The Ontario Securities Commission

OSC Bulletin

November 26, 2004

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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)

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Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

NOVEMBER 26, 2004

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

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

The Harry S. Bray Hearing Room
Ontario Securities Commission
Cadillac Fairview Tower
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Robert L. Shirriff, Q.C.	—	RLS
Suresh Thakrar, FIBC	—	ST
Wendell S. Wigle, Q.C.	—	WSW

SCHEDULED OSC HEARINGS

TBA	**Yama Abdullah Yaqeen** s. 8(2) J. Superina in attendance for Staff Panel: RLS/ST/DLK
December 6 – 10, 2004 10:00 a.m.	**Brian Peter Verbeek** and Lloyd Hutchison Ebenezer Bruce* s. 127 K. Manarin in attendance for Staff **Panel: RLS/WSW/ST** * Lloyd Bruce settled November 12, 2004
December 14, 2004 2:00 p.m.	**Mark E. Valentine** s. 127 A. Clark in attendance for Staff Panel: SWJ/WSW/PKB
January 24 to March 4, 2005, except Tuesdays and April 11 to May 13, 2005, except Tuesdays 10:00 a.m.	**Philip Services Corp. *et al*** s. 127 K. Manarin in attendance for Staff Panel: PMM/RWD/ST
January 26, 27 31 and February 1, 2 and 3, 2005 10:00 a.m.	**Cornwall *et al*** s. 127 K. Manarin in attendance for Staff Panel: HLM/RWD/ST

March 29-31, 2005 April 1, 4, 6-8, 11-14, 18, 20-22, 25-29, 2005 May 2, 4, 12, 13, 16, 18-20, 30, 2005 June 1-3, 2005	**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
10:00 a.m.	Panel: SWJ/HLM/MTM
May 30, June 1, 2, 3, 6, 7, 8, 9 and 10, 2005 10:00 a.m.	**Buckingham Securities Corporation, David Bromberg*, Norman Frydrych, Lloyd Bruce and Miller Bernstein & Partners LLP (formerly known as Miller Bernstein & Partners)** s. 127 J. Superina in attendance for Staff Panel: TBA * David Bromberg settled April 20, 2004

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

Andrew Keith Lech

S. B. McLaughlin

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

1.1.2 Request for Comment - Proposed Amendments to Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings and Companion Policy 52-109CP

REQUEST FOR COMMENT

PROPOSED AMENDMENTS TO MULTILATERAL INSTRUMENT 52-109 CERTIFICATION OF DISCLOSURE IN ISSUERS' ANNUAL AND INTERIM FILINGS AND COMPANION POLICY 52-109CP

Request for Public Comment

The Commission is publishing for a 90-day comment period the following materials in today's Bulletin.

- a proposed amendment instrument amending Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*; and
- proposed amendments to Companion Policy 52-109CP.

We request comments on the proposed materials by **February 24, 2005**.

These materials are published in Chapter 6 of the Bulletin.

1.1.3 TSX Inc. Amendments to the Rules of the TSX: Part 4, Division 6 – Market Makers - Notice of Commission Approval

The Toronto Stock Exchange Inc. (TSX)

Amendments to the Rules of the TSX: Part 4, Division 6 – Market Makers

Notice of Commission Approval

On November 22, 2004, the TSX filed with the Commission amendments to the market making provision in the rules of the TSX. The amendments will enable a Market Maker Firm to exchange one or more of its securities of responsibility with another Market Maker Firm or transfer all of its securities of responsibility to another Market Maker Firm for consideration, subject to the approval of the TSX. The amendments have been filed as "non-public interest" amendments pursuant to the *Protocol for Commission Oversight of Toronto Stock Exchange Rule Proposals* and are deemed to have been approved upon filing. The TSX Notice and the amendments are being published in Chapter 13 of this Bulletin.

1.1.4 OSC Staff Notice 11-742 – The Securities Advisory Committee to the OSC

ONTARIO SECURITIES COMMISSION STAFF NOTICE 11-742
THE SECURITIES ADVISORY COMMITTEE TO THE OSC

In Notices published in the OSC Bulletin on August 27, 2004 and September 17, 2004, the Commission invited applications for positions on the Securities Advisory Committee ("SAC"). SAC provides advice to the Commission and staff on a variety of matters including legislative and policy initiatives and important capital markets trends and brings various issues to the attention of the Commission and staff.

The current members of SAC have staggered terms. One half of the current members will be completing their terms in December 2004. The Commission would like to take this opportunity to thank the members of SAC, listed below, who have served on the Committee with great dedication over the last two and one half years. Their advice and guidance on a range of issues has been very valuable to the Commission.

- Robert Karp – Torys LLP;
- Edwin Maynard – Paul, Weiss, Rifkind, Wharton & Garrison;
- Robert Nicholls – Stikeman Elliott;
- Dale Ponder – Osler, Hoskin & Harcourt LLP;
- Thomas Smee – Royal Bank of Canada; and
- Philippe Tardif – Lang Michener

The remaining members of SAC will continue until October 2005.

- Robert Chapman – McMarthy Tétrault;
- Helen Daley – Wardle Daley LLP;
- Carol Hansell – Davies Ward Phillips & Vineberg LLP;
- Rosalind Morrow – Borden Ladner Gervais LLP;
- Sheila Murray – Blake, Cassels & Graydon LLP;
- Jeffrey Roy – Cassels Brock & Blackwell LLP; and
- Cathy Singer – Ogilvy Renault

The Commission was very impressed with the number of highly qualified practitioners who applied for positions on SAC. Unfortunately, there were far more applicants than there were positions available and selection from among the group was very difficult. The Commission would like to thank everyone who applied for their interest in serving on SAC.

The Commission is pleased to publish the names of practitioners who will be participating on SAC for the next three years.

The new members who will be joining in January 2005 are:

- Michael Bennet – Blaney McMurtry LLP;
- Andrew Foley – Paul, Weiss, Rifkind, Wharton & Garrison;
- Leslie Ann Johnson – Fraser Milner Casgrain LLP;
- Douglas Marshall – Osler, Hoskin & Harcourt LLP;
- Jeffrey Singer – Stikeman Elliott;
- Richard Steinberg – Faskin Martineau DuMoulin LLP; and
- Robert Vaux – Goodmans LLP

The Commission will publish a notice in mid-2005 inviting applications for the next group of new SAC members, who will commence their terms in October 2005.

Reference: Monica Kowal
General Counsel
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mkowal@osc.gov.on.ca

20 Queen Street West
19th Floor, Box 55
Toronto, ON M5H 3S8

November 26, 2004.

1.1.5 Commission Approval of Amendments to National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer and Companion Policy 54-101CP

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

On August 3, 2004, the Commission approved amendments to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (the Instrument) and Companion Policy 54-101CP (the Policy).

The amendments to the Instrument and the Policy were previously published for comment on October 3, 2003 at (2003) 26 OSCB 6759.

