

The Ontario Securities Commission

# OSC Bulletin

December 12, 2003

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

**The Ontario Securities Commission**

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## Chapter 1

# Notices / News Releases

### 1.1 Notices

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

DECEMBER 12, 2003

#### CURRENT PROCEEDINGS

#### BEFORE

#### ONTARIO SECURITIES COMMISSION

-----

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

The Harry S. Bray Hearing Room  
Ontario Securities Commission  
Cadillac Fairview Tower  
Suite 1700, Box 55  
20 Queen Street West  
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Robert L. Shirriff, Q.C.	—	RLS
Suresh Thakrar	—	ST
Wendell S. Wigle, Q. C.	—	WSW

### SCHEDULED OSC HEARINGS

DATE: TBA

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

s. 127

E. Cole in attendance for Staff

Panel: TBA

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 MFDA Application for Amendment and  
Restatement of Its Recognition Order and  
Application for Consent to Enter into a  
Co-operative Agreement in Québec  
- Request for Comment**

**MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**APPLICATION FOR AMENDMENT AND  
RESTATEMENT OF ITS RECOGNITION ORDER  
AND  
APPLICATION FOR CONSENT TO ENTER INTO  
A CO-OPERATIVE AGREEMENT IN QUÉBEC**

**REQUEST FOR COMMENT**

The Mutual Fund Dealers Association of Canada ("MFDA") has applied to the Commission to amend and restate the Commission order recognizing the MFDA as a self-regulatory organization. The MFDA has also submitted an application to the Commission for consent to enter into an arrangement in Québec with the Bureau des services financiers and the Chambre de la sécurité financière for these agencies to perform certain regulatory functions with respect to MFDA Members and Approved Persons in Québec.

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

1. Notice and request for comment;
2. The MFDA's application to amend and restate its recognition order and related documents; and
3. The MFDA's application for consent to enter into a co-operative agreement in Québec and related documents.

**1.1.3 Notice of Commission Approval – Proposed  
Amendment to MFDA Rule 4.1 Mail Insurance**

**THE MUTUAL FUND DEALERS ASSOCIATION (MFDA)  
NOTICE OF COMMISSION APPROVAL  
PROPOSED AMENDMENT TO MFDA RULE 4.1  
MAIL INSURANCE**

The Ontario Securities Commission approved proposed amendment to MFDA Rule 4.1 regarding mail insurance. In addition, the Alberta Securities Commission, Nova Scotia Securities Commission and Saskatchewan Financial Services Commission approved and the British Columbia Securities Commission did not object to the proposed amendment. The proposed amendment will relieve a Member from the mail insurance requirement where the Member does not have to use mail to transmit cash, securities or other property. A copy and description of this amendment was published on July 11, 2003 at (2003) 26 OSCB 5407. No comments were received.

**1.2 Notices of Hearing**

**1.2.1 John Alexander Cornwall et al. - ss. 127 and 127.1**

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

**AND**

**IN THE MATTER OF  
JOHN ALEXANDER CORNWALL,  
KATHRYN A. COOK,  
DAVID SIMPSON,  
JEROME STANISLAUS XAVIER,  
CGC FINANCIAL SERVICES INC.**

**AND**

**FIRST FINANCIAL SERVICES**

**NOTICE OF HEARING  
(Sections 127 and 127.1)**

**TAKE NOTICE** that the Ontario Securities Commission will hold a hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended at its offices on the 17<sup>th</sup> Floor, 20 Queen Street West, Toronto, Ontario, commencing on November 26, 2003 at 10:00 a.m. or as soon thereafter as the hearing can be held:

**TO CONSIDER** whether, pursuant to sections 127 and 127.1 of the Act, it is in the public interest for the Commission:

- (a) to make an order pursuant to subsection 127(1) clause 1 that the registration of the respondents Cornwall and Xavier be suspended for such period as is specified in the order or be terminated;
- (b) to make an order pursuant to subsection 127(1) clause 2 that trading in securities by the respondents Cornwall, Xavier, Simpson and Cook cease permanently or for such period as the Commission may direct;
- (c) to make an order pursuant to subsection 127(1) clause 3 of the Act that the exemptions contained in Ontario securities law do not apply to the respondents Cornwall, Xavier, Simpson and Cook permanently or for such period as specified in the order;
- (d) to make an order pursuant to subsection 127(1) clause 6 that the respondents be reprimanded;
- (e) to make an order pursuant to subsection 127(1) clause 7 that the respondents

Cornwall, Simpson and Xavier resign one or more positions that they hold or may hold as a director or officer of any issuers;

- (f) to make an order pursuant to subsection 127(1) clause 8 that the respondents Cornwall, Simpson and Xavier be prohibited from becoming or acting as a director or officer of any issuer permanently or for such period as the Commission may direct;
- (g) to make an order pursuant to subsection 127.1 that the respondents pay the costs of Staff's investigation and the costs related to the hearing that are incurred by or on behalf of the Commission; and
- (h) to make such other orders as the Commission deems appropriate.

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

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

**AND TAKE FURTHER NOTICE** that upon 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 7, 2003.

"John Stevenson"



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

**AND**

**IN THE MATTER OF  
JOHN ALEXANDER CORNWALL,  
KATHRYN A. COOK,  
DAVID SIMPSON,  
JEROME STANISLAUS XAVIER,  
CGC FINANCIAL SERVICES INC.**

**AND**

**FIRST FINANCIAL SERVICES**

**AMENDED STATEMENT OF ALLEGATIONS**

Staff of the Ontario Securities Commission make the following allegations:

**I. The Respondents**

1. John Alexander Cornwall resides in the province of Ontario.
2. Cornwall was registered under the Securities Act from April 11, 2000 to October 5, 2001 as a salesperson with Global Educational Marketing Corporation, a dealer in the category of Scholarship Plan Dealer.
3. Cornwall is the sole owner and director of CGC Financial Services Inc., an Ontario Corporation, located at 1010 Polytec Street, Unit 2, Gloucester, Ontario.
4. Jerome Stanislaus Xavier, a resident of Quebec, was at all material times, registered under the Act. Xavier has been registered as a salesperson under the Act since 1992. Since September 23, 1999, Xavier has been registered as a salesperson with Keybase Investments Inc., a dealer in the category of Mutual Fund Dealer, Limited Market Dealer and Scholarship Plan Dealer.
5. Since 1992, Xavier shared office space with Cornwall at 1010 Polytec Street.
6. David Simpson is a resident of Ontario and was, at all material times, an unregistered mortgage broker. He is the owner and sole director of 567349 Ontario Ltd., operated as First Financial Services. Simpson was also the sole director and owner of Stramore Inc. Simpson has never been registered under the Act.
7. Kathryn A. Cook is a resident of Ontario and was, at all material times, a Chartered Accountant. Cook has never been registered under the Act.

**The Illegal Distribution**

8. From approximately April 2000 to March 2001, Cornwall participated in a scheme whereby he and others placed advertisements in newspapers throughout Ontario and other provinces, to attract clients. The advertisements advised the potential investor that they could access a portion of the value of their locked-in Registered Retirement Savings Plan ("RRSP") by purchasing shares in private Canadian companies.
9. Shares of Canadian Controlled Private Corporations ("CCPCs") can constitute a qualified investment for RRSPs. The qualifications of a company as a CCPC are prescribed by tax laws and regulations. Cornwall and others claimed that the four companies involved in this scheme were CCPCs, and therefore, were qualified investments for RRSPs.
10. In response to the advertisements, the clients contacted Cornwall and others. The clients purchased shares of one of the following four companies, all purporting to be CCPCs:

**i) Themis Hospitality Inc. – April to October 2000**

An Ontario registered corporation. Sometime in 1998, Themis purchased a vacant lot in Kanata, Ontario for the purpose of constructing a retirement residence. Simpson acted as a financial advisor and mortgage broker. At some point, additional equity financing was required. As a result, Simpson organized the issuing of non-voting shares of Themis.

**ii) Stramore Inc. – May 2000 to February 2001**

Stramore is an Ontario corporation owned by Simpson. In May of 2000, Stramore purchased a vacant lot located in Smith Falls, Ontario for approximately \$175,000. The offering memorandum for Stramore, written by Simpson, indicates that proceeds will be used for a development. The projected cost was in excess of \$1.8 million. The mortgage on the property is now in excess of \$175,000, which represents the initial purchase price of the property and the property is still vacant.

**iii) Faelen Concepts – June 2000 to March 2001**

Faelen is an Ontario Corporation. In the Spring of 2000, Cornwall agreed to assist Mr. M., a trained chef, who wanted to purchase a hotel/resort. Under Cornwall's guidance, M. engaged in a scheme to raise capital selling private company shares to investors. Cornwall registered Faelen to his own office address at 1010 Polytec Street,

Gloucester, naming M. as the sole director. Faelen never purchased property for this venture. Faelen's only assets were the funds generated by the sale of shares.

**iv) Camcys Inc. – September 2000 to February 2001**

Cornwall registered Camcys, an Ontario corporation, for his son-in-law, R., who was also named as the sole director. Cornwall assisted R. in raising capital so that R. could start a web-page design company. Cornwall rented a post office box in his own name and registered the address of Camcy's to that address. The trustee forwarded the proceeds of the sale of the shares to a joint bank account in the name of Cornwall and R. The proceeds from the sales were subsequently transferred to Cornwall's company CGC Financial. Camcys only assets were the funds generated by the sale of the shares. Camcys never had any sales or clients.

11. The clients' purchased shares of these four companies using funds located in their locked in RRSPs. Cornwall, and others, met directly with the majority of the clients. Cornwall, and others, advised these clients that the funds located in their locked-in RRSPs would be used to purchase shares of CCPCs that were purported to be qualified investments for locked-in RRSPs. The clients who purchased shares in Camcys and Faelen then obtained a loan from CGC, a company owned by Cornwall. The clients who purchased shares in Stramore and Themis obtained a loan from First Financial, a company owned by Simpson. The loans were for an amount that represented a portion of the purchase price of the shares, varying from approximately 65% to 70%. The remaining portion, varying from approximately 30% to 35%, was charged as an "administration fee".
12. In total, Cornwall processed over 87 transactions in excess of approximately \$1.8 million in shares. The majority of the investors were Ontario residents.
13. Xavier facilitated the purchase of shares and his name appears as the "registered representative" on all the documentation with respect to the purchase of private company shares of Themis, Camcys, Faelen and Stramore. Xavier did not process all the trades through Keybase. Xavier was registered through Keybase.
14. Cook, a chartered accountant, signed documents that confirmed that "to the best of [her] knowledge" the shares of Camcys and Stramore represented a "fair market value." Cook did not conduct any due diligence with respect to Camcys and Stramore. To facilitate the trust company's acceptance of the transactions as RRSP eligible

investments, Cook signed a letter confirming the share purchases of Stramore, Faelen and Themis were a "qualified investment for the annuitants RRSP."

15. Simpson, through his company First Financial, controlled the incoming investment from clients that was generated from the sale of the shares of Themis and Stramore. Cornwall, through his company CGC, controlled the incoming investment from clients that was generated from the sale of the shares of Faelen and Camcys.
16. In total, each of the respondents received the following compensation (all numbers approximate) for participating in the transactions: Cornwall - \$650,000; Simpson - \$165,000; Xavier - \$60,000 and Cook - \$14,000.

**The Loans**

17. Some of these investors continue to pay back the loans.

**II. VIOLATIONS OF THE SECURITIES ACT**

18. In trading shares of the private companies listed above, Cornwall, Simpson and Xavier participated in an illegal distribution of securities, contrary to section 53(1) of the *Securities Act*, by trading in these securities for which there was no exemption available.
19. By failing to ascertain the general investment needs and objectives of the investors who purchased shares of the companies listed above, and the suitability of the proposed purchases or sales of the securities for these clients, Xavier acted contrary to section 1.5 of Ontario Securities Commission Rule 31-505.
20. By failing to process trades through Keybase, Xavier acted contrary to section 25(1) of the *Securities Act*.

**III. CONDUCT CONTRARY TO THE PUBLIC INTEREST**

21. Cornwall's conduct, as described above, is contrary to the public interest.
22. Simpson's conduct, as described above, is contrary to the public interest.
23. Cook's conduct, as described above, is contrary to the public interest.
24. Xavier's conduct, as described above, is contrary to the public interest.
25. CGC and First Financial's conduct, as described above, is contrary to the public interest.

26. Such additional allegations as Staff may advise  
and the Commission may permit.

November 27, 2003.

**1.3 News Releases**

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

**1.3.1 OSC Proceedings in Respect of John Alexander Cornwall, Kathryn A. Cook, David Simpson, Jerome Stanislaus Xavier, CGC Financial Services Inc. and First Financial Services**

**FOR IMMEDIATE RELEASE  
December 4, 2003**

**OSC PROCEEDINGS IN RESPECT OF  
JOHN ALEXANDER CORNWALL, KATHRYN A. COOK,  
DAVID SIMPSON, JEROME STANISLAUS XAVIER,  
CGC FINANCIAL SERVICES INC. AND  
FIRST FINANCIAL SERVICES**

**TORONTO** – On November 7, 2003, the Ontario Securities Commission issued a Notice of Hearing and Statement of Allegations in respect of John Alexander Cornwall, Kathryn A. Cook, David Simpson, Jerome Stanislaus Xavier, CGC Financial Services Inc. and First Financial Services.

According to the Statement of Allegations, from April 2000 to March 2001, the Respondents assisted individuals, the majority of whom were Ontario residents, in purchasing shares of various companies using funds located in their locked-in RRSPs. Concurrently, the clients obtained a loan representing a portion of the purchase price of the shares, varying from approximately 65% to 70%. The remaining portion, varying from approximately 30% to 35%, was charged as an "administration fee". In total, the respondents were involved in processing transactions in excess of approximately \$1.8 million in shares.

It is alleged that the conduct of the respondents was contrary to the public interest. It is also alleged that Cornwall, Simpson and Xavier participated in an illegal distribution. Staff also allege that Xavier, a registrant, failed to ascertain the general investment needs and objectives of the investors who purchased the shares, contrary to section 1.5 of Ontario Securities Commission Rule 31-505, and acted contrary to section 25(1) by failing to process trades through the dealer.

A set-date appearance was scheduled for November 26, 2003 at 10:00 a.m. On consent, the matter was adjourned to January 15, 2004 at 10:00 a.m. in the Small Hearing Room of the Commission's offices, 20 Queen Street West, 17<sup>th</sup> Floor, for a pre-hearing.

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

**For Media Inquiries:** Eric Pelletier  
Manager, Media Relations  
416-595-8913  
  
Michael Watson  
Director, Enforcement Branch  
416-593-8156

**1.3.2 OSC Proceedings Adjourned in Respect of  
Teodosio Vincent Pangia, Agostino Capista  
and Dallas/North Group Inc.**

**FOR IMMEDIATE RELEASE  
December 5, 2003**

**OSC PROCEEDINGS ADJOURNED IN RESPECT OF  
TEODOSIO VINCENT PANGIA, AGOSTINO CAPISTA  
AND DALLAS/NORTH GROUP INC.**

**TORONTO** – A hearing by the Ontario Securities Commission to consider the settlement agreement which was reached by Staff of the Commission and Teodosio Vincent Pangia, Agostino Capista and Dallas/North Group Inc. was adjourned yesterday to Tuesday, December 16, 2003 at 2:00 p.m.

The terms of the settlement between Staff and the respondents are confidential until approved by the Commission. An application may be brought at the hearing for the matter to be heard in the absence of the public pending approval of the settlement agreement.

Copies of the amended notice of hearing and the amended statement of allegations are available on the Commission's website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

**For Media Inquiries:** Eric Pelletier  
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## Chapter 2

# Decisions, Orders and Rulings

### 2.1 Decisions

#### 2.1.1 Faircourt Split Five Trust - MRRS Decision

##### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - closed-end investment trust exempt from prospectus and registration requirements in connection with issuance of units to existing unit holders pursuant to distribution reinvestment plan whereby distributions of income are reinvested in additional units of the trust, subject to certain conditions - first trade in additional units deemed a distribution unless made in compliance with MI 45-102.

##### Applicable Ontario Statutory Provisions

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

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

**AND**

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

**AND**

**IN THE MATTER OF  
FAIRCOURT SPLIT FIVE TRUST**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the "Jurisdictions") has received an application from Faircourt Split Five Trust (the "Trust") 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 and to file and obtain a receipt for a preliminary and a final prospectus (the "Registration and Prospectus Requirements") shall not apply to certain trades of units of the Trust ("Units") pursuant to a distribution reinvestment 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 THE TRUST** has represented to the Decision Makers that:

1. The Trust is a trust established under the laws of the Province of Ontario and governed by a trust agreement dated July 29, 2003.
2. The Trust filed a (final) prospectus dated July 29, 2003 (the "Prospectus") with the securities regulatory authorities in each of the Jurisdictions qualifying for distribution units of the Trust ("Units") and preferred securities of the Trust ("Preferred Securities") and became a reporting issuer or the equivalent thereof in the Jurisdictions on July 30, 2003 upon obtaining a receipt for the Prospectus. As of the date hereof, the Trust is not on the list of defaulting reporting issuers maintained by any of the Jurisdictions.
3. The Trust is not considered to be a "mutual fund" as defined in the Legislation because the holders of the Units (the "Unitholders") are not entitled to receive "on demand" an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Trust as contemplated in the definition of "mutual fund" in the Legislation. Redemptions only occur once per year (January 31) at net asset value of the Trust ("Net Asset Value") per Unit.
4. The Units are listed and posted for trading on the Toronto Stock Exchange (the "TSX") under the symbol "FCF.UN".
5. The Preferred Securities are listed and posted for trading on the TSX under the symbol "FCF.PR.A".
6. The Preferred Securities were issued pursuant to an indenture entered into with CIBC Mellon Trust Company. Each Preferred Security is due July 31, 2008 and bear interest from the date of issue at 6.0% per annum, which is paid quarterly in arrears, on March 31, June 30, September 30 and December 31 of each year, commencing on September 30, 2003.

7. Each Unit represents an equal, undivided interest in the net assets of the Trust. Each whole Unit is entitled to one vote at all meetings of Unitholders and is entitled to participate equally with all other Units with respect to any and all distributions made by the Trust.
8. Faircourt Asset Management Inc. is the manager and the promoter of the Trust (the "Manager").
9. The Royal Trust Company is the trustee of the Trust.
10. Acuity Investment Management Inc. (the "Investment Advisor") has been retained by the Trust and the Manager to provide investment advisory and portfolio management services to the Trust.
11. The Trust intends to make monthly cash distributions to Unitholders. The objectives of the Trust are to first pay the holders of Preferred Securities ("Securityholders") interest on the Preferred Securities in priority to any distributions on the Units, in the amount of \$0.15 per \$10 principal amount per quarter, and second, to provide the holders of the Units ("Unitholders") with a stable stream of monthly cash distributions targeted to be approximately \$0.13125 per Unit per month. The Trust further intends to repay Securityholders, on July 31, 2008, in priority to any return of the original subscription price to Unitholders, the original subscription price of the Preferred Securities and to return to Unitholders, on July 31, 2008, at least the original subscription price of the Units.
12. The Trust intends to adopt the Plan so that distributions will, if a Unitholder so elects, be automatically reinvested on such Unitholder's behalf in accordance with the provisions of the agreement governing the operation of the Plan (the "DRIP Agreement") entered into by the Manager, on behalf of the Trust, and CIBC Mellon Trust Company, as plan agent (the "Plan Agent").
13. Non-residents of Canada within the meaning of the *Income Tax Act* (Canada) are not eligible to participate in the Plan.
14. Pursuant to the terms of the Plan, a Unitholder may elect to become a participant in the Plan by notifying a participant in CDS (the "CDS Participant") through which the Unitholder holds his or her Units of the Unitholder's intention to participate in the Plan. The CDS Participant shall, on behalf of the Unitholder, provide notice to the CDS (the "Participation Notice") of the Unitholder's participation in the Plan no later than the close of business on the business day which is two business days prior to the last business day of each calendar month commencing with the last day of the third month following the month in which the closing of the initial public offering of the Units occurs (the "Record Date") in respect of the next expected distribution in which the Unitholder intends to participate, by delivering to CDS a completed authorization form in the manner prescribed by CDS from time to time. CDS shall, in turn, notify the Plan Agent no later than the close of business on the business day immediately preceding such Record Date of such Unitholder's participation in the Plan.
15. Distributions due to Unitholders who have elected to participate in the Plan (the "Plan Participants") will automatically be reinvested on their behalf by the Plan Agent to purchase plan Units ("Plan Units") in accordance with the following terms and conditions:
  - (a) if the market price (plus applicable commissions and brokerage charges on a per Unit basis) on the relevant distribution date is less than the Net Asset Value per Unit on the distribution date, the Plan Agent shall apply the distributions otherwise payable in cash by the Trust on the Units beneficially held by such Plan Participants on such distribution date (the "Distributions") to purchase Plan Units in the market or from treasury as set out below;
  - (b) purchases of Plan Units described above will be made in the market by the Plan Agent during the 10 trading day period following the distribution date and the price paid for those Plan Units will not exceed 115% of the market price of the Units on the relevant distribution date. On the expiry of such 10 day period, the unused part, if any, of the distributions will be used to purchase Plan Units from the Trust at a purchase price equal to the higher of: (A) the Net Asset Value per Unit on the relevant distribution date; and (B) 95% of the market price on the relevant distribution date; and
  - (c) if the market price (plus applicable commissions and brokerage charges on a per Unit basis) on the relevant distribution date is equal to or greater than the Net Asset Value per Unit on such distribution date, the Plan Agent shall apply the distributions to purchase Plan Units from the Trust through the issue of new Units at a purchase price equal to the higher of: (A) the Net Asset Value per Unit on the relevant distribution date; and (B) 95% of the market price on the relevant distribution date.
16. The Plan Agent will purchase Plan Units only in accordance with mechanics described in the Plan



- and, accordingly, there is no opportunity for a Plan Participant or the Plan Agent to speculate on Net Asset Value per Unit.
17. The Plan is open for participation by all Unitholders (other than non-residents of Canada), so that such Unitholders can ensure protection against potential dilution, albeit insignificant, by electing to participate in the Plan.
  18. The Trust will invest in securities with the objective of providing Unitholders with a high level of sustainable income (as described in the Prospectus) as well as a cost-effective method of reducing the risk of investing in such securities through broad diversification. In addition, the Net Asset Value per Unit should be less volatile than that of a typical equity fund based on historical data. As a result, the potential for significant changes in the Net Asset Value per Unit over short periods of time is moderate.
  19. The amount of Distributions that may be reinvested in Plan Units issued from treasury is small relative to the Unitholders' equity in the Trust. The potential for dilution arising from the issuance of Plan Units by the Trust at the Net Asset Value per Unit on a relevant distribution date is not significant.
  20. The Plan Agent will not issue certificates representing Plan Units.
  21. No fractional Units will be issued under the Plan. A cash adjustment for any fractional Units will be paid by the Plan Agent to CDS on a monthly basis to be credited to the Plan Participant via the applicable CDS Participant.
  22. A Plan Participant may terminate his or her participation in the Plan by written notice to the CDS Participant through which the Plan Participant holds his or her Units. CDS will then inform the Plan Agent and thereafter distributions on such Units held by such Unitholder will be paid directly to such Plan Participant.
  23. The Plan Agent's charges for administering the Plan will be paid by the Trust out of the assets of the Trust.
  24. The Manager may terminate the Plan at any time in its sole discretion upon not less than 30 days' notice to the Plan Participants, via the applicable CDS Participant, and to the Plan Agent.
  25. The Manager also reserves the right in its sole discretion to suspend the Plan at any time, in which case the Manager must give, or must cause to be given, written notice of the suspension to all Plan Participants via the applicable CDS Participant.
  26. The Manager may, in consultation with the Plan Agent, adopt additional rules and regulations to facilitate the administration of the Plan, which shall, once adopted, be deemed to form part of the DRIP Agreement.
  27. The Manager may also amend the Plan or the DRIP Agreement at any time, in its sole discretion, provided that: (i) if the amendment is material to Plan Participants, at least 30 days' notice thereof shall be given to Plan Participants via the applicable CDS Participant and to the Plan Agent; and (ii) if the amendment is not material to Plan Participants, notice thereof may be given to Plan Participants and to the Plan Agent after effecting the amendment. No material amendment will be effective until it has been approved by the TSX (if required).
  28. The Manager may, in its sole discretion, upon 90 days' written notice to the Plan Agent, and upon payment to the Plan Agent of all outstanding fees payable hereunder, remove the Plan Agent and appoint any person or entity licensed to carry on business of a trustee in Ontario as the agent under the Plan.
  29. The distribution of the Plan Units by the Trust pursuant to the Plan cannot be made in reliance on certain registration and prospectus exemptions contained in the Legislation as the Plan involves the reinvestment of distributable income distributed by the Trust and not the reinvestment of dividends or interest of the Trust.
  30. The distribution of the Plan Units by the Trust pursuant to the Plan cannot be made in reliance on registration and prospectus exemptions contained in the Legislation for distribution reinvestment plans of mutual funds, as the Trust is not considered to be a "mutual fund" as defined in the Legislation because the Unitholders are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in a portion of the net assets of the Trust.
- AND WHEREAS** under the System, this MRRS Decision Document evidences the decision of each of the Decision Makers (collectively, the "Decision");
- AND WHEREAS** each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met;
- THE DECISION** of the Decision Makers pursuant to the Legislation is that trades of Plan Units by the Trust to Plan Participants pursuant to the Plan shall not be subject to the Registration and Prospectus Requirements, provided that:

- |   |                          |  |
|---|--------------------------|--|
| <p>(a) at the time of the trade, the Trust is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation;</p>  | <p>December 2, 2003.</p> | <p>the securities legislation in Québec.</p> |
| <p>(b) no sales charge is payable in respect of the distributions of Plan Units from treasury;</p>  | <p>"Paul M. Moore"</p>   | <p>"Wendell S. Wigle"</p>                    |
| <p>(c) the Trust has caused to be sent to the person or company to whom the Plan Units are traded, not more than 12 months before the trade, a statement describing:</p> <ul style="list-style-type: none"> <li>(i) their right to elect to participate in the Plan on a monthly basis to receive Plan Units instead of cash on the making of a distribution by the Trust and how to terminate such participation; and</li> <li>(ii) instructions on how to make the election referred to in (i);</li> </ul>  |                          |  |
| <p>(d) except in Québec, the first trade or resale of Plan Units acquired pursuant to the Plan in a Jurisdiction shall be deemed a distribution or primary distribution to the public under the Legislation, unless the conditions set out in paragraphs 2 through 5 of subsection 2.6(3) of Multilateral Instrument 45-102 are satisfied;</p>  |                          |  |
| <p>(e) in Québec, the first trade (alienation) of Plan Units acquired pursuant to the Plan in a Jurisdiction shall be deemed to be a distribution or primary distribution to the public unless:</p> <ul style="list-style-type: none"> <li>(i) at the time of the first trade, the Trust is a reporting issuer in Québec and is not in default of any of the requirements of securities legislation in Québec;</li> <li>(ii) no unusual effort is made to prepare the market or to create a demand for the Plan Units;</li> <li>(iii) no extraordinary commission or other consideration is paid to a person or company other than the vendor of the Plan Units in respect of the first trade; and</li> <li>(iv) the vendor of the Plan Units, if in a special relationship with the Trust, has no reasonable grounds to believe that the Trust is default of any requirement of</li> </ul> |                          |  |

## 2.1.2 Global Thermoelectric Inc. - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - issuer deemed to be no longer a reporting issuer under securities legislation (for MRRS Decisions)

### Applicable Ontario Statutory Provisions

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

December 4, 2003.

### Stikeman Elliott LLP

5300 Commerce Court West,  
199 Bay Street  
Toronto, ON M5L 1B9

Attention: Ms. Amanda Linett

**Re: Global Thermoelectric Inc. (Applicant) - Application to Cease to be a Reporting Issuer under the securities legislation of – Alberta, Ontario, Saskatchewan, Quebec (the “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”

## 2.1.3 Dominion Resources, Inc. and Dominion Canada Finance Company - MRRS Decision

### Headnote

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

### Applicable Ontario Statutory Provisions

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

### National Instruments Cited

National Instrument 44-101 Short Form Prospectus Distributions.

National Instrument 44-102 Shelf Distributions.

National Instrument 71-101 Multijurisdictional Disclosure System.

