of SMIC; and

(iii) the capitalization of SMIC represented by the Scotia BOOMS is included in the participation fee calculation applicable to the Bank.

November 12, 2003.

"Charlie MacCready"

2.2.8 The Bank of Nova Scotia and BNS Capital Trust - s. 6.1 of OSC Rule 13-502

Headnote

A closed-ended trust established to comply with regulatory requirements of the Office of the Superintendent of Financial Institutions is exempt from having to pay corporate finance participation fees, subject to certain conditions.

Applicable Ontario Statutory Provisions

Ontario Securities Commission Rule 13-502 Fees 26 OSCB 890, s. 2.2 and 6.1.

IN THE MATTER OF
ONTARIO SECURITIES COMMISSION
RULE 13-502 FEES

AND

IN THE MATTER OF
THE BANK OF NOVA SCOTIA AND
BNS CAPITAL TRUST

ORDER
(Section 6.1 of Rule 13-502)

WHEREAS the Director has received an application from The Bank of Nova Scotia (the "Bank") and BNS Capital Trust (the "Trust") for an order, pursuant to Section 6.1 of Ontario Securities Commission Rule 13-502 *Fees* (the "Fees Rule"), that the requirement to pay a participation fee under Section 2.2 of the Fees Rule shall not apply to the Trust, subject to certain terms and conditions.

AND WHEREAS the Bank and the Trust have represented to the Director that:

1. The Trust is a closed-ended trust established under the laws of the Province of Ontario by Montreal Trust Company of Canada (now Computershare Trust Company of Canada) as trustee (the "Trustee"), pursuant to an amended and restated declaration of trust dated March 1, 2000.

2. The Trust has a financial year-end of December 31.

3. The Trust is a reporting issuer in Ontario and, to its knowledge, is not in default of any requirement under the securities legislation of the Province of Ontario.

4. The Bank is the administrative agent of the Trust pursuant to an amended and restated administration and advisory agreement dated March 1, 2000 and, in such capacity, provides advice and counsel with respect to the administration of the day-to-day operations of the

Trust and other matters as may be requested by the Trustee from time to time.

5. The outstanding securities of the Trust consist of (i) Special Trust Securities (the "Special Trust Securities"), which are voting securities of the Trust, and (ii) Scotiabank Trust Securities – Series 2000-1 (the "Scotia BaTS", together with the Special Trust Securities, the "Trust Securities"). All outstanding Special Trust Securities are held by the Bank. The Trust distributed 500,000 Scotia BaTS in a public offering pursuant to a prospectus dated March 28, 2000 (the "Offering"). The Scotia BaTS are listed on the Toronto Stock Exchange.

6. The Trust is a special purpose vehicle established solely for the purpose of effecting the Offering in order to provide the Bank with a cost-effective means of raising capital for Canadian financial institution regulatory purposes. The assets and liabilities of the Trust are reported on the consolidated balance sheet of the Bank. The Trust does not carry on any independent business activities other than to acquire and hold assets to generate income for distribution to holders of the Trust Securities.

7. Pursuant to the MRRS Decision Document dated May 11, 2001 (the "Continuous Disclosure Exemption") granted to the Trust by the Ontario Securities Commission ("OSC"), as principal regulator, on behalf of itself and other decision makers (collectively, the "Decision Makers"), the Decision Makers determined that the requirement contained in the securities legislation of the Province of Ontario and in other applicable jurisdictions (collectively, the "Legislation"):

(a) to file interim financial statements and audited annual financial statements with the Decision Makers and deliver such statements to the holders of Trust Securities;

(b) to make an annual filing, where applicable, with the Decision Makers in lieu of filing an information circular;

(c) to file an annual report and an information circular with the Decision Maker in the Province of Québec and deliver such report or information circular to holders of Trust Securities resident in the Province of Québec;

(d) to prepare and file an annual information form, including management's discussion and analysis (the "MD&A"), with the Decision Makers and send such MD&A to holders of Trust Securities;

shall not apply to the Trust for so long as:

(i) the Bank remains a reporting issuer under the Legislation;

(ii) the Bank sends its annual financial statements, interim financial statements, annual management discussion and analysis and interim management discussion and analysis to holders of Trust Securities and its annual report to holders of Trust Securities resident in the Province of Québec at the same time and in the same manner as if the holders of Trust Securities were holders of the common shares of the Bank;

(iii) all outstanding securities of the Trust are either Scotia BaTS Securities or Special Trust Securities;

(iv) the rights and obligations of holders of additional series of Capital Trust Securities are the same in all material respects as the rights and obligations of the holders of the Scotia BaTS as of the date of the Continuous Disclosure Exemption; and

(v) the Bank is the beneficial owner of all Special Trust Securities;

provided that if a material change occurs in the affairs of the Trust the Continuous Disclosure Exemption shall expire 30 days after the date of such change.

8. The Trust was established by the Bank in order to comply with the regulatory requirements of the Office of the Superintendent of Financial Institutions ("OSFI") relating to the issuance of innovative Tier 1 capital instruments (as contained in OSFI's Principles Governing Inclusion of Innovative Instruments in Tier 1 Capital dated August 2001 (the "OSFI Guideline").

9. OSFI maintains strict guidelines and standards with respect to the capital adequacy requirements of federally regulated financial institutions, including the Bank, and, in particular, specifies minimum required amounts of Tier 1 capital to be maintained by such institutions. Tier 1 capital consists of common shareholders' equity, qualifying non-cumulative perpetual preferred shares, qualifying innovative instruments and qualifying non-controlling interests arising on consolidation from Tier 1 capital instruments. Innovative instruments, such as the Scotia BaTS, must satisfy the detailed requirements of the OSFI

Guideline to be included in Tier 1 capital. Accordingly, the innovative instruments (Scotia BaTS) must be issued by a special purpose vehicle (BNS Capital Trust), which is a consolidated non-operating entity whose primary purpose is to raise innovative Tier 1 capital (the Trust is included in the financial statements of the Bank on a fully-consolidated basis). OSFI approved the inclusion of the Scotia BaTS as Tier 1 capital of the Bank on March 24, 2000.

10. No continuous disclosure documents concerning only the Trust will be filed with the OSC.

11. The Trust is a "Class 2 reporting issuer" under the Fees Rule and would be required (but for this Order) to pay participation fees under such rule.

12. The Bank will not issue additional securities through the Trust.

THE ORDER of the Director under the Fees Rule is that the requirement to pay a corporate finance participation fee under Section 2.2 of the Fees Rule shall not apply to the Trust, for so long as:

(i) the Bank and the Trust continue to satisfy all of the conditions contained in the Continuous Disclosure Exemption;

(ii) the Bank does not issue further securities out of the Trust; and

(iii) the capitalization of the Trust represented by the Scotia BaTS is included in the participation fee calculation applicable to the Bank.

November 12, 2003.

"Charlie MacCready"

2.2.9 Cathay Financial LLC - s. 211 of Reg. 1015

Headnote

Application in connection with application for registration as an international dealer, for an order pursuant to section 211 of the Regulation exempting the applicant from the requirement in subsection 208(2) of the Regulation that it carry on the business of an underwriter in a country other than Canada to be able to register in Ontario as an international dealer.

Statutes Cited

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

Regulations Cited

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

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

AND

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

AND

IN THE MATTER OF
CATHAY FINANCIAL LLC

ORDER
(Section 211 of the Regulation)

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

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant has filed an application for registration as a dealer under the Act in the category of "international dealer" in accordance with section 208 of the Regulation. The Applicant is not presently registered in any capacity under the Act.

2. The Applicant is a limited liability company formed under the laws of the State of New York and having its principal place of business in the city of New York;

3. The Applicant is registered in the United States of America (the **USA**) as a broker-dealer under the Securities Exchange Act of 1934;

4. The Applicant is a member in good standing of the National Association of Securities Dealers in the USA;

5. The Applicant is registered as a broker-dealer in twenty-three (23) state jurisdictions in the USA and in the District of Columbia, and is registered to carry on investment business with the Financial Services Authority in the United Kingdom;

6. The Applicant's principal business is in providing independent research and broker-dealer services to institutional clients through offices located in New York and London;

7. The Applicant does not currently act as an "underwriter" (as defined in subsection 1(1) of the Act) in the USA or in any jurisdiction outside of the USA;

8. The Applicant is requesting that it be exempted from the requirement under subsection 208(2) of the Regulation that the Applicant carry on the business of an underwriter in a country other than Canada as a condition of registration as a dealer in the category of international dealer;

9. In the absence of the relief requested in the Application, the Applicant would not meet the requirements of the Regulation for registration as an "international dealer" as it does not carry on the business of an underwriter in a country other than Canada;

10. The Applicant does not currently act as an underwriter outside Ontario and will not act as an underwriter in Ontario if it is registered under the Act as an "international dealer", despite the fact that subsection 100(3) of the Regulation provides that an "international dealer" is deemed to have been granted registration as an underwriter for the purposes of a distribution which it is permitted to make.

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

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

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

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

November 14, 2003.

"H. Lorne Morphy" "Robert W. Korthals"

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 Reasons for Decision

3.1.1 OSC v. Universal Settlements International, Inc.

Court File No.: 99/03
Date: 20031027

ONTARIO
SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT AT TORONTO

THEN, SOMERS and GREER, J.J.

BETWEEN:		)
		)
UNIVERSAL SETTLEMENTS INTERNATIONAL, INC.,		) ***Randy Bennett,*** **Counsel for the Applicant**
		)
	Applicant	)
		)
- and -		)
		)
ONTARIO SECURITIES COMMISSION,		) ***Yvonne B. Chisholm,*** **Counsel for the Respondent**
	Respondent	)
		) **HEARD: May 22, 2003**

REASONS

[1] The Applicant, Universal Settlements International, Inc. ("USI" or "the Applicant"), seeks judicial review of a decision of the Respondent, Ontario Securities Commission ("the Commission" or "the Respondent"), regarding the jurisdiction of the Commission to compel testimony and production of documents in aid of an investigation in circumstances where the party under investigation is neither a reporting issuer nor a registrant under the *Securities Act*, R.S.O. 1990, c.S.5, as amended, ("OSA") and where there is no determination that party is engaged in securities transactions.

[2] USI makes Application for an Order in the nature of certiorai, quashing and setting aside the Commission's investigation Order dated July 18, 2002 and its subsequent decision dated January 31, 2003, upholding the investigation Order.

Background

[3] On February 26, 2001, the Superintendent of Financial Services ("the Superintendent") issued a Notice of Proposed Cease and Desist Order pursuant to S.44I(2) of the *Insurance Act* (Ontario). USI, and Derek O'Brien and Tony Duscio, its principals, were named in the Notice. The Notice was based on Investigative Findings alleging that USI was contravening S.115 of the said *Insurance Act*, by trafficking in insurance policies, while not licensed as an insurer or while not the duly authorized agent of an insurer. USI was in the business of selling to Ontario residents, a financial product known as a "viatical settlement purchase program". Essentially this involves a person with a life insurance policy selling the benefits under that policy to the purchaser. The policyholder gets the money while still alive and the purchaser receives the benefits when the policyholder dies. The price is based on the value of the benefits received. These purchases are made from policyholders in Ontario, in Canada and internationally, we are told. USI is said to be the facilitator of these settlements with persons who are terminally ill and dying. This includes policyholders who, for example, have HIV, AIDS or a terminal illness.

[4] The issue then was whether this sale amounted to "insurance undertaken in Ontario", within the meaning of S.39 of the

said Act. The Financial Services Tribunal held a Hearing on the matter on December 6, 2001, and found that USI's viatical settlement purchase programme does not constitute "insurance undertaken in Ontario," and held that the Superintendent's Notice of Proposal was of no force or effect.

[5] Notwithstanding this finding, the Commission asked USI to provide certain information regarding its business to the Commission so that it could determine whether the OSA applied to USI's business. USI refused to provide the information. Therefore, the Commission made an investigation order pursuant to S.11(1)(a) of the OSA. On January 31, 2003, the Commission made a decision whereby it refused USI's application under s.144 of the OSA seeking to quash the investigation order, to quash a summons issued pursuant to S.13 of the SA and to vary its Staff Notice 44. The Staff of the Commission had determined that these viatical products were "securities" and thus subject to the OSA.

[6] USI argues that any such investigation is a very intrusive step in its business operations. It says that there is no evidence to support the Commission's position and that it is basing its investigation on the fact that "it may be a security", and this is not enough. USI says that it only becomes involved after the viatical settlement is done and only deals with purchasers here in Canada. USI gets a commission from the purchase of the contract

[7] The Commission says that USI has its head office in Ontario, has customers in Ontario, Nova Scotia, British Columbia and Alberta. It further notes that USI's sales to Ontario residents alone amount to about $1,500,000 per annum and that USI's activities in Ontario are entirely unregulated. The Commission says it issued the investigation order because it is unclear exactly what USI is selling, to whom USI's products are being sold, which agents are selling USI's products, what representations are being made in respect of USI's products, and what disclosure, if any, is made regarding the nature of USI's products and risks of investing in USI's products.

The Court's Jurisdiction and Standard of Review

[8] The Divisional Court has the authority to hear an application for judicial review of a decision made in the exercise of a statutory power under sections 2(1) and 6(1) of the *Judicial Review Procedure Act*.

[9] The parties do not agree on the standard of review in the case before us. USI argues that S.11 of the OSA is a "jurisdiction-limiting provision" and the standard of review would therefore be one of correctness. The Commission says that s.11 is not a jurisdiction-limiting provision but is instead a regulatory provision and thus the standard of review would be reasonableness. The Supreme Court of Canada held in *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557, [1994] S.C.J. No 58 (cited to QL) where there is no privative clause and where there is a statutory right of appeal, "... the concept of the specialization of duties requires that deference be shown to decisions of specialized tribunals on matters which fall squarely within the tribunal's expertise." The Court also noted that while the Commission's primary role is to administer and apply the Securities Act in that province, it also plays a policy development role. This, said the Court, is an additional basis for deference to the decision of the Commission. Therefore, decisions of the Commission, falling within its expertise, warrant judicial deference.