The amendments to the Instrument were delivered to the Chair of the Management Board of Cabinet (the Minister) on November 26, 2004. If the Minister does not reject the amendments or return them to the Commission for further consideration, the amendments will come into force on February 9, 2005. The amendments to the Policy will come into force on the date that the amendments to the Instrument come into force.

1.3 New Releases

1.3.1 Commission Approves Settlements in Respect of Robert Cassels And Murray Pollitt And Pollitt & Co. Inc.

FOR IMMEDIATE RELEASE
November 18, 2004

COMMISSION APPROVES SETTLEMENTS IN RESPECT OF ROBERT CASSELS AND MURRAY POLLITT AND POLLITT & CO. INC.

Toronto – On Wednesday November 17, 2004, the Ontario Securities Commission approved two settlement agreements between Staff and the Respondent Robert Cassels and Staff and the Pollitt Respondents. The conduct under review, in part, related to tipping and improper pre-marketing communications by a dealer in the context of a bought deal financing.

A. Murray Pollitt and Pollitt & Co. Inc.

The Pollitt Respondents admitted to tipping in violation of s. 76(2) of the Act and improper pre-marketing communications contrary to IDA By-Law 29.13, the Canadian Securities Administrators' Notice on Pre-Marketing Activities in the Context of Bought Deals and OSC National Instrument 44-101. Pollitt, a trading officer with Pollitt & Co., a securities dealer, tipped some of his institutional clients about a convertible debenture bought deal financing that it had been asked to participate in as a junior member of an underwriting syndicate. This material information was provided to Pollitt's clients prior to a press release announcing the bought deal.

The sanctions ordered by the Commission were as follows:

(i) a 30 day suspension of Mr. Pollitt's registration;

(ii) a requirement that Pollitt & Co. forthwith retain a regulatory consultant, at its sole expense, to ensure that its revised practices and procedures have been properly implemented and to ensure that compliance staff and trading officers are properly trained in their obligations, roles and responsibilities;

(iii) a reprimand; and

(iv) a payment of costs in the amount of $27,000 towards a portion of the Commission's costs in relation to its investigation and proceeding.

In approving the sanction, the Commission stated its disapproval of tipping and improper pre-marketing activity. The Commission noted that tipping is just as serious as illegal insider trading as it undermines the public's confidence in the market place.

The sanctions against the Pollitt Respondents were acknowledged by Staff, and accepted by the Commission, as being on the "lighter" end of the range of potential sanctions for conduct of this nature. They nonetheless were considered to be in the public interest in light of the substantial mitigating factors which were present in the matter. These factors included the high degree of co-operation of the Respondents from the very outset of Staff's investigation which allowed Staff to conclude this matter by way of a hearing in just a little over 2 months from the issuance of the Notice of Hearing and Statement of Allegations.

B. Robert Cassels

The Cassels settlement involved an investment counsel portfolio manager, Robert Cassels, who was a client of Pollitt. Cassels' firm held stock, on behalf of its clients, of the issuer involved in the bought deal financing. The facts relating to Cassels included that Pollitt tipped him with respect to the bought deal, but did not advise him as to whether the deal had been publicly announced. Cassels contacted his registered representative to discuss a potential sale of the issuer's shares, including whether the bought deal was public and what the market conditions were for the stock. Cassels failed to use clear and unambiguous instructions in his communications with his registered representative and, as a result, an illegal, although unintended, sale of shares was effected by the registered representative.

The sanctions ordered were as follows:

1. a 30 day suspension of Cassels' registration;

2. a requirement that Cassels successfully complete the Conduct and Practices Handbook Course within one year of the date of the order;

3. a reprimand; and

4. a payment of $6,000 towards a portion of the Commission's costs in relation to its investigation and proceeding.

It was accepted by the Commission that a misunderstanding occurred between Cassels and his RR and that Cassels, although negligent, did not intend to trade on insider information. In approving the sanction the Commission noted that registrants are subject to much higher standards of conduct than a member of the public. The Commission also gave credit to Cassels for his high degree of co-operation with Staff from the very outset of the investigation which allowed Staff to conclude this matter by way of a hearing in a just a little over 2 months from the issuance of the Notice of Hearing and Statement of Allegations.

Copies of the Settlement Agreements and Orders are available on the Commission's website (**www.osc.gov.on.ca**).

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

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

1.3.2 OSC Obtains Interim Consent Order Against Emilia von Anhalt and Jurgen von Anhalt

FOR IMMEDIATE RELEASE
November 19, 2004

OSC Obtains Interim Consent Order Against Emilia von Anhalt and Jurgen von Anhalt

TORONTO – On November 18, 2004, the Ontario Securities Commission obtained an interim Order pursuant to s. 128(4) of the *Securities Act* on consent of Emilia von Anhalt and Jurgen von Anhalt. The Order was made by Justice Pepall in the Ontario Superior Court of Justice. It provides that the meeting of the shareholders requisitioned by the von Anhalts and set for November 24, 2004 be adjourned *sine die*. The Order also prohibits the von Anhalts from requisitioning a further shareholders meeting until further order of the court. Any of the parties may move to vary or set aside the interim consent Order on seven days notice.

The matter was adjourned to December 2, 2004 at 9:30 a.m. to schedule the further hearing of the Commission's s. 128 Application.

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1.3.3 OSC Directs Compliance in Mutual Fund Account Practices

FOR IMMEDIATE RELEASE
November 19, 2004

OSC Directs Compliance in Mutual Fund Account Practices

TORONTO – The Ontario Securities Commission (OSC) has directed the Mutual Fund Dealers Association (MFDA) and the Investment Dealers Association of Canada (IDA) to enforce regulatory requirements to ensure that investors' assets are protected. Over time, a limited number of mutual fund dealers and investment dealers have allowed a broad range of security holdings in clients' accounts, including securities in which mutual fund salespersons are not allowed to trade, through the use of joint service and omnibus arrangements. These arrangements are not in compliance with regulatory requirements and are required to be unwound by October 31, 2005.

The OSC requested in June 2004 that the MFDA and the IDA instruct their members not to enter into any new joint service or omnibus arrangements, or to accept new clients under any existing arrangements until it could review the practices. Following public consultations in the summer of 2004, the OSC examined a range of proposed solutions identified. The OSC found that the proposed solutions could not be implemented immediately or did not address all the investor protection concerns.

As well, the OSC received a report from the MFDA and IDA Joint Industry Committee in November outlining proposed solutions. This report does not include any recommendations that would cause the OSC to revise its decision to require that these arrangements be unwound.

"Some dealers may consider that certain practices appear to be more convenient for their clients," said OSC Chair David Brown. "But when these practices expose investors to risks because they are not in compliance with the rules, they must be corrected. If the structure of the market changes, we can consider adapting the rules, but until that time comes, all firms must comply." Mr Brown pointed out that only a limited number of mutual fund dealers allow omnibus accounts and joint service arrangements. Further, a number of dealers have either chosen not to enter into these arrangements or have taken steps to end similar arrangements.