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

**AND**

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

**AND**

**IN THE MATTER OF  
DOMINION CANADA FINANCE COMPANY  
AND DOMINION RESOURCES, INC.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the “**Decision Maker**”) in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island, (the “**Jurisdictions**”) has received an application (the “**Application**”) from Dominion Resources, Inc. (“**DRI**”) and Dominion Canada Finance Company (“**DomCan**” and together with DRI, the “**Applicants**”) for a decision under

the securities legislation of the Jurisdictions (the "**Legislation**") that the Applicants be exempted from the following requirements contained in the Legislation:

- (a) the requirement pursuant to National Instrument 44-101 ("**NI 44-101**") and National Instrument 44-102 ("**NI 44-102**") that a person or company guaranteeing non-convertible debt issued by an issuer be a reporting issuer with a 12-month reporting history in a Canadian province or territory and have a current annual information form (an "**AIF**") in order to permit DomCan to issue non-convertible debt securities, in particular medium term notes, with an Approved Rating (as defined in NI 44-101) which will be fully and unconditionally guaranteed by DRI (the "**Eligibility Requirement**");
- (b) the requirement pursuant to NI 44-101 to reconcile financial statements included in a prospectus and prepared in accordance with generally accepted accounting principles ("**GAAP**") of a foreign jurisdiction to Canadian GAAP (the "**Canadian GAAP Reconciliation Requirement**");
- (c) the requirement to provide, where financial statements are audited in accordance with generally accepted auditing standards ("**GAAS**") of a foreign jurisdiction, a statement by the auditor: (a) disclosing any material differences in the form and content of the auditor's report as compared to a Canadian auditor's report; and (b) confirming that the auditing standards of the foreign jurisdiction are substantially equivalent to Canadian GAAS (the "**Canadian GAAS Reconciliation Requirement**" and together with the Canadian GAAP Reconciliation Requirement, the "**Reconciliation Requirement**");
- (d) the requirement that DomCan issue and file with the Decision Makers news releases with respect to material changes and file material change reports (collectively, the "**Material Change Requirements**");
- (e) the requirement that DomCan satisfy the proxy and proxy solicitation requirements under the Legislation, including filing with the Decision Makers, and, if applicable, sending to securityholders, an information circular or report in lieu thereof (the "**Proxy Requirements**");
- (f) the requirement that the insiders of DomCan file insider reports with the

Decision Makers (the "**Insider Reporting Requirements**");

- (g) the requirement that DomCan file with the Decision Makers and send to its securityholders audited annual comparative financial statements and an annual report, where applicable (the "**Annual Financial Statement Requirements**");
- (h) the requirement that DomCan file with the Decision Makers and send to its securityholders unaudited interim financial statements (the "**Interim Financial Statement Requirements**"); and
- (i) the requirement that a short form prospectus include the information set forth in items 12.1(1) and 12.2(1) to 12.2(4) of Form 44-101F3 ("**44-101F3**") of NI 44-101 (the "**Prospectus Disclosure Requirements**").

**AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief applications (the "**System**"), the Alberta Securities Commission is the principal regulator for the Application;

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

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

1. DomCan was incorporated under the *Companies Act* (Nova Scotia) on August 20, 2001 and is an indirect wholly-owned subsidiary of DRI. DomCan was extra-provincially registered in Alberta on August 21, 2001.
2. The registered office of DomCan is in Halifax, Nova Scotia and its head office is located in Calgary, Alberta.
3. DomCan's only business is to access Canadian capital markets to raise funds, which it lends or otherwise invests in the Canadian subsidiary companies of DRI. DomCan does not carry on any operating business.
4. DomCan became a reporting issuer or its equivalent in the Jurisdictions on November 30, 2001 by virtue of filing a short form prospectus in connection with the establishment in Canada of its MTN program (as defined in NI 44-102) pursuant to the provisions of NI 44-101 and NI 44-102 (the "**Existing Program**").
5. Pursuant to the Existing Program, DomCan could issue up to Cdn. \$750,000,000 notes over a 25

- month period (the "**First Series Notes**") fully and unconditionally guaranteed by DRI as to payment of principal, interest and all other amounts due thereunder. As at November 13, 2003, DomCan had issued and outstanding a total of Cdn. \$315,000,000 in principal amount of First Series Notes.
6. DRI was incorporated under the laws of the Commonwealth of Virginia in 1983 and is not a reporting issuer or the equivalent in any of the Jurisdictions.
  7. DRI has been a reporting company under the United States Securities Exchange Act of 1934, as amended (the "**1934 Act**") since 1983.
  8. DRI has filed with the United States Securities and Exchange Commission (the "**SEC**") all filings required to be made with the SEC under Sections 13 and 15(d) of the 1934 Act since it first became a reporting company.
  9. As at December 31, 2002, DRI had approximately US \$6.7 billion in long term debt outstanding. All of DRI's directly issued outstanding long term debt is rated "BBB+" by Standard & Poor's Corporation, and "Baa-1" by Moody's Investors Service, Inc..
  10. The common stock of DRI is publicly traded and listed under the symbol "D" on the New York Stock Exchange (the "**NYSE**"). As at the close of trading on the NYSE on November 13, 2003, the common stock of DRI not held by affiliates of DRI had a market value in excess of US \$19,923,991,281.
  11. DRI is the largest fully integrated gas and electric company in the United States with five million customers, more than 24,000 megawatts of electric power generation, 6.2 trillion cubic feet of proved natural gas reserves and operates North America's largest natural gas storage system. DRI owns and manages assets valued in excess of US\$37 billion as of December 31, 2002.
  12. In connection with the establishment of the Existing Program, relief was obtained from the Eligibility Requirement, Reconciliation Requirement, Annual Financial Statement Requirements, Interim Financial Statement Requirements, Material Change Requirements, Insider Reporting Requirements, Proxy Requirements and Prospectus Disclosure Requirements (as they existed at that time) in the Jurisdictions, on the condition, among others, that the continuous disclosure materials filed by DRI in the United States would be filed in the Jurisdictions (collectively, all such relief being the "**Prior Decision**").
  13. In connection with the establishment of the Existing Program, relief was also obtained from the applicable Legislation in Ontario, Saskatchewan and Quebec (the "**AIF Decision**") from the requirement to file with those Decision Makers an AIF and to prepare, file and send annual and interim MD&A (the "**AIF and MD&A Requirements**").
  14. DomCan has complied with the conditions of relief set out in the Prior Decision and the AIF Decision and has been filing DRI's continuous disclosure materials in Canada.
  15. DomCan proposes to renew its Existing Program pursuant to NI 44-101 and NI 44-102 to provide the ability to raise up to Cdn. \$500,000,000 in Canada (the "**Proposed Offering**") through the issuance of additional notes ("**Second Series Notes**") from time to time over a 25 month period and may in the future file additional short form shelf prospectuses in each of the Jurisdictions in respect of the issuance by DomCan of additional medium term notes from time to time (the "**Future Offerings**", and together with the Proposed Offering, the "**Offerings**" and each an "**Offering**"). The Second Series Notes and any other medium term notes issued by DomCan pursuant to an Offering (collectively, the "**Notes**") will be fully and unconditionally guaranteed by DRI as to payment of principal, interest and all other amounts due thereunder and have an Approved Rating.
  16. In connection with the Proposed Offering and any Future Offering, the Applicants are concurrently seeking relief from the AIF and MD&A Requirements from the Decision Makers in Ontario, Saskatchewan and Quebec substantially similar to the AIF Decision.
  17. DRI satisfies the criteria set forth in paragraph 3.1(a) of National Instrument 71-101 ("**NI 71-101**") and is eligible to use the multi-jurisdictional disclosure system ("**MJDS**") (as set out in NI 71-101) for the purpose of distributing approved rating non-convertible debt in Canada based on compliance with US prospectus requirements with certain additional Canadian disclosure.
  18. Except for the fact that DomCan is not incorporated under US law, an Offering would comply with the alternative eligibility criteria of non-convertible debt having an approved rating under the MJDS as set forth in paragraphs 3.1 and 3.2 of NI 71-101.
  19. DomCan does not satisfy the alternative criteria for issuers of guaranteed non-convertible securities, as set out in section 2.5 of NI 44-101, solely because DRI (as guarantor of an Offering) is not a reporting issuer in any Jurisdiction.

20. In connection with any Offering (which, for greater certainty, includes the Proposed Offering and any Future Offerings):

- (a) each short form base shelf prospectus will be prepared pursuant to the Shelf Requirements, with the disclosure required by: (i) items 12 and 13 of 44-101F3 being addressed by incorporating by reference DRI's public disclosure documents, including DRI's annual information form in the form of an annual report on Form 10-K; and (ii) item 7 of Form 44-101F3 in respect of DomCan being addressed by disclosure with respect to DRI in accordance with United States' requirements;
- (b) each prospectus will incorporate by reference: (i) disclosure made in DRI's most recent annual report on Form 10-K filed under the 1934 Act, together with all quarterly reports on Form 10-Q and mandatory current reports on Form 8-K filed under the 1934 Act in respect of the financial year following the year that is the subject of DRI's most recently filed annual report on Form 10-K; and (ii) any documents of the foregoing type filed after the date of the Prospectus and prior to the termination of the Offering; and will state that purchasers of Notes will not receive separate continuous disclosure information regarding DomCan;
- (c) DRI will fully and unconditionally guarantee the Notes as to the payments required to be made by DomCan to holders of the Notes under the provisions of the supplemental trust indenture relating to the particular Notes;
- (d) any Notes will have an Approved Rating;
- (e) the consolidated annual and interim financial statements of DRI that will be included in or incorporated by reference in any short form shelf prospectus of DomCan will be prepared in accordance with GAAP in the United States that the SEC has identified as having substantive authoritative support, as supplemented by Regulation S-X and Regulation S-B under the 1934 Act and in the case of audited annual financial statements, such financial statements will be audited in accordance with GAAS in the United States, as supplemented by the SEC's rules on auditor independence;
- (f) DRI will sign each short form shelf prospectus as credit supporter; and

- (g) DRI will undertake to file with the Decision Makers all documents that it files under sections 13 and 15(d) of the 1934 Act until such time as the Notes are no longer outstanding.

**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:

- (a) the Applicants be exempted from the Eligibility Requirement and the Reconciliation Requirement in connection with any Offering (which, for greater certainty, includes the Proposed Offering and any Future Offering) provided that:
  - (i) each of DRI and DomCan complies with paragraph 20 above;
  - (ii) DomCan complies with all of the filing requirements and procedures set out in NI 44-101 except as varied by the Decision or as permitted by NI 44-102;
  - (iii) the consolidated annual and interim financial statements of DRI that will be included or incorporated by reference in any short form shelf prospectus are prepared in accordance with United States GAAP and, in the case of the audited consolidated annual financial statements, such financial statements will be audited in accordance with United States GAAS;
  - (iv) DRI, or any successor thereto, maintains direct or indirect 100% ownership of the voting shares of DomCan; and
  - (v) DRI continues to satisfy the eligibility criteria set forth in paragraph 3.1 of NI 71-101 (or any applicable successor provision) for using MJDS (or any successor instrument) for the purpose of distributing approved rating non-convertible debt in Canada based on compliance with United States

prospectus requirements with certain additional Canadian disclosure; and

- (b) the Prospectus Disclosure Requirements shall not apply to any short form shelf prospectus filed by DomCan in connection with any Offering (which, for greater certainty, includes the Proposed Offering and any Future Offering) provided that each of DomCan and DRI complies with paragraph 20 above;

December 2, 2003.

“Mavis Legg”

**AND THE FURTHER DECISION** of the Decision Makers under the Legislation is that:

- (A) the Material Change Requirements shall not apply to DomCan, provided that:

- (i) DRI files with the Decision Makers, in electronic format through SEDAR under DomCan's SEDAR profile, the mandatory current reports on Form 8-K of DRI which are filed by it with the SEC, on the same day on which they are filed with the SEC, or as soon as practicable thereafter;

- (ii) DRI promptly issues in each Jurisdiction and DomCan files with the Decision Makers, in electronic format through SEDAR under DomCan's SEDAR profile, any news release that discloses material information and which is required to be issued in connection with the Form 8-K requirements applicable to DRI; and

- (iii) if there is a material change in respect of the business, operations or capital of DomCan that is not a material change in respect of DRI, DomCan will comply with the requirements of the Legislation to issue a press release and file a material change report notwithstanding that the change may not be a material change in respect of DRI;

- (B) the Proxy Requirements shall not apply to DomCan, provided that:

- (i) DRI complies with the requirements of the 1934 Act and the rules and regulations made thereunder relating to proxy statements, proxies and proxy solicitations in connection with any meeting of the holders of its notes;

- (ii) DRI files with the Decision Makers, in electronic format through SEDAR under DomCan's SEDAR profile, materials relating to any such meeting filed by DRI with the SEC, on the same day on which they are filed with the SEC, or as soon as practicable thereafter; and

- (iii) such documents are provided to holders of Notes whose last address as shown on the books of DomCan is in Canada, in the manner, at the time and if required by applicable United States law to be sent to DRI debt holders resident in the United States;

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

- (D) The Annual Financial Statement Requirements shall not apply to DomCan, provided that:

- (i) DRI files with the Decision Makers, in electronic format through SEDAR under DomCan's SEDAR profile, the annual reports on Form 10-K filed by it with the SEC, on the same day on which they are filed with the SEC, or as soon as practicable thereafter; and

- (ii) such documents are provided to holders of Notes whose last address as shown on the books of DomCan is in Canada, in the manner, at the time and, if required, by applicable United States law to be sent to DRI debt holders; and

- (E) The Interim Financial Statement Requirements shall not apply to DomCan, provided that:
- (i) DRI files with the Decision Makers quarterly reports on Form 10-Q in electronic format through SEDAR under DomCan's SEDAR profile, filed by it with the SEC, on the same day on which they are filed with the SEC, or as soon as practicable thereafter; and
  - (ii) such documents are provided to holders of Notes whose last address as shown on the books of DomCan is in Canada, in the manner, at the time and, if required, by applicable United States law to be sent to DRI debt holders;
- (i) all filing fees that would otherwise be payable by DomCan in connection with the Material Change Requirements, the Proxy Requirements, the Insider Reporting Requirements, the Annual Financial Statement Requirements and the Interim Financial Statement Requirements are paid.

December 2, 2003.

"Mavis Legg"

further provided that (for A through E):

- (a) DomCan does not issue additional securities to the public other than securities fully guaranteed by DRI;
- (b) each of DomCan and DRI comply with paragraph 20 above;
- (c) the Notes maintain an Approved Rating;
- (d) DRI, or any successor thereto, maintains direct or indirect 100% ownership of the voting shares of DomCan;
- (e) DRI maintains a class of securities registered pursuant to section 12 of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act;
- (f) DRI continues to satisfy the eligibility criteria set forth in paragraph 3.1 of NI 71-101 (or any applicable successor provision) for using MJDS (or any successor instrument) for the propose of distributing approved rating non-convertible debt in Canada based on compliance with United States prospectus requirements with certain additional Canadian disclosure;
- (g) DomCan carries on no other business other than that set out in paragraph 3 above;
- (h) DRI continues to fully and unconditionally guarantee payment of the principal and interest on any Notes, together with any other amounts that may be due under



**2.1.4 Dominion Resources, Inc. and Dominion  
Canada Finance Company - MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – issuer to distribute medium term notes – medium term notes fully and unconditionally guaranteed – issuer exempt from the requirement that AIF include selected consolidated financial information and MD&A – relief conditional upon AIF incorporating selected conditional financial information and MD&A of guarantor.

**Applicable Ontario Statutory Provisions**

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

**Applicable Ontario Rules**

Ontario Securities Commission Rule 51-501 AIF & MD&A (2000) 23 OSCB 8365, as am. (2001) 24 OSCB 7417.

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

**AND**

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

**AND**

**IN THE MATTER OF  
DOMINION CANADA FINANCE COMPANY  
AND DOMINION RESOURCES, INC.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the “Decision Maker”) in each of Ontario, Saskatchewan, and Quebec (the “Jurisdictions”) has received an application (the “Application”) from Dominion Resources, Inc. (“DRI”) and Dominion Canada Finance Company (“DomCan” and together with DRI, the “Applicants”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the Applicants be exempted from the requirement contained in the Legislation to file with the applicable Decision Makers an annual information form (an “AIF”) and file with the applicable Decision Makers and send to its security holders annual and interim MD&A (collectively, the “AIF and MD&A Requirements”):

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

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

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

1. DomCan was incorporated under the *Companies Act* (Nova Scotia) on August 20, 2001 and is an indirect wholly-owned subsidiary of DRI. DomCan was extra-provincially registered in Alberta on August 21, 2001.
2. The registered office of DomCan is in Halifax, Nova Scotia and its head office is located in Calgary, Alberta.
3. DomCan's only business is to access Canadian capital markets to raise funds, which it lends or otherwise invests in the Canadian subsidiary companies of DRI. DomCan does not carry on any operating business.
4. DomCan became a reporting issuer or its equivalent in the Jurisdictions on November 30, 2001 by virtue of filing a short form prospectus in connection with the establishment in Canada of its MTN program (as defined in National Instrument 44-102 (“NI 44-102”)) pursuant to the provisions of National Instrument 44-101 (“NI 44-101”) and NI 44-102 (the “Existing Program”).
5. Pursuant to the Existing Program, DomCan could issue up to Cdn. \$750,000,000 notes over a 25 month period (the “First Series Notes”) fully and unconditionally guaranteed by DRI as to payment of principal, interest and all other amounts due thereunder. As at November 13, 2003, DomCan had issued and outstanding a total of Cdn. \$315,000,000 in principal amount of First Series Notes.
6. DRI was incorporated under the laws of the Commonwealth of Virginia in 1983 and is not a reporting issuer or the equivalent in any of the Jurisdictions.
7. DRI has been a reporting company under the United States Securities Exchange Act of 1934, as amended (the “1934 Act”) since 1983.
8. DRI has filed with the United States Securities and Exchange Commission (the “SEC”) all filings required to be made with the SEC under Sections 13 and 15(d) of the 1934 Act since it first became a reporting company.
9. As at December 31, 2002, DRI had approximately US \$6.7 billion in long term debt outstanding. All of DRI's directly issued outstanding long term debt is rated “BBB+” by Standard & Poor's Corporation, and “Baa-1” by Moody's Investors Service, Inc..
10. The common stock of DRI is publicly traded and listed under the symbol “D” on the New York Stock Exchange (the “NYSE”). As at the close of trading on the NYSE on November 13, 2003, the common

- stock of DRI not held by affiliates of DRI had a market value in excess of US \$19,923,991,281.
- thereof annually (the "Proxy Requirements");
11. DRI is the largest fully integrated gas and electric company in the United States with five million customers, more than 24,000 megawatts of electric power generation, 6.2 trillion cubic feet of proved natural gas reserves and operates North America's largest natural gas storage system. DRI owns and manages assets valued in excess of US\$37 billion as of December 31, 2002.
    - (f) the requirement that the insiders of DomCan file insider reports (the "Insider Reporting Requirements");
    - (g) the requirement that DomCan file with the decision makers in the Provinces and send to its security holders audited annual financial statements and an annual report, where applicable (the "Annual Financial Statement Requirements");
    - (h) the requirement that DomCan file with the decision makers in the Provinces and send to its security holders unaudited interim financial statements (the "Interim Financial Statement Requirements"); and
    - (i) the requirement that a short form prospectus include the information set forth in items 12.1, 12.2 and 13 of Form 44-101F3 ("44-101F3") of NI 44-101 (the "Prospectus Disclosure Requirements"),
  12. In connection with the establishment of the Existing Program, relief was obtained from the applicable legislation in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Prince Edward Island, Newfoundland and Labrador and New Brunswick (the "Provinces") from:
    - (a) the requirement pursuant to NI 44-101 that an issuer guaranteeing debt issued by a subsidiary be a reporting issuer with a 12 month reporting history in a Canadian province or territory (the "Eligibility Requirement");
    - (b) the requirement pursuant to NI 44-101 to reconcile financial statements included in a prospectus and prepared in accordance with generally accepted accounting principles ("GAAP") of a foreign jurisdiction to Canadian GAAP (the "Canadian GAAP Reconciliation Requirement");
    - (c) the requirement to provide, where financial statements are audited in accordance with generally accepted auditing standards ("GAAS") of a foreign jurisdiction, a statement by the auditor: (a) disclosing any material differences in the form and content of the auditor's report as compared to a Canadian auditor's report; and (b) confirming that the auditing standards of the foreign jurisdiction are substantially equivalent to Canadian GAAS (the "Canadian GAAS Reconciliation Requirement" and together with the Canadian GAAP Reconciliation Requirement, the "Reconciliation Requirement");
    - (d) the requirement that DomCan issue and file news releases with respect to material changes and file material change reports (collectively, the "Material Change Requirements");
    - (e) the requirement that DomCan satisfy the proxy and proxy solicitation requirements, including filing an information circular or report in lieu
  13. In connection with the establishment of the Existing Program, relief was also obtained from the Jurisdictions from the AIF and MD&A Requirements (the "AIF Decision").
  14. DomCan has complied with the conditions of relief set out in the Prior Decision and the AIF Decision and has been filing DRI's continuous disclosure materials in Canada.
  15. DomCan proposes to renew its Existing Program pursuant to NI 44-101 and NI 44-102 to provide the ability to raise up to Cdn. \$500,000,000 in Canada (the "Proposed Offering") through the issuance of additional notes ("Second Series Notes") from time to time over a 25 month period and may in the future file additional short form shelf prospectuses in each of the Provinces in respect of the issuance by DomCan of additional medium term notes from time to time (the "Future Offerings" and together with the Proposed Offering, the "Offerings" and each an "Offering"). The Second Series Notes and any other medium term notes issued by DomCan pursuant to an Offering (collectively, the "Notes") will be fully and unconditionally guaranteed by DRI as to payment of principal, interest and all other amounts due thereunder and have an Approved Rating.
- in the Jurisdictions, on the condition, among others, that the continuous disclosure materials filed by DRI in the United States would be filed in the Jurisdictions (collectively, all such relief being provided by the "Prior Decision").

16. In connection with the Proposed Offering and any Future Offering, the Applicants are concurrently seeking relief from the Reconciliation Requirement, Annual Financial Statement Requirements, Interim Financial Statement Requirements, Material Change Requirements, Insider Reporting Requirements, Proxy Requirements and Prospectus Disclosure Requirements from the decision makers in the Provinces substantially similar to the Prior Decision.
17. DRI satisfies the criteria set forth in paragraph 3.1(a) of National Instrument 71-101 ("NI 71-101") and is eligible to use the multi-jurisdictional disclosure system ("MJDS") (as set out in NI 71-101) for the purpose of distributing approved rating non-convertible debt in Canada based on compliance with US prospectus requirements with certain additional Canadian disclosure.
18. Except for the fact that DomCan is not incorporated in a United States jurisdiction, an Offering would comply with the alternative eligibility criteria of non-convertible debt having an approved rating under the MJDS as set forth in paragraphs 3.1 and 3.2 of NI 71-101.
19. DomCan does not satisfy the alternative criteria for issuers of guaranteed non-convertible securities, as set out in section 2.5 of NI 44-101, solely because DRI (as guarantor of an Offering) is not a reporting issuer in any Jurisdiction.
20. In connection with any Offering (which, for greater certainty, includes the Proposed Offering and any Future Offerings):
  - (a) each short form base shelf prospectus will be prepared pursuant to the Shelf Requirements, with the disclosure required by: (i) items 12 and 13 of 44-101F3 being addressed by incorporating by reference DRI's public disclosure documents, including DRI's annual information form in the form of an annual report on Form 10-K; and (ii) item 7 of Form 44-101F3 in respect of DomCan being addressed by disclosure with respect to DRI in accordance with United States' requirements;
  - (b) each prospectus will incorporate by reference: (i) disclosure made in DRI's most recent annual report on Form 10-K filed under the 1934 Act, together with all quarterly reports on Form 10-Q and mandatory current reports on Form 8-K filed under the 1934 Act in respect of the financial year following the year that is the subject of DRI's most recently filed annual report on Form 10-K; and (ii) any documents of the foregoing type filed after the date of the Prospectus and prior to the termination of the Offering; and will state that purchasers of Notes will not receive separate continuous disclosure information regarding DomCan;
  - (c) DRI will fully and unconditionally guarantee the Notes as to the payments required to be made by DomCan to holders of the Notes under the provisions of the supplemental trust indenture relating to the particular Notes;
  - (d) any Notes will have an Approved Rating;
  - (e) the consolidated annual and interim financial statements of DRI that will be included in or incorporated by reference in any short form shelf prospectus of DomCan will be prepared in accordance with GAAP in the United States that the SEC has identified as having substantive authoritative support, as supplemented by Regulation S-X and Regulation S-B under the 1934 Act and in the case of audited annual financial statements, such financial statements will be audited in accordance with GAAS in the United States, as supplemented by the SEC's rules on auditor independence;
  - (f) DRI will sign each short form shelf prospectus as credit supporter;
  - (g) DRI will undertake to file with the Decision Makers in electronic format under DomCan's SEDAR profile all documents that it files with the SEC under sections 13, 14, and 15(d) of the 1934 Act, on the same day on which they are filed with the SEC, or as soon as practicable thereafter, until such time as the Notes are no longer outstanding; and
  - (h) DRI will maintain a class of securities registered pursuant to section 12 of the 1934 Act.

**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 AIF and MD&A Requirements shall not apply to DomCan for so long as:

- (i) DomCan's AIF (and any renewal AIF filed by DomCan) incorporates the selected consolidated financial information and management's discussion and analysis of DRI (prepared in the manner required by applicable United States law) that would be required if DRI was the issuer preparing the AIF;
- (ii) DRI files with the Decision Makers an AIF in the form of an annual report on Form 10-K, in electronic format through SEDAR under DomCan's SEDAR profile; and
- (iii) each of DRI and DomCan comply with the provisions of paragraph 20 above.

December 4, 2003.

"Charlie MacCready"

## 2.1.5 TransAlta Power L.P. - MRRS Decision

### Headnote

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

### Statutes Cited

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

### Instruments Cited

Multilateral Instrument 45-102 Resale of Securities.

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

**AND**

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

**AND**

**IN THE MATTER OF  
TRANSALTA POWER L.P.**

**MRRS DECISION DOCUMENT**

1. **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 (the **Jurisdictions**) has received an application from TransAlta Power L.P. (**TransAlta Power**) for a decision, pursuant to the securities legislation of the Jurisdictions (the "**Legislation**"), that the requirements contained in the Legislation to be registered to trade in a security and to file a preliminary prospectus and a final prospectus and obtain receipts therefor (the **Registration and Prospectus Requirement**) shall not apply to the distribution of units of TransAlta Power (**Units**) issued pursuant to a premium distribution, distribution reinvestment and optional unit purchase plan (the **Premium DRIP**);
2. **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;

3. **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;
4. **AND WHEREAS** TransAlta Power has represented to the Decision Makers that:
  - 4.1 TransAlta Power is a limited partnership formed pursuant to a limited partnership agreement (the **Partnership Agreement**) dated as of December 16, 1997, as amended and restated. On December 22, 1997, TransAlta Power was registered as a limited partnership under the laws of the Province of Ontario and was subsequently registered or extra-provincially registered, as the case may be, in all other provinces of Canada. The business and affairs of TransAlta Power are managed by TransAlta Power Ltd. (the **General Partner**) pursuant to the Partnership Agreement. TransAlta Energy Corporation (**TransAlta Energy**) has contracted with the General Partner pursuant to a management agreement dated April 12, 1998, as amended (the **Management Agreement**) to provide TransAlta Power with certain management, administrative and other services. TransAlta Energy relies on its own resources in providing such services to TransAlta Power.
  - 4.2 The head and principal office of the general partner of TransAlta Power is located at 110 – 12<sup>th</sup> Avenue S.W., Calgary, Alberta T2R 0G7.
  - 4.3 The business of TransAlta Power consists solely of activities directly or indirectly related to the energy supply industry and the holding of investments in other entities which are primarily engaged in that industry.
  - 4.4 TransAlta Power owns a 49.99% indirect interest in power plants located in Mississauga, Ottawa and Windsor, Ontario and related assets and interests (collectively, the **Ontario Power Plants**), a 29.99% indirect interest in a power plant located in Fort Saskatchewan, Alberta and related assets and interests (the **Dow Power Plant**) and a 24.995% indirect interest in a power plant located near Hanna, Alberta (the **Sheerness Generating Station**). These indirect interests are held by TransAlta Power through its ownership of a 49.99% partnership interest in TransAlta Cogeneration, L.P. (**TA Cogen**). In turn, TA Cogen owns a 100% interest in the Ontario Power Plants, a 60% interest in the Dow Power Plant and a 50% interest in the Sheerness Generating Station.
  - 4.5 TransAlta Power is a reporting issuer or the equivalent thereof in each of the provinces of Canada and has been so since March 1998.
  - 4.6 TransAlta Power is a “qualifying issuer” within the meaning of Multilateral Instrument 45-102 *Resale of Securities* and, to the best of its knowledge, is not in default of any requirements of the Legislation.
  - 4.7 TransAlta Power is authorized under the Partnership Agreement to issue an unlimited number of Units.
  - 4.8 As of September 30, 2003, 69,487,700 Units were issued and outstanding, and there were 17,097,650 outstanding warrants to purchase Units on a one-for-one basis.
  - 4.9 The Units are listed and posted for trading on the Toronto Stock Exchange (the **TSX**).
  - 4.10 The Partnership Agreement provides that no Units may be owned by or transferred to, among other things, a person who is a “non-resident” of Canada, a person in which an interest would be a “tax shelter investment” or a partnership which is not a “Canadian partnership” for the purposes of the *Income Tax Act* (Canada).
  - 4.11 According to the Partnership Agreement, the General Partner shall, to the extent that it has cash available to do so, make monthly distributions of the distributable cash (if any) (**Distributable Cash**) of TransAlta Power to holders of units (**Unitholders**).
  - 4.12 The Partnership Agreement defines Distributable Cash for any particular period as the amount by which TransAlta Power’s cash on hand or to be received in respect of that period exceeds: (i) unpaid administrative expenses of TransAlta Power, (ii) amounts required for the business and operations of TransAlta Power during such period (including fees and expenses payable to TransAlta Energy under the Management Agreement); and (iii) any cash reserve that the board of directors of the General Partner in its discretion determines is necessary to satisfy TransAlta Power’s current and anticipated obligations and liabilities and to comply with applicable law.
  - 4.13 TransAlta Power is not a “mutual fund” as defined in the Legislation because the Unitholders are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of TransAlta Power as contemplated by the definition of “mutual fund” contained in the Legislation.
  - 4.14 TransAlta Power intends to establish the Premium DRIP pursuant to which eligible Unitholders may direct that cash distributions paid by TransAlta Power in respect of their existing Units (**Cash Distributions**) be applied