[10] In *Dr. Q* v. *College of Physicians and Surgeons of British Columbia*, [2003] S.C.J. No.18, 2003 S.C.J. 19, File No. 28553, the Court notes that it applies the pragmatic and functional approach, where a statute delegates power to an administrative decision-maker. The Court says in para. 22 (Q.L.) that this approach calls on the Court to weigh a series of factors in an effort to discern whether a particular issue before the administrative body should receive exacting review by a court, undergo a "significant searching or testing" or be left to the near exclusive determination of the decision-maker. In para. 26, the Court says that the standard of review is determined by considering four contextual factors, namely:

> . . . the presence or absence of a privative clause or statutory right of appeal, the expertise of the tribunal relative to that of the reviewing court on the issue in question, the purposes of the legislation and the provision in particular; and the nature of the question - law, fact or mixed law and fact. The factors may overlap. The overall aim is to discern legislative intent, keeping in mind the constitutional role of the courts in maintaining the rules of law.

See also: *Pushpanathan* v. *Canada (Minister of Citizenship and Immigration),* [1998] 1 S.C.R. 982, 160 D.L.R.(4th) 193.

[11] Notwithstanding those principles, USI insists that the appropriate standard of review is that of correctness, relying on *Walmsley* v. *Ontario (Attorney General)* (1997) 34 O.R.(3d) 612 (C.A.).

[12] A standard or review based on deference to a specialized tribunal's decision was confirmed in *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132, where the Court found that the Commission is a specialized tribunal with a wide discretion to intervene in the public interest and that the protection of the public interest is a matter falling within the core of the Commission's expertise. The Court looked to the Commission's relative expertise in the regulation of capital markets and the purpose of the OSA as a whole, all militating in favour of a high degree of curial deference. The Court found that an intermediate standard of review is dictated. We, in applying the principles set out in *Dr. Q.*, supra, and in *Law Society of New Brunswick v. Ryan*, [3002] S.C.J. No. 17. 2003 SCC 20, File No: 28639,

conclude that the standard of review in the case before us is one of reasonableness.

Analysis

[13] The Commission has wide powers under S.11 of the OSA to investigate any matter it "considers expedient", for the due administration of Ontario securities law or the regulation of the capital markets in Ontario, or to assist in the due administration of the securities laws or the regulation of the capital markets in another jurisdiction. Subsection 11(3) of the OSA sets out in detail what inquiries can be made. In this instance, the Commission says that its Chair issued the investigation order on the basis that it appeared that USI's products may be securities under the Act, and thereby subject to the registration and prospectus requirements of the Act, including Sections 25 and 53. The Commission points out that those requirements are designed to ensure that sales agents meet standards of honesty and fitness, and that all features of a security, including its risks, are transparent and disclosed to potential investors.

[14] USI disagrees with the position taken by the Commission. USI says that the Commission should have to establish conclusively that USI deals in a "security" as defined by the Act, before it issues an investigation order. The term "security" as defined in the Act is very broad, indeed. The USI is asking the Court to stop its investigation at the outset, before any information, at all, is released by USI. It says that the Court must read s.11(1)(a) concurrently with s.13, since the legislation gives the Commission extraordinary powers.

[15] The Commission argues that this approach is wrong, as the whole purpose of a section 11 investigation order is to "ascertain facts." The Commission takes its role as the protector of the public, in such cases, very seriously. It can be argued that the sector of the public involved in these viatical settlements, is the most vulnerable, that is people who are ill, many of whom are dying and in need of money. Subsection 1.1(a) of the Act says that one of its purposes is "to provide protection to investors from unfair, improper or fraudulent practices."

[16] Under s.13 of the OSA, the person making the investigation has broad powers to summon and enforce the attendance of any person and to compel that person to testify under oath. That person will be required to "produce documents and other things". Further, if that person fails to attend, he or she or the company may be liable to be committed for contempt by the Court as if in breach of an order of that court. There are also broad powers of search and seizure set out in s. 13.

[17] The Commission also argues that the implications of granting the relief being requested by USI, would be "serious and indeterminate". On the other hand, USI says that the Ontario investors are protected by the law of the United States. It even has a wholly owned subsidiary of USI in Florida. The USI's marketing materials provide the following:

> At policy maturity, principal plus profit is guaranteed to be "paid in Full" and is a legal right protected by law.

[18] The protection so provided, says the Commission, is the "Insurance Act in the US." This does not give the Commission much comfort that the OSA in Ontario is not being breached.

[19] The Commission, however, takes the position that USI's standard procedure is such that it involves a number of intermediaries, including USI itself, which are interposed between the Ontario investor and the U.S. viator. The Commission does not accept USI's statement that the prospective purchasers of these viatical settlements "receive extensive disclosure material." The disclosure document presented by USI to the Commission is a single page with 5 short paragraphs. The Commission is therefore no further ahead. The Commission sets this problem out in some detail in its Factum. Finally, USI concedes that the viatical settlements are illiquid and based on imprecise life expectancy estimates, and that there is variability in the investment, as each is related to the specific facts of the insured person's policy, his or her health and other unknown factors.

[20] USI points to *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Assoc.*, [1993] 3 S.C.R. 724, [1993] S.C.J. No. 114, file No.: 2149, when examining these extraordinary powers under the Act, which in its view places a constraint on the principles of individual liberty. In para.14 it notes:

> The characterization of the power in question cannot proceed without reference to the exorbitant nature of the penalties which are available to secure compliance. In light of the judicial nature of the power, an extension of the power so that it would be exercisable in an administrative context would be an exception enlargement of its application. The power cannot be envisaged to be so broad in the absence of clear wording to that effect.

[21] The role of the Commission is examined in *Ainsley Financial Corporation et al. v. Ontario Securities Commission et al.,* (1993) 14 O.R. (3d) 280 (Ont. Ct. (Gen. Div.)), where Mr. Justice Blair sets out on p. 289, the role and jurisdiction of the Commission, noting that it has no statutory jurisdiction of a general discretionary nature, and that even though it has a broad discretionary jurisdiction, the specific sections of the Act, itself, delegate to the Commission a particular task in the exercise of its regulatory function in the securities industry. In our view, however, *Ainsley,* does not apply to the case at bar, as it is based on a completely different fact situation. Further, *Ainsley,* was adjudicated upon before the OSA was amended. The Commission is a

specialized tribunal with a wide discretion to intervene in the public interest and to protect the public interest. See: *Asbestos,* supra, at p.592.

[22] The Commission says that what USI is really trying to do is to seek an exemption from the Act on a profoundly premature record. It says there are clear statutory construction cases to support its position. In *British Columbia Securities Commission v. Branch*, [1995] 123 D.L.R.(4th) 462, (S.C.C.), the Court notes in paragraph 59, that the Securities Act of British Columbia is "...essentially a scheme of economic regulation which is designed to discourage detrimental forms of commercial behaviour...the Act is really aimed at regulating certain facets of the economy and business." In para.81, it further notes that one must ask whether such actions undertaken by such a regulatory agency, legitimately within its powers and jurisdiction and in furtherance of important public purposes, can be realistically achieved in a less intrusive manner. When they cannot, there is no Charter breach. We adopt this reasoning.

[23] Further, the Commission points out that the language of the Act changed in 1994, and USI is simply trying to read something into the Act that is not there. In *Securities Law and Practice*, 2nd ed. Vol. 1, Carswell Company, Toronto, 1984, Victor P. Alboini sets out in para. 6.1.1 that the Commission's power to order investigations is critical to its role of regulating the securities industry. He says that the Commission has the power to order investigations in the following circumstances:

1. for the due administration of Ontario securities law;

2. for the regulation of the capital markets in Ontario; or

3. to assist in the due administration of the securities laws or the regulation of the capital markets in another jurisdiction.

[24] He also points out how broad and encompassing the legislation is. There is no requirement, he points out, for the Commission to believe that a contravention of the Ontario securities law has occurred or any improper securities-related activity has occurred or is about to occur. The Commission is not required to obtain judicial approval ahead of time for the searches it is allowed to conduct. Alboini adds, "An investigation proceeding is distinct from an enforcement proceeding in that the rules of natural justice do not generally apply except as may be specified in the Act."

[25] The Commission also says it is important that all risks are disclosed to the purchasers of viatical settlements and to the sellers, as well. The Commission knows that Mr. Duscio owns 50% of the company and that there are two other persons involved in the ownership, Mr. Halas and Mr. Panos. Mr. Duscio, however, refuses to provide the Commission with any information about these persons except that each had previously worked in the securities industry. The documents provided do not refer to a specific viator or purchaser or group of purchasers or to any single transaction whatsoever. USI has, over the years refused to disclose the names of any of its sales agents or anything about how such sales operate.

[26] There are some American authorities on the issue, which serve to illustrate that legislation is being put in place in some jurisdictions to regulate viatical settlements. The State of Ohio has enacted such legislation to include it its definition of "security" and interest in a "life settlement". See: *Glick, Trustee for the Albert Glick Revocable Trust, et al v. Sokol et al.* (2002) 149 Ohio App. 3d 344. However, in some States of the United States, such viatical settlements have been found to be neither insurance contracts nor securities. In other States, they have been found to be securities, depending on how they are structured. The law, is by no means, settled in the area. Further, in the case before us, it is hard to see how the Commission could make any finding one way or the other until it had all the material facts before it, which it does not have at this point in time.

Conclusion

[27] We find that the standard to be applied in the case before us is that of reasonableness. We cannot see that the Commission, in any way, exceeded it jurisdiction in compelling testimony and production of documents in aid of an investigation. In our view, even though USI is neither a reporting issuer nor a registrant under the Act, it is still subject to the parameters of the Act and must co-operate with the Commission in its investigation. Further, it matters not that viatical settlements are not distinctly described under the Act. We find that the Commission has the power to order such investigations that it deems are in the public interest, and that it is in no way expanding its authority in doing so. The decision of the Commission therefore stands. For the reasons set out herein, the application for judicial review is dismissed.

If the parties cannot otherwise agree on Costs, we will receive brief written submissions on Costs, including those of the stay Order of Madam Justice Benotto. The Respondent shall have 30 days from the date hereof to submit its written submissions and the Applicant a further 20 days therefrom. If any reply is necessary, the Respondent shall have 5 days from the date of the Applicant's response.

THEN, J.
SOMERS, J.
GREER, J.

Released: October 27, 2003.

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Extending & Rescinding Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Extending Order	Date of Lapse/Revoke
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

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesScource (see www.carswell.com).

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

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

Exempt Financings

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

REPORTS OF TRADES SUBMITTED ON FORM 45-501F1

Transaction Date	Purchaser	Security	Total Purchase Price ($)	Number of Securities
05-Nov-2003	David Guptill	Acuity Pooled Canadian Equity Fund - Trust Units	180,000.00	8,051.00
05-Nov-2003 to 06-Nov-2003	Sharon Jorgens;Bibhuti Mohanty	Acuity Pooled Conservative Asset Allocation - Trust Units	370,217.27	23,862.00
04-Nov-2003	2022048 Ontario Ltd.	Acuity Pooled Fixed Income Fund - Trust Units	150,000.00	10,986.00
07-Nov-2003 to 12-Nov-2003	5 Purchasers	Acuity Pooled High Income Fund - Trust Units	950,000.00	55,530.00
06-Nov-2003	Constance Mayor	Acuity Pooled Social values Canadian Equity Fund - Trust Units	50,000.00	3,593.00
31-Oct-2003	7 Purchasers	AltaCanada Energy Corp. - Common Shares	2,244,000.00	3,740,000.00
03-Nov-2003	Business Development Bank of Canada and Primaxis Technology Ventures Inc.	Atsana Semiconductor Corp. - Convertible Debentures	496,660.00	2.00
30-Jun-2003	TD Capital Private Equity Investors Partnership	Blackstone Communications Partners I L.P. - Limited Partnership Units	182,720.00	182,720.00
03-Oct-2003	Lou and Nina Panontin	BPI American Opportunities Fund - Units	150,000.00	122.00
22-Oct-2003	4 Purchasers	Canadian Golden Dragon Resources Ltd. - Common Shares	4,000.00	50,000.00
29-Oct-2003	Argosy Securities Inc.	Canadian Golden Dragon Resources Ltd. - Common Shares	6,000.00	60,000.00
06-Nov-2003	8 Purchasers	Canadian Golden Dragon Resources Ltd. - Units	66,799.00	445,333.00