The practices expose clients to risk of loss, since the prohibited securities are not currently eligible for fund protection coverage. Further, they can put pressure on mutual fund dealers to act beyond the scope of their registration, in violation of regulations under the Ontario *Securities Act*. They can also lead to client confusion as well as unclear supervisory responsibilities and liability.

More information can be found in OSC *Staff Notice 31-712 Mutual Fund Dealer Business Arrangements* on the OSC's web site (**www.osc.gov.on.ca**).

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1.3.4 Ontario Securities Commission Approves the Settlement Between Staff and Luke John McGee in the Saxton Matter

FOR IMMEDIATE RELEASE
November 19, 2004

Ontario Securities Commission Approves the Settlement Between Staff and Luke John McGee in the Saxton Matter

TORONTO – On November 17, 2004, the Ontario Securities Commission approved the settlement between Staff of the Commission and Luke McGee. Mr. McGee was involved with Saxton in 1996 and 1997. In 1997, he was Saxton's vice-president, reporting to the president Allan Eizenga. Mr. McGee was a lawyer, called to the Ontario bar in 1993. He never was registered with the Commission.

In his settlement with Staff of the Commission, Mr. McGee agreed that he actively participated in the illegal distributions of the Saxton securities. Among other things, Mr. McGee was involved in the dissemination of inaccurate or misleading information to salespeople, prospective investors and investors. Notwithstanding outside legal advice in the summer of 1997 provided to Mr. McGee and others that no further funds should be raised, Saxton continued to distribute its securities.

In 1999, KPMG, Inc., as the Court-appointed custodian of Saxton's assets, reported that Saxton raised approximately $37 million from investors. KPMG opined that the value of the Saxton assets at its highest was $5.5 million.

The Commission approved the settlement agreement between Staff and Mr. McGee. In so doing, it reprimanded Mr. McGee and imposed a 15 year cease trade order, a 15 year officer and director ban and a 15 year exclusion from the s.34(b) registration exemption. As a term of the settlement, Mr. McGee agreed to co-operate with Staff in connection with the outstanding proceeding against Mr. Eizenga and Mr. Tibollo.

The approved settlement with Mr. McGee is the twentieth approved settlement in the Saxton matter. Sanctions for respondents have ranged from a 90 day cease trade order to a 20 year cease trade order and 20 year officer/director ban. Only two respondents remain in the Saxton matter: Mr. Eizenga, Saxton's president, and Mr. Tibollo, a lawyer and the president of Saxton's operating company. A date for the hearing against Mr. Eizenga and Mr. Tibollo is anticipated to be set by the end of the year.

Copies of the approved Settlement Agreement, the Commission's Order, the Amended Notice of Hearing and Amended Statement of Allegations of Staff of the Commission are available on the Commission's website (www.osc.gov.on.ca).

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 PRIDE TRUST - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – issuer deemed to have ceased to be a reporting issuer.

Ontario Statutes

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

November 17, 2004

Tasha Goh
Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Dear Ms. Goh:

Re: PRIDE TRUST™ (the "Applicant") – Application to Cease to be a Reporting Issuer under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Newfoundland and Labrador, New Brunswick, (collectively, the "Jurisdictions")

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

As the Applicant has represented to the Decision Makers that:

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

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is deemed to have ceased to be a reporting issuer.

"Cameron McInnis"

2.1.2 Superior Plus Income Fund- MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications. Relief granted to certain vice presidents of a reporting issuer from the insider reporting requirements, subject to certain conditions, as outlined in CSA Staff Notice 55-306 - Applications for Relief from the Insider Reporting Requirements by Certain Vice Presidents.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 1(1), 107, 108, 121(2)(a)(ii).

Regulations Cited

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

National Instrument Cited

National Instrument 55-101 - Exemption From Certain Insider Reporting Requirements.

Staff Notice Cited

CSA Staff Notice 55-306 - Applications for Relief from the Insider Reporting Requirements by Certain Vice Presidents.

Citation: Superior Plus Income Fund, 2004 ABASC 1116

November 10, 2004

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA, SASKATCHEWAN, MANITOBA, QUEBEC,
NEWFOUNDLAND & LABRADOR, NOVA SCOTIA
AND ONTARIO (THE "JURISDICTIONS")

AND

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

AND

IN THE MATTER OF
SUPERIOR PLUS INCOME FUND (THE "FILER")

Background

The local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the "Legislation") for an exemption from the insider reporting requirements for certain Vice-Presidents of the Filer (the "Requested Relief").

Under the Mutual Reliance Review System for Exemptive Relief Applications

(a) the Alberta Securities Commission is the principal regulator for this application, and

(b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a limited purpose, unincorporated trust established under the laws of the Province of Alberta by a Declaration of Trust made as of August 2, 1996, as amended and restated on October 7, 2003 with its head and registered office located in Calgary, Alberta.

2. The Filer does not conduct active business operations, but rather, it distributes to its unitholders the income it receives from Superior Plus Inc. ("Superior"). The Filer holds all of the outstanding securities of Superior.

3. Superior has four operating divisions: Superior Propane, a distributor of propane, related products and services; ERCO Worldwide, a supplier of chemicals and technology to the pulp and paper and water treatment industries; Winroc, a distributor of wall and ceiling construction products in North America; and Superior Energy Management which provides natural gas supply services, predominantly to commercial and industrial markets in Ontario.

4. The trust units of the Filer trade on the Toronto Stock Exchange (the "TSX") under the trading symbol "SPF.UN". The Filer also has Series 1 and Series 2, 8% Convertible Unsecured Subordinated Debentures outstanding, that trade on the TSX under the trading symbols "SPF.DB" and "SPF.DB.A", respectively.

5. The Filer is a reporting issuer in all of the provinces and territories of Canada that have such a concept.

6. To its knowledge, the Filer is not in default of any of the requirements of the applicable securities legislation in any of the provinces or territories in which it is a reporting issuer.

7. As of the date of this application, the Filer has 29 persons who are insiders of the Filer by reason of being an officer or director of Superior, a subsidiary of the Filer, or of any of Superior's divisions.

8. There are not any persons who are insiders of the Filer who are currently exempted from the insider reporting requirements by reason of an existing exemption or a previous decision or order.

9. The Filer has developed a corporate disclosure policy (the "Disclosure Policy"), which includes procedures governing insider trading that apply to all insiders of the Filer. The Disclosure Policy also applies to employees of the Filer who have knowledge of material undisclosed information. The Filer has also designated the Chairman of the Board, Chief Executive Officer, Chief Financial Officer and the Secretary of Superior (collectively, the "Disclosure Policy Officers") to oversee compliance with the Disclosure Policy.

10. The objective of the Disclosure Policy is to ensure that the Filer's insiders are aware of the Filer's approach to disclosure and promote compliance.

11. Under the Disclosure Policy, insiders and other employees with knowledge of material undisclosed information may not trade in securities of the Filer. In addition, insiders and other employees may not trade in securities of the Filer during any "blackout" periods which may be prescribed.

12. The number of persons on whose behalf relief is being sought (the "Exempted Vice-Presidents") on the grounds that they are "nominal vice-presidents" (as defined below) of the divisions of Superior is 11.