- to the purchase of additional Units (**DRIP Units**) and, at their option, either (i) direct that the DRIP Units be held for their account (the **Reinvestment Option**) or (ii) authorize and direct the trust company that is appointed as plan agent under the Premium DRIP (the **Plan Agent**) to pre-sell, through a designated broker (the **Plan Broker**), for the account of such Unitholders so electing, that number of Units approximately equal to the number of DRIP Units issuable on such reinvestment of Cash Distributions and to settle such pre-sales with the DRIP Units issued on the applicable distribution payment date in exchange for a cash payment for the account of such Unitholders equal to 102% of the reinvested Cash Distributions (the **Premium Distribution Option**). The Plan Broker will be entitled to retain for its own account the difference between the proceeds realized in connection with the pre-sales of Units and the cash payment to the Plan Agent in an amount equal to 102% of the reinvested Cash Distributions.
- 4.15 Eligible Unitholders that have elected to have their Cash Distributions reinvested in DRIP Units under either the Reinvestment Option or Premium Distribution Option (**Participants**) may also purchase additional Units under the Premium DRIP by making optional cash payments (**Optional Cash Payments**) within certain established limits (the **Cash Payment Option**). TransAlta Power shall have the right to determine from time to time whether the Cash Payment Option will be available.
- 4.16 All DRIP Units purchased under the Premium DRIP will be purchased by the Plan Agent directly from TransAlta Power on the relevant distribution payment date at a price determined by reference to the Average Market Price (defined in the Premium DRIP as the arithmetic average of the daily volume weighted average trading prices of the Units on the TSX for a defined period not exceeding 20 trading days preceding the applicable distribution payment date).
- 4.17 DRIP Units purchased under the Reinvestment Option or the Premium Distribution Option will be purchased at a 5% discount to the Average Market Price. DRIP Units purchased under the Cash Payment Option will also be purchased at a 5% discount to the Average Market Price.
- 4.18 The Plan Broker's *prima facie* return under the Premium Distribution Option will be approximately 3% of the reinvested Cash Distributions (based on pre-sales of DRIP Units having a market value of approximately 105% of the reinvested Cash Distributions and a fixed cash payment to the Plan Agent, for the account of applicable Participants, of an amount equal to 102% of the reinvested Cash Distributions). The Plan Broker may, however, realize more or less than this *prima facie* amount, as the actual return will vary according to the prices the Plan Broker is able to realize on the pre-sales of DRIP Units. The Plan Broker bears the entire price risk of pre-sales in the market, as Participants who have elected the Premium Distribution Option are entitled to a cash payment equal to 102% of the reinvested Cash Distributions.
- 4.19 All activities of the Plan Broker on behalf of the Plan Agent that relate to pre-sales of DRIP Units for the account of Participants who elect the Premium Distribution Option will be in compliance with applicable Legislation and the rules and policies of the TSX (subject to any exemptive relief granted). The Plan Broker will also be a member of the Investment Dealers Association of Canada, and will be registered under the Legislation of any Jurisdiction where the first trade in DRIP Units pursuant to the Premium Distribution Option makes such registration necessary.
- 4.20 The Premium DRIP will only be available to Unitholders who are residents of Canada and who are otherwise permitted by the Partnership Agreement to hold Units.
- 4.21 Participants who choose to participate in the Premium DRIP are free to terminate their participation under either the Reinvestment Option or the Premium Distribution Option and to change their election as between the Reinvestment Option and the Premium Distribution Option, in each such case, by providing written notice thereof to the Plan Agent. A notice of termination or change of election received on or after a distribution record date will become effective after the distribution payment date to which such record date relates.
- 4.22 Under the Reinvestment Option, Cash Distributions will be paid to the Plan Agent and applied by the Plan Agent to the purchase of DRIP Units, which will be credited to the account of the appropriate Participants who have elected to participate in that component of the Premium DRIP through The Canadian Depository of Securities Limited.
- 4.23 Under the Premium Distribution Option, Cash Distributions will be paid to the Plan Agent and applied by the Plan Agent to the purchase of DRIP Units for the account of the appropriate Participants who have elected to participate in that component of the Premium DRIP, but the DRIP Units purchased thereby will be automatically transferred to the Plan Broker to settle pre-sales of Units made by the Plan

- Broker on behalf of the Plan Agent for the account of such Participants in exchange for a cash payment equal to 102% of the reinvested Cash Distributions.
- 4.24 Under the Cash Payment Option, a Participant may, through the Plan Agent, purchase DRIP Units subject to a maximum amount per remittance of \$5,000 and a minimum amount per remittance of \$500. The aggregate number of DRIP Units that may be purchased under the Cash Payment Option by all Participants in any financial year of TransAlta Power will be limited to a maximum of 2% of the number of Units issued and outstanding at the start of the financial year.
  - 4.25 No brokerage fees or service charges will be payable by Participants in connection with the purchase of DRIP Units under the Premium DRIP.
  - 4.26 All Cash Distributions on Units enrolled in the Premium DRIP will be automatically reinvested in DRIP Units under the Reinvestment Option or exchanged for a cash payment under the Premium Distribution Option, as applicable, in accordance with the terms of the Premium DRIP and the current election of the applicable Participant.
  - 4.27 The Premium DRIP permits full investment of reinvested Cash Distributions and Optional Cash Payments because fractions of Units, as well as whole Units, may be credited to Participants' accounts (although, in the case of beneficial Unitholders, the crediting of fractional Units may depend on the policies of a Participant's broker, investment dealer, financial institution or other nominee through which the Participant holds Units).
  - 4.28 TransAlta Power reserves the right to determine for any distribution payment date how many DRIP Units will be available for purchase under the Premium DRIP.
  - 4.29 If, in respect of any distribution payment date, fulfilling all of the elections under the Premium DRIP would result in TransAlta Power exceeding either the limit on DRIP Units set by TransAlta Power or the aggregate annual limit on DRIP Units issuable pursuant to the Cash Payment Option, then elections for the purchase of DRIP Units on the next distribution payment date will be accepted: (i) first, from Participants electing the Reinvestment Option; (ii) second, from Participants electing the Premium Distribution Option; and (iii) third, from Participants electing the Cash Payment Option. If TransAlta Power is not able to accept all elections in a particular category, then purchases of DRIP Units on the next distribution payment date will be pro-rated among all Participants in that category according to the number of DRIP Units sought to be purchased.
  - 4.30 If TransAlta Power determines that no DRIP Units will be available for purchase under the Premium DRIP for a particular distribution payment date, then all Participants will receive the Cash Distribution announced by TransAlta Power for that distribution payment date.
  - 4.31 TransAlta Power reserves the right to amend, suspend or terminate the Premium DRIP at any time, provided that such action shall not have a retroactive effect which would prejudice the interests of Participants. TransAlta Power will notify Unitholders of any such amendment, suspension or termination in accordance with the Premium DRIP and applicable securities law requirements.
  - 4.32 Legislation in the Jurisdictions provides exemptions from the Registration and Prospectus Requirement for reinvestment plans. Such exemptions are not available to TransAlta Power in the Jurisdictions, however, because such exemptions are generally limited to plans that provide for the reinvestment of one or more of (i) dividends; (ii) interest; (iii) capital gains; or (iv) earnings or surplus. In contrast, the distributions that are paid to the Unitholders are distributions of cash which may not fall within such categories.
  - 4.33 In addition, Legislation in certain of the Jurisdictions provides exemptions from the Registration and Prospectus Requirement for reinvestment plans of mutual funds. Such exemptions are unavailable to TransAlta Power since it is a limited partnership and, therefore, not within the definition of "mutual fund" contained in the Legislation of the relevant Jurisdictions.
  5. **AND WHEREAS** under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the **Decision**);
  6. **AND WHEREAS** each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;
  7. **THE DECISION** of the Decision Makers pursuant to the Legislation is that:
    - 7.1 the Registration and Prospectus Requirement contained in the Legislation shall not apply to distributions by TransAlta Power of DRIP Units for the account of Participants pursuant to the Premium DRIP, provided that:

- 7.1.1 at the time of the trade TransAlta Power is a reporting issuer or the equivalent in a jurisdiction listed in Appendix B of MI 45-102 and is not in default of any requirements of the Legislation;
- 7.1.2 no sales charge is payable by Unitholders in respect of the trade;
- 7.1.3 TransAlta Power has caused to be sent to the person or company to whom the DRIP Units are traded, not more than 12 months before the trade, a statement describing:
- 7.1.3.1 their right to withdraw from the Premium DRIP and to make an election to receive Cash Distributions instead of DRIP Units on the applicable distribution payment date (the **Withdrawal Right**); and
- 7.1.3.2 instructions on how to exercise the Withdrawal Right;
- 7.1.4 the aggregate number of DRIP Units issued under the Cash Payment Option of the Premium DRIP in any financial year of TransAlta Power shall not exceed 2% of the aggregate number of Units outstanding at the start of that financial year;
- 7.1.5 the first trade of DRIP Units shall be deemed to be a distribution or a primary distribution to the public under the Legislation unless:
- 7.1.5.1 except in Québec, the conditions in subsections (3) of Section 2.6 of MI 45-102 are satisfied; and
- 7.1.5.2 in Québec:
- 7.1.5.2.1 TransAlta Power is a reporting issuer in Québec and has been a reporting issuer in Québec for the 12 months preceding the trade;
- 7.1.5.2.2 no unusual effort is made to prepare the market or to create a demand for the DRIP Units that are the subject of the trade;
- 7.1.5.2.3 no extraordinary commission or other
- consideration is paid to a person or company in respect of the trade; and
- 7.1.5.2.4 if the selling security holder of the DRIP Units is an insider or officer of TransAlta Power, the selling security holder has no reasonable grounds to believe that TransAlta Power is in default of Québec securities legislation.

December 5, 2003.

"Paul M. Moore"

"Wendell S. Wigle"



**2.1.6 Business Trust Equal Weight Income Fund -  
MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – closed-end investment trust exempt from prospectus and registration requirements in connection with issuance of units to existing unit holders pursuant to distribution reinvestment plan whereby distributions of income are reinvested in additional units of the trust, subject to certain conditions – first trade in additional units deemed a distribution unless made in compliance with MI 45-102.

**Applicable Ontario Statutory Provisions**

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

**Multilateral Instrument Cited**

Multilateral Instrument 45-102 Resale of Securities (2001), 24 OSCB 5522.

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

**AND**

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

**AND**

**IN THE MATTER OF  
BUSINESS TRUST EQUAL WEIGHT INCOME FUND**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, Nunavut and Northwest Territories (the “Jurisdictions”) has received an application from Business Trust Equal Weight Income Fund (the “Fund”) 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 and to file and obtain a receipt for a preliminary and a final prospectus (the “Registration and Prospectus Requirements”) shall not apply to certain trades of units of the Fund pursuant to a distribution reinvestment 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** the trust has represented to the Decision Makers that:

1. The Fund is a closed-end investment trust established under the laws of the Province of Ontario and governed by a declaration of trust dated September 25, 2003.
2. The beneficial interests in the Fund are divided into a single class of limited voting units (the “Units”). The Fund is authorized to issue an unlimited number of Units. Each Unit represents a Unitholder’s proportionate undivided beneficial interest in the Fund.
3. The Fund filed a (final) prospectus dated September 26, 2003 (the “Prospectus”) with the securities regulatory authorities in each of the Jurisdictions qualifying for distribution units of the Fund (“Units”) and became a reporting issuer or the equivalent thereof in the Jurisdictions upon obtaining a receipt for the Prospectus on September 29, 2003 from each of the Jurisdictions, except for Prince Edward Island and Nova Scotia for which receipts were received on September 30, 2003 and October 1, 2003, respectively. As of the date hereof, the Fund is not on the list of defaulting reporting issuers maintained by any of the Jurisdictions.
4. The Fund is not considered to be a “mutual fund” as defined in the Legislation because the holders of the Units (the “Unitholders”) are not entitled to receive “on demand” an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Fund as contemplated in the definition of “mutual fund” in the Legislation.
5. The Toronto Stock Exchange (the “TSX”) has conditionally approved the listing of the Units. Listing is subject to the Fund fulfilling all of the requirements of the TSX on or before December 16, 2003, including distribution of the Units to a minimum number of public holder. The Units will be listed and posted for trading under the symbol “BWI.UN”.
6. Brompton Business Trust Management Limited is the manager and the promoter of the Fund (the “Manager”).

7. Comptuershare Trust Company of Canada is the trustee of the Fund.
8. Brompton Capital Advisors Inc. (the "Advisor") has been retained by the Fund and the Manager to provide investment advisory services to the Fund.
9. The Fund intends to make monthly cash distributions ("Distributions") on the tenth business day of each month (each a "Distribution Date") to a Unitholder of record on the last business day of the immediately preceding month.
10. The Fund intends to adopt the Plan so that distributions will, if a Unitholder so elects, be automatically reinvested on such Unitholder's behalf in accordance with the provisions of the agreement governing the operation of the Plan (the "DRIP Agreement") entered into by the Manager, on behalf of the Fund, and Computershare Trust Company of Canada, as plan agent (the "Plan Agent").
11. Non-residents of Canada within the meaning of the *Income Tax Act* (Canada) are not eligible to participate in the Plan.
12. Pursuant to the terms of the Plan, a Unitholder may elect to become a participant in the Plan by notifying a participant in CDS (the "CDS Participant") through which the Unitholder holds his or her Units of the Unitholder's intention to participate in the Plan. The CDS Participant shall, on behalf of the Unitholder, provide notice to CDS (the "Participation Notice") of the Unitholder's participation in the Plan no later than the close of business on the business day which is two business days prior to the last business day of each calendar month commencing with November 28, 2003 (the "Record Date") in respect of the next expected distribution in which the Unitholder intends to participate, by delivering to CDS a completed authorization form in the manner prescribed by CDS from time to time. CDS shall, in turn, notify the Plan Agent no later than the close of business on the business day immediately preceding such Record Date of such Unitholder's participation in the Plan.
13. Distributions due to Unitholders who have elected to participate in the Plan (the "Plan Participants") will be paid to the Plan Agent and reinvested on their behalf by the Plan Agent to purchase plan Units ("Plan Units") in accordance with the following terms and conditions:
  - (a) if the weighted average trading price of Units on the TSX (or such other exchange or market on which Units are then listed, if the Units are not listed by the TSX) for the 10 trading days immediately preceding the relevant Distribution Date, plus applicable commissions or brokerage charges (the "Market Price") on the relevant Distribution Date is less than the Net Asset Value per Unit on the Distribution Date, the Plan Agent shall apply the Distributions otherwise payable in cash by the Fund to such Plan Participants on such Distribution Date either to purchase Plan Units in the market or from treasury in accordance with subparagraph (c) below;
  - (b) if the Market Price is equal to or greater than the Net Asset Value per Unit on the relevant Distribution Date, the Plan Agent shall apply the Distributions to purchase Plan Units from the Fund through the issue of new Trust Units at a purchase price equal to the higher of (A) the Net Asset Value per Unit on the relevant Distribution Date, and (B) 95% of the Market Price on the relevant Distribution Date; and
  - (c) purchases of Plan Units described in subparagraph (i) above will be made in the market by the Plan Agent on an orderly basis during the 6 trading day period following the Distribution Date and the price paid for those Plan Units will not exceed 115% of the Market Price of the Trust Units on the relevant Distribution Date. On the expiry of such 6 day period, the unused part, if any, of the Distributions will be used to purchase Plan Units from the Fund at a purchase price equal to the Net Asset Value per Unit on the relevant Distribution Date;
14. Plan Units purchased under the Plan will be registered in the name of CDS and credited to the account of the CDS Participant through whom a Unitholder holds Units.
15. No fractional Units will be issued under the Plan. A cash adjustment for any uninvested Distributions will be paid by the Plan Agent to CDS on a monthly basis to be credited to the Plan Participants via the applicable CDS Participants.
16. The Plan Agent will be purchasing Plan Units only in accordance with the mechanisms described in the Plan and, accordingly, there is no opportunity for a Plan Participant or the Plan Agent to speculate on changes in the Net Asset Value per Unit.
17. The Fund is designed to provide Unitholders with the opportunity to invest in an equally weighted diversified portfolio of Business Income Funds (as defined in the Prospectus) on a passive basis and to receive the benefits of high monthly cash distributions and low management fees together

with the opportunity for capital appreciation. In addition, the Net Asset Value per Unit should be less volatile than that of a typical equity fund based on historical data. As a result, the potential for significant changes in the Net Asset Value per Unit over short periods of time is moderate.

18. The amount of Distributions that may be reinvested in Plan Units issued from treasury is small relative to the Unitholders' equity in the Fund. The potential for dilution arising from the issuance of Plan Units by the Fund at the Net Asset Value per Unit on a relevant distribution date is not significant.
19. The Plan is open for participation by all Unitholders other than non-residents of Canada, such that any Canadian resident Unitholder can ensure protection against potential dilution, albeit insignificant, by electing to participate in the Plan.
20. No commissions, service charges or brokerage fees will be payable by Plan Participants in connection with the Plan.
21. The Plan does not permit Plan Participants to make cash payments purchase additional Plan Units.
22. A Plan Participant may terminate his or her participation in the Plan by written notice to the CDS Participant through which the Plan Participant holds his or her Units. CDS will then inform the Plan Agent and thereafter distributions on such Units held by such Unitholder will be paid directly to the CDS Participant.
23. The Plan Agent's charges for administering the Plan will be paid by the Fund out of the assets of the Fund.
24. The Manager may terminate the Plan at any time in its sole discretion upon not less than 30 days' notice to the Plan Participants, via the applicable CDS Participant, and to the Plan Agent.
25. The Manager also reserves the right in its sole discretion to suspend the Plan at any time, in which case the Manager must give, or must cause to be given, written notice of the suspension to all Plan Participants via the applicable CDS Participant.
26. The Manager may, in consultation with the Plan Agent, adopt additional rules and regulations to facilitate the administration of the Plan, which shall, once adopted, be deemed to form part of the DRIP Agreement.
27. The Manager may also amend the Plan or the DRIP Agreement at any time, in its sole discretion, provided that: (i) if the amendment is material to Plan Participants, at least 30 days' notice thereof

shall be given to Plan Participants via the applicable CDS Participant and to the Plan Agent; and (ii) if the amendment is not material to Plan Participants, notice thereof may be given to Plan Participants and to the Plan Agent after effecting the amendment. No material amendment will be effective until it has been approved by the TSX (if required).

28. The Manager may, in its sole discretion, upon 90 days' written notice to the Plan Agent, and upon payment to the Plan Agent of all outstanding fees payable hereunder, remove the Plan Agent and appoint any person or entity licensed to carry on business of a trustee in Ontario as the agent under the Plan.
29. The distribution of the Plan Units by the Fund pursuant to the Plan cannot be made in reliance on certain registration and prospectus exemptions contained in the Legislation as the Plan involves the reinvestment of distributable income distributed by the Fund and not the reinvestment of dividends or interest of the Fund.
30. The distribution of the Plan Units by the Fund pursuant to the Plan cannot be made in reliance on registration and prospectus exemptions contained in the Legislation for distribution reinvestment plans of mutual funds, as the Fund is not considered to be a "mutual fund" as defined in the Legislation because the Unitholders are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in a portion of the net assets of the Fund.

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

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

**THE DECISION** of the Decision Makers pursuant to the Legislation is that trades of Plan Units by the Fund to Plan Participants pursuant to the Plan shall not be subject to the Registration and Prospectus Requirements, provided that:

- (a) at the time of the trade, the Fund 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 distributions of Plan Units from treasury;
- (c) the Fund has caused to be sent to the person or company to whom the Plan

Units are traded, not more than 12 months before the trade, a statement describing:

- (i) their right to elect to participate in the Plan on a monthly basis to receive Plan Units instead of cash on the making of a distribution by the Fund and how to terminate such participation; and
- (ii) instructions on how to make the election referred to in (i);
- (d) except in Québec, the first trade or resale of Plan Units acquired pursuant to the Plan in a Jurisdiction shall be deemed a distribution or primary distribution to the public under the Legislation, unless the conditions set out in paragraphs 2 through 5 of subsection 2.6(3) of Multilateral Instrument 45-102 are satisfied;
- (e) in Québec, the first trade (alienation) of Plan Units acquired pursuant to the Plan in a Jurisdiction shall be deemed to be a distribution or primary distribution to the public unless:
  - (i) at the time of the first trade, the Fund is a reporting issuer in Québec and is not in default of any of the requirements of securities legislation in Québec;
  - (ii) no unusual effort is made to prepare the market or to create a demand for the Plan Units;
  - (iii) no extraordinary commission or other consideration is paid to a person or company other than the vendor of the Plan Units in respect of the first trade; and
  - (iv) the vendor of the Plan Units, if in a special relationship with the Fund, has no reasonable grounds to believe that the Fund is default of any requirement of the securities legislation in Québec.

December 5, 2003.

"Paul M. Moore"

"Wendell S. Wigle"

## 2.1.7 CIBC Asset Management Inc. - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Extension of lapse date for mutual fund prospectus for a specified period of time.

### Applicable Ontario Statute

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

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,  
MANITOBA, ONTARIO, QUEBEC, 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  
CIBC ASSET MANAGEMENT INC.  
AND  
FRONTIERS CANADIAN SHORT TERM INCOME POOL  
FRONTIERS CANADIAN FIXED INCOME POOL  
FRONTIERS CANADIAN EQUITY POOL  
FRONTIERS U.S. EQUITY POOL  
FRONTIERS U.S. EQUITY RSP POOL  
FRONTIERS INTERNATIONAL EQUITY POOL  
FRONTIERS INTERNATIONAL EQUITY RSP POOL  
FRONTIERS EMERGING MARKETS EQUITY POOL  
FRONTIERS GLOBAL BOND POOL  
(each a "Pool", collectively the "Pools")**

### MRRS DECISION DOCUMENT

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of Canada except New Brunswick (the "Jurisdictions") has received an application (the "Application") from CIBC Asset Management Inc. ("CM"), the manager of the Pools, on behalf of each Pool, for a decision (the "Decision") pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the time periods prescribed by the Legislation for filing the final simplified prospectus and annual information form (together, the "Renewal Prospectus") of the Pools be extended to the time periods that would be applicable if the lapse date for the distribution of the units of the Pools was December 26, 2003;

**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** CM has represented to the Decision Makers that:

1. CM is a corporation incorporated under the laws of Canada and is the manager of the Pools.
2. Each of the Pools is an open-ended mutual fund trust established under the laws of Ontario by a Declaration of Trust.
3. Each of the Pools is a reporting issuer in each of the provinces and territories of Canada.
4. Units of the Pools are currently qualified for distribution in each of the Jurisdictions pursuant to a simplified prospectus and annual information form dated November 26, 2002 (the "Current Prospectus"). The MRRS decision document evidencing final receipts of the securities regulatory authorities in each of the Jurisdictions in respect of the Current Prospectus was issued on November 28, 2002. The earliest lapse date under the Legislation for distribution of units of the Pools under the Current Prospectus is November 26, 2003.
5. There have been no material changes in the affairs of the Pools since the date of the Current Prospectus in respect of which an amendment to the Current Prospectus has not been prepared and filed in accordance with the Canadian securities laws.
6. The Pools filed a pro forma prospectus and annual information form on October 22, 2003 under SEDAR project number 582248 in each of the Jurisdictions within the time limits specified by the Legislation.
7. CM is contemplating the possibility of offering a new fund which would be established in early January (the "New Fund").
8. The Pools have been offered under the Frontiers Program which includes an asset allocation service which relates to all of the Pools and a prospectus for all Pools is provided to investors. Accordingly, CM would like to qualify the New Fund for distribution in each of the Jurisdictions by including the New Fund in the final Renewal Prospectus of the Pools to avoid having two sets of disclosure documents.
9. If the New Fund is established in 2003, it will only have until March, 2004 (three months) to qualify as "mutual fund trust" for the purposes of the Income Tax Act (Canada) (the "ITA"). It may prove to be difficult to obtain 150 unitholders in the New Fund in that three month period as the minimum investment in the Pools is \$25,000 per account. If the New Fund is established in January, 2004, the New Fund will have until March, 2005 (15 months)

to qualify as a "mutual fund trust" under the ITA, which is a significantly longer period.

10. Without an extension to the Pools' lapse date, CM will have to file in final form a Renewal Prospectus not later than December 6, 2003 and obtain a receipt for the renewal prospectus by December 16, 2003, which prevents CM from including the New Fund in the final Renewal Prospectus for the reason discussed in paragraph 9, and shortly thereafter CM will have to file a preliminary and amended and restated simplified prospectus and annual information form to incorporate the New Fund and the Pools in one document, paying the costs of preparing, printing and distributing the prospectuses twice.

**AND WHEREAS** pursuant to the System this MRRS Decision Document evidences the Decision of each Decision Maker;

**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 lapse date for filing the Renewal Prospectus of the Pools be extended to the time period that would be applicable if the lapse date for the distribution of the units of the Pools was December 26, 2003.

December 5, 2003.

"Leslie Byberg"

**2.1.8 Far West Industries Inc. - s. 83**

**Headnote**

Issuer deemed to have ceased to be a reporting issuer. Issuer has less than 15 security holders in each of the jurisdictions of Canada, and less than 51 security holders in total in Canada. Issuer will cease to be a reporting issuer in all jurisdictions of Canada. Issuer is not in default of any of its statutory obligations as a reporting issuer.

**Statutes Cited**

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

December 4, 2003

**Blake, Cassels & Graydon LLP**

Suite 2600, 595 Burrard Street  
Vancouver, BC V7X 1L3

Attention: Ms. Dori C. Assaly

Dear Ms. Assaly:

**Re: Far West Industries Inc. (Applicant) -  
Application to Cease to be a Reporting Issuer  
under the securities legislation of Alberta,  
Saskatchewan and Ontario (the  
"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"

**2.1.9 Honeywell International Inc. and 678669 British Columbia Ltd. - MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – Employment Agreements entered into between the offeror and senior executives of the offeree who have also agreed to deposit their common shares to the offer – executives holding less than eight percent of offeree shares on a fully diluted basis – Employment Agreements negotiated at arm's length, on terms that are commercially reasonable, and are consistent with industry standards – Employment Agreements contain retention and performance bonuses – Decision made that the Employment Agreements are being made for reasons other than to increase the value of the consideration to be paid to the senior executives for their common shares and may be entered into notwithstanding the prohibition on collateral agreements.

**Applicable Statutory Provisions**

Securities Act, R.S.O. 1990, c. S.5, as amended, ss. 97 and 104(2)(a).

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

**AND**

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

**AND**

**IN THE MATTER OF  
HONEYWELL INTERNATIONAL INC.,  
678669 BRITISH COLUMBIA LTD. AND  
SILENT WITNESS ENTERPRISES LTD.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions") has received an application from Honeywell International Inc. ("Honeywell") and 678669 British Columbia Ltd. (the "Applicant") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that, in connection with their take-over bid (the "Offer") to acquire all of the issued and outstanding common shares ("Common Shares") of Silent Witness Enterprises Ltd. ("Silent Witness"), the employment agreements (the "Employment Agreements") between Honeywell, the Applicant and each of Rob Bakshi ("Bakshi") and Tom Gill ("Gill") are made for reasons other than to increase the value of the consideration paid to

Bakshi and Gill and may be entered into despite the prohibition in the Legislation against an offeror entering into a collateral agreement with any holder of an offeree that has the effect of providing to the holder a consideration of greater value than that offered to the other holders of the same class of securities (the "Prohibition on Collateral Agreements");

**AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the British Columbia 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** Honeywell and the Applicant have represented to the Decision Makers that:

1. Honeywell is a corporation existing under the laws of Delaware and is not a reporting issuer in any of the Jurisdictions;
2. the Applicant is an indirect wholly-owned subsidiary of Honeywell incorporated in British Columbia for the purpose of making the Offer;
3. the Applicant is not a reporting issuer in any of the Jurisdictions;
4. Silent Witness is a company existing under the laws of British Columbia having its head office in Surrey and its Common Shares listed and posted for trading on The Toronto Stock Exchange;
5. Silent Witness is a reporting issuer in Ontario and British Columbia;
6. as at October 10, 2003, Silent Witness had 7,468,541 Common Shares outstanding (excluding 549,900 Common Shares which are held by Silent Witness and which have not been cancelled) and 427,000 options outstanding;
7. Honeywell, indirectly through the Applicant, has made an all-cash offer to acquire all of the Common Shares at \$11.27 per Common Share;
8. the Offer will be made by way of a take-over bid circular (the "Circular") prepared in accordance with the Legislation, which was sent to all shareholders of Silent Witness on October 28, 2003;
9. the Offer will be conditional upon, among other things, there being validly deposited under the Offer and not withdrawn at the expiry time at least 90% of the Common Shares (calculated on a fully-diluted basis);

10. neither Honeywell nor the Applicant will, as a result of the Offer, become a reporting issuer under the Legislation;
  11. the Applicant, Honeywell and Silent Witness have entered into a support agreement under which Silent Witness has agreed to support the Offer, subject to its right under certain conditions to terminate the agreement in the event of a superior proposal that is not matched by the Applicant;
  12. Honeywell has entered into deposit agreements with Bakshi and Gill under which they have agreed to deposit to the Offer all of the Common Shares held by them, representing approximately 8% of the outstanding Common Shares;
  13. Bakshi, as the Chairman, Chief Executive Officer and President of Silent Witness, is responsible for, among other things establishing short-term and long range-objectives, plans and policies (subject to approval of the Board of Directors) and directing financial, operations, product development and sales and marketing functions and ensuring performance objectives are met;
  14. Gill, as the Chief Operating Officer of Silent Witness, is responsible for planning, directing and controlling Silent Witness's overall operations and financial plans and policies and, under the guidance of the Chief Executive Officer, is also responsible for establishing short-term and long-term objectives, plans and policies relating to the financial, organizational, operations and human resources planning activities;
  15. Gill has also undertaken the responsibilities of Chief Financial Officer since June 2003;
  16. there is currently no formal, written employment agreement between Silent Witness and either of Gill or Bakshi;
  17. the main terms of the Employment Agreements are described in the Circular;
  18. the purpose of the Employment Agreements is to provide incentives to Bakshi and Gill to:
    - (a) continue their involvement with the business of Silent Witness and thereby improve the performance of Silent Witness' business after its indirect acquisition by Honeywell; and
    - (b) assist in managing and expanding Honeywell's global video controls business (with current worldwide sales of approximately US\$150 million annually), which business will include Silent Witness following the acquisition;
  19. the Applicant believes these two individuals have been critical to the successful development of the business of Silent Witness to date and they are important to the relationship between Silent Witness and many of its principal clients;
  20. the Applicant believes that it is important to the long-term success and growth of Honeywell's global video controls business that each of Bakshi and Gill be retained as senior officers of Honeywell, or a direct or indirect subsidiary, engaged full time in such business;
  21. it is intended that the terms of the Employment Agreements will provide Bakshi and Gill with long-term incentives to support and grow the business of Silent Witness and to assist with the transition of the business to its new ownership;
  22. the proposed terms of the Employment Agreements have been negotiated with each of Bakshi and Gill at arm's length and are on terms and conditions that are commercially reasonable;
  23. the proposed base compensation and eligibility for annual stock options and incentive compensation provided to each of Bakshi and Gill is substantially similar to their current compensation and is commensurate with the compensation of employees of Honeywell with similar levels of responsibility in similar contexts;
  24. Honeywell has provided similar retention and incentive packages in comparable acquisitions it has undertaken to ensure management continuity so as to preserve and grow the value of the acquired business;
  25. Honeywell believes that such packages are customary in the industry; and
  26. the Employment Agreements have been made for valid business reasons unrelated to Bakshi's and Gill's holdings of Common Shares or options to acquire Common Shares and not for the purpose of conferring an economic or collateral benefit that the other shareholders of Silent Witness do not enjoy or to increase the value of the consideration to be paid to Bakshi or Gill for their Common Shares tendered under the Offer;
- AND WHEREAS** under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");
- AND WHEREAS** each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;
- THE DECISION** of the Decision Makers in the Jurisdictions under the Legislation is that the Employment Agreements are being made for reasons other than to



increase the value of the consideration to be paid to Bakshi and Gill for their Common Shares and may be entered into notwithstanding the Prohibition on Collateral Agreements.