28-Oct-2003	22 Purchasers	Centurion Energy International Inc. - Common Shares	6,376,036.00	3,110,261.00
04-Nov-2003	11 Purchasers	Deer Creek Energy Limited - Common Shares	6,543,750.00	3,271,875.00
07-Nov-2003	4 Purchasers	Dollar Financial Group, Inc. - Notes	2,503,930.00	4.00
10-Nov-2003	5 Purchasers	DragonWave Inc. - Preferred Shares	1,688,406.00	8,839,821.00
06-Nov-2003	43 Purchasers	DRC Resoures Corporation - Common Shares	24,150,000.00	3,450,000.00
31-Oct-2003	20 Purchasers	EdgeStone Capital Equity Fund II-A, L.P. - Limited Partnership Interest	9,639,000.00	9,639.00
31-Oct-2003	20 Purchasers	EdgeStone Capital Equity Fund II-B, L.P. - Limited Partnership Interest	2,891,700.00	2,891.00
23-Oct-2003	Robert Fraser	EMJ Data Systems Ltd. - Convertible Debentures	150,000.00	2,000.00
31-Oct-2003	18 Purchasers	Entree Gold Inc. - Units	3,945,000.00	3,945,000.00
05-Nov-2003	Ontario Teachers Pension Plan	First Marblehead - Common Shares	640,000.00	40,000.00
30-Jun-2003	TD Capital Private Equity Investors Partnership	Genstar Capital Partners III, L.P. - Limited Partnership Units	165,396.00	165,396.00
31-Oct-203	27 Purchasers	Hazelton Capital Limited Partnership - Limited Partnership Units	2,345,000.00	2,345.00
06-Nov-2003	10 Purchasers	IMC VENTURES INC. - Promissory note	1,432,500.00	2,865,000.00
29-Oct-2003	14 Purchasers	International Wex Technologies Inc. - Units	4,273,177.00	2,191,373.00
31-Oct-2003	3 Purchasers	Ivanhoe Mines Ltd. - Special Warrants	45,800,000.00	4,000,000.00
31-Oct-2003	Bridget O'Brien	JED Oil Inc. - Common Shares	11,976.28	3,300.00
29-Oct-2003	John Finlay	Krang Energy Inc. - Shares	525,000.00	525,000.00
03-Oct-2003	Andyco Inc.	Landmark Global Opportunities Fund - Units	150,000.00	1,296.00
30-Jun-2003	TD Capital Private Equity Investors Partnership	Lightspeed Venture Partners VI, L.P. - Limited Partnership Units	124,414.00	124,414.00
01-Jul-2003	TD Capital Private Equity Investors Partnership	Madison Dearborn Capital Partners IV, L.P. - Limited Partnership Units	92,553.00	92,553.00
28-Oct-2003	5 Purchasers	Masters Energy Inc. - Special Warrants	875,000.00	875,000.00

31-Oct-2003	Mario Drinovac and Rozina Joosub	McElvaine Investment Trust - Trust Units	250,172.00	13,403.00
01-Jul-2003	TD Capital Private Equity Investors Partnership	Menlo Ventures IX, L.P. - Limited Partnership Units	193,360.00	193,360.00
11-Nov-2003	King John Won	Microbix Biosystems Inc. - Common Shares	1,800.00	300.00
11-Nov-2003	Brian Blakeley	Microsource Online, Inc. - Common Shares	20,100.00	3,350.00
11-Nov-2003	Nicole Cyr	Microsource Online, Inc. - Common Shares	6,000.00	1,000.00
11-Nov-2003	Trung Tran	Microsource Online, Inc. - Common Shares	6,000.00	1,000.00
11-Nov-2003	Wally Speckert	Microsource Online, Inc. - Common Shares	18,000.00	3,000.00
14-Nov-2003	David Pettigrew	Microsource Online, Inc. - Common Shares	6,000.00	1,000.00
27-Oct-2003	Creststreet 2002 Limited Partnership	Mount Copper Wind Power Energy Inc. - Shares	11,877.00	11,521.00
07-Nov-2003	Elliot & Page	MSW Energy Holdings LLC/MSE Energy Finance Co., Inc. - Notes	2,678,000.00	1.00
30-Oct-2003	3 Purchasers	NeuroMed Technologies Inc. - Shares	1.99	1,525,000.00
30-Oct-2003	3 Purchasers	NeuroMed Technologies Inc. - Shares	2.61	1,987,920.00
30-Nov-2003	3 Purchasers	NeuroMed Technologies Inc. - Units	1,995,616.00	1,525,000.00
28-Oct-2003	Eastern Technology Seed Investment Fund Limited and MedInnova Partners Inc.	NovaNeuron Inc. - Convertible Debentures	50,000.00	2.00
27-Oct-2003	Gluskin Sheff & Associates	Nu Skin Enterprises - Common Shares	5,853,646.00	345,000.00
10-Nov-2003	6 Purchasers	O'Donnell Emerging Companies Fund - Units	254,572.00	32,172.00
01-Jul-2003	TD Capital Private Equity Investors Partnership	Oak Investment Partners X, Limited Partnership - Limited Partnership Units	109,629.00	109,629.00
10-Nov-2003	Ayrfield Holdings Limited ConcordOntario	Ozz Corporation - Common Shares	224,914.52	274,286.00
30-Oct-2003	Ayrfield Holdings Limited ConcordOntario	Ozz Corporation - Common Shares	893,428.00	2,233,571.00
30-Oct-2003	Ayrfield Holdings Limited ConcordOntario	Ozz Corporation - Common Shares	1,032,000.00	2,580,000.00

30-Oct-2003	Ayrfield Holdings Limited ConcordOntario	Ozz Corporation - Common Shares	106,971.00	205,714.00
30-Oct-2003	Ayrfield Holdings Limited ConcordOntario	Ozz Corporation - Common Shares	111,200.00	139,000.00
30-Oct-2003	Ayrfield Holdings Limited ConcordOntario	Ozz Corporation - Common Shares	480,000.00	1,200,000.00
27-Oct-2003	3 Purchasers	Patch Safety Services Ltd. - Special Warrants	29,600.00	257,391.00
28-Oct-2003	Marian Hutchison and Hutchold Ltd.	Plazacorp Partners I Limited Partnership - Limited Partnership Units	100,000.00	1,000.00
28-Oct-2003	4 Purchasers	Plazacorp Partners II Limited Partnership - Limited Partnership Units	903,200.00	9,032.00
06-Nov-2003	Credit Risk Advisors and Bank of Montreal	PPC Escrow Corp. - Notes	4,952,450.00	2.00
01-Jan-2003	TD Capital Private Equity Investors Partnership	Providence Equity Partners IV L.P. - Limited Partnership Units	325,581.00	325,581.00
06-Nov-2003	4 Purchasers	Quality Distribution, Inc. - Notes	1,673,125.00	4.00
29-Oct-2003 to 06-Nov-2003	25 Purchasers	Qwest Energy RSP/Flow-Through Financial Corp. - Bonds	443,000.00	17,720.00
29-Oct-2003 to 06-Nov-2003	70 Purchasers	Qwest Energy RSP/Flow-Through Financial Corp. - Limited Partnership Units	2,540,000.00	101,600.00
07-Nov-2003	7 Purchasers	Radiant Communications Corp. - Units	1,130,000.00	282,500.00
30-Jun-2003	TD Capital Private Equity Investors Partnership	Spectrum Equity Investors IV, L.P. - Limited Partnership Units	231,373.00	231,373.00
01-Jul-2003	TD Capital Private Equity Investors Partnership	Sprout Capital IX, L.P. - Limited Partnership Units	320,755.00	320,755.00
19-Oct-2003 to 05-Nov-2003	3 Purchasers	Starboard Gas Ltd. - Common Shares	675,000.00	675,000.00
06-Nov-2003	NCE Flow-Through (2003-2) Limited Partnership	Tango Energy Inc. - Common Shares	500,500.00	770,000.00
27-Oct-2003	4 Purchasers	Tethyan Copper Company Limited - Shares	1,098,000.00	3,921,428.00
03-Oct-2003	1111580 Ontario Inc.	Trident Global Opportunities Fund - Units	22,000.00	201.00
15-Oct-2003	Dynamic Venture Opportunities Fund Inc.	Triexe Management Group Inc. - Preferred Shares	3,000,000.00	30,000.00
31-Oct-2003	Rob Hirjibehdin;Marlene Irwin	Vertex Fund - Units	51,066.90	1,603.00

30-Sep-2003	RBC Technology Ventures Inc.	VIMAC Milestone Medica Fund Limited Partnership - Limited Partnership Interest	708,960.00	708,960.00
07-Nov-2003	8 Purchasers	West Energy Ltd. - Common Shares	2,430,000.00	2,430,000.00
01-Jul-2003	TD Capital Private Equity Investors Partnership	Willis Stein & Partners III, L.P. - Limited Partnership Units	147,645.00	147,645.00

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

Seller	Security	Number of Securities
Vision J.M.P. inc	Cossette Communication Group Inc. - Shares	44,950.00
F.D.L. & Associes Ltee	Cossette Communication Group Inc. - Shares	74,794.00
Lauren Communication Ltd.	Cossette Communication Group Inc. - Shares	24,350.00
Communipro ltee	Cossette Communication Group Inc. - Shares	227,375.00
Concertmedia inc.	Cossette Communication Group Inc. - Shares	22,925.00
Communigstart inc.	Cossette Communication Group Inc. - Shares	22,300.00
Communication Mens Sana incorporee	Cossette Communication Group Inc. - Shares	7,875.00
Xenolith Gold Limited	Kookaburra Resources Ltd. - Common Shares	74,247.00
Targa Group Inc.	Plaintree Systems Inc. - Common Shares	329,557,600.00
Michael R. Faye	Spectra Inc. - Common Shares	450,000.00
Samuel Hahn	Stellar International Inc. - Common Shares	150,000.00

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Advantage Energy Income Fund
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated November 14, 2003
Mutual Reliance Review System Receipt dated November 14, 2003
Offering Price and Description:
$80,325,000.00 - 5,100,000 Trust Units $60,000,000.00 8.25% Convertible Unsecured Subordinated Debentures
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
FirstEnergy Capital Corp.
Raymond James Ltd.
Promoter(s):
-
Project #588427

Issuer Name:
Canada Dominion Resources Limited Partnership XII
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated November 10, 2003
Mutual Reliance Review System Receipt dated November 12, 2003
Offering Price and Description:
$20,000,000.00 (Maximum Offering) (800,000 Units) Price: $25.00 per Unit
Minimum Purchase: 200 Units
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Dundee Securities Corporation
Scotia Capital Inc.
TD Securities Inc.
Canaccord Capital Corporation
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Desjardins Securities Inc.
Promoter(s):
Canada Dominion Resources XII Corporation
Project #587721

Issuer Name:
Creststreet Power & Income Fund LP
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated November 13, 2003
Mutual Reliance Review System Receipt dated November 14, 2003
Offering Price and Description:
$ * - * Limited Partnership Units Price: $10.00 per Unit
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
National Bank Financial Inc.
HSBC Securities (Canada) Inc.
Canaccord Capital Corporation
Raymond James Ltd.
Promoter(s):
Creststreet Asset Management Limited
Project #588572

Issuer Name:
Equitech Corporation
Principal Regulator - Alberta
Type and Date:
Preliminary Prospectus dated November 12, 2003
Mutual Reliance Review System Receipt dated November 14, 2003
Offering Price and Description:
OFFER OF RIGHTS TO SUBSCRIBE FOR UNITS
Subscription Price: Four Rights And * For Three Units
Maximum Offering: 4,971,655 Units To Raise $ *
Minimum Offering: * Units To Raise $700,000
Each Unit Is Comprised Of One Common Share And One Warrant
Underwriter(s) or Distributor(s):
Northern Securities Inc.
Promoter(s):
-
Project #588718

Issuer Name:
Greater Toronto Airports Authority
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Shelf Prospectus dated November 18, 2003
Mutual Reliance Review System Receipt dated November 18, 2003
Offering Price and Description:
$2,000,000,000.00 - Medium-Term Notes (Secured)
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Merrill Lynch Canada Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
Promoter(s):
-
Project #589691

Issuer Name:
GrowthWorks WV Canadian Fund Inc. (fomerly Working Ventures Canadian Fund Inc.)
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated November 10, 2003
Mutual Reliance Review System Receipt dated November 12, 2003
Offering Price and Description:
Class A Shares Offering Price: Net Asset Value per Series Share
Underwriter(s) or Distributor(s):
GrowthWorks (WVIS) Ltd.
Promoter(s):
-
Project #587888

Issuer Name:
Hot House Growers Income Fund
Principal Regulator - British Columbia
Type and Date:
Preliminary Prospectus dated November 12, 2003
Mutual Reliance Review System Receipt dated November 13, 2003
Offering Price and Description:
$ * - * Units Price: $10.00 per Unit
Underwriter(s) or Distributor(s):
TD Securities Inc.
RBC Dominion Securities Inc.
Promoter(s):
Canagro Produce Ltd.
Century Pacific Greenhouses Ltd.
Project #588443

Issuer Name:
H&R Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated November 12, 2003
Mutual Reliance Review System Receipt dated November 12, 2003
Offering Price and Description:
$110,050,000.00 - 7,100,000 Units Price: $15.50 per Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
Raymond James, Ltd.
Promoter(s):
-
Project #587856

Issuer Name:
MDC Corporation Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated November 18, 2003
Mutual Reliance Review System Receipt dated November 18, 2003
Offering Price and Description:
3,903,451 Adjustable Rate Exchangeable Securities due December 31, 2028
($ * principal amount per Exchangeable Security)
Exchangeable into Units of CUSTOM DIRECT INCOME FUND
Price: $ * per Exchangeable Security
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
TD Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Griffiths McBurney & Partners
Promoter(s):
-
Project #589785

Issuer Name:
N-45° First CMBS Issuer Corporation
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated November 14, 2003
Mutual Reliance Review System Receipt dated November 17, 2003
Offering Price and Description:
Commercial Mortgage-Back Bonds
Series 2003-3
$458,748,000 (Approximate)
$119,755,000 principal amount of •% Class A-1 Bonds, due January 15, 2008
$228,469,000 principal amount of •% Class A-2 Bonds, due December 15, 2012
$47,632,000 principal amount of •% Class B Bonds, due December 15, 2012
$31,446,000 principal amount of •% Class C Bonds, due December 15, 2012
$31,446,000 principal amount of •% Class D Bonds, due December 15, 2012
$462,449,072 notional amount of Class IO Bonds (interest only), due December 15, 2012
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
Canaccord Capital Corporation
Trilon Securities Corporation
Desjardins Securities Inc.
Laurentian Bank Securities Inc.
Promoter(s):
Hypothèques CDPQ Inc.
Project #589043