13. The 18 insiders of the Fund for whom no relief is being sought include all the directors and officers of Superior, the presidents of each of Superior's operating divisions and the vice-presidents of finance, if any, of each of Superior's operating divisions.

14. The Disclosure Policy Officers have considered the job requirements and principal functions of the insiders of the Filer to determine which of them met the definition of "nominal vice-president" contained in Canadian Securities Administrators Staff Notice 55-306 *Applications for Relief from the Insider Reporting Requirements by Certain Vice-Presidents* (the "Staff Notice").

15. Each of the Exempted Vice-Presidents meets the following criteria and definition of "nominal vice-president", as defined in the Staff Notice:

    (a) the individual is a vice-president;

    (b) the individual is not in charge of a principal business unit, division or function of the Filer or a "major subsidiary" of the Filer (as such term is defined in National Instrument 55-101 *Exemption from Certain Insider Reporting Requirements)*;

    (c) the individual does not in the ordinary course receive or have access to information as to material facts or material changes concerning the Filer before the material facts or material changes are generally disclosed; and

    (d) the individual is not an insider of the Filer in any other capacity.

16. On an ongoing basis, the Filer will monitor the eligibility for the exemption available under the Staff Notice for each of the Exempted Vice-Presidents by monitoring such persons' respective job requirements and principal functions and assessing the extent to which in the ordinary course they receive notice of material facts or material changes with respect to the Filer prior to such material facts or material changes being generally disclosed.

17. If the Filer determines that any of the Exempted Vice-Presidents no longer satisfy the criteria of "nominal vice-presidents" set out in the Staff Notice, the Filer will inform such individuals of their ongoing obligations under the Insider Reporting Requirements.

18. The Filer has filed with the Decision Makers a copy of the Disclosure Policy.

Decision

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 Requested Relief is granted provided that:

    (a) The Filer agrees to make available to the Decision Makers, upon request, a list of all individuals who are relying on the exemption granted by this Decision as at the time of the request; and

    (b) the relief granted under this decision will cease to be effective on the date that National Instrument 55-101 is amended.

"Mavis Legg"
Manager, Securities Analysis
Alberta Securities Commission

2.1.3 CIBC World Markets Inc. and Canadian Imperial Bank of Commerce - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Registered investment dealer exempted from section 228 of the Regulation for recommendations in respect of securities of its parent bank, subject to conditions – Decision permits the registrant to make recommendations in the circumstances contemplated by subsection 228(2) of the Regulation, but without having to comply with the requirement for (comparative) information, similar to that set forth in respect of the bank, for a substantial number of other persons or companies that are in the industry or business of the bank, to the extent that such comparative information is not known, or ascertainable, by the registrant – In incorporating other requirements from subsection 228(2), the decision also provides that the space and prominence restrictions in clause 228(2)(d) relate to the information for which there is such comparative information.

Applicable Ontario Statutory Provision

Ontario Regulation 1015, R.R.O. 1990, as am., ss. 228 and 233.

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

AND

IN THE MATTER OF
THE MUTAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELEIF APPLICATIONS

AND

IN THE MATTER OF
CIBC WORLD MARKETS INC. AND
CANADIAN IMPERIAL BANK OF COMMERCE

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, Nova Scotia, and Newfoundland and Labrador (the "Jurisdictions") has received an application (the "Application") for a decision under the securities legislation (the "Legislation") of the Jurisdictions, that the provisions (the "Recommendation Prohibition") in the Legislation which provide that no registrant shall, in any medium of communication, recommend, or cooperate with any person [or company] in the making of any recommendation, that the securities of the registrant, or a related issuer of the registrant, or, in the course of a distribution, the securities of a connected issuer of the registrant, be purchased, sold or held, shall not, in certain circumstances, apply to CIBC World Markets Inc. (the "Registrant"), in respect of securities of its parent bank, Canadian Imperial Bank of Commerce (the "Bank");

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, terms used herein have the meaning set out in National Instrument 14-101 *Definitions*;

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

1. The Registrant, a corporation incorporated under the laws of Ontario, has its head office in Ontario.

2. The Bank is a Canadian chartered bank named in Schedule I of the Bank Act (Canada).

3. The Registrant is a wholly-owned subsidiary of the Bank and, as such, is a "related issuer" of the Registrant for the purposes of the Recommendation Prohibition.

4. The Registrant is registered under the Legislation of each of the Jurisdictions as a dealer in the category of "broker" and "investment dealer".

5. The Registrant acts as a full-service investment dealer.

6. The Registrant provides equity research report coverage on in excess of 300 issuers, including the Bank and all of the other banks currently named in Schedule I of the Bank Act (Canada).

7. As a member of the Investment Dealers Association of Canada (the "IDA"), the Registrant is obliged to comply with the IDA Policy 11 – Research Restrictions and Disclosure Requirements ("IDA Policy 11").

8. Guideline No. 3 of IDA Policy 11 states:

> Members should adopt standards of research coverage that include, at a minimum, the obligation to maintain and publish current financial estimates and recommendations on securities followed, and to revisit such estimates and recommendations within a reasonable time following the release of material information by an issuer or the occurrence of other relevant events.

9. In each of the Jurisdictions, the Legislation provides an exemption (the Statutory Exemption") from the Recommendation Prohibition for a recommendation (a "Recommendation") to purchase, sell or hold securities of an issuer, that

is contained in a circular, pamphlet or similar publication (a "Report") that is published, issued or sent by a registrant and is of a type distributed with reasonable regularity in the ordinary course of its business, provided that the Report:

(a) includes in a conspicuous position, in type not less legible than that used in the body of the Report

(i) a full and complete statement (a "Relationship Statement") of the relationship or connection between the registrant and the issuer of the securities; and

(ii) a full and complete statement of the obligations of the registrant under the Recommendation Prohibition and the Statutory Exemption;

(b) includes information ("Comparative Information") similar to that set forth in respect of the issuer for a substantial number of other persons or companies ("Competitors") that are in the industry or business of the issuer; and

(c) does not give materially greater space or prominence to the information set forth in respect of the issuer than to the information set forth in respect of any other person or company described therein.

10. So long as the Registrant remains a related issuer of the Bank, the Registrant cannot rely on the Statutory Exemption from the Recommendation Prohibition, to publish in a Report any Recommendation with respect to securities of the Bank, including a revision to a previous Recommendation, in response to:

(a) the release of interim financial statements of the Bank or information concerning such financial statements, or

(b) the release of information, or the occurrence of an event, that might reasonably be interpreted to have, or possibly have, a significant effect on the value of any securities issued by the Bank, or the continued validity of previously published financial estimates or recommendation issued by the Registrant in respect of any securities issued by the Bank,

unless, at the relevant time, the Registrant has been able to ascertain, and is able to include in the Report, Comparative Information for a substantial number of Competitors of the Bank, and also satisfy the requirements of the Statutory Exemption relating to space and prominence of information, referred to in paragraph 9(c), above.