December 5, 2003.

“Brenda Leong”

**2.2 Orders**

**2.2.1 John Alexander Cornwall et al. - ss. 127(1) and 127.1**

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

**AND**

**IN THE MATTER OF  
JOHN ALEXANDER CORNWALL,  
KATHRYN A. COOK,  
DAVID SIMPSON,  
JEROME STANISLAUS XAVIER,  
CGC FINANCIAL SERVICES INC.**

**AND**

**FIRST FINANCIAL SERVICES**

**ORDER  
(Sections 127(1) and 127.1)**

**WHEREAS** on November 7, 2003, the Ontario Securities Commission issued a Notice of Hearing and Statement of Allegations pursuant to sections 127(1) and 127.1 of the *Securities Act*, R.S. O. 1990 c. S.5, as amended in respect of John Alexander Cornwall, Kathryn A. Cook, David Simpson, Jerome Stanislaus Xavier, CGC Financial Services Inc. and First Financial Services;

**AND WHEREAS** the first appearance was scheduled to take place on November 26, 2003 at 10:00 a.m.;

**AND WHEREAS** Staff and the respondents agreed to attend a pre-hearing on January 15, 2004 at 10:00 a.m.;

**AND WHEREAS** the respondents have consented to an adjournment of this matter;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to grant the adjournment requested by the respondent's counsel;

**IT IS THEREFORE ORDERED** that the hearing of this matter be adjourned to January 15, 2004 at 10:00 a.m., or to a date shortly thereafter to be scheduled by the Secretary to the Commission.

November 26, 2003.

"Paul Moore"

**2.2.2 ESS Capital Inc. - ss. 83.1(1)**

**Headnote**

Subsection 83.1(1) - issuer deemed to be a reporting issuer in Ontario - issuer has been a reporting issuer in Alberta since October 17, 2002 and in British Columbia since March 27, 2003 - issuer's securities are listed and posted for trading on the TSX Venture Exchange - continuous disclosure requirements of Alberta and British Columbia substantively the same as those of Ontario.

**Applicable Ontario Statutory Provisions**

Securities Act, R.S.O. 1990, c. S.5, as amended, s. 83.1(1).

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

**AND**

**IN THE MATTER OF  
ESS CAPITAL INC.**

**ORDER  
(Subsection 83.1(1))**

**UPON** the application (the "Application") of ESS Capital Inc. (the "Corporation") to the Ontario Securities Commission (the "Commission") for an order pursuant to subsection 83.1(1) of the Act deeming the Corporation to be a reporting issuer for the purposes of Ontario securities law;

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

**AND UPON** the Corporation having represented to the Commission as follows:

1. The Corporation was incorporated by a Certificate of Incorporation issued pursuant to the provisions of the Business Corporations Act (Alberta) on April 16, 2002. The Articles of the Corporation were amended on June 12, 2002 to remove the private issuer provisions and the restrictions on share transfer.
2. The head office of the Corporation is located at 127 Temple Crescent West, Lethbridge, Alberta, T1K 4T3, and the registered office of the Corporation is located at 3100, 324 - 8th Avenue S.W., Calgary, Alberta, T2P 2Z2.
3. The authorized capital of Corporation consists of an unlimited number of common shares and an unlimited number of preferred shares issuable in series, of which 4,700,001 common shares and no preferred shares are issued and outstanding as of the date hereof. An aggregate of 275,000 common shares are reserved for issuance on the

- exercise of an agent's option granted by the Corporation in conjunction with its initial public offering. Another 376,000 common shares are reserved for issuance on the exercise of stock options granted by the Corporation to certain of its officers and directors.
4. The Corporation is a "reporting issuer" under the Securities Act (Alberta) and the Securities Act (British Columbia). The Corporation is not a reporting issuer or its equivalent under the securities laws of any other jurisdiction.
  5. The Corporation has not been the subject of any enforcement actions by the Alberta or British Columbia Securities Commissions or the Exchange, and the Corporation is not in default of any requirement of the Act, the Securities Act (Alberta) or the Securities Act (British Columbia).
  6. The materials filed by the Corporation as a reporting issuer in the Provinces of Alberta and British Columbia are available on the System for Electronic Document Analysis and Retrieval.
  7. The Corporation's common shares are listed on the TSX Venture Exchange (the "Exchange") and currently trade under the symbol "XAQ.P". The Corporation is in good standing under the rules, regulations and policies of the Exchange.
  8. The Corporation is a "Capital Pool Company" for the purposes of the policies of the Exchange and has entered into a share purchase agreement made September 10, 2003 pursuant to which it will acquire the issued and outstanding shares of MPC Circuits Ltd., an Ontario-based printed circuit board manufacturing company (the "Acquisition"). The Acquisition is intended to be the Qualifying Transaction of the Corporation for the purposes of the policies of the Exchange. By letter dated October 30, 2003, the Exchange has conditionally approved the additional listing of the 2,260,000 common shares of the Corporation to be issued pursuant to the Acquisition as the Qualifying Transaction of the Corporation. The Acquisition is expected to close on December 8, 2003, the date of the meeting of the shareholders of the Corporation in respect of the Acquisition, among other things.
  9. The Corporation has a "significant connection to Ontario" in that Ontario residents beneficially own at least 20% of the outstanding common shares of the Corporation based on the list of registered shareholders of the Corporation as of November 7, 2003, the record date for the upcoming meeting of the shareholders of the Corporation, and information available to the directors and officers of the Corporation regarding the beneficial shareholders of the Corporation. After the Acquisition, that percentage will increase as all of the 2,260,000 common shares issuable under the Acquisition will be issued to Ontario residents.
  10. The continuous disclosure requirements of the Securities Act (Alberta) and the Securities Act (British Columbia) are substantially the same as the requirements under the Act.
  11. There have been no penalties or sanctions imposed against the Corporation by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority, and the Corporation has not entered into any settlement agreement with any Canadian securities regulatory authority.
  12. Neither the Corporation nor, to the knowledge of the Corporation, any of its officers, directors or controlling shareholders is or has been subject to:
    - (a) any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority or entered into a settlement agreement with a Canadian securities regulatory authority; or
    - (b) any other penalties or sanctions imposed by a court or regulatory body that would likely to be considered important to a reasonable investor making an investment decision.
  13. Neither the Corporation nor, to the knowledge of the Corporation, any of its directors, officers or controlling shareholders, is or has been subject to:
    - (a) any known ongoing or concluded investigations by:
      - (i) a Canadian securities regulatory authority, or
      - (ii) a court or regulatory body, other than a Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision; or
    - (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver-manager or trustee, within the preceding 10 years.
  14. To the knowledge of the Corporation, none of the Corporation's directors, officers or controlling shareholders is or has been subject to:

- (a) any cease trade or similar orders, or orders that denied access to any exemptions under Ontario securities law, for a period of more than 30 consecutive days, within the preceding 10 years; or
- (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver-manager or trustee, within the preceding 10 years,

relating to any other issuer which the director, officer or controlling shareholder of the Corporation was a director or officer at the time of such event.

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

**IT IS HEREBY ORDERED** pursuant to subsection 83.1(1) of the Act that the Corporation be deemed to be a reporting issuer for the purposes of Ontario securities law.

December 3, 2003.

"Erez Blumberger"

## **2.2.3 Environmental Waste International Inc. - ss. 83.1(1)**

### **Headnote**

Subsection 83.1(1) – issuer deemed to be a reporting issuer in Ontario – issuer has been a reporting issuer in Alberta and British Columbia for over 12 months – issuer's securities listed and posted for trading on the TSX Venture Exchange – continuous disclosure requirements of British Columbia and Alberta substantially identical to those of Ontario.

### **Statutes Cited**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 83.1(1).

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

### **AND**

### **IN THE MATTER OF ENVIRONMENTAL WASTE INTERNATIONAL INC.**

### **ORDER (Subsection 83.1(1))**

**UPON** the application of Environmental Waste International Inc. ("EWI") for an order pursuant to subsection 83.1(1) of the Act deeming EWI to be a reporting issuer for the purposes of Ontario securities law;

**AND UPON** considering the application and the recommendation of the staff of the Ontario Securities Commission (the "Commission");

**AND UPON** EWI representing to the Commission as follows:

1. EWI was incorporated under the laws of the Province of Alberta as 3360290 Alberta Ltd. on September 12, 1985. EWI was continued in Ontario on November 20, 1996, under the name E.W.M.C. International Inc. The name of the Corporation was changed to Environmental Waste International Inc. on July 12, 2001.
2. EWI's head office is located at 283 Station Street, Ajax, Ontario L1S 1S3.
3. The authorized share capital of EWI consists of unlimited common shares without par value, of which 58,398,316 common shares are issued and outstanding as of July 1, 2003.
4. As of July 1, 2003, the mind and management of EWI was located in Ontario and the beneficial holders of greater than 10% of its equity securities were residents of Ontario.

5. EWI has been a reporting issuer under the Securities Act (Alberta) (the "Alberta Act") since July 12, 1986. EWI became a reporting issuer under the Securities Act (British Columbia) (the "BC Act") when its shares became listed on the Canadian Venture Exchange (now TSX Venture Exchange or "TSX Venture"). EWI's shares were previously quoted on the Canadian Dealing Network. EWI is not in default of any requirements of the BC Act or the Alberta Act.
6. EWI is not a reporting issuer or public company under the securities legislation of any other jurisdiction in Canada.
7. The continuous disclosure requirements of the BC Act and the Alberta Act are substantially the same as the requirements under the Act.
8. The continuous disclosure materials filed by EWI under the Alberta Act and the BC Act are available on the System for Electronic Document Analysis and Retrieval.
9. The common shares of EWI are listed on Tier 3 of TSX Venture. EWI is not in default of any requirements of TSX Venture. EWI is not designated a capital pool company under the policies of TSX Venture.
10. Neither EWI nor any of its officers, directors, nor any of its shareholders holding sufficient securities of EWI to affect materially the control of EWI, is or has been subject to: (i) any known ongoing or concluded investigations by: (a) a Canadian securities regulatory authority, or (b) a court or regulatory body, other than a Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision; or (ii) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or other appointment of a receiver, receiver-manager or trustee within the preceding 10 years.
11. Except as disclosed below, none of the officers or directors of EWI, nor any of its shareholders holding sufficient securities of EWI to affect materially the control of EWI, is or has been at the time of such event, an officer or director of any other issuer which is or has been subject to: (i) any cease trade or similar orders that denied access to any exemptions under Ontario securities law, for a period of more than 30 consecutive days, within the preceding 10 years; or (ii) any bankruptcy or insolvency proceeding, or other proceedings, arrangements or comprises with creditors, or the appointment of a receiver, receiver-manager or trustee, within the preceding 10 years.
12. Neither EWI nor any of its officers, directors or shareholders holding sufficient securities of EWI to affect materially the control of EWI has: (i) been the subject of any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority; (ii) entered into a settlement agreement with a Canadian securities regulatory authority; or (iii) been subject to any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor making an investment decision.
13. In June 2000, the Commission issued a cease trade order against certain management shareholders of Golden Maritime Resources Ltd., including Mr. Hans-Jörg Hundergerland, an EWI director, in connection with its failure to file annual and interim financial statements. As the financial statements were never filed, the Commission subsequently ordered in July 2000 that all trading in securities of Golden Maritime Resources Ltd. cease. The orders remain in effect. Mr. Hundergerland was Chairman of the board of Golden Maritime Resources Ltd. at the time the cease trade orders were issued. Mr. Hundergerland has since resigned as a director of EWI.

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

**IT IS HEREBY ORDERED** pursuant to subsection 83.1(1) of the Act that EWI be deemed a reporting issuer for the purpose of the Act.

December 9, 2003.

"Iva Vranic"

## 2.3 Rulings

### 2.3.1 Mr. Zelick Goldstein and 2012413 Ontario Inc. - s. 9.1 of OSC Rule 61-501

#### Headnote

Rule 61-501 – going private transactions – severance payment and non-compete fee payable to a principal shareholder of issuer made for reasons other than to increase the value of the consideration paid to the shareholder under proposed going private transaction – payments not conditional on support of transaction and reasonably consistent with customary industry practice – full particulars of payments to be disclosed in disclosure document sent to shareholders in connection with meeting to approve transaction – principal shareholder permitted to vote that number of common shares that is equal to ten percent of the issued and outstanding common shares of the issuer – number of common shares permitted to be voted approximately twenty-five percent of eligible minority vote.

#### Applicable Ontario Rules

Rule 61-501 - Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions, ss. 4.7, 4.8 and 9.1.

#### IN THE MATTER OF ONTARIO SECURITIES COMMISSION RULE 61-501 ("Rule 61-501")

#### AND

#### IN THE MATTER OF MR. ZELICK GOLDSTEIN AND 2012413 ONTARIO INC.

#### RULING (Section 9.1 of Rule 61-501)

**UPON** the application (the "Application") of Mr. Zelick Goldstein ("Goldstein") and 2012413 Ontario Inc. ("Acquisitionco") (collectively, the "Applicants") to the Director for a decision pursuant to section 9.1 of Rule 61-501 that Mr. Hyman Himmel ("Himmel") be permitted to vote up to that number of common shares (the "Common Shares") of Hy & Zel's Inc. ("Hy & Zel's") that is equal to 10% of the issued and outstanding Common Shares as part of the minority vote required in connection with the going private transaction of Hy & Zel's (the "Transaction") notwithstanding the severance arrangement (the "Severance Arrangement") pursuant to which Himmel will receive a cash payment in connection with the Transaction;

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

**AND UPON** the Applicants having represented to the Director as follows:

1. Hy & Zel's operates a chain of 17 stores in Southern Ontario, which sell drug store products as well as grocery and general merchandise.
2. Hy & Zel's was incorporated by Letters Patent issued April 1, 1963 pursuant to the *Corporations Act* (Ontario), and is governed by the provisions of the *Business Corporations Act* (Ontario) ("OBCA"). By Articles of Amendment dated August 25, 1986, Hy & Zel's amended its share capital to its present authorized and issued share capital and changed its name to its current name.
3. Hy & Zel's has two wholly-owned subsidiaries, The Warehouse Drug Store Ltd. ("Warehouse"), a corporation incorporated under the OBCA, and 3608751 Canada Inc.
4. The authorized capital of Hy & Zel's consists of an unlimited number of Common Shares. As at the date hereof, 2,900,100 Common Shares are issued and outstanding. Hy & Zel's Common Shares are listed on the Toronto Stock Exchange.
5. Goldstein is a senior executive of Hy & Zel's and has been a director of Hy & Zel's since 1963. Goldstein owns or controls 1,054,200 Common Shares, representing approximately 36.4% of the issued and outstanding Common Shares.
6. Acquisitionco was incorporated under the OBCA for the purpose of completing the Transaction and is controlled by Goldstein.
7. Himmel was a senior executive of Hy & Zel's for the past 22 years and has been a director of the Hy & Zel's since 1963.
8. Himmel owns or controls 1,000,000 Common Shares representing approximately 34.5% of the issued and outstanding Common Shares.
9. On December 20, 2002, Goldstein proposed the Transaction to the Hy & Zel's board of directors (the "Board"). Pursuant to the proposal, the Transaction would be completed by the amalgamation of Acquisitionco and Hy & Zel's under the OBCA pursuant to which the shareholders of Hy & Zel's (the "Shareholders") would receive, directly or indirectly cash consideration of \$2.25 in exchange for each of their Common Shares.
10. An independent committee (the "Independent Committee") of the Board was formed to review the proposed Transaction and to make a recommendation to the board of directors of Hy & Zel's and the Shareholders.
11. The Transaction would constitute a "going private transaction" under Rule 61-501 and will be subject to the formal valuation and minority approval requirements of Rule 61-501.

12. On December 20, 2002, Himmel entered into a shareholder support agreement (the "Original Support Agreement") with the Applicants pursuant to which Himmel agreed to support the Transaction and to vote the 1,000,000 Common Shares owned or controlled by him in favour of the Transaction. The Original Support Agreement expired on May 31, 2003.
13. On June 6, 2003, Warehouse and Himmel entered into a retirement agreement pursuant to which Himmel retired as an employee of Warehouse and resigned as an officer of Hy & Zel's and its subsidiaries and Warehouse agreed to pay Himmel a retiring allowance in the aggregate amount of \$600,000 (the "Retiring Allowance").
14. In October, 2003, Capital Canada Ltd. ("Capital Canada") delivered the results of its valuation report to the Independent Committee. In the opinion of Capital Canada, based on the scope of its review and subject to the qualifications and assumptions set out in its valuation report, the fair market value of the Common Shares is in the range of \$2.13 to \$3.14 per Common Share as of August 12, 2003. Capital Canada further opined that the Transaction is fair, from a financial point of view, to the minority Shareholders of Hy & Zel's.
15. The Independent Committee has concluded that the Transaction is fair, from a financial point of view, to the minority Shareholders of Hy & Zel's and has concluded that the Board of Directors of Hy & Zel's should recommend that the minority Shareholders of Hy & Zel's vote to approve the Transaction.
16. On October 4, 2003, Himmel entered in a new shareholder support agreement (the "New Support Agreement") with the Applicants pursuant to which Himmel has agreed to support the Transaction and to vote the 1,000,000 Common Shares owned or controlled by him in favour of the Transaction.
17. In addition to the Retiring Allowance, Himmel is to receive a further amount of \$250,000 upon successful completion of the Transaction as consideration for entering into a non-competition agreement (the "Non-Compete Fee"). The Retiring Allowance and the Non-Compete Fee are collectively referred to as the "Severance Arrangement".
18. The Severance Arrangement was negotiated in December 2002 as a lump sum payment of \$850,000.
19. Himmel is an interested party within the meaning of Rule 61-501 because he will receive a cash payment under the Severance Arrangement that will not be offered to any other Shareholder. Therefore, Himmel's Common Shares are excluded, under Rule 61-501, from the minority Shareholder vote required to approve the Transaction.
20. The Severance Arrangement was made on commercially reasonable terms and the amount payable to Himmel is substantially similar to the amount that Himmel would otherwise be entitled to at common law.
21. The amount to be received by Himmel under the Severance Arrangement is reasonably consistent with customary industry practice.
22. The Severance Arrangement is the result of agreement reached between Goldstein and Himmel. Goldstein wishes to take Hy & Zel's private and carry on the business without his partner in business of almost 40 years and Himmel was not prepared to agree to the termination of his employment without receiving reasonable compensation for his years of service in addition to receiving reasonable value for his equity investment.
23. The Severance Arrangement was offered for business reasons unrelated to Himmel's holdings of Common Shares and not for the purpose of conferring a benefit to Himmel that the other Shareholders do not enjoy or to increase the value of consideration to be paid to Himmel for his Common Shares.
24. The Severance Arrangement is not conditional on Himmel's support of the Transaction.
25. Goldstein's Common Shares are excluded from the minority vote. Since Goldstein holds approximately 36.4% of the Common Shares and Himmel holds approximately 34.5% of the Common Shares, if Himmel is permitted to vote 10% of the Common Shares owned or controlled by him, his vote would represent approximately 25% of the eligible minority vote.
26. In his capacity as a Shareholder, Himmel is being treated identically to the other Shareholders.
27. Full particulars of the benefit to be received by Himmel will be disclosed in any disclosure document that will be sent to security holders in connection with the Transaction.

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

**IT IS DECIDED** pursuant to section 9.1 of Rule 61-501 that, notwithstanding the Severance Arrangement pursuant to which Himmel will receive a cash payment in connection with the Transaction, Himmel is permitted to vote up to that number of Common Shares that is equal to 10% of the issued and outstanding Common Shares as part of the minority vote required in connection with the

Transaction, provided that the Applicants and Hy & Zel's comply with the other applicable provisions of Rule 61-501.

November 14, 2003.

"Ralph Shay"



## Chapter 4

# Cease Trading Orders

### 4.1.1 Temporary, Extending & Rescinding Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Extending Order	Date of Lapse/Revoke
701 Media Group Inc.	04 Dec 03	16 Dec 03		
Communicorp Corporation	05 Dec 03	17 Dec 03		
HNR Ventures Inc.	09 Dec 03	19 Dec 03		
Medical Services International Inc.	25 Nov 03	05 Dec 03	05 Dec 03	
Teddy Bear Valley Mines, Limited	04 Dec 03	16 Dec 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
Atlas Cold Storage Income Trust	02 Dec 03	15 Dec 03			
National Construction Inc.	25 Jul 03	07 Aug 03	07 Aug 03	05 Dec 03	
RTICA Corporation	21 Oct 03	03 Nov 03	03 Nov 03		
Saturn (Solutions) Inc.	21 Oct 03	03 Nov 03	03 Nov 03		

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## **Chapter 7**

# **Insider Reporting**

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

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

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

## Chapter 8

# Notice of Exempt Financings

### Exempt Financings

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

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

<u>Transaction Date</u>	<u>Purchaser</u>	<u>Security</u>	<u>Total Purchase Price (\$)</u>	<u>Number of Securities</u>
25-Jun-2003	N/A	2001656 Ontario Limited - Common Shares	250,000.00	250,000.00
24-Nov-2003	5 Purchasers	4125452 Canada Limited - Preferred Shares	26,180,735.00	19,317,064.00
17-Nov-2003	Terry-Lynne Jewell	Acuity Pooled Canadian Equity Fund - Trust Units	63,714.64	2,912.00
17-Nov-2003	Elzo De Haan	Acuity Pooled Conservative Asset Allocation - Trust Units	150,000.00	9,593.00
20-Nov-2003 to 21-Nov-2003	6 Purchasers	Acuity Pooled High Income Fund - Trust Units	700,000.00	40,929.00
16-Nov-2003	Royal Bank of Canada	Aligo, Inc. - Shares	1,805,726.76	6,720,807.00
20-Nov-2003	20 Purchasers	Ashton Mining of Canada Inc. - Units	3,164,500.50	2,109,667.00
01-Dec-2003	Royal Bank of Canada	Axia Offshore Partners Ltd. - Shares	1,000,000.00	1,000.00
21-Nov-2003	12 Purchasers	bcMetals Corporation - Common Shares	4,250,000.00	2,833,334.00
20-Nov-2003	Kinross Gold Corporation	Beaufield Consolidated Resources Inc. - Common Shares	400,000.00	2,000,000.00
04-Nov-2003	Mandeville Financial Services Limited;Portland Holdings Inc.	Berkshire-TWC Financial Group Inc. - Common Shares	12,000,000.00	239,829.00
19-Nov-2003	6 Purchasers	Bioteq Environmental Technologies Inc. - Units	82,250.00	117,500.00
07-Nov-2003	Barry Schneider	BPI Global Opportunites III Fund - Units	130,023.98	1,384.00
07-Nov-2003	Mirko Michael Kadlec	BPI Global Opportunites III Fund - Units	128,446.40	1,294.00

**Notice of Exempt Financings**

14-Nov-2003	Jan Van Velzen	BPI Global Opportunites III Fund - Units	32,233.40	348.00
24-Nov-2003	Argosy Securities Inc.	Canadian Golden Dragon Resources Ltd. - Common Shares	6,000.00	42,857.00
04-Nov-2003	8 Purchasers	Canadian Golden Dragon Resources Ltd. - Units	66,799.95	445,333.00
14-Nov-2003	Chartwell Care Corporation	Chartwell Master Care LP - Limited Partnership Units	20,000,000.00	2,000,000.00
14-Nov-2003	Chartwell Seed Capital Limited Partnership	Chartwell Seniors Housing Real Estate Investment Trust - Units	1,400,000.00	140,000.00
28-Nov-2003	Gary Weinberg and Tim Davis	Chartwell Seniors Housing Real Estate Investment Trust - Units	783,000.00	78,300.00
25-Nov-2003	STARS Trust	CIT Canadian VFN Trust - Note	143,507,471.41	1.00
25-Nov-2003	Plaza Trust	CIT Canadian VFN Trust - Note	71,753,735.71	1.00
30-Sep-2003	LEAF Trust	CIT Canadian VFN Trust - Note	211,173,697.63	1.00
17-Nov-2003	4 Purchasers	Coast Mountain Power Corp. - Common Shares	50,000.00	27,778.00
25-Nov-2003	Michael de la Roche	Consolidated Odyssey Exploration Inc. - Units	5,000.00	50,000.00
12-Nov-2003	Creemore Valley Holdings Inc.	Consolidated Ventures Holdings Ltd. - Units	10,000.00	100,000.00
28-Nov-2003	Rod Baker	Creation Casinos Inc. - Units	100,000.00	400,000.00
21-Nov-2003	Orion Securities Inc.	Crystallex International Corporation - Common Shares	167,000.00	50,000.00
02-Dec-2003	MRF 2003 II Resource Limited Partnership	Drumlin Energy Corp. - Flow-Through Shares	504,000.00	240,000.00
21-Nov-2003	10 Purchasers	e-Witness Inc. - Common Shares	1,000,000.00	2,857,000.00
19-Nov-2003	Stephen Meldrum; Susan Melrum	Energy Visions Inc. - Warrants	20,000.00	12,000.00
15-Oct-2003	MDS INC.	EVOLVED DIGITAL SYSTEMS INC. - Common Shares	0.00	9,926,747.00
18-Nov-2003	Floyd Business Inc.	Excalibur Limited Partnership - Limited Partnership Units	1,302,300.00	54,989.00
27-Nov-2003	4 Purchasers	Excalibur Limited Partnership - Limited Partnership Units	3,826,777.50	16.00
28-Nov-2003	3 Purchasers	Falls Management Company - Notes	26,000,000.00	3.00
28-Nov-2003	31 Purchasers	Fortune Minerals Limited - Units	3,772,750.00	2,946,000.00
28-Nov-2003	4 Purchasers	Fuel Cell Technologies Corporation - Common Shares	1,645,965.63	2,887,659.00

**Notice of Exempt Financings**

26-Nov-2003	41 Purchasers	Glencairn Gold Corporation - Common Shares	5,675,450.00	6,677,000.00
03-Dec-2003	4 Purchasers	Great Northern Exploration Ltd. - Common Shares	5,142,500.00	935,000.00
10-Nov-2003	Wilmot L. Matthews; Chiefswood Holdings Limited	Helpttrain Inc. - Common Shares	400,000.00	200,000.00
25-Nov-2003	3 Purchasers	HILTON PETROLEUM LTD. - Units	10,000.00	100,000.00
14-Nov-2003	Cinram International Inc.	HSBC US Dollar Liquidity Fund - Units	2,607,600.00	2,000,000.00
04-Nov-2003	Cinram International Inc.	HSBC US Dollar Liquidity Fund - Units	2,664,000.00	2,000,000.00
21-Nov-2003 to 25-Nov-2003	7 Purchasers	IMAGIN Diagnostics, Inc. - Common Shares	40,800.00	40,800.00
26-Nov-2003 to 03-Dec-2003	5 Purchasers	IMAGIN Diagnostics, Inc. - Common Shares	24,500.00	24,500.00
28-Nov-2003	Jim Flindall	KBSH - Income Trust Fund - Units	66,300.00	6,483.00
25-Nov-2003	Blackburn Holdings Limited	KBSH Private - Balanced Fund - Units	250,000.00	26,085.00
26-Nov-2003	3 Purchasers	KERMODE RESOURCES LTD. - Common Shares	609,000.00	2,075,500.00
26-Nov-2003	Blackboard Ventures Inc.	Kodiak Venture Partners III, L.P. - Limited Partnership Interest	10,000,000.00	1.00
07-Nov-2003	3 Purchasers	Landmark Global Opportunities Fund - Units	170,000.00	1,289.00
14-Nov-2003	Brenda Benedet; Pescara Fund of Funds	Landmark Global Opportunities Fund - Units	157,565.61	1,209.00
07-Nov-2003	Jerry P. Lenders	Landmark Global Opportunities RSP Fund - Units	25,000.00	205.00
04-Nov-2003	AIC Limited	Mandeville Financial Services Ltd. - Common Shares	6,679,372.00	133,492.00
02-Dec-2003	Merrill Lynch Canada Inc.	Merrill Lynch Financial Assets Inc. - Certificates	21,501,132.00	248,089,225.00
02-Dec-2003	RBC Dominion Securities Inc.	Merrill Lynch Financial Assets Inc. - Certificates	11,993,562.73	270,859,225.00
02-Dec-2003	RFA Capital Management Inc.	Merrill Lynch Financial Assets Inc. - Certificates	0.00	1.00
02-Dec-2003	5 Purchasers	Merrill Lynch Financial Assets Inc. - Certificates	2,748,005.06	3,679,000.00