Issuer Name:
Northland Power Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated November 13, 2003
Mutual Reliance Review System Receipt dated November 14, 2003
Offering Price and Description:
$110,031,700.00 - 9,635,000 Subscription Receipts, each representing the right to receive one Trust Unit Price: $11.42 per Subscription Receipt
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
Canaccord Capital Corporation
FirstEnergy Capital Corp.
Raymond James Ltd.
Promoter(s):
-
Project #588761

Issuer Name:
Oilexco Incorporated
Principal Regulator - Alberta
Type and Date:
Amended and Restated Preliminary Prospectus dated November 14, 2003
Mutual Reliance Review System Receipt dated November 17, 2003
Offering Price and Description:
$ * - * Common Shares Price: $ * per Common Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Promoter(s):
-
Project #570627

Issuer Name:
Sentry Select Focused 50 S-1 Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated November 12, 2003
Mutual Reliance Review System Receipt dated November 18, 2003
Offering Price and Description:
Mutual Fund Securities Net Asset Value
Underwriter(s) or Distributor(s):
Sentry Select Capital Corp.
Sentry Select Capital Corp.
Promoter(s):
Sentry Select Capital Corp.
Project #589305

Issuer Name:
TriOil Ltd.
Principal Regulator - Alberta
Type and Date:
Amended and Restated Preliminary Prospectus dated November 14, 2003
Mutual Reliance Review System Receipt dated November 17, 2003
Offering Price and Description:
Minimum: $ * (* Flow-Through Shares) Maximum $ * (* Flow-Through Shares) Minimum Offering $ *
Underwriter(s) or Distributor(s):
Woodstone Capital Inc.
Promoter(s):
Joseph M. Dutton
Robert M. Libin
Project #578342

Issuer Name:
UE WATERHEATER INCOME FUND
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Prospectus dated November 13, 2003
Mutual Reliance Review System Receipt dated November 17, 2003
Offering Price and Description:
$ * - * Units Price: $10.00 per Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
TD Securities Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Promoter(s):
Epcor Utilities Inc.
Project #587173

Issuer Name:
WATT ENERGY LIMITED PARTNERSHIP III
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated November 14, 2003
Mutual Reliance Review System Receipt dated November 18, 2003
Offering Price and Description:
$15,000,000 (Maximum Offering)
$1,000,000 (Minimum Offering)
A MAXIMUM OF 15,000 AND A MINIMUM OF 1,000 UNITS
Price: $1,000 per Unit
Minimum Purchase of 10 Units ($10,000)
Underwriter(s) or Distributor(s):
Orion Securities Inc.
Promoter(s):
WATT Energy Management III Corp.
Project #589344

Issuer Name:
407 International Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Base Shelf Prospectus dated November 17, 2003
Mutual Reliance Review System Receipt dated November 18, 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

Issuer Name:
Acetex Corporation
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated November 12, 2003
Mutual Reliance Review System Receipt dated November 14, 2003
Offering Price and Description:
US $75,000,000.00 - 10.% Senior Unsecured Notes due 2009
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #585018

Issuer Name:
ARIUS Research Inc.
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated November 14, 2003
Mutual Reliance Review System Receipt dated November 17, 2003
Offering Price and Description:
Minimum: 1,333,333 Units ($1,200,000) - Maximum: 3,333,333 Units ($3,000,000)
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Dlouhy Merchant Group Inc.
Promoter(s):
-
Project #576962

Issuer Name:
Canadian Medical Discoveries Fund II Inc.
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated November 13, 2003
Mutual Reliance Review System Receipt dated November 17, 2003
Offering Price and Description:
Class A Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
PIPSC Sponsor Corp.
Project #582198

Issuer Name:
Canadian Medical Discoveries Fund Inc.
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated November 13, 2003
Mutual Reliance Review System Receipt dated November 17, 2003
Offering Price and Description:
Class A Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #582212

Issuer Name:
Certicom Corp.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 18, 2003
Mutual Reliance Review System Receipt dated November 18, 2003
Offering Price and Description:
Cdn.$14,999,997.60 - 5,357,142 Common Shares @Cdn.$2.80 per Common Share
Underwriter(s) or Distributor(s):
TD Securities Inc.
Research Capital Corportion
Promoter(s):
-
Project #587587

Issuer Name:
Cineplex Galaxy Income Fund
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated November 14, 2003
Mutual Reliance Review System Receipt dated November 17, 2003
Offering Price and Description:
$175,000,000.00 - 17,500,000 Units @$10.00 per Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Scotia Capital Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Griffiths McBurney & Partners
Westwind Partners Inc.
Promoter(s):
Cineplex Odeon Corporation
Project #578293

Issuer Name:
CNH Capital Canada Receivables Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Shelf Prospectus dated November 13, 2003
Mutual Reliance Review System Receipt dated November 14, 2003
Offering Price and Description:
Up to $2,000,000,000 of Receivable-Backed Notes
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #578370

Issuer Name:
Desert Sun Mining Corp.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 12, 2003
Mutual Reliance Review System Receipt dated November 12, 2003
Offering Price and Description:
$15,000,001.00 - 8,823,530 Units @ $1.70/Unit
Underwriter(s) or Distributor(s):
Sprott Securities Inc.
Griffiths McBurney & Partners
CIBC World Markets Inc.
Promoter(s):
-
Project #585284

Issuer Name:
Glacier Credit Card Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 18, 2003
Mutual Reliance Review System Receipt dated November 18, 2003
Offering Price and Description:
$541,500,000 4.444% Asset-Backed Senior Notes, Series 2003-1 Expected Repayment Date November 20, 2008
$28,500,000 5.034% Asset-Backed Subordinated Notes, Series 2003-1 Expected Repayment Date November 20, 2008
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):
-
Project #586343

Issuer Name:
Investors Canadian Money Market Fund
Investors Canadian High Yield Money Market Fund
Investors U.S. Money Market Fund
Principal Regulator - Manitoba
Type and Date:
Amendment #1 dated November 5, 2003 to Final Simplified Prospectus dated July 28, 2003
Mutual Reliance Review System Receipt dated November 12, 2003
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Investors Group Financial Services Inc.
Les Services Investors Limitee
Investors Group Financial Services Inc.
Investors Groupe Financial Services Inc.
Les Services Investors Limitee
Investors Group Financial Services Inc.
Promoter(s):
-
Project #549802

Issuer Name:
ING Canadian Money Market Fund
ING Canadian Bond Fund
ING Canadian Balanced Fund
ING Canadian Equity Fund
ING Canadian Small Cap Equity Fund
ING US Equity Fund
ING US Equity RSP Fund
ING Global Equity Fund
ING Global Equity RSP Fund
ING Europe Equity Fund
ING Austral-Asia Equity Fund
ING Japan Equity Fund
ING Emerging Markets Equity Fund
ING Canadian Financial Services Fund
ING Canadian Resources Fund
ING Global Technology Fund
ING Global Communications Fund
ING Global Brand Names Fund
Ensemble Conservative Equity Portfolio
Ensemble Moderate Equity Portfolio
Ensemble Aggressive Equity Portfolio
Ensemble Conservative Equity RSP Portfolio
Ensemble Moderate Equity RSP Portfolio
Ensemble Aggressive Equity RSP Portfolio
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated November 13, 2003
Mutual Reliance Review System Receipt dated November 18, 2003
Offering Price and Description:
Investor Class Units, Exclusive Class Units and Institutional Class Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #579161

Issuer Name:
IPC US Income Commercial Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 18, 2003
Mutual Reliance Review System Receipt dated November 18, 2003
Offering Price and Description:
Cdn. $26,675,000.00 - 2,500,000 Units @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):
-
Project #587271

Issuer Name:
Mackenzie Cundill Canadian Security Capital Class
Mackenzie Ivy Canadian Capital Class
Mackenzie Ivy Enterprise Capital Class
Mackenzie Maxxum Canadian Equity Growth Capital Class
Mackenzie Maxxum Canadian Value Capital Class
Mackenzie Maxxum Dividend Capital Class
Mackenzie Select Managers Canada Capital Class
Mackenzie Universal Canadian Growth Capital Class
Mackenzie Universal Future Capital Class
Mackenzie Cundill American Capital Class
Mackenzie Select Managers USA Capital Class
Mackenzie Universal American Growth Capital Class
Mackenzie Universal U.S. Blue Chip Capital Class
Mackenzie Universal U.S. Emerging Growth Capital Class
Mackenzie Universal U.S. Growth Leaders Capital Class
Mackenzie Cundill Value Capital Class
Mackenzie Ivy European Capital Class
Mackenzie Ivy Foreign Equity Capital Class
Mackenzie Select Managers Capital Class
Mackenzie Select Managers Far East Capital Class
Mackenzie Select Managers International Capital Class
Mackenzie Select Managers Japan Capital Class
Mackenzie Universal European Opportunities Capital Class
Mackenzie Universal Global Future Capital Class
Mackenzie Universal Growth Trends Capital Class
Mackenzie Universal International Stock Capital Class
Mackenzie Universal Sustainable Opportunities Capital Class
Mackenzie Universal World Emerging Growth Capital Class
Mackenzie Universal Emerging Technologies Capital Class
Mackenzie Universal Financial Services Capital Class
Mackenzie Universal Health Sciences Capital Class
Mackenzie Universal World Precious Metals Capital Class
Mackenzie Universal World Real Estate Capital Class
Mackenzie Universal World Resource Capital Class
Mackenzie Universal World Science & Technology Capital Class
Mackenzie Sentinel Canadian Managed Yield Capital Class
Mackenzie Sentinel Managed Return Capital Class
Mackenzie Sentinel U.S. Managed Yield Capital Class
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated November 6, 2003
Mutual Reliance Review System Receipt dated November 13, 2003
Offering Price and Description:
Series A, F, I, M, O and R Shares
Underwriter(s) or Distributor(s):
Mackenzie Financial Corporation
Promoter(s):
-
Project #576528

Issuer Name:
Merrill Lynch Financial Assets Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form PREP Prospectus dated November 14, 2003
Mutual Reliance Review System Receipt dated November 17, 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):
-
Project #587141

Issuer Name:
MUNDORO MINING INC.
Principal Regulator - British Columbia
Type and Date:
Final Prospectus dated November 14, 2003
Mutual Reliance Review System Receipt dated November 17, 2003
Offering Price and Description:
$11,875,000.00 - 9,500,000 Common Shares CDN$1.25 per share
Underwriter(s) or Distributor(s):
Dominick & Dominick Securities Inc.
Promoter(s):
Frank Crerie
Project #575059

Issuer Name:
National Bank Monthly Income Fund
Principal Regulator - Quebec
Type and Date:
Final Simplified Prospectus and Annual Information Form dated November 17, 2003
Mutual Reliance Review System Receipt dated November 17, 2003
Offering Price and Description:
Investors Series and Advisor Series
Underwriter(s) or Distributor(s):
National Bank Securities Inc.
National Bank Securities Inc.
Promoter(s):
National Bank Securities Inc.
Project #577869

Issuer Name:
Northgate Exploration Limited
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated November 17, 2003
Mutual Reliance Review System Receipt dated November 17, 2003
Offering Price and Description:
$218,731,188.00 - 82,540,071 Common Shares @$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

Issuer Name:
R Corporate Treasury Fund
R Canadian Leaders Fund
R Techno-Media RSP Fund
R Life & Health RSP Fund
R World Leaders RSP Fund
R European RSP Fund
R Asian RSP Fund
R American RSP Fund
R Money Market Fund
R Life & Health Fund
R Techno-Media Fund
R World Leaders Fund
R European Fund
R Asian Fund
R American Fund
R Global Equity Fund
R Small Cap Canadian Equity Fund
R Canadian Equity Fund
R Monthly Income Balanced Fund
R Balanced Fund
R Dividend Fund
R North American High Yield Bond Fund
R Bond Fund
Principal Regulator - Quebec
Type and Date:
Final Simplified Prospectus and Annual Information Form dated November 12, 2003
Mutual Reliance Review System Receipt dated November 14, 2003
Offering Price and Description:
Class A Units, Class B Units, Class F Units, Class I Units and Retail Class Units
Underwriter(s) or Distributor(s):
LBC Financial Services Inc.
BLC Services Financiers Inc.
BLC Financial Services Inc.
LBC Financial Services Inc.
Promoter(s):
BLC-Edmond De Rothschild Asset Management Inc.
Project #581196

Issuer Name:
SHAW COMMUNICATIONS INC.
Principal Regulator - Alberta
Type and Date:
Amendment #1 dated November 6, 2003 to the Final Short Form Shelf Prospectus dated November 23, 2001
Mutual Reliance Review System Receipt dated November 12, 2003
Offering Price and Description:
$900,000,000.00 - Debt Securities
Class B Non-Voting Participating Shares
Class 1 Preferred Shares
Class 2 Preferred Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #402713

Issuer Name:
Shoppers Drug Mart Corporation
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 18, 2003
Mutual Reliance Review System Receipt dated November 18, 2003
Offering Price and Description:
$924,000,000.00 - 33,000,000 COMMON SHARES @$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):
-
Project #587182

Issuer Name:
The Vengrowth Traditional Industries Fund Inc.
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated November 17, 2003
Mutual Reliance Review System Receipt dated November 18, 2003
Offering Price and Description:
Class A Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #565839

Issuer Name:
Trinidad Energy Services Income Trust
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated November 12, 2003
Mutual Reliance Review System Receipt dated November 12, 2003
Offering Price and Description:
$25,000,005.00 - 5,050,506 Trust Units PRICE: $4.95 PER TRUST UNIT
Underwriter(s) or Distributor(s):
Raymond James Ltd.
CIBC World Markets Inc.
TD Securities Inc.
Haywood Securities Inc.
First Associates Investments Inc.
Promoter(s):
Trinidad Drilling Ltd.
Project #585475