11. The Registrant will be precluded from including in any Report Comparative Information for a substantial number of Competitors of the Bank if, at the relevant time:

(a) there is no Comparative Information for any Competitors that is known, or ascertainable, by the Registrant, or

(b) there is not Comparative Information for a substantial number of Competitors of the Bank that is known, or ascertainable, by the Registrant.

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 Recommendation Prohibition shall not apply to Recommendations of the Registrant in respect of securities of the Bank that are made by the Registrant in a Report, in response to:

(i) the release of interim financial statements of the Bank or information concerning such financial statements, or

(ii) the release of information, or the occurrence of an event, that might reasonably be interpreted to have, or possibly have, a significant effect on the value of any securities issued by the Bank, or the continued validity of previously published financial estimates or recommendation issued by the Registrant in respect of any securities issued by the Bank,

if, at the relevant time, Comparative Information for a substantial number of Competitors of the Bank is not known, or ascertainable, by the Registrant, provided that:

(A) the Report includes in a conspicuous position in a type not less legible than that used in the body of the Report:

(i) a Relationship Statement concerning the relationship or connection between the Registrant and the Bank; and

(ii) a full and complete statement of the obligations of the Registrant

under the Recommendation Prohibition and this Decision;

(B) for any information in respect of the Bank that is included in the Report, for which there is Comparative Information for any Competitors that is known, or ascertainable, by the Registrant, the Report includes such Comparative Information;

(C) for the information referred to in paragraph (B) above, the Report does not give greater prominence to the information in respect of the Bank than to the Comparative Information for any of the Competitors of the Bank that is included in the Report; and

(D) this Decision shall terminate on the day that is two years after the date of this Decision.

November 19, 2004.

"Paul M. Moore" "Susan Wolburgh Jenah"

2.1.4 Qwest Energy 2004 Flow-Through Limited Partnership - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from registration and prospectus requirements for trades of warrants to limited partners – limited partners acquire limited partnership units by way of initial public offering – first trade of securities acquired deemed a distribution unless certain conditions in Multilateral Instrument 45-102 are satisfied

Applicable Ontario Statutory Provisions

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

Rules

OSC Rule 45-501 – Exempt Distributions
Multilateral Instrument 45-102 – Resale of Securities

October 29, 2004

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

AND

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

AND

**IN THE MATTER OF
QWEST ENERGY 2004 FLOW-THROUGH LIMITED PARTNERSHIP (THE FILER)**

MRRS DECISION DOCUMENT

Background

¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the registration requirement and prospectus requirement in the Legislation (the Registration and Prospectus Requirements) do not apply to the first trade of Warrants (defined below) by the Filer to the limited partners (the Limited Partners) of the filer (the Non-Exempt Trades).

Under the Mutual Reliance Review System for Exemptive Relief Applications

(a) the British Columbia Securities Commission is the principal regulator for this application, and

(b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

¶ 2 Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

¶ 3 This decision is based on the following facts represented by the Filer:

1. the Filer is a limited partnership formed under the laws of British Columbia on December 30, 2003 under the *Partnership Act* (British Columbia) to achieve capital appreciation for its Limited Partners primarily by investing in a diversified portfolio of options, warrants or similar rights to purchase flow-through shares issued by resource issuers whose principal business is oil and gas/mineral exploration, development and/or production or energy generation;

2. the Filer's head office is located in British Columbia;

3. the Filer is authorized to issue an unlimited number of limited partnership units (the Units), of which one Unit is currently issued and outstanding;

4. the Filer is not currently a reporting issuer or the equivalent in any jurisdiction in Canada;

5. Qwest Energy 2004 Flow-Through Management Corp. (the General Partner) is the general partner of the Filer and manages the business and affairs of the Filer;

6. the Filer is conducting a financing in the Jurisdictions by way of an initial public offering under a prospectus dated September 16, 2004 and an amendment dated October 18, 2004;

7. in traditional flow-through limited partnership unit offerings (Traditional Flow-Through Offerings), a limited partnership is organized to invest in flow-through shares issued by resource issuers which are usually listed on a Canadian stock exchange and whose principal business is oil and gas/mineral exploration, development and/or production or energy generation; such Traditional Flow-Through Offerings are usually blind pool offerings;

8. following the closing of a Traditional Flow-Through Offering, the limited partnership will enter into agreements to subscribe for common shares from the treasury of resource issuers (Resource Cos) under flow through investment subscription agreements (the Flow-Through Agreements); under the Flow-Through Agreements, each Resource Co in question will typically incur and renounce Canadian Exploration Expense (CEE) or Canadian Development Expense (CDE) to the partnership in an amount equal to the subscription price of the Resource Co's common shares; that CEE and CDE is then flowed through the partnership to the limited partner investors;

9. Traditional Flow-Through Offerings commonly provide that the general partner may propose a liquidity mechanism to the limited partners 18 to approximately 24 months after closing of an initial public offering; such liquidity mechanisms typically involve terminating the partnership after exchanging partnership assets for securities of a mutual fund corporation or other investment vehicle on a tax-deferred basis; under some Traditional Flow-Through Offerings, such liquidity mechanism is subject to approval by the limited partners at a special meeting; under other Traditional Flow-Through Offerings, no such approval is required;

10. if a liquidity mechanism is not implemented, the limited partners in a Traditional Flow-Through Offering receive a *pro rata* share of the net assets of the partnership, including the common shares of Resource Cos held by the partnership, on the dissolution of the partnership;

11. in the flow-through offering structure proposed by the Filer (the Proposed Flow-Through Offering), an additional investment in a single-purpose financing vehicle will be added to the Traditional Flow-Through Offering structure;

12. investors who have passed a credit evaluation will have the opportunity to

first make an RRSP or RRIF-eligible investment in bonds issued by a single-purpose financing entity, Qwest Energy 2004 Financial Corp. (Financial Corp.), a wholly-owned subsidiary of a TSX Venture Exchange listed company, Knightswood Financial Corp.;

13. accordingly, an investor, his or her registered retirement savings plan (RRSP), his or her registered retirement income fund (RRIF) or the RRSP or RRIF of the investor's spouse or child, or a private corporation existing under the *Canada Business Corporations* Act or the laws of any of the Jurisdictions, as applicable, will purchase bonds of Financial Corp. maturing on December 31, 2013 which bear cumulative interest at a rate of 5% per annum (the Bonds); the Bonds will be sold by way of an initial public offering using an prospectus in each of the Jurisdictions;

14. Financial Corp. will then loan (a Loan) the net proceeds from each investor's or RRSP's or RRIF's or corporation's purchase of Bonds to that investor (an RRSP Investor); each Loan will bear interest at a fixed cumulative interest rate of 7.95% per annum and repayment of principal will be due on December 31, 2013; each Loan will be secured by a pledge of Units of the Filer acquired by the RRSP Investor (with proceeds from the Loan) and any Warrants, Flow-Through Shares or Mutual Fund Shares (as defined below) registered in the name of the RRSP Investor along with the RRSP Investor's interest in the Investment Portfolio (as defined below) at any time before or after the Filer's dissolution;