**Notice of Exempt Financings**

02-Dec-2003	6 Purchasers	Merrill Lynch Financial Assets Inc. - Certificates	6,759,584.88	10,210,225.00
28-Nov-2003	Robert Michael Jones	Microsource Online, Inc. - Common Shares	1,200.00	200.00
17-Nov-2003	17 Purchasers	Mint Inc. - Units	991,099.50	490,126.00
01-Dec-2003	Pescara Fund of funds Beryl Hanna	MMCAP Limited Partnership Fund - Limited Partnership Units	525,000.00	525.00
01-Apr-2003 to 01-Oct-2003	1436244 Ontario Limited	Morgan Stanley Liquid Market Fund I LP - Limited Partnership Interest	1,250,000.00	1.00
28-Nov-2003	CMP 2003 Resources Limited Partnership	Murgor Resources Inc. - Units	250,000.00	2,500,000.00
21-Nov-2003	Thomas Patrick Blain	NETISTIX TECHNOLOGIES CORPORATION - Common Shares	200,000.00	400,000.00
26-Nov-2003	3 Purchasers	North American Energy Partners Inc. - Notes	5,212,000.00	4,000.00
20-Nov-2003	Albert Buell Canada Limited Partnership	Northam Real Estate Investment Fund VI, L.P. - Units	5,000,000.00	5,000.00
28-Nov-2003	Ed Massel Dorothy Samuel	O'Donnell Emerging Companies Fund - Units	50,000.00	6,626.00
02-Oct-2003	Ontario Teachers' Pension Plan Board	Octave-1, Ltd - Shares	6,691,021.99	500.00
01-Dec-2003	Daniel Bernier	Oxford Software Developers Inc. - Common Shares	500.00	500.00
21-Nov-2003	28 Purchasers	Ozz Corporation - Units	6,986,412.00	6,986,412.00
19-Nov-2003	Dave Watson; Jim St. James	Pacific Tiger Energy Inc. - Units	33,000.00	110,000.00
20-Nov-2003	23 Purchasers	Passion Media Inc. - Units	1,000,000.00	6,666,667.00
25-Nov-2003	Richmont Mines Inc.	Patricia Mining Corp. - Flow-Through Shares	1,000,000.00	2,000,000.00
28-Nov-2003	Michael Orser	Penetanguishene-Huronina Bingo, Inc. - Options	325,000.00	66,666.00
18-Sep-2003	Christina Cheng	Poly-Pacific International Inc. - Convertible Debenture	15,000.00	1.00
24-Nov-2003	6 Purchasers	POPLAR RESOURCES LTD. - Units	1,150,000.00	14,375,000.00
24-Nov-2003	Christine Kah-Ying Tan	POPLAR RESOURCES LTD. - Units	3,600.00	45,000.00
17-Nov-2003	23 Purchasers	QI Systems Inc. - Units	301,543.00	869,000.00
20-Nov-2003	Aumerco Limited Myrna Mason	Quincy Resources Inc. - Common Shares	63,672.00	181,920.00

**Notice of Exempt Financings**

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	71 Purchasers	Qwest Energy RSP/Flow-Through Financial Corp. - Limited Partnership Units	7,936,500.00	317,460.00
01-Dec-2003	Brian Beckwermert	Ravenwood Energy Corp. - Common Shares	225,000.00	150,000.00
31-Oct-2003	Absolute Return Concepts Fund	RBC Asset Management - Units	177,000.00	1,595.00
01-Dec-2003	Endiang Holdings Inc.	River Oaks Financial Fund LP - Limited Partnership Interest	1,302,997.37	1.00
25-Nov-2003	Shell Canada Pension Fund	Rocket Trust - Note	6,565,500.00	1.00
28-Nov-2003	30 Purchasers	Sawtooth International Resources Inc. - Common Shares	437,300.00	1,082,000.00
01-Dec-2003	6 Purchasers	Sidetrack Technologies Inc. - Units	84,150.00	15,300.00
10-Nov-2003	Mosaic Capital Partners	Signature Health Partners Inc. - Common Shares	655,300.00	8,333,333.00
24-Nov-2003	J.L. Albright III Venture Fund	SIRIT Technologies Inc. - Common Shares	2,919,806.10	9,732,687.00
25-Nov-2003	Owen McCreery	South American Gold and Copper Company Limited - Units	999,999.98	14,285,714.00
27-Nov-2003	29 Purchasers	South American Gold and Copper Company Limited - Units	1,729,000.00	24,671,430.00
27-Nov-2003	32 Purchasers	Southern Star Resources Inc. - Common Shares	1,595,000.00	3,190,000.00
05-Dec-2003	Terry MacGibbon Canada Dominion Resources LP XII	Southern Star Resources Inc. - Common Shares	525,000.00	1,050,000.00
26-Nov-2003	Interward Capital Corporation	Sparton Resources Inc. - Special Warrants	70,000.00	100,000.00
21-Nov-2003	3 Purchasers	SpectrumGold Inc. - Common Shares	1,906,500.00	615,000.00
20-Nov-2003	15 Purchasers	St. Jude Resources Ltd. - Units	8,520,400.00	4,260,200.00
30-Nov-2003	1200439 Ontario Inc. and Hugh M. Brown	TD Harbour Capital Balanced Fund - Trust Units	870,000.00	8,299.00
24-Nov-2003	EquiGenesis 2003 Preferred Investment LP	Trafalgar 2003 Limited - Units	1,368,960.00	1,368,960.00
27-Nov-2003	Canadian Amateur Wrestling Association	Trafalgar Trading Limited - Units	25,000,000.00	25,000,000.00



**Notice of Exempt Financings**

19-Nov-2003	Little League Baseball Canada	Trafalgar Trading Limited - Units	50,000.00	50,000.00
19-Nov-2003	Canadian Lacrosse Association	Trafalgar Trading Limited - Units	50,000.00	50,000.00
19-Nov-2003	Henvey Inlet First Nation Community Support Organization	Trafalgar Trading Limited - Units	200,000.00	200,000.00
31-Oct-2003	Mariposa Capital Inc.	Trez Capital Corporation - Mortgage	250,000.00	250,000.00
19-Nov-2003	10 Purchasers	Trigon Exploration Canada Ltd. - Units	402,000.00	1,675,000.00
24-Nov-2003	Canadian Lacrosse Association	TTL 2003 Limited - Units	862,884.00	862,884.00
24-Nov-2003	Henvey Inlet First Nation Community Support Organization	TTL 2003 Limited - Units	1,395,900.00	1,395,900.00
28-Oct-2003	G. Mark Curry	Uroteq Inc. - Common Shares	20,000.00	30,770.00
28-Oct-2003	G. Mark Curry	Uroteq Inc. - Units	350,000.00	538,461.00
25-Nov-2003	3 Purchasers	Vault Minerals Inc. - Common Shares	269,474.80	769,928.00
28-Nov-2003	8 Purchasers	Verena Minerals Corporation - Units	291,449.25	1,942,995.00
24-Nov-2003 to 28-Nov-2003	4 Purchasers	Villacare Retirement (2003) Limited Partnership - Limited Partnership Units	610,000.00	5.00
25-Nov-2003	6 Purchasers	Virginia Gold Mines Inc. - Units	1,657,500.00	1,105,000.00
21-Nov-2003	XML-Global Technologies;Inc.	Xenos Group Inc. - Common Shares	2,230,000.00	1,000,000.00

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

<u>Transaction Date</u>	<u>Seller</u>	<u>Security</u>	<u>Total Selling Price</u>	<u>Number of Securities</u>
27-Nov-2003	LH Enterprises Company	Crowflight Minerals Inc. - Common Shares	\$46,925.00	57,500.00
25-Nov-2003 to 28-Nov-2003	Canadian Medical Discoveries Fund	Ecopia BioSciences Inc. - Units	\$422,324.00	400,300.00

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

<u><b>Seller</b></u>	<u><b>Security</b></u>	<u><b>Number of Securities</b></u>
Douglas O. Vandekerkhove	ACD Systems International Inc. - Common Shares	60,000.00
Arnold T. Kondrat	BRC Development Corporation - Common Shares	400,000.00
John Buhler	Buhler Industries Inc. - Common Shares	772,100.00
Tamisuke Matsufji	Cambior Inc. - Common Shares	10,989,011.00
Chengfeng Zhou	China Ventures Inc. - Common Shares	7,874,000.00
John H. Kruzick	DRC Resoures Corporation - Common Shares	404,900.00
Glen R. Estill	EMJ Data Systems Ltd. - Common Shares	2,667.00
Hector Davila Santos	First Silver Reserve Inc. - Common Shares	635,000.00
Victor D'Souza	Imperial Plastech Inc. - Common Shares	4,145,233.00
Victor D'Souza	Imperial Plastech Inc. - Common Shares	4,070,233.00
Global Communications Limited	Medbroadcast Corporation - Common Shares	4,895,833.00
ONCAN Canadian Holdings Ltd.	Onex Corporation - Shares	999,900.00
Michael J. Shields	WFI Industries Ltd. - Common Shares	100,000.00
Timothy E. Shields	WFI Industries Ltd. - Common Shares	100,000.00
James R. Shields	WFI Industries Ltd. - Common Shares	100,000.00
Patricia A. Shields	WFI Industries Ltd. - Common Shares	100,000.00

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## Chapter 11

# IPOs, New Issues and Secondary Financings

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**Issuer Name:**

Baytex Energy Trust  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated November 27, 2003  
Mutual Reliance Review System Receipt dated November 27, 2003

**Offering Price and Description:**

\$55,000,000.00 - 5,500,000 Trust Units - Price: \$ 10.00 per Trust Unit

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

TD Securities Inc.  
BMO Nesbitt Burns Inc.  
National Bank Financial Inc.  
RBC Dominion Securities Inc.  
CIBC World Markets Inc.  
Peter & Co. Limited  
Raymond James Ltd.

**Promoter(s):**

-

**Project #593751**

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**Issuer Name:**

Desjardins Enhanced Bond Fund  
Desjardins CI Canadian Investment Fund  
Desjardins Fidelity True North (R) Fund  
Desjardins Fidelity Canadian Growth Company Fund  
Desjardins American Equity Value Fund  
Desjardins CI Value Trust Sector Fund  
Desjardins CI Value Trust RSP Fund  
Desjardins Fidelity Small Cap America Fund  
Desjardins Fidelity Small Cap America RSP Fund  
Desjardins Overseas Equity Value RSP Fund  
Desjardins Fidelity International Portfolio Fund  
Desjardins Fidelity International Portfolio RSP Fund  
Desjardins Alternative Investments Fund  
Principal Regulator - Quebec

**Type and Date:**

Preliminary Simplified Prospectuses dated November 20, 2003  
Mutual Reliance Review System Receipt dated November 28, 2003

**Offering Price and Description:**

-

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

Desjardins Trust Investment Services Inc.  
Desjardins Trust Inc.  
Desjardins Trust Investments Services Inc.

**Promoter(s):**

-

**Project #590981**

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**Issuer Name:**

ENBRIDGE GAS DISTRIBUTION INC.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Shelf Prospectus dated November 24, 2003  
Mutual Reliance Review System Receipt dated November 26, 2003

**Offering Price and Description:**

\$600,000,000.00 - MEDIUM TERM NOTES (UNSECURED)

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

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

**Promoter(s):**

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**Project #592381**

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**Issuer Name:**

Explorer Flow-Through Limited Partnership  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated December 2, 2003  
Mutual Reliance Review System Receipt dated December 2, 2003

**Offering Price and Description:**

\$15,000,000 (maximum) - (maximum - 600,000 Units)  
\$3,000,000 (minimum) - (minimum - 120,000 Units)

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

-

**Promoter(s):**

Explorer Management Limited  
**Project #595869**

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**Issuer Name:**

Guyana Goldfields Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated November 27, 2003  
Mutual Reliance Review System Receipt dated November 28, 2003

**Offering Price and Description:**

7,333,333 Special Warrant Shares and 3,666,669 Share Purchase Warrants  
issuable upon the exercise of 7,333,333 previously issued Special Warrants

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

Canaccord Capital Corporation

**Promoter(s):**

-

**Project #593611**

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**Issuer Name:**

Intrawest Corporation  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Prospectus dated December 1, 2003  
Mutual Reliance Review System Receipt dated December 1, 2003

**Offering Price and Description:**

US\$350,000,000.00 - 7.50% Senior Exchange Notes due to October 15, 2013

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

-

**Promoter(s):**

-

**Project #595515**

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**Issuer Name:**

Minefinders Corporation Ltd  
Principal Regulator - British Columbia

**Type and Date:**

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

**Offering Price and Description:**

\$33,000,000.00 - 3,000,000 Common Shares Price:  
\$11.00 per Common Share

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

BMO Nesbitt Burns Inc.  
Griffiths McBurney & Partners  
Salman Partners Inc.  
Orion Securities Inc.

**Promoter(s):**

-

**Project #592899**

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**Issuer Name:**

Northwestern Mineral Ventures Inc.

**Type and Date:**

Preliminary Prospectus dated November 28, 2003  
Receipted on November 28, 2003

**Offering Price and Description:**

Minimum of 8,000,000 Common Shares and  
Maximum of 15,000,000 Common Shares  
and  
2,000,000 Common Shares issuable upon the exercise of  
2,000,000 previously issued Special Warrants

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

Dominick & Dominick Securities Inc.

**Promoter(s):**

-

**Project #594110**

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**Issuer Name:**

Ore-Leave Capital Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated November 26, 2003  
Mutual Reliance Review System Receipt dated November 28, 2003

**Offering Price and Description:**

\* Units Price: \$ \* per Unit and 13,740,000 Common  
Shares and 13,740,000 Common Share Purchase  
Warrants Issuable Upon the Exercise of previously issued  
Special Warrants

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

CTI Capital Inc.

**Promoter(s):**

Dino Titaro

**Project #593647**

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**Issuer Name:**

RBC Canadian Short-Term Income Fund  
RBC Canadian Money Market Fund  
RBC Bond Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectuses and Annual  
Information Forms dated November 28, 2003  
Mutual Reliance Review System Receipt dated December 2, 2003

**Offering Price and Description:**

Offering Advisor Series units

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

RBC Asset Management Inc.

**Promoter(s):**

The Royal Trust Company

**Project #595885**

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**Issuer Name:**

TERASEN GAS INC.  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Shelf Prospectus dated December 1, 2003  
Mutual Reliance Review System Receipt dated December 1, 2003

**Offering Price and Description:**

\$700,000,000.00 - Medium Term Note Debentures

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

-

**Promoter(s):**

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

**Project #595728**

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**Issuer Name:**

TERASEN INC.  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Shelf Prospectus dated December 1, 2003  
Mutual Reliance Review System Receipt dated December 1, 2003

**Offering Price and Description:**

\$800,000,000.00 - Debentures (unsecured) Subordinated Debt Securities (unsecured)

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

-

**Promoter(s):**

-

**Project #595696**

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**Issuer Name:**

Vitrin Corporation Inc.  
Principal Regulator - Ontario

**Type and Date:**

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

**Offering Price and Description:**

\$ \* - 2,000,000 Class A Voting Shares Price: \$ \* per Share

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

Orion Securities Inc.  
Paradigm Capital Inc.

**Promoter(s):**

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**Project #592575**

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**Issuer Name:**

Woodruff Capital Management Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary CPC Prospectus dated November 28, 2003  
Mutual Reliance Review System Receipt dated November 28, 2003

**Offering Price and Description:**

\$300,000.00 - 2,000,000 Common Shares - Price: \$0.15 per Common Share

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

Haywood Securities Inc.

**Promoter(s):**

Mark Goodman  
Daniel Goodman

**Project #594296**

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**Issuer Name:**

Acuity Growth & Income Trust  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated November 27, 2003  
Mutual Reliance Review System Receipt dated November 28, 2003

**Offering Price and Description:**

Maximum \$150,000,000 (15,000,000 Units @ \$10 per Unit)  
Minimum \$40,000,000 (4,000,000 Units @ \$10 per Unit)

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

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

**Promoter(s):**

Acuity Funds Ltd.

**Project #582841**

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**Issuer Name:**

AltaLink, L.P.  
Principal Regulator - Alberta

**Type and Date:**

Final Short Form Prospectus dated December 2, 2003  
Mutual Reliance Review System Receipt dated December 2, 2003

**Offering Price and Description:**

\$125,000,000.00 - 5.43% Senior Bonds, Series 03-2, due June 5, 2013 - Price: 101.049% per Series 03-2 Bond

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

Scotia Capital Inc.  
TD Securities Inc.

**Promoter(s):**

-

**Project #592155**

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**Issuer Name:**

Asia Gold Corp.  
Principal Regulator - British Columbia

**Type and Date:**

Final Prospectus dated November 28, 2003  
Mutual Reliance Review System Receipt dated December 1, 2003

**Offering Price and Description:**

Minimum 4,000,000 Common Shares (\$12,000,000)  
Maximum 5,000,000 Common Shares (\$15,000,000)  
@\$3.00 per Common Share

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

Salman Partners Inc.  
Dundee Securities Corporation

**Promoter(s):**

Ivanhoe Mines Ltd.  
David C. Owens

**Project #583501**

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**Issuer Name:**

Canada Dominion Resources Limited Partnership XII  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated November 24, 2003  
Mutual Reliance Review System Receipt dated November 26, 2003

**Offering Price and Description:**

\$20,000,000 Maximum Offering (800,000 Units @ \$25.00 Per Unit)

**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**

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**Issuer Name:**

Clarington Corporation  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated December 1, 2003  
Mutual Reliance Review System Receipt dated December 2, 2003

**Offering Price and Description:**

\$67,636,647.00 - 5,010,122 Common Shares - Price: \$13.50 per Common Share

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

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

**Promoter(s):**

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**Project #584254**

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**Issuer Name:**

Cyclical Split NT Corp.  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated November 27, 2003  
Mutual Reliance Review System Receipt dated November 28, 2003

**Offering Price and Description:**

945,000 Preferred Shares @\$25 per Preferred Share = \$23,625,000  
945,000 Capital Shares @ \$25.95 per Capital Share = \$24,522,750

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

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

**Promoter(s):**

BMO Nesbitt Burns Inc.  
**Project #583203**

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**Issuer Name:**

Dimethaid Research Inc.  
Principal Regulator - Ontario

**Type and Date:**

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

**Offering Price and Description:**

14,377,688 Common Shares Issuable Upon Exercise of  
14,377,688 Special Warrants @ \$1/Special Warrant

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

Paradigm Capital Inc.

**Promoter(s):**

-

**Project #587598**

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**Issuer Name:**

Diversified Preferred Share Trust  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated November 25, 2003  
Mutual Reliance Review System Receipt dated November 26, 2003

**Offering Price and Description:**

Maximum \$150,000,000 (6,000,000 Units @ \$25 per Unit)  
Minimum \$75,000,000 (3,000,000 Units @ \$25 per Unit)

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

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

**Promoter(s):**

RBC Dominion Securities Inc.

**Project #580959**

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**Issuer Name:**

GMP Capital Corp.  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated November 26, 2003  
Mutual Reliance Review System Receipt dated November 27, 2003

**Offering Price and Description:**

\$100,100,000.00 - 9,100,000 Common Shares @\$11.00  
per Common Share

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

CIBC World Markets Inc.  
Griffiths McBurney & Partners  
BMO Nesbitt Burns Inc.  
Dundee Securities Corporation  
Canaccord Capital Corporation  
Haywood Securities Inc.  
McFarlane Gordon Inc.  
Sprott Securities Inc.

**Promoter(s):**

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**Project #582329**

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**Issuer Name:**

GrowthWorks WV Canadian Fund Inc. (formerly Working  
Ventures Canadian Fund Inc.)  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated November 27, 2003  
Mutual Reliance Review System Receipt dated November 28, 2003

**Offering Price and Description:**

Class A Shares

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

GrowthWorks (WVIS) Ltd.

**Promoter(s):**

-

**Project #587888**

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**Issuer Name:**

High Yield & Mortgage Plus Trust  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated November 28, 2003  
Mutual Reliance Review System Receipt dated November 28, 2003

**Offering Price and Description:**

Maximum \$100,000,000 (4,000,000 Units @ \$25 per Unit)  
Minimum \$25,000,000 (1,000,000 Units @ \$25 per Unit)

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

CIBC World Markets Inc.  
TD Securities Inc.

**Promoter(s):**

Skylon Capital Corp.

**Project #585572**



**Issuer Name:**

H&R Real Estate Investment Trust  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated November 27, 2003  
Mutual Reliance Review System Receipt dated November 27, 2003

**Offering Price and Description:**

\$110,050,000.00 - 7,100,000 Units@\$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:**

IA Canadian Conservative Equity Fund  
IA Canadian Core Equity Fund  
IA Canadian Balanced Fund  
IA Canadian Bond Fund  
IA Canadian Money Market Fund  
IA Credit Suisse Global Equity Fund  
IA Crystal Enhanced Index America Fund  
IA Crystal Enhanced Index World Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated December 1, 2003  
Mutual Reliance Review System Receipt dated December 2, 2003

**Offering Price and Description:**

Mutual Fund Units, Class A Units and Class F Units

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

-

**Promoter(s):**

Industrial Alliance Mutual Funds Limited

**Project #584910**

**Issuer Name:**

MDC Corporation Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus (NI 44-101) dated December 1, 2003  
Mutual Reliance Review System Receipt dated December 1, 2003

**Offering Price and Description:**

\$29,750,000.00 - 3,400,000 Adjustable Rate Exchangeable Securities due December 31, 2028 (\$8.75 principal amount per Exchangeable Security) Exchangeable into Units of

**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:**

Final Short Form Prospectus (NI 44-101) dated November 28, 2003  
Mutual Reliance Review System Receipt dated December 1, 2003

**Offering Price and Description:**

\$458,748,000 (Approximate)  
\$119,755,000 principal amount of 4.463% Class A-1 Bonds, due January 15, 2008  
\$228,469,000 principal amount of 5.300% Class A-2 Bonds, due December 15, 2012  
\$47,632,000 principal amount of 5.641% Class B Bonds, due December 15, 2012  
\$31,446,000 principal amount of 6.107% Class C Bonds, due December 15, 2012  
\$31,446,000 principal amount of 6.700% 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**

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**Issuer Name:**

Northland Power Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated November 25, 2003  
Mutual Reliance Review System Receipt dated November 26, 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**

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**Issuer Name:**

Peak Energy Services Ltd.  
Principal Regulator - Alberta

**Type and Date:**

Final Short Form Prospectus dated December 1, 2003  
Mutual Reliance Review System Receipt dated December 1, 2003

**Offering Price and Description:**

\$9,450,000.00 - 3,500,000 Common Shares @\$2.70 per Common Share

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

Orion Securities Inc.  
Sprott Securities Inc.  
Griffiths McBurney & Partners  
National Bank Financial Inc.

**Promoter(s):**

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**Project #591416**

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**Issuer Name:**

Preferred Securities Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated November 28, 2003  
Mutual Reliance Review System Receipt dated November 28, 2003

**Offering Price and Description:**

Units

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

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

**Promoter(s):**

First Asset Funds Inc.

**Project #585618**

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**Issuer Name:**

Primerica Canadian Aggressive Growth Portfolio Fund  
Primerica International Aggressive Growth Portfolio Fund  
Primerica International RSP Aggressive Growth Portfolio Fund

Primerica Canadian High Growth Portfolio Fund  
Primerica International High Growth Portfolio Fund  
Primerica Canadian Growth Portfolio Fund  
Primerica International Growth Portfolio Fund  
Primerica Canadian Balanced Portfolio Fund  
Primerica Canadian Conservative Portfolio Fund  
Primerica Canadian Income Portfolio Fund  
Primerica Canadian Money Market Portfolio Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated November 25, 2003  
Mutual Reliance Review System Receipt dated November 28, 2003

**Offering Price and Description:**

Mutual Fund Units @ Net Asset Value

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

PFSL Investments Canada Ltd.  
PFSL Investments Canada Ltd.

**Promoter(s):**

PFSL Investments Canada Ltd.

**Project #583176**

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**Issuer Name:**

Summit Real Estate Investment Trust  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated November 27, 2003  
Mutual Reliance Review System Receipt dated November 28, 2003

**Offering Price and Description:**

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

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

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

**Promoter(s):**

-

**Project #587489**

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**Issuer Name:**

Synergy Canadian Fund Inc.  
comprised of:  
Synergy Canadian Growth Class  
Synergy Canadian Momentum Class  
Synergy Canadian Small Cap Class  
Synergy Canadian Value Class  
Synergy Canadian Style Management Class  
Synergy Canadian Short-Term Income Class  
Synergy Global Fund Inc.

comprised of:

Synergy Global Growth Class  
Synergy Global Momentum Class  
Synergy Global Value Class  
Synergy Global Style Management Class  
Synergy American Growth Class  
Synergy European Momentum Class  
Synergy Global Short-Term Income Class  
Synergy Tactical Asset Allocation Fund  
Synergy Global Momentum RSP Fund  
Synergy Global Style Management RSP Fund  
Synergy Extreme Canadian Equity Fund  
Synergy Global Growth RSP Fund  
Synergy European Momentum RSP Fund  
Synergy Canadian Income Fund  
Synergy Extreme Global Equity Fund  
Synergy American Growth RSP Fund  
Synergy Global Value RSP Fund  
Synergy Extreme Global Equity RSP Fund  
Principal Regulator - Ontario

**Type and Date:**

Amendment #2 dated November 24, 2003 to the Final  
Simplified Prospectuses and Annual Information Forms  
dated August 25, 2003  
Mutual Reliance Review System Receipt dated December 2, 2003

**Offering Price and Description:**

Mutual Fund Securities Net Asset Value

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

-

**Promoter(s):**

CI Mutual Funds Inc.

**Project #558906**

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**Issuer Name:**

USA REIT FUND LLC  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated November 26, 2003  
Mutual Reliance Review System Receipt dated November 28, 2003

**Offering Price and Description:**

Common Shares

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

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

**Promoter(s):**

Brompton Capital Advisors Inc.

**Project #579831**

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**Issuer Name:**

Vermilion Energy Trust  
Principal Regulator - Alberta

**Type and Date:**

Final Short Form Prospectus dated November 28, 2003  
Mutual Reliance Review System Receipt dated November 28, 2003

**Offering Price and Description:**

\$77,550,000.00 - 5,500,000 Trust Units @\$14.10 per Trust Unit

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

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

**Promoter(s):**

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**Project #591450**

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**Issuer Name:**

Wells Fargo Financial Canada Corporation  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Shelf Prospectus dated November 24, 2003  
Mutual Reliance Review System Receipt dated November 26, 2003

**Offering Price and Description:**

\$1,500,000,000.00 - Medium Term Notes (unsecured)

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

CIBC World Markets Inc.  
RBC Dominion Securities Inc.  
BMO Nesbitt Burns Inc.

**Promoter(s):**

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**Project #584833**

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## Chapter 12

# Registrations

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### 12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change of name	From: Abria Financial Products Ltd. To: Abria Asset Management Inc.	Limited Market Dealer & Investment Counsel & Portfolio Manager	Dec 9, 2004
New Registration	Aronson+Johnson+Oritz, L.P.	International Adviser, Investment Counsel & Portfolio Manager	Dec 02, 2003
New Registration	GMP Securities Ltd.	Investment Dealer	Dec 02, 2003

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## SRO Notices and Disciplinary Proceedings

### 13.1.1 MFDA Application for Amendment and Restatement of Its Recognition Order and Application for Consent to Enter into a Co-operative Agreement in Québec - Notice and Request for Comment

#### MUTUAL FUND DEALERS ASSOCIATION OF CANADA

##### APPLICATION FOR AMENDMENT AND RESTATEMENT OF ITS RECOGNITION ORDER AND APPLICATION FOR CONSENT TO ENTER INTO A CO-OPERATIVE AGREEMENT IN QUÉBEC

##### NOTICE AND REQUEST FOR COMMENT

The Mutual Fund Dealers Association of Canada (the "MFDA") has submitted an application to the securities regulatory authority in each of Alberta, British Columbia, Ontario, Saskatchewan and Nova Scotia (the "Recognizing Jurisdictions") to amend and restate the orders of each of the Recognizing Jurisdictions recognizing the MFDA as a self-regulatory organization (the "Recognition Orders"). The amendments are requested in order to:

- (a) To reflect changes in the MFDA's governance structure;
- (b) To clarify the MFDA's ability to enter into arrangements with another party to perform certain regulatory functions; and
- (c) To make housekeeping amendments to streamline the current Recognition Order.