Issuer Name:
Van Eck Robson Hard Assets Performance Trust
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated November 14, 2003
Mutual Reliance Review System Receipt dated November 17, 2003
Offering Price and Description:
Minimum $20,000 (2,000,000 Units @ $10 per Unit)
Maximum $75,000,000 (7,500,000 Units @ $10 per Unit)
Underwriter(s) or Distributor(s):
Desjardins Securities Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
Raymond James Ltd.
First Associates Investments Inc.
Research Capital Corporation
Wellington West Capital Inc.
Promoter(s):
Robson Capital Inc.
Project #572040

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Clearsight Wealth Management Inc. Attention: David Finley 49 Bathurst Street Suite 200 Toronto ON M5V 2P2	Investment Dealer (Equities)	Nov 13/03
New Registration	Van Eck Absolute Return Advisers Corporation Attention: Joseph Foster 99 Park Avenue, 8th Floor New York NY 10016 USA	Commodity Trading Manager (Non-Resident)	Nov 13/03
New Registration	Cambridge Corporate Development Inc. Attention: Paul Lavelle 44 Victoria Street, Suite 601 Toronto ON M5C 1Y2	Limited Market Dealer	Nov 18/03
New Registration	Fiera Capital Management Inc. Attention: Jean-Guy Desjardins 1 Complex Desjardins 40th Floor South Tower Montreal QC H5B 1J1	Limited Market Dealer Investment Counsel & Portfolio Manager Commodity Trading Manager	Nov 14/03
New Registration	Fidelity Retirement Services Company of Canada Limited / Compagnie de Services de Retraite Fidelity du Canada Limitee Attention: Peter Bowen 483 Bay Street Suite 200 Toronto ON M5G 2N7	Mutual Fund Dealer	Nov 14/03
Change in Category (Categories)	Mackenzie Financial Corporation Attention: Peter Dawkins 150 Bloor Street West 4th Floor Toronto ON M5S 2X9	From: Investment Counsel & Portfolio Manager Commodity Trading Counsel Commodity Trading Manager To: Limited Market Dealer Investment Counsel & Portfolio Manager Commodity Trading Manager	Nov 11/03
Change of Name	From: Fahnestock & Co. Inc. To: Oppenheimer & Co. Inc.	International Dealer	Sep 02/03

Type	Company	Category of Registration	Effective Date
Suspension of Registration	Rice Financial Group Inc. Attention: Sharon Goodwin 491 Portage Ave. Winnipeg MB R3B 2E4	Mutual Fund Dealer Limited Market Dealer	Nov 17/03

Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 Notice of Commission Approval - Amendments to MFDA Rule 2.2.1 - "Know-Your-Client"

THE MUTUAL FUND DEALERS ASSOCIATION (MFDA)
NOTICE OF COMMISSION APPROVAL
AMENDMENTS TO MFDA RULE 2.2.1
"KNOW-YOUR-CLIENT"

The Ontario Securities Commission approved amendments to MFDA Rule 2.2.1, the "Know-Your-Client" rule. In addition, the Alberta Securities Commission, Nova Scotia Securities Commission and Saskatchewan Financial Services Commission approved; and the British Columbia Securities Commission did not object to the amendments. The amendments to MFDA Rule 2.2.1 clarify the Member's obligations when a transaction proposed by a client is not suitable for the client. A copy and description of these amendments were published on July 11, 2003 at (2003) 26 OSCB 5419. A summary of the public comments received is provided in Appendix "A". The final amendments to Rule 2.2.1 blacklined from the version published on July 11, 2003 are contained in Appendix "B".

APPENDIX "A"

Summary of Public Comments Respecting
Proposed Amendments to MFDA Rule 2.2.1
("Know-Your-Client")
And Response of the MFDA

On July 11, 2003, the Ontario Securities Commission published for public comment proposed amendments to MFDA Rule 2.2.1- "Know-Your-Client" (**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.

Five submissions were received during the public comment period:

1. TWC Financial Corp.
2. Independent Planning Group Inc.
3. Manulife Securities International Ltd.
4. Berkshire Investment Group Inc.
5. Philip Anisman, Barrister and Solicitor

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 following is a summary of the comments received, together with the MFDA's responses.

1. Responsibility to Advise Client that Proposed Transaction is Unsuitable

One commentator suggested that a reference to Approved Person be added to the provision requiring Members to advise the client where the client proposes a transaction that is determined to be unsuitable for the client and in keeping with the client's investment objectives. Another commentator noted that it is unclear whether the responsibility to advise the client that the transaction is unsuitable can be fulfilled by the Approved Person on behalf of the Member or whether the Member must contact the client directly. Two commentators were of the view that it should be the responsibility of the Approved Person to advise the client before the execution of an unsuitable transaction rather than the Member. One of these commentators expressed concern that the Member will not be aware of proposed transactions, as it would be a result

of dialogue between the Approved Person and the client, and therefore it cannot be the Member's responsibility to advise a client before execution of an unsuitable transaction.

MFDA Response

The reference to Member in the Proposed Amendments is intended to include Approved Persons acting as employees and agents of the Member. Although in practice the Approved Person would be responsible for advising the client that a transaction proposed by the client is unsuitable, as a general principle the Member is responsible for establishing and implementing policies and procedures to ensure that the client is in fact advised in accordance with the Proposed Amendments.

2. Transactions Proposed by Clients

One commentator noted that investment decisions are often arrived at following lengthy discussions between the client and the salesperson, which makes it very difficult to determine to what extent a transaction was proposed by the client. The commentator stated that requiring that a transaction be proposed by the client does not enhance consumer protection given that the Member already has a duty to ensure that recommendations made by a salesperson are otherwise suitable.

MFDA Response

The fundamental principle underlying Rule 2.2.1 is that all recommendations made to a client should be suitable. The obligation imposed on the Member under the Proposed Amendments where an unsuitable transaction is proposed by a client is one of due diligence. Rule 5.1(b) requires a Member to keep an adequate record of each order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Where an unsolicited order is determined to be unsuitable for a client, the record of the order pursuant to Rule 5.1(b) should include evidence that:

(i) the transaction was unsolicited;

(ii) the Member performed a suitability review; and

(iii) the Member advised the client that the proposed transaction was unsuitable.

3. Obligation of Member to Make a Suitability Determination for Unsolicited Orders

One commentator submitted that the Proposed Amendments as drafted renders unclear the obligation of Members and their Approved Persons to make a suitability analysis for unsolicited orders by removing the requirement that Members use due diligence to ensure that "each order accepted" for any client account be suitable for the client. The commentator stated that the obligation of a Member to make a suitability determination for unsolicited orders must instead be implied from the Member's obligation to advise the client that a proposed transaction is not suitable. The commentator was of the view that the Proposed Amendments leave open an argument that a suitability determination is not required with respect to unsolicited orders and that Members and their Approved Persons need only use due diligence to advise the client where they recognize that the transaction in question is unsuitable for the client.

The commentator further submitted that the Proposed Amendments may soften a Member's existing obligation with respect to unsolicited orders that are unsuitable for a client. The commentator stated that in some circumstances a Member may be obligated to refuse to execute an order desired by a client on the basis that it is unsuitable for the client. The commentator submitted that the Proposed Amendments would arguably remove this existing obligation by specifying that a Member's only obligation with respect to an unsuitable order is to advise the client before executing it. The commentator suggested that Rule 2.2.1 be amended to state that in some circumstances it may be appropriate for a Member to refuse to execute an unsolicited order on the basis that it is unsuitable for the client. Alternatively, the commentator suggested that a statement to this effect could be included in the commentary to the Rule when it is adopted. The commentator submitted that the latter approach would be preferable because a decision to refuse an order will be based on the Member's judgment on the circumstances of each case. If this approach were adopted, the commentator suggested that the amended Rule should clarify that advising the client that a proposed transaction is unsuitable is a minimum requirement.

The commentator suggested that the reference to "each order accepted" be retained in paragraph (c) of Rule 2.2.1 and that the amended rule specify how, at a minimum, an unsolicited order that is found to be unsuitable for the client must be handled.

MFDA Response

The MFDA agrees with the commentator's submission with respect to clarifying the drafting of the Proposed Amendment with respect to the obligation of Members and their Approved Persons to make a suitability determination for unsolicited orders. Appendix "B" provides a blacklined version of the amendments to Rule 2.2.1 indicating the changes from the previously published version.

The MFDA will also issue a companion notice when the Proposed Amendments are adopted clarifying that a Member is not obligated to accept an order from a client that is determined by the Member to be unsuitable. The notice will state that the decision as to whether or not to refuse such a trade is an internal policy decision of the Member. Further, the notice will remind Members of their record-keeping requirements as set out in the MFDA response under heading 2 "Transactions Proposed by Clients" above with respect to unsuitable, unsolicited orders.

APPENDIX "B"

The Final Amendments to Rule 2.2.1 Regarding "Know-Your-Client"

2.2.1 "**Know-Your-Client**". Each Member shall use due diligence:

(a) to learn the essential facts relative to each client and to each order or account accepted;

(b) to ensure that the acceptance of any order for any account is within the bounds of good business practice;

(c) to ensure that each order accepted or recommendation made for any account of a client is suitable for the client and in keeping with the client's investment objectives; and ~~in any event where a transaction proposed by a client is not suitable for the client and in keeping with the client's investment objectives, the Member shall so advise the client before execution thereof.~~

(d) to ensure that, notwithstanding the provisions of paragraph (c), where a transaction proposed by a client is not suitable for the client and in keeping with the client's investment objectives, the Member has so advised the client before execution thereof.

13.1.2 IDA Notice to Public: Disciplinary Hearing in the Matter of Robert Saltsman

NEWS RELEASE
For immediate release

NOTICE TO PUBLIC: DISCIPLINARY HEARING

IN THE MATTER OF ROBERT SALTSMAN

November 18, 03 (Toronto, Ontario) – The Investment Dealers Association of Canada announced today that a hearing is scheduled to commence on December 1, 2003 before a panel of the Ontario District Council of the Association in respect of matters for which Robert Saltsman may be disciplined by the Association.

The hearing relates to allegations that while a registered representative at the North Toronto office of Scotia Capital Inc., Mr. Saltsman engaged in conduct unbecoming contrary to Association By-law 29.1 by misdirecting client funds, making misrepresentations to a client and undertaking to cover trading losses for a client. It is also alleged that Mr. Saltsman engaged in unsuitable trading strategies for various clients.

The hearing is scheduled for one week commencing on December 1, 2003 at 10:00 a.m. or soon thereafter at the offices of Atchison & Denman Court Reporting Services located at 155 University Avenue, Suite 302, Toronto, Ontario. The hearing is open to the public except as may be required for the protection of confidential matters. Copies of the Decision of the District Council will be made available.

The Investment Dealers Association of Canada is the national self-regulatory organization and representative of the securities industry. The Association's mission is to protect investors and enhance the efficiency and competitiveness of the Canadian capital markets. The IDA enforces rules and regulations regarding the sales, business and financial practices of its Member firms. Investigating complaints and disciplining Members are part of the IDA's regulatory role.

For further information, please contact:

Alex Popovic
Vice-President, Enforcement
(416) 943-6904 or apopovic@ida.ca

Jeff Kehoe
Director, Enforcement Litigation
(416) 943-6996 or jkehoe@ida.ca

13.1.3 CNQ Request for Comments – Registration Requirements and Appeals of CNQ Decisions

CANADIAN TRADING AND QUOTATION SYSTEM INC.

PROPOSED AMENDMENTS TO CNQ RULES – REGISTRATION REQUIREMENTS FOR CNQ DEALERS AND APPROVED TRADERS AND APPEALS OF CNQ DECISIONS

NOTICE AND REQUEST FOR COMMENT

The Board of Directors of Canadian Trading and Quotation System Inc. ("CNQ") has approved amendments to the CNQ Rules removing the requirement that CNQ Dealers and Approved Traders be Ontario registrants and removing the description of appeal rights to securities commissions. The proposed amendments are attached to this notice as Appendix "A."

The Board has determined that the proposed amendments are in the public interest and have authorized them to be published for public notice and comments. Comments should be made no later than 30 days from the date of publication of this notice and should be addressed to:

Canadian Trading and Quotation System Inc.
BCE Place, 161 Bay Street
Suite 3850, P.O. Box 207
Toronto ON
M5J 2S1

Attention: Timothy S. Baikie, General Counsel & Corporate Secretary
Fax: 416.572.4160
E-mail: Timothy.Baikie@cnq.ca

A copy should be provided to the Ontario Securities Commission at the following address:

Capital Markets Branch
Ontario Securities Commission
Suite 800, Box 55
20 Queen Street West
Toronto ON
M5H 3S8

Attention: Cindy Petlock, Manager, Market Regulation
Fax: 416.595.8940
E-mail: cpetlock@osc.gov.on.ca

Registration Requirements

CNQ rules currently require both CNQ Dealers and Approved Traders to be Ontario registrants as a condition of approval. This has become a barrier to access as some out-of-province traders are reluctant to seek Ontario registration where it would not otherwise be required.

The Board has determined that the burden these requirements impose is disproportionate to the benefit to be obtained. As applicable securities legislation sets out registration requirements based on activities conducted by the firm or the trader within the jurisdiction, it is not necessary for CNQ to set additional requirements.

If the amendments are approved, firms and traders will continue to have the responsibility for ensuring they have all necessary registrations, including Ontario registrations if applicable, for the business they are undertaking. In particular, firms must be registered with a Canadian securities regulatory authority.

Appeal Rights

The rules currently state that appeals of CNQ decisions may be brought to the Ontario Securities Commission. Some securities commissions take the view that appeal rights to those commissions may also exist under their legislation. As the appeal rights arise under applicable securities law and not by virtue of CNQ rules, reference to them in CNQ rules is unnecessary and may be confusing. Existing rights of appeal will not be affected by the change.

Rules of Other Jurisdictions

Neither the TSX nor the TSX Venture Exchanges have specific registration requirements for Approved Traders or Participating Organizations.