15. RRSP Investors will be required by the terms of the Loan to purchase non-transferable Units of the Filer;

16. the Units will be sold by way of an initial public offering in each of the Jurisdictions using a prospectus; in addition to being sold to RRSP Investors, Units will also be sold to conventional purchasers of Flow-Through Shares, other than RRSP Investors, although these purchasers will not receive the same overall tax benefit as an RRSP Investor whose beneficially-owned RRSP or RRIF or whose spouse's or child's beneficially-owned RRSP or RRIF, as applicable, has invested in Bonds; the gross proceeds of the offering of Units (the Funds) will be deposited in a bank account of the General Partner;

17. the limited partnership agreement (the Partnership Agreement) governing the Filer will:

(a) include standard provisions governing: the formation of the Filer; partnership capital; sales of Units; allocation of income gain and loss; distributions; liabilities of partners; function and powers of the limited partners and the general partner; accounting and reporting; and partnership meetings;

(b) set out the investment objectives, strategy and guidelines pursuant to which the Partnership's investment activities will be conducted;

(c) require the Filer to be dissolved, without any approval or other action by the Limited Partners on December 31, 2004, or such earlier date on which the Filer disposes of all of its assets, or a date authorized by an extraordinary resolution of the Limited Partners;

(d) provide that as soon as practicable following the Filer's acquisition of, any Warrants (as defined below) to purchase flow-through shares of Resource Cos, and in any event not later than upon the dissolution of the Filer, such Warrants will be distributed among the Limited Partners of the Filer *pro rata* along with Funds sufficient to permit the exercise of such Warrants;

(e) grant to the General Partner an irrevocable power of attorney, which will survive the dissolution of the Filer, to exercise Warrants to purchase flow-through shares of Resource Cos on behalf of the Limited Partners of the Filer and enter into Investment Agreements (as defined below) with Resource Cos; and

(f) grant the General Partner the authority, which will survive the dissolution of the Filer, as agent for each Limited Partner, to direct payment of the

Funds to Resource Cos upon exercise of Warrants to purchase flow through shares of Resource Cos by the Limited Partners;

18. certificates representing the Units will be issued under the book-based system and registered in the name of CDS & Co.; Financial Corp. will hold a security interest in Units beneficially owned by RRSP Investors pursuant to the terms of a pledge contained in the Loan documentation;

19. from time to time throughout 2004, the Filer, as principal, will enter into agreements to subscribe for warrants, rights or options (the Warrants) issued by Resource Cos to purchase their flow-through shares (and possibly other incidental securities, such as share purchase warrants that are comprised in a unit with a flow-through share) (collectively, the Flow-Through Shares) from treasury; the Filer will pay nominal consideration to Resource Cos for these Warrants;

20. the Filer anticipates that it will acquire the Warrants under the registration and prospectus exemptions contained in the Legislation applicable to purchases of securities made by "accredited investors" in Ontario and under Multilateral Instrument 45-103 *Capital Raising Exemptions* in other jurisdictions, as a non-redeemable investment fund that distributes its securities under a prospectus;

21. the Warrants will:

    (a) set the exercise price to purchase the Flow-Through Shares, based on negotiation between the General Partner and the Resource Cos;

    (b) be exercisable for a brief period of time (not to exceed 45 days);

    (c) be transferable to the Limited Partners of the Filer at any time during their term;

    (d) be distributable to the Limited Partners of the Filer as soon as practicable and in no event later than upon the dissolution of the Filer;

    (e) in the case of Warrants distributed to RRSP Investors, be pledged to Financial Corp. as security for Loans;

    (f) require the execution of an Investment Agreement (defined below) by the Resource Cos and the General Partner, as attorney for each of the Limited Partners, at the time of exercise of the Warrants and before the issuance of the Flow-Through Shares to the Limited Partners;

22. the Investment Agreement and the Warrants will require that the Resource Cos use 70% or more of the proceeds received by them on the purchase of the Flow-Through Shares following the exercise of the Warrants to incur CEE or qualifying CDE, which will be renounced to the holders of the Flow-Through Shares effective on December 31, 2004; the balance of such proceeds will be required to be used to incur non-qualifying CDE, which will be renounced to the holders of the Flow-Through Shares effective no later than December 31, 2005;

23. the Loan documentation between Financial Corp. and each RRSP Investor will require each RRSP Investor's Warrants (and any Flow-Through Shares received on exercise thereof and interest in the Investment Portfolio (as defined below)) to be pledged as security for his or her Loan; the share certificates representing the Flow-Through Shares, together with the cash from, or other securities obtained with any proceeds from, the sale of the Flow-Through Shares or such other securities (the Investment Portfolio) will be held by an escrow agent (the Escrow Agent), which will be a Trust Company, for the benefit of the Limited Partners; the escrow agreement governing the conduct of the Escrow Agent will provide that if an RRSP Investor defaults on his or her Loan and fails to rectify the default within 15 days of receiving notice of such default, the Escrow Agent will release such RRSP Investor's interest in the Investment Portfolio to Financial Corp. to allow for execution against such pledged security;

24. throughout 2004, the Resource Cos who grant Warrants to the Filer will require funding; accordingly, it will become appropriate for the Warrants to be

exercised and Flow-Through Shares purchased with some of the Funds; the Filer will distribute from the Funds the exercise price of the Warrants to the Limited Partners *pro rata*; such Funds will be held by the General Partner as agent on behalf of the Limited Partners;

25. the General Partner, acting on behalf of the Limited Partners, will notify the Resource Cos that the Limited Partners have elected to exercise their Warrants to purchase Flow-Through Shares and, as attorney on behalf of each Limited Partner, will enter into subscription agreements (the Investment Agreements) with Resource Cos, under which each Limited Partner, in his or her personal capacity and not in his or her capacity as Limited Partner, will exercise and subscribe for Flow-Through Shares issued by the Resource Cos under the terms of each Limited Partner's Warrants; the Investment Agreements will contain the same terms as are included in conventional flow-through share subscription agreements, including the requirement for the Resource Cos to use 70% or more of the proceeds received by them from the purchase of the Flow-Through Shares to incur CEE or qualifying CDE which will be renounced to the holders of the Flow-Through Shares effective on December 31, 2004; the balance of such proceeds will be required to be used to incur non-qualifying CDE, which will be renounced to the holders of the Flow-Through Shares effective no later than December 31, 2005;

26. concurrently with the execution of the Investment Agreements, the General Partner, as agent for each Limited Partner, will direct payment to the Resource Cos of the exercise price for the Flow-Through Shares from the Funds; certificates representing Flow-Through Shares will be issued and registered in the name of the Escrow Agent for the benefit of the Limited Partners;

27. some of the Flow-Through Shares will be qualified by a prospectus and, therefore will be freely tradeable; however, some of the Flow-Through Shares (the Restricted Flow-Through Shares) may be issued on a private placement basis and accordingly subject to hold periods;