The MFDA has also submitted an application to the Recognizing Jurisdictions for consent to enter into an arrangement in Québec with the Bureau des services financiers (the "Bureau") and the Chambre de la sécurité financière (the "Chambre") for these agencies to perform certain regulatory functions with respect to MFDA Members and Approved Persons in Québec.

The Recognizing Jurisdictions (including the Ontario Securities Commission) is publishing for comment both applications of the MFDA and the related documents. We are seeking comments on all aspects of the applications and related documents. We also request specific comment on certain matters identified below and have highlighted certain important aspects of the applications.

#### A. MFDA'S CORPORATE GOVERNANCE CHANGES

Under the terms and conditions of the current Recognition Orders, the MFDA is required to review and make changes

to its governance structure to ensure that, among other things, there are a reasonable number and proportion of directors on the MFDA's board to represent the public interest and the different MFDA members. The MFDA Corporate Governance Committee completed its review and submitted a report to the Recognizing Jurisdictions with recommendations for changes to the MFDA's governance structure. The MFDA subsequently submitted to the Recognizing Jurisdictions for approval proposed By-laws No. 5 and No. 6 that adopt the recommendations included in the report of its Corporate Governance Committee. The proposed By-laws No. 5 and No. 6 were published for public comment by the Ontario Securities Commission on August 29, 2003, at (2003) 26 OSCB 6209. As a result of the proposed changes, the terms and conditions of the current Recognition Orders with respect to governance will no longer be relevant. The MFDA, therefore, has applied to amend these terms and conditions to reflect the new governance structure.

#### B. MFDA'S ABILITY TO DELEGATE REGULATORY FUNCTIONS

##### 1. Co-operative Agreement

The MFDA is not recognized or approved as a self-regulatory organization ("SRO") in Québec and is not able to conduct its regulatory activities in respect of its Members in Québec on the same basis as it does in other provinces and territories. In order to ensure that MFDA Members and their Approved Persons operating in Québec are properly regulated, the MFDA has struck an agreement with the Bureau and the Chambre, who have jurisdiction over mutual fund dealers and salespersons operating in Québec, to co-ordinate their regulation (the "Co-operative Agreement").

The objectives of the Co-operative Agreement are to avoid regulatory inefficiencies and to preserve and enhance the respective separate mandates of the Bureau, the Chambre and the MFDA. Under the Co-operative Agreement, the Bureau, the Chambre and the MFDA will co-ordinate the various regulatory functions in the following manner:

- (a) Prudential regulation
  - the MFDA can assist the Bureau in conducting prudential examinations
  - the MFDA can take enforcement actions against a Member operating in Québec in respect of prudential matters



## (b) Business conduct and sales practices regulation

- Members and Approved Persons operating in Québec complying with the regulations of the Bureau and the Chambre relating to business conduct and sales practices will be deemed to be complying with MFDA rules relating to the same subject matter
- the Bureau and the Chambre will conduct business conduct and sales practices examinations, and the MFDA can request to assist in these examinations only under certain special circumstances described in section 3.3.1 of the Co-operative Agreement
- the MFDA will not take enforcement actions against a Member or an Approved Person operating in Québec in respect of business conduct and sales practices matters, but will rely on the Bureau or the Chambre to do so

## (c) Complaints Handling

- the MFDA will refer to the Bureau and the Chambre complaints regarding conduct of its Members and Approved Persons in Québec
- the Bureau and the Chambre will refer to the MFDA complaints regarding conduct of MFDA Members and Approved Persons outside Québec

## (d) Policy development

- the Bureau, the Chambre and the MFDA will keep each other advised of the development or proposed development of new or amended regulations, and consult with each other to ensure rule harmonization.

In practice, MFDA Members will be required to comply only with the regulations of the Bureau relating to business conduct and sales practices in Québec, and Approved Persons acting only in Québec will be required to comply only with the regulations of the Bureau. In order to ensure that MFDA Members and their Approved Persons operating in Québec and outside of Québec will be subject to a

similar regulatory regime, the Co-operative Agreement provides for a Coordination Committee, made up of staff of the MFDA and the Bureau, to develop similar approaches and program for compliance examinations and to work towards consistency and harmonization of rules. The Co-operative Agreement also provides for the sharing of information among the Bureau, the Chambre and the MFDA with respect to the status and conclusion of complaints, among other things. Staff request comment on the arrangement under the Co-operative Agreement, specifically with respect to the following:

Question 1: Would the arrangement under the Co-operative Arrangement create risk to the MFDA, the MFDA Investor Protection Corporation or any other compensation fund approved for mutual fund dealers, the mutual fund dealer industry in general, and the investing public?

Question 2: If so, how could the risk be mitigated?

## 2. MFDA's Ability to Delegate Enforcement Function

The Recognition Orders allow the MFDA to make arrangements to have the compliance function carried out by another party; however, they do not allow the MFDA to delegate its enforcement function to another party. The Recognition Orders also do not contemplate a situation whereby the party performing the compliance and enforcement functions will be monitoring and enforcing compliance with the party's own rules rather than with the MFDA rules. The MFDA, therefore, has applied to amend its terms and conditions of recognition in this respect. Staff request comment on the delegation of regulatory functions by an SRO to another party, specifically:

Question 3: Under what conditions should an SRO be allowed to delegate its enforcement function?

Under Recognition Orders, the MFDA must receive consent from the Recognizing Jurisdictions to make arrangements with another party to perform certain of its regulatory functions. The MFDA, therefore, must receive the consent of the Recognizing Jurisdictions to enter into the Co-operative Agreement before the Co-operative Agreement can become effective.

## C. HOUSEKEEPING AMENDMENTS TO THE TERMS AND CONDITIONS OF RECOGNITION

In its application for amendment and restatement of its Recognition Orders, the MFDA has also proposed to remove certain terms and conditions that were transitional and have already been satisfied by the MFDA. In addition, the suspension period for MFDA Rule 2.4.1 is proposed to be extended to December 31, 2006, in the provinces of British Columbia, Ontario and Saskatchewan to allow these Recognizing Jurisdictions sufficient time to consider all issues and to approve any resulting legislative amendments.

**D. COMMENT PROCESS**

You are asked to provide your comments in writing and delivered on or before **January 12, 2004**, addressed to the attention of the Secretary of the Commission, Ontario Securities Commission, 20 Queen Street West, 19<sup>th</sup> Floor, Box 55, 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

Antoinette Leung  
Senior Accountant, Market Regulation  
(416) 595-8901  
email: aleung@osc.gov.on.ca

December 12, 2003

**13.1.2 MFDA Application for Amendment and Restatement of Terms and Conditions of Order Recognizing Self-regulatory Organization**

**MUTUAL FUND DEALERS ASSOCIATION OF CANADA  
APPLICATION FOR AMENDMENT AND  
RESTATEMENT OF TERMS AND CONDITIONS  
OF ORDER RECOGNIZING  
SELF-REGULATORY ORGANIZATION**

October 24, 2003

The Secretary to the Commission  
Ontario Securities Commission  
20 Queen Street West  
Suite 1900, P.O. Box 55  
Toronto, Ontario  
M4S 3S8

Executive Director  
British Columbia Securities Commission  
P.O. Box 10142, Pacific Centre  
701 West Georgia Street  
Vancouver, B.C.  
V7Y 1L2

The Secretary to the Commission  
Alberta Securities Commission  
300 – 5<sup>th</sup> Avenue S.W.  
4<sup>th</sup> Floor  
Calgary, Alberta  
T2P 3C4

The Secretary to the Commission  
Nova Scotia Securities Commission  
2nd Floor, Joseph Howe Building  
P.O. Box 468  
1690 Hollis Street  
Halifax, Nova Scotia  
B3J J39

The Secretary to the Commission  
Saskatchewan Financial Services Commission  
1919 Saskatchewan Drive  
6<sup>th</sup> Floor  
Regina, Saskatchewan  
S4P 3V7

Dear Sirs/Mesdames:

**Re: Mutual Fund Dealers Association of Canada  
Application for amendment and restatement of  
terms and conditions of order recognizing self-  
regulatory organization**

**1. Application**

**(a) Summary**

This application is made by the Mutual Fund Dealers Association of Canada ("MFDA") concurrently to each of the Ontario Securities Commission, the British Columbia Securities Commission, the Alberta Securities Commission,

the Saskatchewan Securities Commission and the Nova Scotia Securities Commission (respectively, the "OSC", "BCSC", "ASC", "SSC" and "NSSC" and, together, the "Commissions") for an amendment and restatement of the terms and conditions of the Order of each such Commission recognizing the MFDA as a self-regulatory organization pursuant to section 21.1(1) of the *Securities Act* (Ontario), section 24(1) of the *Securities Act* (British Columbia), section 53.1(1) of the *Securities Act* (Alberta), section 21(2) of the *Securities Act, 1998* (Saskatchewan) and section 30 of the *Securities Act* (Nova Scotia), (respectively, the "OSA", "BCSA", "ASA", "SSA" and "NSSA" and together, the "Legislation"). The date of the Orders in respect of recognition of the MFDA referred to above by each of the OSC, BCSC, ASC, SSC and NSSC are, respectively, February 6, 2001, February 15, 2001, May 11, 2001, February 13, 2001 and November 26, 2001. The Orders of the respective Commissions recognizing the MFDA as a self-regulatory organization are referred to individually and collectively in this application as an "Order" or the "Orders" and the terms and conditions attached as Schedule A to each such order are referred to individually and collectively as "Terms and Conditions".

#### (b) Authority for Application

This application is made to the respective Commissions pursuant to Section 144 of the OSA, Section 171 of the BCSA, Section 214(1) of the ASA, Section 158(3) of the SSA and Section 151 of the NSSA.

#### (c) Terms and Conditions to be Amended

The Terms and Conditions of the OSC, BCSC, SSC and NSSC Orders to be amended (incidental amendments excepted) are: Section 1 (definitions of Approved Persons, rules and securities legislation), Section 3 (Corporate Governance), Section 7(B) and (D) (notice to Commissions of securities legislation violations), Section 12(A), (D) and (I) (delegation of compliance and enforcement functions), Section 14 (original Order required rule amendments) and Section 15 (Suspension of MFDA rule 2.4.1). The corresponding sections in the Order of the ASC are: Section 1(definitions of Approved Persons, rules and securities legislation), Section 4 (Corporate Governance), Section 8(B) and (D) (notice to Commission of securities legislation violations), Section 13(A), (D) and (I) (delegation of compliance and enforcement functions) Section 15 (original Order required rule amendments) and Section 16 (Suspension of MFDA rule 2.4.1).

#### 2. The Applicant

The MFDA is a non-share capital corporation under Part II of the *Canada Corporations Act* incorporated on June 19, 1998 and has been recognized as a self-regulatory organization pursuant to the Orders of the Commissions referred to in paragraph 1 of this Application.

#### 3. Basis of Application

##### (a) Corporate Governance

The Orders recognizing the MFDA as a self-regulatory organization pursuant to the provisions of the Legislation were made subject to the Terms and Conditions that were contained in Schedule A to the respective Orders. Section 3 of the Terms and Conditions of the Orders of the OSC, BCSC, SSC, NSSC and section 4 of the Order of the ASC related to the corporate governance of the MFDA and required, among other things, for the MFDA to file with the Commissions for approval a plan for governance of the MFDA including a plan for the orderly transition to the governance framework outlined in the Orders. The MFDA has filed with each of the Commissions the "Report of the Corporate Governance Committee on a Plan for Governance by the MFDA" as adopted by the Board of Directors (the "Board") dated February 2003 (the "Corporate Governance Report"). In particular, the Terms and Conditions of the Orders relating to corporate governance required that the governance structure of the MFDA provide, not later than the third annual meeting after the date of recognition by the respective Commissions:

- (i) a reasonable number and proportion of directors serving on the Board, and on each of the governance, executive and audit committee of the Board or similar bodies within the meaning of the MFDA rules, are public directors;
- (ii) meetings of any committee or body on which there are public directors shall have a quorum requirement including at least one public director;
- (iii) the remaining number of directors serving on the Board and on the above referred to committees and bodies of the Board, consist of directors representing the different members of the MFDA to ensure diversity of representation on the Board in accordance with its Order;
- (iv) the Investment Dealers Association of Canada ("IDA") and the Investment Funds Institute of Canada ("IFIC") no longer have rights to nominate and appoint persons to serve as directors on the Board or as members of committees or bodies of the Board;
- (v) the Chair of the Board is an individual appointed as such by the Board (constituted as required) and is not required to be the Chairperson of IFIC;
- (vi) the President and Chief Executive Officer of the MFDA is an individual appointed by the Board (constituted as required above) and is not required to be the President of the IDA.

- (vii) a proper balance amongst the interests of the members;
- (viii) appropriate representation of public directors on committees and bodies of the Board;
- (ix) appropriate qualification, remuneration, and conflict of interest provisions and provisions with respect to the limitation of liability of and indemnification protection for directors, officers and employees of the MFDA; and
- (x) a chief executive officer and other officers, all of whom, except for the Chairman of the Board, are independent of any member.

In order to implement the requirements of the Orders outlined above and as expressed therein, the Board of Directors of the MFDA have passed on June 13, 2003 By-laws Nos. 5 and 6 which have been submitted to each of the Commissions for approval, subject to publication and consideration of comments arising from such publication.

The purpose of the changes to the MFDA By-laws referred to above and as reflected in By-laws 5 and 6 is to enhance the basis on which MFDA is governed by its Members, the Board and its officers and staff. The changes will provide for a representative, responsive and transparent governance structure that is considered to be suitable for MFDA at this stage of its development. It is recognized that the mutual fund distribution business and the affairs of MFDA's Members are not static and MFDA will review its governance structure on a periodic basis.

The MFDA submits that the implementation of the recommendations made in the Corporate Governance Report as adopted by the Board of Directors together with the making of By-laws Nos. 5 and 6 of the MFDA and other administrative acts contemplated thereby, will satisfy the provisions of the Orders relating to corporate governance identified above and will enhance the governance of MFDA in general and its self-regulatory role.

#### (b) Other Transitional Matters

In addition to the requirements with respect to changes in the corporate governance of MFDA required by the Orders and referred to above, the Orders contained a number of miscellaneous transition Terms and Conditions which have either been satisfied or are spent and are therefore no longer relevant. MFDA has also discussed with staff of each of the Commissions certain other changes relating to the manner in which MFDA regulates its members. These matters related to, among other things:

- (i) the ability of MFDA to cooperate with other persons in the effective monitoring and enforcement of compliance with its Rules. In particular, MFDA proposes to enter into a formal arrangement with the

Bureau des services financiers ("BSF") and the Chambre de la sécurité financière ("Chambre") in Quebec to coordinate the regulation of certain affairs of MFDA Members in Quebec with those agencies. The MFDA has filed a separate application with the Commissions requesting their consent for such arrangements. In this regard, a Co-operative Agreement has been negotiated with the BSF and Chambre which has been approved by the Commission des valeurs mobilières du Quebec and is awaiting approval of the Quebec government. The arrangements provided for by the Co-operative Agreement are necessary because MFDA is not recognized as a regulatory authority in the Province of Quebec where several of its Members carry on business. The Agreement contemplates that the rules of both the BSF and MFDA in respect of the business of mutual fund dealers are substantially similar and that, with respect to prudential regulation matters, MFDA will be able to conduct regulatory activities in respect of its Members with the BSF on a co-operative basis.

- (ii) the basis on which financial planning may be conducted pursuant to Rule 1.2.1(d);
- (iii) suspension of Rules 5.3.4 and 5.3.5 relating to consolidated statements;
- (iv) sections 13.7 and 13.9 of By-law No. 1 relating to the approval of ownership interests;
- (v) amendments to the MFDA financial questionnaire and report; and
- (vi) the suspension of Rule 2.4.1 relating to the payment of the remuneration in respect of the approved persons by members of the MFDA.

The amendments to Rules required referred to above were made by the MFDA Board of Directors on February 23, 2001 and subsequently approved by the Members.

In addition to the foregoing specific amendments to MFDA's By-laws and Rules, paragraph 12(A) of the Terms and Conditions required that within one year of the date that MFDA accepted its first member that it would have "adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules." MFDA accepted its first Member in October 2001 and has hired appropriate numbers of qualified staff in its offices in Toronto, Calgary and Vancouver to commence regulation of its Members. MFDA has provided separately to the Commissions budgets, plans and staff complements.

The MFDA submits that amendments made or proposed by the MFDA and approved by the respective Commissions to date or as filed with the Commissions warrant amendments to the Terms and Conditions of the relevant Orders in that regard.

**(c) Supporting Documents**

Submitted with this application are the following supporting documents in original or photocopied form:

- (i) a draft order amending and restating the Terms and Conditions of the Order of each relevant Commission on the basis described herein;
- (ii) draft revised Terms and Conditions contained in Schedule A to the Orders reflecting the amendments described herein;
- (iii) By-laws No. 5 and No. 6 as passed by the Board of Directors of MFDA and submitted to each of the Commissions for approval. Each of these By-laws was published for comment by the OSC in Volume 26, Issue 34/45 of the Ontario Securities Commission Bulletin dated August 29, 2003; and
- (iv) our cheque for the fee, if any, payable to the relevant Commission.

This application has been reviewed and approved by, and is signed and made by, duly authorized officers of the MFDA and such officers confirm the truth of the facts contained herein. In addition to the undersigned officers, representatives of MFDA counsel, Borden Ladner Gervais LLP, are authorized to discuss this application and any matter related to it with the Commissions.

Yours very truly,

**MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

By: "Larry Waite"  
Chief Operating Officer

By: "Mark T. Gordon"  
Vice President, Member Regulation

**Draft Amended and Restated Recognition Order**

**Draft:** October 24, 2003

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

**AND**

**IN THE MATTER OF  
MUTUAL FUND DEALERS ASSOCIATION OF CANADA/  
ASSOCIATION CANADIENNE DES  
COURTIERS DE FONDS MUTUELS  
(the "MFDA")**

**AMENDMENT AND RESTATEMENT OF  
RECOGNITION ORDER  
(Section 144)**

**WHEREAS** the Commission issued an order dated February 6, 2001, recognizing the MFDA as a self-regulatory organization for mutual fund dealers pursuant to section 21.1 of the Act ("Previous Order");

**AND WHEREAS** the Commission has determined that it is not prejudicial to the public interest to issue an order that amends and restates the Previous Order to (a) reflect changes in the MFDA's governance structure, (b) clarify the MFDA's ability to enter into arrangements with any other suitable body or person to perform the function of enforcing compliance by MFDA members with MFDA's or such other body or person's substantially similar by-laws, rules, regulations, policies, forms, and other similar instruments, and (c) remove certain terms and conditions of the Previous Order that were transitional and have been satisfied by the MFDA;

**IT IS ORDERED** pursuant to section 144 of the Act that the Previous Order be amended and restated as follows:

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

**AND**

**IN THE MATTER OF  
MUTUAL FUND DEALERS ASSOCIATION OF CANADA/  
ASSOCIATION CANADIENNE DES  
COURTIERS DE FONDS MUTUELS  
(the "MFDA")**

**RECOGNITION ORDER  
(Section 21.1)**

**WHEREAS** the Commission recognized the MFDA as a self-regulatory organization for mutual fund dealers on February 6, 2001 ("Previous Order"), subject to terms and conditions;

**AND WHEREAS** the MFDA has requested in an application dated October 24, 2003, that certain changes be made to the Previous Order;

DATED on ●, 2004.

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**AND WHEREAS** the Board of Directors of the MFDA has passed amendments to the MFDA's by-laws to change the MFDA's governance structure in order to provide for a proper balance among the interests of MFDA members and appropriate representation of individuals who represent the public interest on the MFDA Board of Directors and its committees and bodies;

**AND WHEREAS** the MFDA intends to enter into arrangements with other parties for such other parties to perform the function of enforcing compliance by MFDA members, who conduct securities related business in Quebec, with the MFDA's or such other parties' substantially similar by-laws, rules, regulations, policies, forms, and other similar instruments;

**AND WHEREAS** certain terms and conditions of the Previous Order were transitional in nature and the Commission is satisfied that the MFDA has met those terms and conditions;

**AND WHEREAS** the MFDA will continue to regulate, in accordance with its Rules, the operations and the standards of practice and business conduct of its members and their Approved Persons as defined under its Rules;

**AND WHEREAS** the Commission has considered the application and related submissions of the MFDA for continued recognition as a self-regulatory organization for mutual fund dealers;

**AND WHEREAS** the Commission has received certain representations and acknowledgements from the MFDA in connection with the MFDA's continued recognition as a self-regulatory organization;

**AND WHEREAS** the Commission considers it appropriate to set out in an order the terms and conditions of MFDA's continued recognition as a self-regulatory organization for mutual fund dealers, which terms and conditions are set out in Schedule A attached;

**AND WHEREAS** the MFDA has agreed to the terms and conditions set out in Schedule A;

**AND WHEREAS** the Commission has determined that continuing to recognize the MFDA is not prejudicial to the public interest;

**THE COMMISSION HEREBY AMENDS AND RESTATES** the MFDA's recognition as a self-regulatory organization so that the recognition pursuant to section 21.1 of the Act continues, subject to the terms and conditions attached as Schedule A.

Draft: October 24, 2003  
(Changes from current terms and conditions are  
marked.)

**SCHEDULE "A"**

**TERMS AND CONDITIONS  
OF RECOGNITION OF THE MUTUAL FUND DEALERS  
ASSOCIATION OF  
CANADA  
AS A SELF-REGULATORY ORGANIZATION FOR  
MUTUAL FUND DEALERS**

**4-1. DEFINITIONS**

For the purposes of this Schedule:

~~"Approved Person" means, in respect of a member of the MFDA, an individual who is a partner, director, officer, compliance officer, branch manager or alternate manager, employee or agent of the member who conducts or participates in the business of the member MFDA and who (i) is registered, licensed or approved in the appropriate category, where required by applicable securities legislation, by the Commission and (ii) is designated and qualified as such in accordance with the rules or (iii) is otherwise subject to the jurisdiction of the MFDA;~~  
"Approved Person" means, in respect of a member of the MFDA, an individual who is a partner, director, officer, compliance officer, branch manager or alternate manager, employee or agent of the member who conducts or participates in the business of the member MFDA and who (i) is registered, licensed or approved in the appropriate category, where required by applicable securities legislation, by the Commission and (ii) is designated and qualified as such in accordance with the rules or (iii) is otherwise subject to the jurisdiction of the MFDA;

~~"member" means a member of the MFDA;~~

~~"rules", except where used in the definition of "securities legislation", means the by-laws, rules, regulations, policies, forms, and other similar instruments of the MFDA; and~~

~~"securities legislation" means the securities laws, regulations, rules and policies of the Canadian jurisdictions;~~  
"securities legislation" means the securities laws, regulations, rules and policies of the Canadian jurisdictions; has the same meaning as that defined in National Instrument 14-101.

**2-2. STATUS**

The MFDA is and shall remain a not-for-profit corporation.

**3-3. CORPORATE GOVERNANCE**

~~(A) The MFDA's arrangements with respect to the appointment, removal from office and functions of the persons ultimately responsible for making or enforcing the rules of the MFDA, being the Board of Directors (the "Board"), shall secure a proper balance between the interests of the different members of the MFDA in order to ensure diversity of representation on the Board. In recognition that the protection of the~~  
(A) The MFDA's arrangements with respect to the appointment, removal from office and functions of the persons ultimately responsible for making or enforcing the rules of the MFDA, being the Board of Directors (the "Board"), shall secure a proper balance between the interests of the different members of the MFDA in order to ensure diversity of representation on the Board. In recognition that the protection of the

public interest is a primary goal of the MFDA, a reasonable number and proportion of directors on the Board and on the committees of the Board shall be and remain during their term of office persons ("Public Directors") who are not members or directors, partners, officers, salespersons or employees of a member, or of an associate, affiliate or related company of a member, of the MFDA, the Investment Dealers Association of Canada (the "IDA") or The Investment Funds Institute of Canada ("IFIC"). and a Public Director is a director:

~~(B) Not later than the third annual meeting after the date of its Recognition, the MFDA shall ensure that:~~

(a) who is not a current director (other than a Public Director), officer or employee of, or of an associate or affiliate of:

(i) the MFDA;

(ii) any protection or contingency fund in which Members (at the time the director holds the relevant office) are required to participate; or

(iii) the Investment Funds Institute of Canada or the Investment Dealers Association of Canada;

(b) who is not a current director, partner, significant shareholder, officer, employee or agent of a Member, or of an associate or affiliate of a Member, of:

(i) the MFDA;

(ii) any protection or contingency fund in which Members (at the time the director holds the relevant office) are required to participate; or

(iii) the Investment Funds Institute of Canada or the Investment Dealers Association of Canada;

(c) who is not a current employee of a federal, provincial or territorial government or a current employee of an agency of the Crown in respect of such government;

(d) who is not a current member of the federal House of Commons or member of a provincial or territorial legislative assembly;

(e) who has not, in the two years prior to election as a Public Director, held a position described in (a)-(d) above;

(f) who is not:

(i) an individual who provides goods or services to and receives direct significant compensation from, or

(ii) an individual who is a director, partner, significant shareholder, officer or employee of an entity that receives significant revenue from services the entity provides to, if such individual's compensation from that entity is significantly affected by the services such individual provides to,

the MFDA or any protection or contingency fund in which Members are required to participate, or a Member of the MFDA; and

(g) who is not a member of the immediate family of the persons listed in (a)-(f) above.

For the purposes of this definition:

(i) "significant compensation" and "significant revenue" means compensation or revenue the loss of which would have, or

appear to have, a material impact on the individual or entity;

(ii) "significant shareholder" means an individual who has an ownership interest in the voting securities of an entity, or who is a director, partner, officer, employee or agent of an entity that has an ownership interest in the voting securities of another entity, which voting securities in either case carry more than 10% of the voting rights attached to all voting securities for the time being outstanding.

(B) The MFDA's governance structure shall provide for:

(i) at least 50% of its directors, other than its President and Chief Executive Officer, shall be Public Directors;

(ii) the President and Chief Executive Officer of the MFDA is deemed to be neither a Public Director nor a non-Public Director;

(iii) appropriate representation of Public Directors on committees and bodies of the Board, in particular:

(i) a reasonable number and proportion (a) at least 50% of directors serving on the Board, and on each of the governance committee of the Board shall be Public Directors, executive and

(b) a majority of directors on the audit committee of the Board or similar bodies within the meaning of the MFDA rules, are shall



be Public Directors,  
and

and is not required to be the Chairperson of IFIC;

(c) at least 50% of  
directors on the  
executive committee  
of the Board, if any,  
shall be Public  
Directors;

~~(vi) (the President and Chief  
Executive Officer of the MFDA  
is an individual appointed by the  
Board (constituted as required  
by (i) and (iii) above) and is not  
required to be the President of  
the IDA.~~

(d) meetings of the  
Board shall have a  
quorum requirement  
of a reasonable  
number and  
proportion of Public  
Directors and non-  
Public Directors, with  
at least two Public  
Directors, and

~~(C) Without limiting the generality of the  
foregoing, not later than the third annual  
meeting after the date of its Recognition,  
the MFDA's governance structure shall  
provide for:~~

~~(i) a proper balance amongst the  
interests of the members;~~

~~(ii) appropriate representation of  
Public Directors on committees  
and bodies of the Board;~~

~~(iii)(v) appropriate qualification,  
remuneration, and conflict of  
interest provisions and  
provisions with respect to the  
limitation of liability of and  
indemnification protection for  
directors, officers and  
employees of the MFDA; and~~

~~(iv)(vi) a chief executive officer and  
other officers, all of whom,  
except for the chairman~~chair~~ of  
the Board, are independent of  
any member.~~

~~(ii)(e)~~ meetings of any  
committee or body on  
which there are Public  
Directorsof the Board  
shall have a quorum  
requirement  
includingof a  
reasonable number  
and proportion of  
Public Directors and  
non-Public Directors,  
provided that if the  
committee or body  
has Public Directors  
then the quorum  
must require at least  
one Public Director; be  
present;

~~(iii)(iv)~~ the remaining number of  
directors serving on the Board  
and on the above referred to  
committees and bodies of the  
Board, shall consist of directors  
representing the different  
members of the MFDA to  
ensure diversity of  
representation on the Board in  
accordance with paragraph (A);

~~(D) Not later than the second anniversary  
after the date of its Recognition, the  
MFDA shall file with the Commission for  
its approval, a plan for the governance of  
the MFDA, including a plan for the  
orderly transition to the governance  
framework outlined in this paragraph 3.~~

#### 4.4. FEES

~~(iv) the IDA and IFIC no longer have  
rights to nominate and appoint  
persons to serve as directors on  
the Board or as members of  
committees or bodies of the  
Board;~~

~~(A)(A)~~ Any and all fees imposed by the MFDA  
on its members shall be equitably  
allocated and bear a reasonable relation  
to the costs of regulating members,  
carrying out the MFDA's objects and  
protecting the public interest. Fees shall  
not have the effect of creating  
unreasonable barriers to membership  
and shall be designed to ensure that the  
MFDA has sufficient revenues to  
discharge its responsibilities.

~~(v) the Chair of the Board is an  
individual appointed as such by  
the Board (constituted as  
required by (i) and (iii) above)~~

~~(B)~~ (B) The MFDA's process for setting fees shall be fair, transparent, and appropriate.

#### 5.5. COMPENSATION OR CONTINGENCY TRUST FUNDS

The MFDA shall co-operate with compensation funds or contingency trust funds that are from time to time considered by the Commission under securities legislation to be compensation funds or contingency trust funds for mutual fund dealers and with any such fund that has applied to the Commission to be considered such funds (the "IPPs"). The MFDA shall ensure that its rules give it the power to assess members, and require members to pay such assessments, on account of assessments or levies made by or in respect of an IPP.