Alternatives Considered

An alternative was considered to refer to rights of appeal pursuant to the provisions of applicable securities legislation. However, this statement would be too vague to be meaningful. Instead, the description of appeal rights has been removed altogether.

APPENDIX "A"

Be it resolved that:

1. Rule 1-105(2) is repealed.

2. Rule 2-101(a) is amended by deleting the words "an Ontario registrant and".

3. Rule 4-101(1) is amended by deleting the words "is an Ontario registrant and".

4. Rule 4-101(2) is repealed and replaced with the following:

   "A CNQ Dealer shall ensure that each person entering orders on the CNQ System has all necessary registrations under applicable securities legislation and is trained in and understands these rules."

5. Section 5.3 of Policy 1 is repealed.

Passed and enacted this 5th day of November, 2003 to become effective upon Ontario Securities Commission approval following public notice and comment.

"Ian Bandeen"
Chairman

"Timothy Baikie"
Secretary

13.1.4 CNQ Application for Recognition as a Stock Exchange - Notice and Request for Comment

CANADIAN TRADING AND QUOTATION SYSTEM INC.

APPLICATION FOR RECOGNITION AS A STOCK EXCHANGE

NOTICE AND REQUEST FOR COMMENT

A. Application

On February 28, 2003, the Commission recognized the Canadian Trading and Quotation System Inc. (CNQ) as a quotation and trade reporting system (QTRS) in accordance with section 21.2.1 of the *Securities Act* (Ontario)(the Act). CNQ is now applying to the Commission for recognition as a stock exchange, pursuant to section 21 of the Act.

CNQ is a private Ontario corporation originally formed to own and operate an electronic marketplace for Ontario investment dealers to trade non-exchange listed equity securities of Ontario reporting issuers. CNQ is a new marketplace primarily for small issuers. It commenced trading operations on July 25, 2003.

CNQ is making the application to be recognized as a stock exchange so that issuers traded on CNQ will automatically become reporting issuers in Ontario upon acceptance to trading. As a QTRS, quoted issuers do not automatically become Ontario reporting issuers and those that are not must make separate application to the OSC. CNQ has indicated that this is an impediment to quotation.

The Commission is publishing for comment the application of CNQ and related documents, as described below.

B. Rule Amendments

CNQ is proposing certain amendments to CNQ rules, policies and forms (Rule Amendments) that will be required if they are recognized as a stock exchange. The Rule Amendments, which are attached, are subject to approval of the Commission. The Rule Amendments are being published for comment at this time. Subject to comments received, the Commission will consider whether to approve the Rule Amendments.

We note that CNQ is proposing to repeal section 1.1 of Policy 2, as previously amended. That section currently provides that only issuers that are reporting issuers under the securities legislation of Alberta, British Columbia, Ontario or Quebec are eligible for quotation on CNQ. In connection with their application for recognition as a stock exchange, CNQ is proposing that there be no limitations on which issuers are eligible for listing on CNQ. Staff are considering whether there should be limitations on eligibility for listing on CNQ, to ensure there is an existing disclosure record prior to listing, and request comments on this specific issue.

Question 1: Should there be limitations on which issuers are eligible for listing on CNQ?

Question 2: If yes, what would the appropriate limitation be? Should listing eligibility be limited to companies that are already reporting issuers somewhere in Canada, so as to ensure that the issuer has an existing disclosure record?

Question 3: Alternatively, should the approach be one of no limitations on issuer eligibility but instead the imposition of additional requirements on certain issuers such as non reporting issuers or foreign issuers?

C. Draft Recognition Order

It is proposed that the recognition of CNQ as a stock exchange be on substantially the same terms and conditions as its recognition as a QTRS. The terms and conditions incorporate the following areas:

1. Corporate Governance
2. Fees
3. Fitness
4. Access
5. Financial Viability
6. Regulation
7. Capacity and Integrity of Systems
8. Purpose of Rules
9. Rules and Rule-Making
10. Financial Statements
11. Discipline Rules
12. Due Process
13. Information Sharing
14 Issuer Regulation
15. Clearing and Settlement
16. Transparency Requirements
17. Additional Information

CNQ must continue to meet each term and condition to the satisfaction of the Commission.

Aside from minor drafting changes to reflect the change from a QTRS to a stock exchange, the only other changes are to the term and conditions relating to financial viability and to Appendix B, the Rule Review Process. Provisions under term and condition number five of the original recognition order have been amended to recognize that CNQ is in a start-up phase. Specifically, CNQ will be allowed to base adjusted revenues for the purposes of calculating the liquidity measure on forecast earnings for the two years after its recognition as a stock exchange. During this two-year period, CNQ will be required to report to the Commission differences between actual revenues and expenses incurred and forecasted revenues and expenses, and provide explanations for material variances. Appendix B, the Rule Review Process, has been amended to include a process for "housekeeping" rules, as defined in Appendix B, to allow for a more streamlined approval process for such rules.

The draft recognition order, with the terms and conditions, is also being published at this time for comment.

D. Comment Process

You are asked to provide your comments in writing and delivered on or before December 22, 2003, addressed to the attention of the Secretary of the Commission, Ontario Securities Commission, 20 Queen Street West, Toronto, Ontario, M5H 3S8.

We request that you submit a diskette containing an electronic copy of your submission. The confidentiality of submissions cannot be maintained as a summary of written comments received during the comment period will be published.

Questions may be referred to:

Barbara Fydell
Legal Counsel, Market Regulation
(416) 593-8253
email: bfydell@osc.gov.on.ca

Cindy Petlock
Manager, Market Regulation
(416) 593-2351
email: cpetlock@osc.gov.on.ca

September 15, 2003

Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, ON
MM5H 3S8

Attention: Randee Pavalow, Director, Capital Markets

Dear Ms. Pavalow:

Re: Canadian Trading and Quotation System Inc. ("CNQ") — Application for Recognition as a Stock Exchange

Canadian Trading and Quotation System Inc. hereby applies under section 21(2) of the *Securities* Act (Ontario), R.S.O. 1990, c. S-5 for an order from the Ontario Securities Commission ("OSC") recognizing CNQ as a stock exchange on the same terms as its existing order recognizing it as a quotation and trade reporting system ("QTRS"). If the order is granted, CNQ further applies under section 144 of the Act that its existing order be revoked so that CNQ will be recognized only as a stock exchange. Our cheque for the applicable fee will be sent under separate cover.

CNQ is making this application so that issuers traded on CNQ will automatically become reporting issuers in Ontario upon acceptance to trading. As a QTRS, quoted issuers do not automatically become Ontario reporting issuers and those that are not must make separate application to the OSC. This is an impediment to quotation.

In order to be accepted, an issuer must file a quotation statement with CNQ that contains prospectus-level disclosure, except for certain historical financial information. This is comparable to, and in some cases is greater than, the information that must be provided to an exchange to qualify for listing.

In making this application, we note that we have previously filed a Form 21-101F1 and related exhibits with the OSC, and there are no changes to that filing that would result from this application other than the category of recognition. We incorporate that form and our application for recognition as a QTRS dated July 16, 2002 by reference into this application, modified to reflect the change of status. Also enclosed are consequential amendments to CNQ rules, policies and forms that will be required if this application is approved. The reference to "as previously amended" is to the rule changes recently approved by the OSC, which were published for comment in the July 18, 2003 *OSC Bulletin*.

The only material change from our previous application is that CNQ was recognized as a QTRS by the OSC on February 28, 2003 and commenced trading on July 25, 2003. It is the first new marketplace to be recognized since the implementation of National Instrument 21-101 — Marketplace Operation. CNQ is not currently recognized or exempted from recognition by any other securities commission, although we have applied to the Commission des valeurs mobilières du Québec for an order exempting CNQ from recognition as a self-regulatory organization and to the Alberta Securities Commission for an order exempting CNQ from recognition as a QTRS. We continue to be in compliance with the criteria set out in the recognition order.

We look forward to receiving your comments at your earliest convenience. If you have any questions or would like to discuss any aspects of this application, please contact Timothy Baikie at 416-572-2000 x 2282 or Robert Cook at 416-572-2000 x2470.

Yours truly,

CANADIAN TRADING AND QUOTATION SYSTEM INC.

Timothy Baikie
General Counsel & Secretary

cc: Barbara Fydell, Legal Counsel, Market Regulation

CANADIAN TRADING AND QUOTATION SYSTEM INC.

RULE AMENDMENT 2003-03

Be it resolved that:

1. Section 1.4 of Policy 1, as previously amended, is further amended by replacing the phrase "Ontario securities law" with "applicable securities legislation" wherever it appears.

2. Section 1.1 of Policy 2, as previously amended, is repealed.

3. Paragraph 2.3(i) of Policy 2 is repealed.

4. Sections 3.2-.4 of Policy 2 are repealed.

5. Item 25.1 (a) of Form 2A, as previously amended, is further amended by repealing the phrase "prepared and filed with the Commission under Ontario securities law, as if the issuer were subject to such law, for the preceding three years" with "prepared and filed under applicable securities law."

6. All references to "quote" and "quotation" and grammatical variations thereof in the Rules, Policies and forms, when referring to a CNQ Issuer or a company applying to become a CNQ Issuer, are replaced with references to "list", "listing" and appropriate grammatical variations thereof.

Pursuant to subsection 129(1) of the Act, the foregoing resolution is signed by all of the directors of the Corporation, a majority of whom are resident Canadians, as of this 4th day of September, 2003. This resolution is to become effective immediately upon Ontario Securities Commission approval and upon recognition of the Corporation as an exchange following public notice and comment.

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

AND

IN THE MATTER OF
CANADIAN TRADING AND QUOTATION INC.

RECOGNITION ORDER
(Section 21 of the Act)

AND

REVOCATION ORDER
(Section 144 of the Act)

WHEREAS the Commission issued an order dated February 28, 2003, recognizing the Canadian Trading and Quotation System Inc. (CNQ) as a quotation and trade reporting system (QTRS) pursuant to section 21.2.1 of the Act (QTRS Recognition Order);

AND WHEREAS CNQ has now applied for recognition as a stock exchange pursuant to section 21 of the Act so that issuers traded on CNQ will automatically become reporting issuers in Ontario upon acceptance for trading on CNQ;

AND WHEREAS CNQ has agreed to be recognized as a stock exchange on the same terms and conditions as contained in the QTRS Recognition Order;

AND WHEREAS CNQ requests that the QTRS Recognition Order be rescinded so that it will be recognized only as a stock exchange;

AND WHEREAS CNQ is operating a screen-based, automated electronic marketplace;

AND WHEREAS the Commission has received certain representations and undertakings from CNQ in connection with CNQ's application for recognition as a stock exchange;

AND WHEREAS CNQ's application for recognition as a stock exchange incorporates by reference its application for recognition as a QTRS dated July 16, 2002, modified only to reflect the fact that CNQ has now commenced trading operations;

AND WHEREAS the Commission has determined that the recognition of CNQ as a stock exchange on the same terms and conditions in the QTRS Recognition Order would not be prejudicial to the public interest;

THE COMMISSION hereby recognizes CNQ as a stock exchange pursuant to section 21of the Act, subject to the terms and conditions attached at Schedule A, and revokes the QTRS Recognition Order pursuant to section 144 of the Act.

DATED ●

SCHEDULE A

TERMS AND CONDITIONS

1. CORPORATE GOVERNANCE

(a) CNQ's arrangements with respect to the appointment, removal from office and functions of the persons ultimately responsible for making or enforcing the rules, policies and other similar instruments (Rules) of CNQ, namely, the governing body, are such as to ensure a proper balance between the interests of the different entities desiring access to the facilities of CNQ (CNQ Dealer) and companies seeking to be quoted on CNQ (CNQ Issuer), and a reasonable number and proportion of directors will be "independent" in order to ensure diversity of representation on the Board. An independent director is a director that is not:

i) an associate, director, officer or employee of a CNQ Dealer;

ii) an officer or employee of CNQ or its affiliates;

iii) an associate, director, officer or employee of any person or company who owns or controls, directly or indirectly, over 10% of CNQ; or

iv) a person who owns or controls, directly or indirectly, over 10% of CNQ.

In particular, CNQ will ensure that at least fifty per cent (50%) of its directors will be independent. In the event that at any time CNQ fails to meet such requirement, it will promptly remedy such situation.

(b) Without limiting the generality of the foregoing, CNQ's governance structure provides for:

(i) fair and meaningful representation on its governing body, in the context of the nature and structure of CNQ, and any governance committee thereto and in the approval of Rules;

(ii) appropriate representation of independent directors on any CNQ Board committees; and

(iii) appropriate qualifications, remuneration, conflict of interest provisions and limitation of liability and indemnification protections for directors and officers and employees of CNQ generally.

2. FITNESS

In order to ensure that CNQ operates with integrity and in the public interest, each person or company that owns or controls, directly or indirectly, more than 10% of CNQ and each officer or director of CNQ is a fit and proper person and the past conduct of each person or company that owns or controls, directly or indirectly, more than 10% of CNQ and each officer or director of CNQ affords reasonable grounds for belief that the business of CNQ will be conducted with integrity.

3. FAIR AND APPROPRIATE FEES

(a) Any and all fees imposed by CNQ will be equitably allocated. Fees will not have the effect of creating barriers to access and must be balanced with the criteria that CNQ will have sufficient revenues to satisfy its responsibilities.

(b) CNQ's process for setting fees will be fair, appropriate and transparent.

4. ACCESS

(a) CNQ's requirements permit all properly registered dealers that are members of a recognized SRO and satisfy access requirements established by CNQ to access the facilities of CNQ.

(b) Without limiting the generality of the foregoing, CNQ will:

(i) establish written standards for granting access to CNQ Dealers trading on CNQ;

(ii) not unreasonably prohibit or limit access by a person or company to services offered by it; and

(iii) keep records of

(A) each grant of access including, for each CNQ Dealer, the reasons for granting such access, and

(B) each denial or limitation of access, including the reasons for denying or limiting access to any applicant.

5. FINANCIAL VIABILITY

(a) CNQ will maintain sufficient financial resources for the proper performance of its functions.

(b) CNQ will calculate and report those financial ratios described below to permit trend analysis and provide an early warning signal with respect to the financial health of the company.

(c) CNQ will maintain: (i) a liquidity measure greater than or equal to zero; (ii) a debt to cash flow ratio less than or equal to 4.0/1; and (iii) a leverage ratio less than or equal to 4.0/1. For this purpose:

(i) liquidity measure is:

(working capital + borrowing capacity)

- 2 (adjusted budgeted expenses + adjusted capital expenditures – adjusted revenues)

where:

A) working capital is current assets minus current liabilities,

B) borrowing capacity is the principal amount of long term debt available to be borrowed under loan or credit agreements that are in force,

C) adjusted budgeted expenses are 95% of the expenses (other than depreciation and other non-cash items) provided for in the budget for the current fiscal year,

D) adjusted capital expenditures are 50% of average capital expenditures for the previous three fiscal years, except that in each of the first three years, adjusted capital expenditures shall be determined as follows:

- in the first year after February 28, 2003 (Year 1), 50% of 1/3rd of Start Up Capital Expenditures;
- in the second year after February 28, 2003 (Year 2), 50% of [1/3rd (2/3rd Start-up Capital Expenditures plus Year 1 Capital Expenditures)]; and,
- in the third year after February 28, 2003 (Year 3), 50%[1/3rd(1/3rd Start-up Capital Expenditures plus Year 1 Capital Expenditures plus Year 2 Capital Expenditures)]

where Start-up Capital Expenditures are the total Capital Expenditures prior to July 25, 2003, and

E) adjusted revenues are 80% of revenues plus 80% of investment income for the previous fiscal year, except that in each of the first two years after recognition as a stock exchange, adjusted revenues shall be calculated as 80% of revenues plus 80% of investment income as forecasted on ●,

(ii) debt to cash flow ratio is the ratio of total debt (including any line of credit drawdowns, term loans (current and long-term portions) and debentures, but excluding accounts payables, accrued expenses and other liabilities) to EBITDA (or earnings before interest, taxes depreciation and amortization) for the previous month multiplied by 12, and

(iii) financial leverage ratio is the ratio of total assets to shareholders' equity,

in each case following the same accounting principles as those used for the audited financial statements of CNQ, except as provided in paragraphs "h" and "i" below.

(d) On a quarterly basis (along with the quarterly financial statements required to be filed pursuant to paragraph 10), CNQ will report to the Commission the monthly calculation of the liquidity measure and debt to cash flow and financial leverage ratios, the appropriateness of the calculations and whether any alternative calculations should be considered.

(e) Except as provided in "g" below, if CNQ fails to maintain any of the liquidity measure, the debt to cash flow ratio or the financial leverage ratio in any month, it shall immediately report to the Commission or its staff.

(f) Except as provided in "g" below, if CNQ fails to maintain any of the liquidity measure, the debt to cash flow ratio or the financial leverage ratio for a period of more than three months, its President will immediately deliver a letter advising the Commission or its staff of the reasons for the continued ratio deficiencies and the steps being taken to rectify the problem, and CNQ will not, without the prior approval of a Director of the Commission, make any capital expenditures not already reflected in the financial statements, or make any loans, bonuses, dividends or other distributions of assets to any director, officer, related company or shareholder until the deficiencies have been eliminated for at least six months.

(g) Recognizing that CNQ is a start-up operation expecting to incur losses, the following apply during the first two years of operations after recognition as a stock exchange:

(i) paragraphs "e" and "f" above shall not apply if the debt to cash flow ratio is negative or greater than 4.0/1, but CNQ will not, without the permission of the Director, make any loans, bonuses, cash dividends or other distributions of assets to any director, officer, related company or shareholder until the deficiencies have been eliminated for six months, except for bonuses payable to employees under a profit sharing bonus plan included in the forecast financial statements provided to the Commission as part of the application for recognition, and

(ii) on a quarterly basis (along with the quarterly financial statements required to be filed pursuant to paragraph 10), CNQ will provide the Commission with the following:

A) a comparison of the revenues and expenses incurred by CNQ with the revenues and expenses forecasted on ●, for each of the months, and

B) for each revenue item whose actual was lower than its forecasted amount by 15% or more, and for each expense item whose actual was higher than its forecasted amount by 15% or more, the reasons for the variance and the steps that will be or have been taken to address any issues arising from the variance.

(h) CNQ may recognize the subordinated, convertible debentures described in the term sheet dated November 29, 2002 ("Subordinated, Convertible Debentures") as equity for the purposes of calculating the financial ratios in paragraph "c" above, provided that:

(i) the amount of the Subordinated, Convertible Debentures recognized as equity should not exceed $5,000,000;

(ii) CNQ shall not repay the Subordinated, Convertible Debentures or pay cash interest on the Subordinated, Convertible Debentures if such payment will result in CNQ not meeting the financial ratios; and

(iii) prior to making a cash interest payment or principal repayment, CNQ should demonstrate to the satisfaction of the Commission that it will continue to meet the financial ratios after payment.

(i) CNQ may recognize the debts owed by CNQ described in the subordinated agreement dated December 23, 2002 between 1141216 Ontario Limited, Wendsley Lake Corporation, CNQ and The Business, Engineering, Science & Technology Discoveries Fund Inc. ("Junior Debt") as equity for the purposes of calculating the financial ratios in paragraph "c" above, provided that:

(i) CNQ shall not repay the Junior Debt or pay cash interest on the Junior Debt if such payment will result in CNQ not meeting the financial ratios; and

(ii) prior to making a cash interest payment or principal repayment, CNQ should demonstrate to the satisfaction of the Commission that it will continue to meet the financial ratios after payment.

6. REGULATION

(a) CNQ will maintain its ability to perform its regulation functions including setting requirements governing the conduct of CNQ Dealers and CNQ Issuers and disciplining CNQ Dealers and CNQ Issuers.

(b) CNQ has retained and will continue to retain Market Regulation Services Inc. (RS Inc.) as a regulation services provider to provide, as agent for CNQ, certain regulation services which have been approved by the Commission. CNQ will provide to the Commission, on an annual basis, a list outlining the regulation services performed by RS Inc. and the regulation services performed by CNQ. All amendments to those listed services are subject to the prior approval of the Commission.

(c) CNQ will provide the Commission with an annual report with such information regarding its affairs as may be requested from time to time. The annual report will be in such form as may be specified by the Commission from time to time.

(d) CNQ will perform all other regulation functions not performed by RS Inc.

(e) Management of CNQ (including the President and CEO) will at least annually assess the performance by RS Inc. of its regulation functions and report to the Board, together with any recommendations for improvements. CNQ will provide the Commission with copies of such reports and shall advise the Commission of any proposed actions arising therefrom.

(f) CNQ shall provide the Commission with the information set out in Appendix A, as amended from time to time.

7. CAPACITY AND INTEGRITY OF SYSTEMS

For each of its systems that support order entry, order routing, execution, data feeds, trade reporting and trade comparison, capacity and integrity requirements, CNQ will:

(a) on a reasonably frequent basis, and in any event, at least annually,

(i) make reasonable current and future capacity estimates;

(ii) conduct capacity stress tests of critical systems to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;

(iii) develop and implement reasonable procedures to review and keep current the development and testing methodology of those systems;

(iv) review the vulnerability of those systems and data centre computer operations to internal and external threats including physical hazards, and natural disasters;

(v) establish reasonable contingency and business continuity plans;

(b) annually, cause to be performed an independent review and written report, in accordance with established audit procedures and standards, of its controls for ensuring that it is in compliance with paragraph (a) and conduct a review by senior management of the report containing the recommendations and conclusions of the independent review; and

(c) promptly notify the Commission of material systems failures and changes.

8. PURPOSE OF RULES

(a) CNQ will establish Rules that are necessary or appropriate to govern and regulate all aspects of its business and affairs.

(b) More specifically, CNQ will ensure that:

(i) the Rules are designed to:

(A) ensure compliance with securities legislation;

(B) prevent fraudulent and manipulative acts and practices;

(C) promote just and equitable principles of trade;

(D) foster cooperation and coordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities; and

(E) provide for appropriate discipline.

(ii) the Rules do not:

(A) permit unreasonable discrimination among CNQ Issuers and CNQ Dealers; or

(B) impose any burden on competition that is not necessary or appropriate in furtherance of securities legislation.

(iii) the Rules are designed to ensure that its business is conducted in a manner so as to afford protection to investors.

9. RULES AND RULE-MAKING

CNQ will comply with the rule review process set out in Appendix B, as amended from time to time, concerning Commission approval of changes in its Rules.

10. FINANCIAL STATEMENTS

CNQ will file unaudited quarterly financial statements within 60 days of each quarter end and audited annual financial statements within 90 days of each year end, prepared in accordance with generally accepted accounting principles.

11. DISCIPLINE RULES

(a) CNQ will ensure, through Market Regulation Services Inc. and otherwise, that any person or company subject to its regulation is appropriately disciplined for violations of securities legislation and the Rules.

(b) CNQ will have general disciplinary and enforcement provisions in its Rules that will apply to any person or company subject to its regulation.

12. DUE PROCESS

CNQ will ensure that:

(a) its requirements relating to access to the facilities of CNQ, the imposition of limitations or conditions on access and denial of access are fair and reasonable;

(b) parties are given an opportunity to be heard or make representations; and

(c) it keeps a record, gives reasons and provides for appeals of its decisions.

13. INFORMATION SHARING

CNQ will share information and otherwise co-operate with the Commission and its staff, the Canadian Investor Protection Fund, other Canadian exchanges and recognized self-regulatory organizations and regulatory authorities responsible for the supervision or regulation of securities firms and financial institutions.

14. ISSUER REGULATION

(a) CNQ has sufficient authority over its issuers.

(b) CNQ carries out appropriate review procedures to monitor and enforce issuer compliance with the Rules.

(c) CNQ will amend its Policies and Forms, from time to time, at the request of the Director, Corporate Finance, to reflect changes to the disclosure requirements of Ontario securities law.

15. CLEARING AND SETTLEMENT

CNQ has appropriate arrangements in place for clearing and settlement through a clearing agency recognized by the Commission for the purposes of the *Securities Act* (Ontario).

16. TRANSPARENCY REQUIREMENTS

CNQ will comply with the pre-trade and post-trade transparency requirements set out in National Instrument 21-101 Marketplace Operation.

17. ADDITIONAL INFORMATION

(a) CNQ has completed and submitted Form 21-101F1 (including the exhibits) to the Commission.

(b) CNQ will provide the Commission with any additional information the Commission may require from time to time.

Appendix A

Information to be filed

1. Quarterly Reporting on Exemptions or Waivers Granted

On a quarterly basis, CNQ will submit to the Commission a report summarizing all exemptions or waivers granted pursuant to the rules, policies or other similar instruments (Rules) to any CNQ Dealer or CNQ Issuer during the period. This summary should include the following information:

(a) The name of the CNQ Dealer or CNQ Issuer;

(b) The type of exemption or waiver granted during the period

(c) Date of the exemption or waiver, and

(d) A description of CNQ staff's reason for the decision to grant the exemption or waiver.

2. Quarterly Reporting on Quotation Applications

On a quarterly basis, CNQ will submit to the Commission a report containing the following information:

(a) The number of listing applications filed;

(b) The number of listing applications that were accepted;

(c) The number of listing applications that were rejected and the reasons for rejection, by category;

(d) The number of listing applications that were withdrawn or abandoned and, if known, the reasons why the application was withdrawn or abandoned, by category;

(e) The number of listing applications filed by CNQ Issuers as a result of a Fundamental Change;

(f) The number of listing applications filed by CNQ Issuers as a result of a Fundamental Change that were accepted;

(g) The number of listing applications filed by CNQ Issuers as a result of a Fundamental Change that were that were rejected and the reasons for rejection, by category;

(h) The number of listing applications filed by CNQ Issuers as a result of a Fundamental Change that were withdrawn or abandoned and, if known, the reasons why the application was withdrawn or abandoned, by category.

In each of the foregoing cases, the numbers shall be broken down by industry category and in any other manner that a Director of the Commission requests.

3. Notification of suspensions and disqualifications

If a CNQ Issuer has been suspended or disqualified from qualification for listing, CNQ will immediately issue a press release setting out the reasons for the suspension and file this information with the Commission.

Appendix B

Rule Review Process

1. CNQ will file with the Commission each new or amended rule, policy and other similar instrument (Rules) adopted by its Board.

2. More specifically, CNQ will file the following information:

   (a) the Rule;

   (b) a notice of publication including:

      (i) a description of the Rule and its impact;

      (ii) a concise statement, together with supporting analysis, of the nature, purpose and effect of the Rule;

      (iii) the possible effects of the Rule on marketplace participants, competition and the costs of compliance;

      (iv) a description of the rule-making process, including a description of the context in which the Rule was developed, the process followed, the issues considered, the consultation process undertaken, the alternative approaches considered and the reasons for rejecting the alternatives;

      (v) where the Rule requires technological changes to be made by CNQ, CNQ Dealers or CNQ Issuers, CNQ will provide a description of the implications of the Rule and, where possible, an implementation plan, including a description of how the Rule will be implemented and the timing of the implementation;

      (vi) a reference to other jurisdictions including an indication as to whether another regulator in Canada, the United States or another jurisdiction has a comparable rule or has made or is contemplating making a comparable rule and, if applicable, a comparison of the Rule to the rule of the other jurisdiction; and

      (vii) whether the Rule is classified as “public interest” or “housekeeping”; and

      (viii) where the Rule is classified as “housekeeping”, the effective date of the Rule.