#### 6.6. MEMBERSHIP REQUIREMENTS

~~(A)~~ (A) The MFDA's rules shall permit all properly registered mutual fund dealers who satisfy the membership criteria to become members thereof and shall provide for the non-transferability of membership.

~~(B)~~ (B) Without limiting the generality of the foregoing, the MFDA's rules shall provide for:

~~(i)~~ (i) reasonable financial and operational requirements, including minimum capital and capital adequacy, debt subordination, bonding, insurance, record-keeping, new account, knowledge of clients, suitability of trades, supervisory practices, segregation, protection of clients' funds and securities, operation of accounts, risk management, internal control and compliance (including a written compliance program), client statement, settlement, order taking, order processing, account inquiries, confirmation and back office requirements;

~~(ii)~~ (ii) reasonable proficiency requirements (including training, education and experience) with respect to ~~partners, directors, officers, employees and agents~~ Approved Persons of members;

~~(iii)~~ (iii) consideration of disciplinary history, including breaches of

applicable securities ~~laws~~ legislation, the rules of other self regulatory organizations or MFDA rules, prior involvement in criminal, relevant quasi-criminal, administrative or insolvency proceedings or civil proceedings involving business conduct or alleging fraudulent conduct or deceit, and prior business and other conduct generally, of applicants for membership and any partners, directors and officers, in order that membership may, where appropriate, be refused where any of the foregoing have previously engaged in improper conduct, and shall be refused where the past conduct of any of the foregoing affords reasonable grounds for belief that the applicant's business would not be conducted with integrity;

~~(iv)~~ (iv) reasonable consideration of relationships with other members and other business activities to ensure the appropriateness thereof; and

~~(v)~~ (v) consideration of the ownership of applicants for membership under the criteria established in paragraph 6(E).

~~(C)~~ (C) The MFDA shall require members to confirm to the MFDA that persons that it wishes to sponsor, employ or associate with as Approved Persons comply with applicable securities legislation and are properly registered.

~~(D)~~ (D) The MFDA's rules shall require a member to give prior notice to the MFDA before any person or company acquires a material registered or beneficial interest in securities or indebtedness of or any other ownership interest in the member, directly or indirectly, or becomes a transferee of any such interests, or before the member engages in any business combination, merger, amalgamation, redemption or repurchase of securities, dissolution or acquisition of assets. In each case there may be appropriate exceptions in the case of publicly traded securities, de minimis transactions that do not involve changes in de facto or legal control or the acquisitions of material interests or

assets, and non-participating indebtedness.

~~(E)~~ (E) The MFDA rules shall require approval by the MFDA in respect of all persons or companies proposing to acquire an ownership interest in a member in the circumstances outlined in paragraph 6(D) and, except as provided in paragraph 6(F), for approval of all persons or companies that satisfy criteria providing for:

~~(i)~~ (i) consideration of disciplinary history, including breaches of applicable securities ~~laws~~ legislation, the rules of other self-regulatory organizations or MFDA rules, involvement in criminal, relevant quasi-criminal, administrative or insolvency proceedings or civil proceedings involving business conduct or alleging fraudulent conduct or deceit, and prior business and other conduct generally; and

~~(ii)~~ (ii) reasonable consideration of relationships with other members and involvement in other business activities to ensure the appropriateness thereof.

~~(F)~~ (F) The MFDA rules shall give the MFDA the right to refuse approval of all persons or companies that are proposing to acquire an ownership interest in a member in the circumstances outlined in paragraph 6(D) who do not agree to:

~~(i)~~ (i) submit to the jurisdiction of the MFDA and comply with its rules;

~~(ii)~~ (ii) notify the MFDA of any changes in his, her or its relationship with the member or of any involvement in criminal, relevant quasi-criminal, administrative or insolvency proceedings or in civil proceedings involving business conduct or alleging fraudulent conduct or deceit;

~~(iii)~~ (iii) accept service by mail in addition to any other permitted methods of service;

~~(iv)~~ (iv) authorize the MFDA to co-operate with other regulatory and self-regulatory organizations, including sharing

information with these organizations; and

~~(v)~~ (v) provide the MFDA with such information as it may from time to time request and full access to and copies of any records.

~~(G)~~ (G) The MFDA shall notify the Commission forthwith of members whose rights and privileges will be suspended or terminated or whose membership will be terminated, and in each case the MFDA shall identify the member, the reasons for the proposed suspension or termination and provide a description of the steps being taken to ensure that the member's clients are being dealt with appropriately.

## 7.7. COMPLIANCE BY MEMBERS WITH MFDA RULES

~~(A)~~ (A) The MFDA shall enforce, as a matter of contract between itself and its members, compliance by its members and their Approved Persons with the rules of the MFDA and the MFDA shall cooperate with the Commission in ensuring compliance with applicable securities legislation relating to the operations, standards of practice and business conduct of members and Approved Persons, without prejudice to any action that may be taken by the Commission under securities legislation.

~~(B)~~ (B) The MFDA shall conduct periodic reviews of its members and the members' Approved Persons to ensure compliance by its members and the members' Approved Persons with the rules of the MFDA and shall conduct such reviews at a frequency requested by the Commission or its staff. The MFDA shall provide notice to staff of the Commission of any material violations of securities legislation of which it becomes aware in the ordinary course operation of its business. The MFDA shall also cooperate with the Commission in the conduct of reviews of its members and the members' Approved Persons as requested by the Commission or its staff, to ensure compliance by its members and their Approved Persons with applicable securities legislation.

~~(C)~~ (C) The MFDA shall promptly report to the Commission when:

~~(i)~~ (i) any member has failed to file on a timely basis any required

financial, operational or other report;

~~(ii)~~ (ii) early warning thresholds established by the MFDA that would reasonably be expected to raise concerns about a member's liquidity, risk-adjusted capital or profitability have been triggered by any member; and

~~(iii)~~ (iii) any condition exists with respect to a member which, in the opinion of the MFDA, could give rise to payments being made out of an IPP, including any condition which, alone or together with other conditions, could, if appropriate corrective action is not taken, reasonably be expected to:

~~(a)~~ (a) inhibit the member from promptly completing securities transactions, promptly segregating clients' securities as required or promptly discharging its responsibilities to clients, other members or creditors;

~~(b)~~ (b) result in material financial loss; or

~~(c)~~ (c) result in material misstatement of the member's financial statements.

The MFDA shall, in each case, identify the member, describe the circumstances that gave rise to the reportable event and describe the MFDA's proposed response to ensure the identified circumstances are resolved.

~~(D)~~ (D) The MFDA shall promptly report to the Commission actual or apparent misconduct by members and their Approved Persons and others where investors, creditors, members, an IPP or the MFDA may reasonably be expected to suffer serious damage as a consequence thereof, including where the solvency of a member is at risk, fraud is present or there exist serious deficiencies in supervision or internal controls or non-compliance with MFDA rules or securities legislation. The MFDA shall, in each case, identify the member,

the Approved Persons, or others, and the misconduct or deficiency as well as the MFDA's proposed response to ensure that the identified problem is resolved.

~~(E)~~ (E) The MFDA shall advise the Commission promptly following the taking of any action by it with respect to any member in financial difficulty.

~~(F)~~ (F) The MFDA shall promptly advise each other self-regulatory organization and IPP of which a member is a participant or which provides compensatory coverage in respect of the member, of any actual or apparent material breach of the rules thereof of which the MFDA becomes aware.

## **8-8. DISCIPLINE OF MEMBERS AND APPROVED PERSONS**

~~(A)~~ (A) The MFDA shall, as a matter of contract, have the right to and shall appropriately discipline its members and their Approved Persons for violations of the rules of the MFDA and shall cooperate with the Commission in the enforcement of applicable securities legislation relating to the operations, standards of practice and business conduct of the members and Approved Persons, without prejudice to any action that may be taken by the Commission under securities legislation.

~~(B)~~ (B) The MFDA's rules shall enable it to prevent the resignation of a member from the MFDA if the MFDA considers that any matter affecting the member or any registered or beneficial holder of a direct or indirect ownership interest in securities, indebtedness or other interests in the member, or in a person or company associated or affiliated with the member or affecting the member's Approved Persons or any of them, should be investigated or that the member or any such person, company or Approved Person should be disciplined.

~~(C)~~ (C) The MFDA shall require its members and their Approved Persons to be subject to the MFDA's review, enforcement and disciplinary procedures.

~~(D)~~ (D) The MFDA shall notify

~~(i)~~ (i) the Commission in writing, and

~~(ii)~~ (ii) the public and the media

~~(a)~~ (a) of any disciplinary or settlement hearing, as soon as practicable and in any event not less than 14 days prior to the date of the hearing; and

~~(b)~~ (b) of the disposition of any disciplinary action or settlement, including any discipline imposed, and shall promptly make available any written decision and reasons.

~~(E)~~ (E) Any notification required under paragraph 8 (D) shall include, in addition to any other information specified in paragraph 8 (D), the names of the member and the relevant Approved Persons together with a summary of circumstances that gave rise to the proceedings.

~~(F)~~ (F) The MFDA shall maintain a register to be made available to the public, summarizing the information which is required to be disclosed to the Commission under paragraphs 8 (D) and (E).

~~(G)~~ (G) The information given to the Commission under paragraphs 8 (D) and (E) will be published by the Commission unless the Commission determines otherwise.

~~(H)~~ (H) The MFDA shall at least annually review all material settlements involving its members or their Approved Persons and their clients with a view to determining whether any action is warranted, and the MFDA shall prohibit members and their Approved Persons from imposing confidentiality restrictions on clients vis-a-vis the MFDA or the Commission, whether as part of a resolution of a dispute or otherwise.

~~(I)~~ (I) Disciplinary and settlement hearings shall be open to the public and media except where confidentiality is required for the protection of confidential matters. The criteria and any changes thereto for determining these exceptions shall be specified and submitted to the Commission for approval.

## 9.9. DUE PROCESS

The MFDA shall ensure that the requirements of the MFDA relating to admission to membership,

the imposition of limitations or conditions on membership, denial of membership and termination of membership are fair and reasonable, including in respect of notice, an opportunity to be heard or make representations, the keeping of a record, the giving of reasons and provision for appeals.

## 40-10. PURPOSE OF RULES

~~(A)~~ (A) The MFDA shall, subject to the terms and conditions of its Recognition and the jurisdiction and oversight of the Commission in accordance with securities legislation, establish such rules as are necessary or appropriate to govern and regulate all aspects of its business and affairs and shall in so doing:

~~(i)~~ (i) seek to ensure compliance by members and their Approved Persons with applicable securities legislation relating to the operations, standards of practice and business conduct of the members;

~~(ii)~~ (ii) seek to prevent fraudulent and manipulative acts and practices and to promote the protection of investors, just and equitable principles of trade and high standards of operations, business conduct and ethics;

~~(iii)~~ (iii) seek to promote public confidence in and public understanding of the goals and activities of the MFDA and to improve the competence of members and their Approved Persons;

~~(iv)~~ (iv) seek to standardize industry practices where appropriate for investor protection;

~~(v)~~ (v) seek to provide for appropriate discipline;

and shall not:

~~(vi)~~ (vi) permit unfair discrimination among investors, mutual funds, members or others; or

~~(vii)~~ (vii) impose any barrier to competition that, ~~having regard to the above purposes,~~ is not appropriate.

~~(B)-(B)~~ Unless otherwise approved by the Commission, the rules of the MFDA governing the conduct of member business regulated by the MFDA shall afford investors protection at least equivalent to that afforded by securities legislation, provided that higher standards in the public interest shall be permitted and are encouraged.

#### 11-11. RULES AND RULE-MAKING

~~(A)-(A)~~ No new rules, changes to rules (which shall include any revocation in whole or in part of a rule) or suspension of rules shall be made effective by the MFDA without prior approval of the Commission. Any such rules, changes or suspensions shall be justified by reference to the permitted purposes thereof (having regard to paragraph 10). The approval process shall be subject to a memorandum of understanding between the Commission and the MFDA to be established regarding the review and approval of rules and amendments and suspensions thereto.

~~(B)-(B)~~ Prior to proposing a new rule, changes to a rule (which shall include any revocation in whole or in part of a rule) or a suspension of a rule, the Board shall have determined that the entry into force of such rule or change or the suspension of the rule would be in the public interest and every proposed new rule, change or suspension must be accompanied by a statement to that effect.

~~(C)-(C)~~ All rules, changes to rules and suspensions of rules adopted by the Board must be filed with the Commission.

~~(D)-(D)~~ A copy of all written notices relevant to the rules or to the business and activities of members, their Approved Persons or other employees or agents to assist in the interpretation, application of and compliance with the rules and legislation relevant to such business and activities shall be provided to the Commission.

~~(E)-(E)~~ The MFDA shall, wherever practicable, document its interpretations of its rules and distribute copies of that documentation to its members and the Commission.

#### 12-12. OPERATIONAL ARRANGEMENTS AND RESOURCES

~~(A)-(A)~~ Within one year of the date that the MFDA accepts its first member, the ~~(A)~~

The MFDA shall have adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules. With the consent of the Commission, the arrangements for monitoring and enforcement may make provision for one or more parts of that function to be performed on behalf of the MFDA (and without affecting its responsibility) by any other body or person that is able and willing to perform it. The Commission's consent may be varied or revoked from time to time and may be subject to terms and conditions the following:

(i) one or more parts of those functions to be performed (and without affecting its responsibility) by any other body or person that is able and willing to perform it; and

(ii) its members and their Approved Persons to be deemed in compliance with its rules by complying with the substantially similar rules of such other body or person.

The Commission's consent may be varied or revoked from time to time and may be subject to terms and conditions.

~~(B)-(B)~~ The MFDA shall respond promptly and effectively to public inquiries and generally shall have effective arrangements for the investigation of complaints (including anonymous complaints) against its members or their Approved Persons. With the consent of the Commission, such arrangements may make provision for one or more parts of that function to be performed on behalf of the MFDA (and without affecting its responsibility) by any other body or person that is able and willing to perform it. The Commission's consent may be varied or revoked from time to time and may be subject to terms and conditions. The MFDA and any other body or person performing such function on behalf of the MFDA shall not refrain from investigating complaints due to the anonymity of the complainant where the complaint is otherwise worthy of investigation and sufficiently detailed to permit investigation.

~~(C)-(C)~~ The MFDA shall ensure that it is accessible to the public and shall designate and make available to the public the names and telephone numbers

of persons to be contacted for various purposes, including making complaints and enquiries.

~~(D)~~ Within one year of the date that the MFDA accepts its first member, ~~the~~ (D) The arrangements and resources referred to in paragraphs (A) and (B) above shall consist at a minimum of:

~~(i)-(i)~~ a sufficient complement of qualified staff, including professional and other appropriately trained staff;

~~(ii)-(ii)~~ an adequate supervisory structure;

~~(iii)-(iii)~~ adequate management information systems;

~~(iv)-(iv)~~ a compliance department and an enforcement department with appropriate reporting structures directly to senior management, and with written procedures wherever practicable;

~~(v)-(v)~~ procedures and structures that minimize or eliminate conflicts of interest within the MFDA;

~~(vi)-(vi)~~ inquiry and complaint procedures and a public information facility, including with respect to the discipline history of members and their Approved Persons;

~~(vii)-(vii)~~ guidelines regarding appropriate disciplinary sanctions; and

~~(viii)-(viii)~~ the capacity and expertise to hold disciplinary hearings (including regarding proposed settlements) utilizing public members within the meaning of the current section 19.6 of the MFDA's By-law No. 1 together with member representatives.

On the first business day after the date that is one year after the MFDA accepts its first member, the MFDA shall report to the Commission on its compliance with paragraphs 12 (A), (B), (C) and (D).

~~(E)~~ The MFDA shall advise the Commission at least annually of its self regulatory staff complement, by function, and of any material changes or reductions in self regulatory staff, by function.

~~(F)~~ The MFDA shall advise the Commission in advance of any proposed material changes or reductions in its financial review program or operational and sales compliance review programmes, including as to procedures or scope, of any proposed changes in its external audit instructions and of any proposed material changes or reductions in the operation of its investigation or enforcement programmes.

~~(G)-(E)~~ The MFDA shall cooperate and assist with any surprise, regular or other reviews of its self-regulatory functions by an IPP or the Commission. In addition, in the event that the Commission is of the view that there has been a serious actual or apparent failure in the MFDA's fulfilment of its self-regulatory functions, the MFDA shall, where requested by the Commission, undergo an independent third party review on terms and by a person or persons satisfactory to or determined by the Commission, which review shall be at the expense of the MFDA.

~~(H)-(E)~~ The MFDA shall cooperate and assist with any surprise, regular or other reviews of its corporate governance structure by the Commission. In addition, in the event that the Commission is of the view that there has been a serious weakness in the MFDA's corporate governance structure, the MFDA shall upon the request of the Commission undergo an independent third party review on terms and by a person or persons satisfactory to or determined by the Commission, which review shall be at the expense of the MFDA.

~~(I)~~ Management of the MFDA shall at least annually self assess the MFDA's performance of its self-regulatory responsibilities and report thereon to the executive committee, together with any recommendations for improvements. The executive committee shall be responsible for reporting to the Board as to the MFDA's performance of its self-regulatory responsibilities. The reports shall, for each of the MFDA's member regulatory functions, set performance measurements against which

performance can be compared, and identify major successes, significant problem areas, plans to resolve these problems, recruitment and training plans, and other information as reasonably requested by the Commission or its staff. The MFDA shall, within 120 days of the fiscal year end of the MFDA, provide the Commission with copies or summaries of such reports and advise the Commission of any proposed actions arising therefrom.

(J) The MFDA shall provide its budget and audited financial statements to the Commission on an annual basis following adoption thereof and within 120 days of its fiscal year end, and with such other information as the Commission or its staff may reasonably request.

(K) (G) The MFDA shall not make material changes to its organizational structure, which would affect its self-regulatory functions, without prior approval of the Commission, and shall give the Commission notice of new directors, officers and committee chairpersons, including a 5 year employment history and information as to involvement in criminal, relevant quasi-criminal, administrative or insolvency proceedings and civil proceedings involving business conduct or alleging fraudulent conduct or deceit in respect of each such person.

(L) (H) The MFDA shall comply with reporting requirements set out in Appendix A, as amended from time to time by the Commission or its staff. The MFDA shall also provide the Commission with with other reports, documents and other information as the Commission or its staff may reasonably request. The Commission or its staff may review and revise such reporting requirements as necessary on an on-going basis.

#### 43. 13. INFORMATION SHARING

The MFDA shall cooperate, by sharing information and otherwise, with IPPs, the Commission and its staff, and other Canadian federal, provincial and territorial recognized self-regulatory organizations and regulatory authorities, including without limitation, those responsible for the supervision or regulation of securities firms, financial institutions, insurance matters and competition matters. The Commission and its staff shall have unrestricted access to the books and records, management, staff and systems of the MFDA.

#### 44. REQUIRED RULE AMENDMENTS

Prior to the MFDA accepting its first member, the MFDA shall amend its rules as set out below:

(A) Rule 1.2.1(d) to provide that an Approved Person may only carry on financial planning services through the member or through another entity that is otherwise regulated or that is subject to the rules of a widely recognized professional association.

(B) Rule 5.3.4 and Rule 5.3.5 to suspend the operation of Rule 5.3.5 until such time as it has been published for comment for a minimum of 30 days and approved by the Commission;

(C) Sections 13.7 and 13.9 of By Law No. 1 to provide that the MFDA must approve all reorganizations and acquisitions of significant equity interests of 20 percent or more.

(D) Form 1 - MFDA Financial Questionnaire and Report to amend the requirements of MFDA Form 1 - MFDA Financial Questionnaire and Report to require a member to provide margin for mutual fund securities held by the member calculated as follows:

(i) 5 percent of the market value of money market mutual funds, as defined by National Instrument 81-102 Mutual Funds

(ii) 50 percent of the market value of all other mutual funds

For this purpose, the MFDA shall amend, before it is issued, its MFDA Notice to Members entitled "Transition Periods" to reflect the rule suspensions noted in this paragraph.

#### 45. 14. SUSPENSION OF MFDA RULE 2.4.1

The MFDA Rule 2.4.1 is suspended and will continue to be suspended until December 30, 2006 in the Provinces of British Columbia, Saskatchewan and Ontario, and during such period the MFDA shall comply with the following conditions during the period that MFDA Rule 2.4.1 is suspended as set out in its MFDA Notice to Members entitled "Transition Periods":

(A) (A) the MFDA shall co-operate with the Commission and its staff, including participating on any joint industry and regulatory committee struck by the Commission and its staff, in their efforts to develop amendments to applicable securities legislation that would, among other things, allow an Approved Person to carry on securities related business



(within the meaning of the MFDA rules) through a corporation, while preserving that Approved Person's and the member's liability to clients for the Approved Person's actions;

~~(B)~~ (B) the MFDA shall, as a condition of a member or Approved Person being entitled to rely on the suspension of Rule 2.4.1, require that the member and its Approved Persons agree, and cause any recipient of commissions on behalf of Approved Persons that is itself not registered as a dealer or a salesperson to agree, to provide to the MFDA, the Commission and the applicable member access to its books and records for the purpose of determining compliance with the rules of the MFDA and applicable securities legislation;

~~(C)~~ (C) the MFDA shall ~~prepare a Notice to Members, which Notice shall be acceptable to the Commission and its staff, describing the effect of~~ ensure in connection with the suspension of Rule 2.4.1 ~~and the requirement that members and Approved Persons comply with the remaining Rules, with specific reference to Rule 1 Business Structures and Qualifications, Rule 1.2.1(d) Dual Occupations and the rule noted above in paragraph (B), and shall publish this Notice, once approved by the Commission or its staff, before accepting its first member;~~

~~(D)~~ (D) the MFDA shall ensure that members applying for membership are made aware of the requirements of Rule 1 by delivering to each applicant a copy of ~~the~~ its Notice ~~referred to above~~ MR-0002; and

~~(E)~~ (E) the MFDA shall not accept a member whose relationship with its Approved Persons does not comply with the rules of the MFDA and in particular, Rule 1, unless the MFDA has granted exemptive relief to that applicant under the authority granted to the Board of Directors under section 38 of By-law No. 1.

## APPENDIX A

### Reporting Requirements

#### 1. Prior Notification

1.1 The MFDA shall advise the Commission in advance of any proposed material changes or reductions in its financial review program or operational and sales compliance review programs, including as to procedures or scope, or any proposed changes in its external audit instructions and of any proposed material changes or reductions in the operation of its investigation or enforcement programs.

#### 2. Immediate Notification

2.1 The MFDA shall give the Commission notice of new directors, officers and committee chairpersons, including a 5 year employment history and information as to the involvement in criminal, relevant quasi-criminal, administrative or insolvency proceedings and civil proceedings involving business conduct or alleging fraudulent conduct or deceit in respect of each such person.

#### 3. Annual Reporting

The MFDA shall within 120 days of its fiscal year end file the following information and reports to the Commission:

3.1 The MFDA's self-regulatory staff complement, by function, and of any material changes or reductions in self-regulatory staff, by function;

3.2 Copy or summary of self-assessment by management of the MFDA's performance of its self-regulatory responsibilities and any proposed actions arising therefrom. The self-assessment shall, for each of the MFDA's member regulatory functions, set performance measurements against which performance can be compared, and identify major successes, significant problem areas, plans to resolve these problems, recruitment and training plans, and other information as reasonably requested by the Commission or its staff; and

3.3 The MFDA's budget and audited financial statements.

**13.1.3 MFDA Application for Consent to Enter into Co-operative Agreement in the Province of Quebec**

**MUTUAL FUND DEALERS ASSOCIATION OF CANADA  
APPLICATION FOR CONSENT TO ENTER INTO  
CO-OPERATIVE AGREEMENT IN  
THE PROVINCE OF QUEBEC**

October 24, 2003

The Secretary to the Commission  
Ontario Securities Commission  
20 Queen Street West  
Suite 1900, P.O. Box 55  
Toronto, Ontario  
M4S 3S8

Executive Director  
British Columbia Securities Commission  
P.O. Box 10142, Pacific Centre  
701 West Georgia Street  
Vancouver, B.C.  
V7Y 1L2

The Secretary to the Commission  
Alberta Securities Commission  
300 – 5<sup>th</sup> Avenue S.W.  
4<sup>th</sup> Floor  
Calgary, Alberta  
T2P 3C4

The Secretary to the Commission  
Nova Scotia Securities Commission  
2nd Floor, Joseph Howe Building  
P.O. Box 468  
1690 Hollis Street  
Halifax, Nova Scotia  
B3J J39

The Secretary to the Commission  
Saskatchewan Financial Services Commission  
1919 Saskatchewan Drive  
6<sup>th</sup> Floor  
Regina, Saskatchewan  
S4P 3V7

Dear Sirs/Mesdames:

**Re: Mutual Fund Dealers Association of Canada  
Application for Consent to Enter into Co-  
operative Agreement in the Province of  
Quebec**

**1. Application**

**(a) Summary**

This application is made by the Mutual Fund Dealers Association of Canada ("MFDA") concurrently to each of the Ontario Securities Commission, the British Columbia Securities Commission, the Alberta Securities Commission, the Saskatchewan Securities Commission and the Nova

Scotia Securities Commission (respectively, the "OSC", "BCSC", "ASC", "SSC" and "NSSC" and, together, the "Commissions") for consent to enter into a Co-operative Agreement ("Co-operative Agreement") with the Bureau des services financiers ("BSF") and the Chambre de la sécurité financière ("Chambre") pursuant to the terms and conditions of the Order of each such Commission recognizing the MFDA as a self-regulatory organization pursuant to section 21.1(1) of the *Securities Act* (Ontario), section 24(1) of the *Securities Act* (British Columbia), section 53.1(1) of the *Securities Act* (Alberta), section 21(2) of the *Securities Act, 1998* (Saskatchewan) and section 30 of the *Securities Act* (Nova Scotia), (respectively, the "OSA", "BCSA", "ASA", "SSA" and "NSSA" and together, the "Legislation"). The date of the Orders in respect of recognition of the MFDA referred to above by each of the OSC, BCSC, ASC, SSC and NSSC are, respectively, February 6, 2001, February 15, 2001, May 11, 2001, February 13, 2001 and November 26, 2001. The Orders of the respective Commissions recognizing the MFDA as a self-regulatory organization, as the same may be amended or restated to date, are referred to individually and collectively in this application as an "Order" or the "Orders" and the terms and conditions attached as Schedule A to each such order are referred to individually and collectively as "Terms and Conditions".

**(b) Authority for Application**

This application is made to the respective Commissions in accordance with the provisions of paragraph 12(A) of the Terms and Conditions of the OSC, BCSC, SSC and NSSC Orders and of paragraph 13(A) of the Terms and Conditions of the ASC Order.

**2. The Applicant**

The MFDA is a non-share capital corporation under Part II of the Canada *Corporations Act* incorporated on June 19, 1998 and has been recognized as a self-regulatory organization pursuant to the Orders of the Commissions referred to in paragraph 1 of this Application.

**3. Basis of Application**

**(a) MFDA Members in Quebec**

Approximately 36 Members of the MFDA either have their head offices or conduct branch operations in the Province of Quebec. The MFDA is not recognized or approved as a self-regulatory organization in Quebec and is not able to conduct its regulatory activities in respect of its Members in Quebec on the same basis that it does in other provinces and territories. The regulation of such Members in Quebec is carried out by the BSF and enforcement matters with respect to individual salespersons are conducted by the Chambre. In addition, the Fonds d'indemnisation des services financiers ("FISF") has been established in Quebec to compensate financially the victims of fraud, fraudulent tactics or embezzlement by various providers of financial services in Quebec, including MFDA Members and their personnel in Quebec. The MFDA expects to arrange to provide for customers of its Members financial

protection for eligible losses due to the insolvency of a Member.

MFDA Members are required to comply with both the MFDA's by-laws and rules as well as the laws and the requirements enforced by the BSF, Chambre and FISF in Quebec, subject to any relief or exemptions that may be available by any such authority. To the extent that either there are differences in the rules of each of the MFDA and the BSF or the MFDA is to be precluded from enforcing its rules in Quebec, the MFDA cannot be assured that its regulatory mandate with respect to Members and the public can be satisfied. One of the less satisfactory solutions is to require Members to segregate their businesses and operations in Quebec from those in other provinces by creating a separate corporation. This solution is considered to be expensive and inefficient from the point of view of MFDA Members and the public in general. A more satisfactory solution for the MFDA, Members and customers is represented by the arrangements contemplated by the Co-operative Agreement.

#### **(b) Co-operative Agreement**

The Co-operative Agreement has been negotiated by the MFDA, BSF and Chambre and accepted by the boards of directors of each of these organizations. It has also been approved under applicable legislation by the Commission des valeurs mobilières du Québec ("CVMQ") and has been submitted for approval by the Quebec Government.

The main premises of the Co-operative Agreement including those stated in Section 1.4 are commented on separately below:

- (i) Similar Mandates. The mission of the BSF as provided by section 184 of *An act respecting the distribution of financial products and services, R.S.Q., c.D-9.2* is to ensure public protection of the fields of activity under its authority which include investment contracts and mutual funds. This mandate is similar to that of the MFDA as expressed in its Letters Patent to include the encouragement and enforcement through self-regulation of a high standard of conduct of members of the mutual fund distribution industry in the interests of members, clients and the public. The MFDA has reviewed carefully the mandate and regulatory activities of the BSF and Chambre and is satisfied that they each, in fact, are performing similar regulatory activities as the MFDA.
- (ii) Similar Sales Compliance Rules. The staff of each of the MFDA and the BSF have conducted a detailed review and comparison of the rules and regulations of each of them relating to business conduct and sales practices and are satisfied that each such rules and

regulations are substantially similar or have the same regulatory objectives. This conclusion results in the MFDA being of the view that its Members in Quebec will be subject to a similar or equivalent regulatory regime with respect to their activities in Quebec or outside Quebec in accordance with MFDA Rules. The further result is that if MFDA Members in Quebec comply with the rules and requirements of the BSF and Chambre, they will be in compliance as a matter of fact with the Rules of the MFDA relating to the corresponding subject. This aspect of the implementation of the Co-operative Agreement is based on the premise that the MFDA's reliance on the BSF and Chambre to enforce their respective requirements will ensure enforcement of the MFDA's Rules as they relate to the sales compliance and business conduct of Members operating in Quebec.

- (iii) Prudential Compliance Rules. The Co-operative Agreement acknowledges in Section 4.1 that harmonization between the MFDA and BSF of all rules applicable to Members in Quebec is in the public interest. However, not all rules relating to the prudential regulation of Members in Quebec have been harmonized. In addition, because of the importance of prudential matters relating to MFDA Members, the MFDA is of the view that it must have the ability to participate directly in the regulation of its Members in Quebec in that regard. Unlike sales compliance matters referred to in (ii) above, full reliance at this time on the BSF relating to prudential regulation is not appropriate. To address this concern, the Co-operative Agreement contemplates that MFDA will be able to participate with the BSF in its Inspections (as defined in the Co-operative Agreement) to ensure that MFDA prudential rules are being complied with by MFDA Members. To the extent that MFDA Members in Quebec do not comply with MFDA rules relating to prudential matters, such Members will be subject, where appropriate, to MFDA enforcement.

As indicated above, MFDA staff will participate directly with BSF staff in the inspection of Members in Quebec and will, accordingly, be entitled to access to the books and records of Members. The MFDA Rules, in any event, require all Members to make their books and records available to MFDA staff in the

normal course. The Co-operative Agreement contains specific provisions in Section 2, 3 and 5 relating to the basis on which access to, and the sharing of, information will be co-ordinated.

(iv) Implementation. As the name of the Co-operative Agreement implies, active co-operation and co-ordination by the respective staff of the MFDA and BSF is required and anticipated. In this regard, the MFDA and BSF have already established and utilized the co-ordination committee contemplated by Section 5 of the Co-operative Agreement. This committee has established detailed protocols and examination plans and is expected to continue in a role of coordinating examinations as well as monitoring the regulatory rules and requirements of each regulator to work towards consistency and harmonization of rules in the interests of effective and efficient regulation.

(v) Equivalent Regulatory Regime. MFDA is of the view and represents to the Commissions that the result of the arrangements contemplated by the Co-operative Agreement being implemented by MFDA Members will be that such Members are subject to a similar or equivalent regulatory regime with respect to their operations in Quebec and elsewhere in Canada.

**(c) Protection Plans**

The MFDA anticipates that it will arrange for protection for financial loss to customers of its Members as a result of the insolvency of a Member. In this regard, the MFDA Investor Protection Corporation has published for comment the terms of its proposed plan and several comments have been received. At this time it is not known with certainty the form or time of such protection and the Commissions have been apprised separately in this regard. However, the MFDA acknowledges that suitable arrangements will have to be made not only with respect to its plan coverage, but also with the Quebec FISF coverage referred to above, as a result of the implementation of the Co-operative Agreement. Although the details of such arrangements cannot be specified until the actual form and extent of customer protection is determined, the MFDA is confident that cost effective and sound arrangements will be able to be settled in the interest of the MFDA, the BSF, FISF, Members and customers.

**(d) Supporting Documents**

Submitted with this application are the following supporting documents in original or photocopied form:

- (i) a draft consent to the MFDA entering into the Co-operative Agreement pursuant to the relevant Terms and Conditions of each Commission on the basis described herein (the draft follows the provisions of the OSC Terms and Conditions);
- (ii) a copy of the Cooperative Agreement dated February 25, 2003; and
- (iii) our cheque for the fee, if any, payable to the relevant Commission.

This application has been reviewed and approved by, and is signed and made by, duly authorized officers of the MFDA and such officers confirm the truth of the facts contained herein. In addition to the undersigned officers or representatives of MFDA counsel, Borden Ladner Gervais LLP, are authorized to discuss this application and any matter related to it with the Commissions.

Yours very truly,

**MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

By: "Larry Waite"  
Chief Operating Officer

By: "Mark T. Gordon"  
Vice President, Member Regulation

**Draft Commission Consent**

**Draft:** October 24, 2003

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

**AND**

**IN THE MATTER OF  
MUTUAL FUND DEALERS ASSOCIATION OF CANADA/  
ASSOCIATION CANADIENNE DES  
COURTIERS DE FONDS MUTUELS  
("MFDA")**

**CONSENT**

**WHEREAS** the Commission issued an order dated February 6, 2001, recognizing the MFDA as a self-regulatory organization for mutual fund dealers pursuant to section 21.1 of the Act ("Previous Order");

**AND WHEREAS** the Commission issued an amended and restated order dated ●, 2003 ("Recognition Order"), to (a) reflect changes in the MFDA's governance structure, (b) clarify the MFDA's ability to enter into arrangements with any other suitable body or person to perform the function of enforcing compliance by MFDA members with the MFDA's or such other body or person's substantially similar by-laws, rules, regulations, policies, forms, and other similar instruments ("Rules"), and (c) remove certain terms and conditions of the Previous Order that were transitional and have been satisfied by the MFDA;

**AND WHEREAS** the Recognition Order provides that the MFDA may, with the consent of the Commission, make arrangements with any other suitable body or person to perform the functions of monitoring and enforcing compliance with the MFDA's or such other body or person's substantially similar Rules, and investigating complaints against MFDA members and their Approved Persons (as defined in the MFDA Rules);

**AND WHEREAS** the MFDA has entered into an agreement with the Bureau des services financiers (the "Bureau") and the Chambre de la sécurité financière (the "Chambre") to co-ordinate the regulation of MFDA members with operations in Québec ("Co-operative Agreement"), attached as Schedule A;

**AND WHEREAS** the MFDA seeks the Commission's consent to the Co-operative Agreement;

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

1. The Rules of the MFDA and the laws, regulations, orders or other regulatory directions or instruments which the Bureau and/or the Chambre administer or enforce from time to time including, without limitation, the *Securities Act* (Québec) and

the Regulations made thereunder (the "Regulations of the Bureau and/or the Chambre"), relating to business conduct and sales practices, are substantially similar or have the same regulatory objectives;

2. MFDA members will, by complying with the Regulations of the Bureau relating to business conduct and sales practices in Québec, be considered by the MFDA to comply with MFDA Rules relating to the same subject matter;
3. The MFDA, the Bureau and the Chambre have similar public interest mandates;
4. The MFDA and the Bureau together with the Chambre, are performing similar regulatory activities;
5. The MFDA has sufficient access to its members' books, records and operations to be able to conduct prudential compliance reviews of its members operating in Québec;
6. Staff of the MFDA and the Bureau have struck a coordination committee to develop similar approaches to conducting inspections, a similar inspection program and schedule of inspections to ensure substantially consistent monitoring and enforcement of requirements;
7. The MFDA is of the opinion that members in Quebec will be subject to a similar or equivalent regulatory regime;

**AND WHEREAS** the Commission agrees to provide such consent, subject to the terms and conditions set out in Schedule B attached;

**AND WHEREAS** the MFDA has agreed to the terms and conditions set out in Schedule B;

**AND WHEREAS** the Commission has determined that the Co-operative Agreement is not prejudicial to the public interest;

**THE COMMISSION HEREBY CONSENTS** to the MFDA entering into the Co-operative Agreement, subject to the terms and conditions attached as Schedule "B".

DATED ●, 2003.

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

**SCHEDULE B****TERMS AND CONDITIONS OF CONSENT**

1. The MFDA shall regulate its members on the basis that its members will, by complying with the Regulations of the Bureau and/or the Chambre relating to business conduct and sales practices in Québec, be deemed to be complying with MFDA Rules relating to the same subject matter.
2. Management of the MFDA shall assess the effectiveness of the Co-operative Agreement, including (a) the performance of the Bureau and the Chambre in monitoring and enforcing compliance by MFDA members in Québec with Regulations of the Bureau and/or the Chambre relating to business conduct and sales practices, and in investigating complaints against its members and their Approved Persons, and (b) whether the MFDA Rules and the Regulations of the Bureau and/or the Chambre continue to be harmonized. Management of the MFDA shall report to the MFDA Board of Directors their assessment together with any recommendations for improvements. The MFDA will provide the Commission with copy of such report by the second anniversary of the date of this consent, and shall advise the Commission of any proposed actions arising therefrom.
3. Prior to the commencement of coverage by the MFDA Investors Protection Corporation or any other compensation fund approved by the MFDA and the Commission, and prior to the effective date of the agreement between the MFDA, the MFDA Investors Protection Corporation or such other fund, the Bureau and the Fonds d'indemnisation des services financiers, that co-ordinates the protection of clients and the administration of insolvent MFDA members in Québec, the MFDA shall obtain the consent of the Commission to such agreement.
4. This consent expires on the earlier of the termination date of the Co-operative Agreement and the third anniversary of the date of this consent.

**Co-operative Agreement dated February 25, 2003****CO-OPERATIVE AGREEMENT**

made as of •, 2003

BETWEEN:

**BUREAU DES SERVICES FINANCIERS  
("Bureau")****CHAMBRE DE LA SÉCURITÉ FINANCIÈRE  
("Chambre")**

and

**ASSOCIATION CANADIENNE DES  
COURTIERS DE FONDS MUTUELS  
("ACCFM")****INTRODUCTION:**

1. The Bureau is a regulatory organization in respect of mutual fund firms and their representatives pursuant to *An Act respecting the distribution of financial products and services*, and its Regulations and carries out other activities in respect thereof pursuant to that Act and other applicable legislation including, without limitation, the Securities Act of Quebec.
2. Pursuant to the Act, the Chambre is a self-regulatory organization responsible for protecting the public in maintaining discipline and ethics among its members who carry on activities in the following sectors: insurance of persons, group insurance of persons, financial planning, group savings plan brokerage, investment contracts brokerage and scholarship plan brokerage, all through a syndic and a discipline committee. It regulates the compulsory continuing education, supervises its application and professional development of representatives within its jurisdiction.
3. The ACCFM is a self-regulatory organization which is recognized as such in certain provincial jurisdictions other than Quebec in respect of mutual fund dealers and their approved persons, and which is empowered under the legislation of such jurisdictions to supervise or regulate matters similar to those within the jurisdiction of the Bureau or the Chambre as contemplated by section 189 of the Act.
4. The Fonds d'indemnisation des services financiers provides compensation to victims of fraud, fraudulent tactics or embezzlement that takes place within the context of the distribution of financial products and services covered by the Act in Quebec by, among others, mutual fund firms and their representatives including Members of the ACCFM and their representatives.

5. The Corporation de protection des investisseurs de l'ACCFM has been established to provide protection to eligible clients.

6. In order to protect the public, avoid regulatory inefficiencies and preserve and enhance the respective separate mandates of the Bureau, Chambre and ACCFM, the parties wish to enter into this co-operative agreement pursuant to section 189 of the Act relating to the specific subjects set out below.

7. These recitals are an integral part of this Agreement.

## **1. INTERPRETATION**

### **1.1 General Principles**

This Agreement is intended to set out the general principles on which the parties will co-operate in the regulation of Member Firms of the ACCFM with operations and activities as mutual fund firms in Quebec and elsewhere. It is acknowledged that many aspects of the implementation of this Agreement will be by practices and protocols between the parties as experience develops, and this Agreement, and policy and administrative matters under it, may be the subject of amendments or supplementary protocols and understandings. In all respects, this Agreement is to be implemented in a manner that preserves the respective jurisdiction of the parties (as set out in Section 1.3).

### **1.2 Definitions**

The following terms as used in this Agreement or any document of the parties contemplated hereby shall have the meanings indicated, except as defined otherwise or the context requires:

"ACCFM IPC" means the Corporation de protection des investisseurs de l'ACCFM, a corporation created under Part II of the *Canada Corporations Act* by ACCFM;

"Act" means *An act respecting the distribution of financial products and services*, R.S.Q., c.D-9.2;

"Approved Person" means an individual who is an Approved Person of a Member of the ACCFM under the Rules;

"Firm" means a legal person registered with the Bureau to pursue mutual fund brokerage activities in Quebec;

"FISF" means the Fonds d'indemnisation des services financiers established pursuant to the Act;

"Head Office" means:

- (i) the principal or registered office of the Member Firm according to the legislation under which the Member Firm is incorporated; and

- (ii) any office listed in Appendix A as may be amended from time to time by the Coordination Committee referred to in Section 3.5.

"Information" means all information in written, electronic or other format referred to in Section 2.1 and in Section 2.2;

"Inspection" means, if carried out by the Bureau, an inspection in the sense of the Act, and if carried out by the ACCFM, means an examination or investigation in the sense of the Rules;

"Members" means mutual fund dealers which are Members of the ACCFM but, for greater certainty, shall not include individuals or representatives who are Approved Persons;

"Member Firm" means a Firm which is a Member;

"Prudential Matters" means in respect of a Member those aspects of its structure and operations that affect its financial integrity including, without limitation,

- (i) capital, margin, segregation, filing, reporting and audit matters which are the subject of ACCFM Rule 3;
- (ii) insurance requirements which are the subject of ACCFM Rule 4;
- (iii) systems and operations matters including internal controls and procedures and trading processing which are the subject of ACCFM Policy 4; and
- (iv) systems and procedures relating to compliance and supervision requirements of Members with respect to operations outside Quebec;

"QSA" means the *Securities Act* (Quebec), R.S.Q., c.V-1.1;

"Regulations" means in respect of either the Bureau or the Chambre, the laws, regulations, orders or other regulatory directions or instruments which they (or either of them) administer or enforce from time to time including, without limitation, the Act, the QSA and the Regulations made thereunder.

"Representatives" means individuals authorized pursuant to the Act to conduct mutual fund activities in Quebec;

"Rules" means the By-laws, Rules, Policies, Forms, orders, or other regulatory directions or instruments which the ACCFM administers or enforces from time to time.

### **1.3 Jurisdiction**

#### **1.3.1 Bureau and Chambre.**

The authority, capacity and jurisdiction of both the Bureau and Chambre are subject to the provisions of the Act, the QSA and other legislation and principles of law applicable

in Quebec and the rights and obligations of each of the Bureau and Chambre under this Agreement are subject to such legislation and laws.

### **1.3.2 ACCFM**

ACCFM is a self-regulatory organization, recognized as such in certain provincial jurisdictions other than Quebec, to which its Members belong and submit to self-regulation, subject to the laws in the applicable provinces of Canada.

### **1.3.3 Agreement**

This Agreement is entered into pursuant to Section 189 of the Act and the entering into of this Agreement shall not constitute the recognition of the ACCFM as a self-regulatory organization in Quebec.

### **1.4 Premise**

It is a premise of this Agreement that:

- (a) the Rules of the ACCFM and Regulations of the Bureau and Chambre relating to business conduct and sales practices of Members and their Approved Persons are substantially similar and/or have the same regulatory objectives. Thus, Member Firms will, by complying with the Regulations of the Bureau relating to business conduct and sales practices in Quebec, comply with ACCFM Rules relating to the same subject matter;
- (b) Prudential Matters of Member Firms related to Head Offices located in Quebec affect clients of Member Firms and the public both inside and outside Quebec;
- (c) the Bureau, Chambre and the ACCFM have similar public interest mandates;
- (d) the Bureau, Chambre and the ACCFM are performing similar regulatory activities; and
- (e) it is in the respective interests of the parties to this Agreement and the public interest including Quebec clients of Member Firms that (i) the protection to clients and (ii) the administration of insolvent Member Firms be co-ordinated by separate agreement between the Bureau, the ACCFM, the ACCFM IPC and FISF as may be relevant, such agreement to be settled prior to the date the ACCFM IPC commences offering coverage.

Based on the foregoing, the ACCFM considers that its mandate with respect to its Member Firms and Approved Persons registered under the Act can be satisfied by the

performance of the Bureau and Chambre of their existing mandates under the Act and in accordance with the provisions of this Agreement.

### **1.5 Laws of Quebec**

This Agreement is to be construed and governed by the laws of Quebec.

### **1.6 French Text**

An English translation of this Agreement has been prepared for the convenience of the parties. In case of any divergence between the English translation and the French text of this Agreement, the French text shall prevail.

## **2. INFORMATION SHARING**

### **2.1 Sharing**

Each of the Bureau, Chambre and ACCFM receives and maintains Information pertaining to the business, operations and activities of Firms and Members, as the case may be, and their representatives, Approved Persons and employees, as the case may be. Subject to the restrictions set out in this Agreement including, without limitation, the provisions of Sections 2.3 and 2.4, the Bureau, Chambre and ACCFM shall make available to each other Information on the basis provided herein. A party may make such Information available to another party (a) on request by such party, (b) voluntarily without request or (c) pursuant to protocols or understandings developed and approved by the parties to be followed as a matter of course. Any Information so provided shall be in a format as agreed by the parties and may be specific as to any Member Firm, all Member Firms or class of Member Firms and as to any subject matter or activity relating to a Member Firm, all Member Firms or class of Member Firms. It is expected that each party shall bear its own expenses in connection with the provision of Information hereunder, except that in any case where the costs of providing Information would be unfairly high or excessive the parties may agree to an appropriate basis of sharing such costs and, if such agreement is not reached, there shall be no obligation to provide Information under this Section 2.1.

### **2.2 Complaints**

The Bureau or the Chambre, as the case may be, will advise the ACCFM on a periodic basis of the status or conclusion of any complaint described in Section 5.1.1. The ACCFM will advise the Bureau or the Chambre, as the case may be, on a periodic basis of the status or conclusion of any complaint described in Section 5.1.2.

### **2.3 Use and Confidentiality**

All Information provided to a party hereunder shall be used solely in respect of the regulatory and enforcement activities of the recipient and shall be kept confidential and not disclosed to any other person except as (a) consented to by the party providing the Information, (b) to the extent the Information is in the public domain, or (c) specifically



required by applicable law or a court or regulatory authority of competent jurisdiction.

## 2.4 Privacy Legislation

The obligations of the parties to provide Information hereunder are subject to the restrictions of any privacy or similar legislation including, without limitation, *An Act respecting access to documents held by public bodies and the protection of personal information*, R.S.Q., c.A-2.1. The parties shall endeavour to administer their affairs and to the extent authorized make and enforce Regulations and Rules which permit the provision of Information hereunder including satisfying the requirement for the consent by Member Firms of the release and use of Information pursuant to this Agreement.

## 2.5 Notice of Agreement

It is acknowledged that the parties intend to give notice to Member Firms, representatives, governments and regulators and the public of the fact that this Agreement has been entered into, and the parties shall co-operate in settling the terms and format of such notices.

## 3. INSPECTIONS

### 3.1 Prudential Matters Inspections in Head Office

The Bureau, as lead jurisdiction, shall conduct Inspections in Quebec concerning the Prudential Matters of all Member Firms having Head Offices in Quebec. The ACCFM may cooperate with the Bureau in conducting such Inspections pursuant to the provisions of Section 3.5. For the purpose of permitting ACCFM to cooperate with the Inspections contemplated herein and ensuring that any Information relating thereto can be used by the Bureau, the Bureau shall recognize or designate representatives of ACCFM as inspectors of the Bureau. The ACCFM, as lead jurisdiction, shall conduct Inspections of all Member Firms having Head Offices outside Quebec. The Bureau may cooperate with the ACCFM in conducting such Inspections pursuant to the provisions of Section 3.5.

### 3.2 Business Conduct and Sales Practices Compliance

Subject to the provisions of Section 3.3, ACCFM acknowledges that it will not conduct Inspections in Quebec relating to the business conduct and sales practices compliance by its Member Firms and their representatives and their operations in Quebec and as they affect clients in Quebec and the Quebec public. In this regard ACCFM understands that the Bureau and Chambre will be conducting such Inspections in accordance with the Regulations.

### 3.3 Special Circumstances

**3.3.1** In this Section, "Special Circumstances" means:

- (a) for the ACCFM and the Bureau, in respect of Prudential Matters, an

apparent financial problem that can cause insolvency of a Member Firm;

- (b) for the ACCFM, in respect of business conduct and sales practices compliance, a situation that occurred outside Quebec that may demonstrate an apparent major compliance failure in respect of such practices;
- (c) for the Bureau, in respect of business conduct and sales practices compliance, a situation that occurred in Quebec that may demonstrate an apparent major compliance failure in respect of such practices.

**3.3.2** The ACCFM, when it becomes aware of Special Circumstances, may request the Bureau or the Chambre, as the case may be, to conduct an Inspection of a Member Firm in Quebec. The Bureau or the Chambre, as the case may be, when it becomes aware of Special Circumstances, may request the ACCFM to conduct an Inspection of a Member Firm elsewhere in Canada. The party that has requested the Inspection may cooperate with the other party which becomes the lead jurisdiction. For the purpose of permitting the ACCFM to cooperate with such an Inspection in Quebec and ensuring that any Information relating thereto can be used by the Bureau, the Bureau shall recognize or designate representatives of ACCFM as inspectors of the Bureau.

### 3.4 Information

The results of any Inspections provided for in this Section 3 are to be considered Information for the purposes of Section 2.

### 3.5 Coordination Committee

The ACCFM and the Bureau will use its best efforts to develop a similar Inspection program and similar views and approaches related thereto. A coordination committee composed of Inspections staff of both parties shall be responsible for ensuring the follow-up of the application of the Inspection program. Such coordination committee shall determine the number of Member Firms that must be Inspected in a year and the scheduling of such Inspections.

### 3.6 Inspections Relating to Enforcement and Complaints

Notwithstanding the provisions of this Section 3, Inspections relating to enforcement and complaints shall be subject to the provisions of Section 5.

## 4. REGULATIONS AND RULES

### 4.1 Harmonization

The parties acknowledge that, subject to applicable laws, public policy and their respective mandates, substantially similar Regulations and Rules applicable to Member Firms,

and their consistent application, is in the interests of the public, Member Firms and their clients. The manner in which the parties pursue the foregoing objective will be determined according to the particular Regulations and Rules identified and may include, without limitation, the procedures referred to in Sections 4.2 and 4.3. It is acknowledged that the Bureau or the Chambre may not have the power to make or amend such Regulations, or be responsible for initiating such actions by other authorities. It is acknowledged that under the terms of the legislation in certain provinces of Canada, or the terms on which ACCFM is recognized or authorized to operate, ACCFM may require the approval of other authorities to make or amend its Rules.

#### **4.2 Development**

The parties shall keep each other advised as to the development or proposed development of new or amended Regulations and Rules. Where the subject matter permits and it would otherwise be helpful, the parties will consult with each other, provide information to each other and/or engage in forums or committees to assist in the objective of substantially similar Regulations and Rules.

#### **4.3 Notices of Regulations and Rules**

The parties will use their best efforts to provide to each other in advance of publication any proposed notices, directions or other regulatory communications relating to the application or interpretation of their respective Regulations and Rules. The purpose of this process is to permit the recipient of such information to comment on the proposed publication and/or to amend or co-ordinate the publication of its own such notices, directions or communications to assist the public, clients and Member Firms in understanding and complying with the Regulations and Rules.

### **5. ENFORCEMENT AND COMPLAINTS**

#### **5.1 Complaints**

##### **5.1.1 ACCFM**

ACCFM shall refer any complaint it receives relating to the conduct of its Member Firms and Approved Persons in Quebec to the Bureau or Chambre, as appropriate. The Inspection related to any such complaint shall be carried out by the Bureau or Chambre according to their respective practices and mandates.

##### **5.1.2 Bureau and Chambre**

The Bureau or Chambre shall refer any complaint it receives relating to the conduct of Member Firms and Approved Persons outside Quebec to ACCFM. The Inspection related to any such complaint shall be carried out by the ACCFM according to its practices and mandates.

### **5.2 Enforcement Regarding Member Firms**

#### **5.2.1 Business Conduct and Sales Practices Compliance**

Enforcement actions in respect of Member Firms and Approved Persons in respect of or arising out of matters referred to in Section 3.2, shall be undertaken by the Bureau or Chambre, as the case may be, and not by the ACCFM.

#### **5.2.2 Prudential Matters and Special Circumstances**

Enforcement actions in respect of Member Firms in respect of or arising out of Prudential Matters referred to in Section 3.1 or the subject of an Inspection under Section 3.3 may be undertaken by the ACCFM.

#### **5.2.3 General**

The parties acknowledge that in order that enforcement actions apply everywhere in Canada, both the ACCFM and the Bureau must exercise their respective jurisdictions. Nothing in Section 5.2.2 shall preclude the Bureau or Chambre, as the case may be, from taking enforcement action pertaining to the same circumstances referred to in the preceding sentence.

### **5.3 Co-operation**

The parties shall co-operate to the extent reasonable and practicable in co-ordinating and providing mutual assistance to each other in enforcement actions involving Member Firms and Approved Persons. Such co-operation shall include the provision of Information pursuant to Section 2, advance notice of proposed proceedings, joint settlement discussions where appropriate and the avoidance of double jeopardy in respect of Member Firms and Approved Persons.

### **6. GENERAL**

#### **6.1 Term**

Subject to Section 6.2, this Agreement will remain in force until the earlier of:

- (a) the Rules of the ACCFM and Regulations of the Bureau relating to Prudential Matters are substantially similar for Member Firms; and
- (b) the Agence nationale d'encadrement du secteur financier established under the Bill relating to the Act respecting the agence nationale d'encadrement du secteur financier (L.Q. 2002, c.45) is fully operational, unless extended by written agreement between the ACCFM and the Bureau or the ACCFM and the Agence nationale d'encadrement du secteur financier.

**6.2 Termination**

This Agreement may be terminated by any party on not less than 180 days' prior written notice to the others of them.

**6.3 Notices**

Any notice or communication required or desirable under this Agreement may be given in writing by courier or electronic means as set out below and, if given accordingly, shall be effective on receipt or, if by electronic means, on transmission and receipt by the sender of electronic confirmation of such successful transmission:

(a) if sent to the Bureau:

140, Grande-Allée Est  
Bureau 300  
Québec, Québec  
G1R 5M8

Attention: Louise Champoux-Paillé,  
President  
Facsimile: ●  
e-mail: ●

(b) if sent to the Chambre:

500, Rue Sherbrooke O.  
7e Étage  
Montréal, Québec  
H3A 3C6

Attention: Lucie Granger, Director General  
Facsimile: ●  
e-mail: ●

(c) if sent to ACCFM:

121 King Street West  
Suite 1600  
Toronto, Ontario  
M5H 3T9

Attention: Larry Waite, Chief Operating  
Officer  
Facsimile: (416) 943-1218  
e-mail: lwaite@mfd.ca

AGREED by the parties under the hands of their authorized representatives as of the date set out above.

**BUREAU DES SERVICES FINANCIERS**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**CHAMBRE DE LA SÉCURITÉ FINANCIÈRE**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**ASSOCIATION CANADIENNE DES COURTIER DE FONDS MUTUELS**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**13.1.4 IDA Settlement Hearing - James Moon and Benjamin Gelfand**

**NEWS RELEASE**  
**For immediate release**

**NOTICE TO PUBLIC: SETTLEMENT HEARING**

**IN THE MATTER OF  
JAMES MOON AND BENJAMIN GELFAND**

December 3, 2003 (Toronto, Ontario) – The Investment Dealers Association of Canada announced today that a hearing date has been set for the presentation, review and consideration of a Settlement Agreement by the Ontario District Council of the Association.

The Settlement Agreement is between Staff of the Association and James Moon and Benjamin Gelfand and relates to matters for which Mr. Moon and Mr. Gelfand may be disciplined by the Association. The conduct that is the subject of the hearing occurred during the period between September 1999 and December 2000 while Mr. Moon and Mr. Gelfand were employed at the Toronto office of TD Evergreen.

The proceeding is scheduled to commence at 9:30 a.m. or soon thereafter on December 11, 2003 in the main boardroom of the Investment Dealers Association of Canada located at 121 King Street West, Suite 1600 Toronto, Ontario. The proceeding is open to the public except as may be required for the protection of confidential matters.

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](mailto:apopovic@ida.ca)

Jeff Kehoe  
Director, Enforcement Litigation  
(416) 943-6996 or [jkehoe@ida.ca](mailto:jkehoe@ida.ca)

**13.1.5 RS Adjourns Date in the Matter of Credit Suisse First Boston Canada Inc.**

**December 8, 2003**

**NOTICE TO PUBLIC**

**Subject: Market Regulation Services Inc. adjourns date *In the Matter of Credit Suisse First Boston Canada Inc.***

The above matter scheduled to begin on December 11, 2003 has been adjourned to January 16, 2004 commencing at 9:30 a.m. or as soon thereafter as the matter can be heard, at the offices of RS, 145 King Street West, 9<sup>th</sup> 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

**13.1.6 RS Hearing Panel to Reconvene in the Matter  
of John Andrew Scott**

**December 9, 2003**

**NOTICE TO PUBLIC**

**Subject: Market Regulation Services Inc. Hearing  
Panel to Reconvene *In the Matter of John  
Andrew Scott***

The Hearing Panel of Market Regulation Services Inc. ("RS") which approved a Settlement Agreement in the matter of John Andrew Scott on November 13, 2003 will reconvene on December 16, 2003 commencing at 11:00 a.m. or as soon thereafter as the matter can be heard at the offices of RS, 145 King Street West, 9<sup>th</sup> Floor, Toronto, Ontario. The hearing is open to the public.

Reference:

Jane P. Ratchford  
Chief Counsel  
Investigations and Enforcement  
Market Regulation Services Inc.

Telephone: 416-646-7229

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