3. For the purposes of the Rule Review Process, a Rule may be classified as “housekeeping” if it does not affect the meaning, intent or substance of an existing rule and involves only:

(a) the correction of spelling, punctuation, typographical or grammatical mistakes or inaccurate cross-referencing;

(b) stylistic formatting, including changes to headings or paragraph numbers;

(c) amendments required to ensure consistency with an existing approved rule; or

(d) changes in routing procedures and administrative practices of CNQ provided that such changes do not impose any significant burden or any barrier to competition that is not appropriate.

Any Rule falling outside of this definition would be categorized as a "public interest" Rule. Prior to proposing a Rule that is of a "public interest" nature, as defined above, the Board of Directors of CNQ shall have determined that the entry into force of such "public interest" Rule would be in the best interests of the capital markets in Ontario. The material filed with the Commission in relation to "public interest" Rules shall be accompanied by a statement to that effect.

4. Where a Rule has been classified as "public interest", the Commission will publish for a 30 day comment period in its bulletin or on its website the notice filed by CNQ and the Rule. If amendments to the Rule are necessary as a result of comments received, the Commission shall have discretion to determine whether the Rule should be re-published for comment. If the Rule is re-published, the request for comment shall include CNQ's summary of comments and responses thereto together with an explanation of the revisions to the Rule and the supporting rationale for the amendments.

5. A "public interest" Rule will be effective as of the date of Commission approval or on a date determined by CNQ, whichever is later. A "housekeeping" Rule shall be deemed to have been approved upon being filed with the Commission, unless staff of the Commission communicate to CNQ, within five business days of receipt of the Rule, their disagreement with CNQ's classification of the Rule as "housekeeping" and the reasons for their disagreement. Where staff of the Commission disagree with CNQ's classification, CNQ shall re-file the Rule as a "public interest" Rule. A "housekeeping" Rule shall be effective on the date indicated by CNQ in the filing.

6. The Commission shall publish a Notice of Commission Approval of both "public interest" and "housekeeping" Rules in its bulletin or on its website. All such notices relating to "public interest" Rules shall also include CNQ's summary of comments and responses thereto. All such notices relating to "housekeeping" Rules shall be accompanied by the notice filed by CNQ and the Rule itself.

7. If CNQ is of the view that there is an urgent need to implement a Rule, CNQ may make a Rule effective immediately upon approval by CNQ's board of directors provided that CNQ:

(a) provides the Commission with written notice of the urgent need to implement the Rule prior to the submission of the Rule to CNQ's board of directors; and

(b) includes in the notice referenced in 2(b)(ii) an analysis in support of the need for immediate implementation of the Rule.

8. If the Commission does not agree that immediate implementation is necessary, the Commission will advise CNQ that is disagrees and provide the reasons for its disagreement. If no notice is received by CNQ within 5 business days of the Commission receiving CNQ's notification, CNQ shall assume that the Commission agrees with its assessment.

9. A Rule that is implemented immediately shall be published, reviewed and approved in accordance with the procedure set out above. Where the Commission subsequently disapproves a Rule that was implemented immediately, CNQ shall repeal the Rule and publish a notice informing its marketplace participants.

10. The terms, conditions and procedures set out in this section may be varied or waived by the Commission. A waiver or variation may be specific or general and may be made for a time or for all time.

13.1.5 RS Adjourns Hearing in the Matter of Dwayne Barrington Nash

November 19, 2003

NOTICE TO PUBLIC

Subject: Adjournment of Market Regulation Services Inc. Hearing *In the Matter of Dwayne Barrington Nash*

The Hearing in the above matter scheduled to begin on December 1, 2003 has been adjourned to a date to be set by the Hearing Panel. A further Public Notice will be provided when this date is set.

For further details, please refer to RS's Notice to Public #2003-017.

Reference:

Jane P. Ratchford
Chief Counsel
Investigations and Enforcement
Market Regulation Services Inc.

Telephone: 416-646-7229

13.1.6 RS Adjourns Hearing in the Matter of Louis Anthony De Jong

November 19, 2003

NOTICE TO PUBLIC

Subject: Adjournment of Market Regulation Services Inc. Hearing *In the Matter of Louis Anthony De Jong*

The Hearing in the above matter scheduled to begin on December 1, 2003 has been adjourned to a date to be set by the Hearing Panel. A further Public Notice will be provided when this date is set.

For further details, please refer to RS's Notice to Public #2003-016.

Reference:

Jane P. Ratchford
Chief Counsel
Investigations and Enforcement
Market Regulation Services Inc.

Telephone: 416-646-7229

13.1.7 RS Sets Hearing Date in the Matter of Credit Suisse First Boston Canada Inc.

November 19, 2003

NOTICE TO PUBLIC

Subject: Market Regulation Services Inc. sets hearing date *In the Matter of Credit Suisse First Boston Canada Inc.*

The Hearing in the above matter scheduled to begin on December 1, 2003 has been adjourned to December 11, 2003 commencing at 9:30 a.m. or soon thereafter as the hearing can be held, at the offices of RS, 145 King Street West, 9th Floor, Toronto. The hearing is open to the public. For further details, please refer to RS's Notice to Public #2003-015 dated September 24, 2003.

Reference:

Jane P. Ratchford
Chief Counsel
Investigations and Enforcement
Market Regulation Services Inc.

Telephone: 416-646-7229

13.1.8 RS Sets Hearing Date in the Matter of Linda Grace Malinowski to Consider a Settlement Agreement

November 18, 2003

NOTICE TO PUBLIC

Subject: Market Regulation Services Inc. sets hearing date *In the Matter of Linda Grace Malinowski* to consider a Settlement Agreement.

Market Regulation Services Inc. ("RS") will hold a Hearing before a Panel of the Hearing Committee (the "Hearing Panel") of RS on November 26, 2003, commencing at 11:00 a.m., or as soon thereafter as the Hearing can be held, at the offices of RS, 145 King Street West, 9th floor, Toronto, Ontario. The Hearing is open to the public.

The purpose of the hearing is to consider a Settlement Agreement entered into between RS and Linda Grace Malinowski ("Malinowski").

It is alleged that Malinowski breached Section 17.09(1)(b) of the General By-law of the Toronto Stock Exchange ("the Exchange") and Rule 7-106(1)(b) of the Rules of the Exchange relating to conduct inconsistent with just and equitable principles of trade.

The Hearing Panel may accept or reject an Offer of Settlement pursuant to Part 3.4 of Policy 10.8 of the Universal Market Integrity Rules governing the practice and procedure of hearings. In the event the Settlement Agreement is accepted, the matter becomes final and there can be no appeal of the matter. In the event the Settlement Agreement is rejected, RS may proceed with a hearing of the matter before a differently constituted Hearing Panel.

The terms of the settlement, if accepted and approved by the Hearing Panel, and the disposition of this matter by the Hearing Panel will be published by RS as a Disciplinary Notice.

Reference:

Jane P. Ratchford
Chief Counsel
Investigations and Enforcement
Market Regulation Services Inc.

Telephone: 416-646-7229

13.1.9 RS Sets Hearing Date in the Matter of Matthew Philip Linden to Consider a Settlement Agreement

November 18, 2003

NOTICE TO PUBLIC

Subject: Market Regulation Services Inc. sets hearing date *In the Matter of Matthew Philip Linden* to consider a Settlement Agreement.

Market Regulation Services Inc. ("RS") will hold a Hearing before a Panel of the Hearing Committee (the "Hearing Panel") of RS on November 26, 2003, commencing at 11:00 a.m., or as soon thereafter as the Hearing can be held, at the offices of RS, 145 King Street West, 9th floor, Toronto, Ontario. The Hearing is open to the public.

The purpose of the hearing is to consider a Settlement Agreement entered into between RS and Matthew Philip Linden ("Linden").

It is alleged that Linden breached Section 8.34 of the General By-law of the Toronto Stock Exchange ("the Exchange") and Rule 2-401(4) of the Rules of the Exchange relating to a failure to supervise employees.

The Hearing Panel may accept or reject an Offer of Settlement pursuant to Part 3.4 of Policy 10.8 of the Universal Market Integrity Rules governing the practice and procedure of hearings. In the event the Settlement Agreement is accepted, the matter becomes final and there can be no appeal of the matter. In the event the Settlement Agreement is rejected, RS may proceed with a hearing of the matter before a differently constituted Hearing Panel.

The terms of the settlement, if accepted and approved by the Hearing Panel, and the disposition of this matter by the Hearing Panel will be published by RS as a Disciplinary Notice.

Reference:

Jane P. Ratchford
Chief Counsel
Investigations and Enforcement
Market Regulation Services Inc.

Telephone: 416-646-7229

Chapter 25

Other Information

25.1 Exemptions

25.1.1 Sprucegrove Investment Management Ltd. - ss. 6.1 of OSC Rule 13-502

Headnote

Item E(1) of Appendix C of OSC Rule 13-502 Fees – exemption for pooled funds from paying an activity fee of $5,500 in connection with an application brought under subsection 147 of the Act, provided an activity fee be paid on the basis that the application be treated as an application for other regulatory relief under item E(3) of Appendix C of the Rule.

Rules Cited

Ontario Securities Commission Rule 13-502, Fees, (2003) 26 OSCB 891.
Securities Act, R.S.O. 1990, c. S.5 as am., ss. 77(2) and ss. 78(1).
National Instrument 13-101 – System for Electronic Document Analysis and Retrieval (SEDAR), s. 2.1(1)1.

BY FAX

November 13, 2003

Torys LLP
Suite 3000
Maritime Life Tower
Box 270, TD Centre
Toronto, Ontario M5K 1N2

Attention: Marlene Davidge

Dear Sirs/Mesdames:

Re: Sprucegrove Investment Management Ltd.
Application for Exemptive Relief under OSC Rule 13-502 Fees (the "Rule" or "Rule 13-502")
Application No. 820/03

By letter dated November 4, 2003 (the "Application"), you applied on behalf of Sprucegrove Investment Management Ltd. ("Sprucegrove"), the manager of certain pooled funds listed in the Application (the "Existing Pooled Funds") and other pooled funds managed by Sprucegrove from time to time (collectively with the Existing Pooled Funds, the "Pooled Funds"), to the Ontario Securities Commission (the "Commission") under subsection 147 of the Securities Act Ontario (the "Act") for relief from subsections 77(2) and 78(1) of the Act, which requires every mutual fund in Ontario to file interim and comparative annual financial statements (the "Financial Statements") with the Commission.

By same date and cover, you additionally applied to the securities regulatory authority in Ontario (the "Decision Maker") on behalf of Sprucegrove, the manager of the Existing Pooled Funds, for an exemption, pursuant to subsection 6.1 of Rule 13-502, from the requirement to pay an activity fee of $5,500 in connection with the Application in accordance with item E(1) of Appendix C of the Rule, on the condition that fees be paid on the basis that the Application be treated as an application for other regulatory relief under item E(3) of Appendix C of Rule 13-502, and from the requirement to pay an activity fee of $1,500 in connection with the latter relief (the "Fees Exemption")

Item E of Appendix C of Rule 13-502 specifies the activity fee applicable for applications for discretionary relief. Item E(1) specifies that applications under subsection 147 of the Act pay an activity fee of $5,500, whereas item E(3) specifies that applications for other regulatory relief pay an activity fee of $1,500.

From our review of the Application and other information communicated to staff, we understand the relevant facts and representations to be as follows:

1. Sprucegrove is a corporation under the laws of Ontario with its head office in Ontario. Sprucegrove is the manager of the Existing Pooled Funds. Sprucegrove is registered with the Commission as an adviser in the categories of investment counsel and portfolio manager and as a dealer in the category of limited market dealer.

2. The Existing Pooled Funds are open-end mutual fund trusts established under the laws of Ontario. The Existing Pooled Funds are not reporting issuers in any province or territory of Canada. Units of the Existing Pooled Funds are distributed in each of the provinces and territories of Canada without a prospectus pursuant to exemptions from the prospectus delivery requirements of applicable securities legislation.

3. The Existing Pooled Funds fit within the definition of "mutual fund in Ontario" in section 1(1) of the Act and are thus required to file Financial Statements with the Commission under subsections 77(2) and 78(1) of the Act.

4. Section 2.1(1)1 of National Instrument 13-101 – System for Electronic Document Analysis and Retrieval (SEDAR) ("Rule 13-101") requires that every issuer required to file a document under securities legislation make its filing through SEDAR. The Financial Statements filed with the Commission thus become publicly available.

5. In the Application, Sprucegrove and the Pooled Funds have requested under subsection 147 of the Act relief from filing the Financial Statements with the Commission. The activity fee associated with the Application is $5,500 in accordance with item E(1) of Appendix C of Rule 13-502.

6. If Sprucegrove and the Pooled Funds had, as an alternative to the Application, sought an exemption from the requirement to file the Financial Statements via SEDAR, the activity fee for that application would be $1,500 in accordance with item E(3) of Appendix C of Rule 13-502.

7. If the Pooled Funds were reporting issuers seeking the same relief as requested in the Application, such relief could be sought under section 80 of the Act, rather than under subsection 147 of the Act, and the activity fee for that application would be $1,500 in accordance with item E(3) of Appendix C of Rule 13-502.

Decision

This letter confirms that, based on the information provided in the Application, other communications to staff, and the facts and representations above, and for the purposes described in the Application, the Decision Maker hereby exempts Sprucegrove and the Pooled Funds from

i) paying an activity fee of $5,500 in connection with the Application, provided that Sprucegrove and the Pooled Funds pay an activity fee on the basis that the Application be treated as an application for other regulatory relief under item E(3) of Appendix C to Rule 13-502, and

ii) paying an activity fee of $1,500 in connection with the Fees Exemption application under item E(3) of Appendix C to Rule 13-502.

“Leslie Byberg”

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