28. on or immediately prior to December 31, 2004, the Filer will be dissolved; it is anticipated that all Warrants will have been transferred to the Limited Partners and exercised and the vast majority of the Funds will have been expended to purchase Flow-Through Shares before the dissolution of the Filer;

29. immediately before the dissolution, any remaining Funds will be distributed by the Filer to the Limited Partners *pro rata* in proportion to the number of Units held by each Limited Partner;

30. the Investment Portfolio will be held by the Escrow Agent and will be managed on an ongoing basis by a registered portfolio manager;

31. the Escrow Agent will be granted the contractual discretion by the former Limited Partners to sell Flow-Through Shares (respecting any seasoning periods attached thereto) and other securities comprising the former Limited Partner's Investment Portfolio and to reinvest the net proceeds from such dispositions in securities of resource issuers whose principal business is oil and gas, mining, certain energy production, pulp and paper, forestry, or a related resource business, such as a pipeline or service company or utility on the directions of a registered portfolio manager;

32. between February 28, 2006 and June 30, 2006, the General Partner may implement a transaction, or in its sole discretion propose a transaction for approval by the former Limited Partners to provide for liquidity and long-term growth of capital, which may involve exchanging each former Limited Partner's Investment Portfolio for redeemable securities (Mutual Fund Shares) of a mutual fund corporation or other investment vehicle (the Mutual Fund) on a tax-deferred basis (a Liquidity Transaction); any such liquidity rollover will be subject to obtaining all necessary regulatory approvals and must occur on or before June 30, 2006; the General Partner may, in its sole discretion, call a meeting of the former Limited Partners to approve a Liquidity Transaction and no Liquidity Transaction proposed for approval will be implemented if such former Limited Partners holding a majority of the interests in the Investment Portfolio represented at such meeting vote against a proceeding with the Liquidity Transaction;

33. each RRSP Investor's interest in the Investment Portfolio will be held by the Escrow Agent for the benefit of such RRSP Investor under the escrow agreement until the earlier of a Liquidity Transaction and December 31, 2006; if a Liquidity Transaction closes on or prior to June 30, 2006, the Escrow Agent will release and deliver each RRSP Investor's interest in the Investment Portfolio to the Mutual Fund and the Mutual Fund Shares will be delivered by the Mutual Fund to Financial Corp. and held by Financial Corp. as security for that RRSP Investor's Loan under the terms of a pledge contained in the Loan documentation; if a Liquidity Transaction does not occur on or prior to June 30, 2006, on December 31, 2006 each RRSP Investor's interest in the Investment Portfolio will be released by the Escrow Agent to Financial Corp. and held by Financial Corp. as security for that RRSP Investor's Loan under the terms of a pledge contained in the Loan documentation;

34. each non-RRSP Investor's interest in the Investment Portfolio will be held by the Escrow Agent for the benefit of such non-RRSP Investors under the escrow agreement, until the earlier of a Liquidity Transaction and December 31, 2006; if a Liquidity Transaction is closed on or prior to June 30, 2006, each non-RRSP Investor's interest in the Investment Portfolio will be released and delivered by the Escrow Agent to the Mutual Fund in exchange for Mutual Fund Shares which will delivered to each non-RRSP Investor; if a Liquidity Transaction is not closed on or prior to June 30, 2006, on December 31, 2006 each non-RRSP Investor's interest in the Investment Portfolio will be released by the Escrow Agent to such non-RRSP Investor;

35. on December 31, 2013, the Loans will become due; the Loans, however, may also be repaid in full on the last day of each month beginning on the earlier of June 30, 2006 and the last business day of the month in which a Liquidity alternative closes and ending on November 30, 2013 upon written notice given no later than the 15th day of such month and no earlier than 60 days prior to the last day of such month; upon repayment in full of each Loan, the RRSP Investors' interest in the Investment Portfolio or Mutual Fund Shares held by or on behalf of Financial Corp. as security for the Loan will be released to the appropriate RRSP Investor; if a Liquidity Transaction is not closed on or prior to June 30, 2006, the earliest date that such release will occur will be December 31, 2006;

36. the principal received by Financial Corp. from repayment of the Loans will be distributed to owners of Bonds as a repayment of principal and it is anticipated that Financial Corp. will wind-up within the six months after repayment of the Bonds;

37. for tax purposes, in order to allow the full amount of the renounced CEE and qualifying CDE to be available to the RRSP Investors, the Limited Partners must be the persons who exercise the Warrants and acquire the Flow-Through Shares, rather than the Filer itself, accordingly, for tax purposes, the Warrants must be transferred to the RRSP Investors before they are exercised;

38. the Filer cannot rely on the registration and prospectus exemptions in the Legislation relating to the distribution of securities as part of a winding-up to distribute all of the Warrants to the Limited Partners because the formal winding-up of the Filer is not scheduled to occur until the end of December of 2004; the Filer could structure the Proposed Flow-Through Offering to include multiple limited partnerships that could be wound-up whenever Warrants had to be distributed; however, this would increase administrative time, expense and complexity and the likelihood of investor confusion;

39. due to the structure of the Proposed Flow-Through Offering, the Flow-Through Shares will be subject to contractual restrictions on transfer by the Limited Partners under an escrow agreement until at least June 30, 2006, restrictions that are similar to those that would typically occur in Traditional Flow-Through Offerings.

Decision

¶ 4 Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met.

The decision of the Decision Makers under the Legislation is that the Registration and Prospectus Requirements do not apply to the Non-Exempt

Trades, provided that the first trade in a Warrant (other than a Non-Exempt Trade) or a Restricted Flow-Through Share issued upon exercise of a Warrant is deemed to be a distribution or a primary distribution to the public unless the conditions in sections 2.5(2) and (3) of MI 45-102 *Resale of Securities* are satisfied.

"Noreen Bent"
Manager
British Columbia Securities Commission

2.2 Orders

2.2.1 Robert Cassels - 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
ROBERT CASSELS

ORDER
(Sections 127 and 127.1)

WHEREAS on August 30, 2004, the Ontario Securities Commission issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act* (the "Act") in respect of Robert Cassels ("Cassels");

AND WHEREAS Cassels entered into a settlement agreement with Staff of the Commission (the "Settlement Agreement"), in which they agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and the Notice of Hearing and Statement of Allegations of Staff of the Commission, and upon hearing submissions from Counsel to Cassels and from Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT:

(a) pursuant to clause 1 of subsection 127(1) of the Act, the registration granted to Cassels under the Act be suspended for a period of 30 days effective from the date of this Order;

(b) pursuant to clause 127(2) of the Act, Cassels be required to successfully complete the Canadian Securities Institute's Conduct and Practices Handbook Course within one year of the date of this Order;

(c) pursuant to clause 6 of subsection 127(1) of the Act, Cassels be reprimanded by the Commission; and

(d) pursuant to section 127.1 of the Act, Cassels make payment by certified cheque to the Commission in the amount of $6,000 in respect of a portion of the costs of the investigation and proceeding in relation to this matter.

November 17, 2004.

SCHEDULE "A"

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

- AND -

IN THE MATTER OF
ROBERT CASSELS, MURRAY HOULT POLLITT
AND POLLITT & CO. INC.

SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE COMMISSION AND ROBERT CASSELS

I. INTRODUCTION

1. By Notice of Hearing dated August 30, 2004, in respect of Robert Cassels et al., the Ontario Securities Commission announced that it proposed to hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, (the "Act") it is in the public interest for the Commission to make orders as specified therein.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff recommend settlement of the allegations against the Respondent Robert Cassels in accordance with the terms and conditions set out below. Cassels agrees to the settlement on the basis of the facts and conclusions agreed to as provided in Part IV and consents to the making of an order against him in the form attached as Schedule "A" on the basis of the facts set out in Part IV.

3. This settlement agreement, including the attached Schedule "A" (collectively, the "Settlement Agreement") will be released to the public only if and when the Settlement Agreement is approved by the Commission.

III. ACKNOWLEDGEMENT

4. Staff and Cassels agree with the facts and conclusions set out in Part IV of this Settlement Agreement.

IV. AGREED FACTS

Background

5. Murray Hoult Pollitt ("Pollitt") is registered in Ontario under the Act as a trading officer and director, Vice-President and Secretary of Pollitt & Co. Inc. ("Pollitt & Co.") and also serves in the capacity of designated compliance officer of the firm. Pollitt holds an approximate 80% ownership interest in Pollitt & Co.

6. Pollitt & Co. Inc is registered in Ontario as a dealer in the category of broker.

7. Robert Cassels is registered in Ontario as an investment counsel and portfolio manager with the firm Cassels Investment Management Inc. ("CIM"). Cassels is an officer and director and holds an approximate 70% ownership interest in CIM. Cassels serves as CIM's Chief Compliance Officer and Ultimate Responsible Person. CIM was a client of Pollitt & Co. at the material time.

Pollitt Contacts Robert Cassels to Advise of Bought Deal

8. On November 11, 2002 at approximately 3:08 p.m. Cassels at CIM received a voicemail message from Pollitt advising of a $100 million convertible debenture bought deal financing for Agricore United and indicating that if Cassels was interested in participating in the deal he should contact Pollitt. At approximately 3:14 p.m. Cassels spoke to Pollitt and was advised of the terms of the bought deal. At the time of these communications, CIM held 69,750 shares of Agricore on behalf of various clients.

Robert Cassels Contacts His Broker about Agricore

9. Following Cassels' discussion with Pollitt, at approximately 3:26 p.m. Cassels called his registered representative (the "RR") at TD Waterhouse. During the course of this telephone discussion between Cassels and the RR, the following was stated:

Cassels: .. .I'm in a bit of a quandary and I need your guidance with respect to this. .. this is absolutely confidential because I don't know if I am suppose to know it or not.. .on Agricore United, that's AU on Toronto, um, I've got 69,750 shares I want to sell them but the reason I want to sell them is that the broker called me and told me there was a convertible issue coming.

RR: Okay

Cassels: I haven't seen that on the wires yet and so I don't know if I'm suppose to know that and so I don't know if I'm trading on inside information.

RR: Well, was it speculation, I mean did he speculate?

Cassels: No, no, he knows.

RR: He knows for sure?

Cassels: He knows for sure and he...

RR: How does he know? And I don't want to know by the way,

Cassels: You and I are in the same position except I own shares and he called me directly to ask if I wanted to buy it

RR: Agricore, well there's news on it here, I mean 1...

Cassels: What's the news?
RR: Um, it's not today's news so...

Cassels: Okay, no that's old

RR: How could he know for sure?

Cassels: He's in the underwriting group.

RR: Well, let me see if that is public. I'll just ask around.

Cassels: Uh, no don't ask anyone...it will come out as a new release, will it come out on Dow Jones the fastest or on Reuters?

RR: Dow, Bloomberg...if you don't want to sell ahead of it then that's fine.

Cassels: Well, I don't think I'm suppose to, do you?

RR: It depends. I mean if the issue has been talked about, you know they, there were some restructuring things they were doing

Cassels: Yup.

RR: There was some, it looks like they acquired Saskatchewan Wheatpool and it looks like they have been doing something

Cassels: Yeah, they have

RR: There could be a public story on it already

Cassels: Yeah

RR: And his intention to put out some kind of income trust could be public knowledge, I don't know, I have no knowledge of it.
Cassels: No this is not an income trust this is just a convertible which is usually hard on stock prices, right?

RR: Yeah.

Cassels: Okay so anyway, I've got 69,750 to sell

RR: Okay

Cassels: Um,

RR: Okay where do you let it go

Cassels: I'm pretty aggressive in front of a convertible uh, it's currently bid about 6 bucks. I'd start right here and uh..

RR: Well I have no knowledge of this stuff, so you're talking to somebody whose ignorant.. .so you know...

Cassels: Yeah, normally if someone tells you...

RR: I don't know if they are speaking from knowledge or from recommendation or if they're just guessing.

Cassels: Yeah.

RR: So you want me to sell it?

Cassels: Yup...

RR: Alright its 6 dollars bid right now and it doesn't look like it's going to go up from here.

Cassels: No it's not going up.
RR: All right well, let me come back, hopefully I can get this thing done if I can find some interest.

Cassels: Yeah.. .and I'm pretty aggressive on selling it so...

RR: And do you have a lower limit or just.. .

Cassels: I don't know what the lower limit is.. .um

RR: Alright. Okay, let me come back.

Cassels: And maybe we just have to go on the market but maybe you could get a bid for it, I don't know.

RR: Sure, I'll find out.

Cassels: Okay thanks.. .Oh will you call me on my cell...

RR: Perfect.

13. At approximately 3:30 p.m. a sell ticket was issued by the RR to sell 69,750 shares of Agricore on behalf of CIM. At approximately 3:32 p.m. 3,700 shares of Agricore were sold on the market at $6.00.

14. Immediately following this conversation, Cassels called Agricore at approximately 3:36 p.m. Cassels represents to Staff that he called Agricore to ascertain whether the issue was public and that he was unable to speak to anyone at Agricore other than the receptionist.

15. Subsequent to this trade taking place, at approximately 3:34 p.m. the RR spoke with his superior about his discussion with Cassels. Immediately following this conversation, at 3:38 p.m. the RR called Cassels and left a message advising that he did not think he could go ahead and sell the stock without further clarification in respect of the information known to Cassels.

16. At approximately 3:38 p.m. while the RR was leaving the message referred to in the preceding paragraph, trading in shares of Agricore was halted by the TSX. At approximately 3:40 p.m., Agricore issued a press release announcing that it had "entered into a bought deal agreement to issue and sell to a syndicate of underwriters co-

lead by Scotia Capital Inc. and National Bank Financial Inc. $100 million aggregate principal amount of 9.0% convertible unsecured subordinated debentures due November 30, 2007".

17. Shortly after the RR left Cassels the message referred to in paragraph 15 above, Cassels contacted the RR at 3:40 p.m. and advised that he agreed the stock should not be sold without further clarification. The RR then advised Cassels that "I just sold some stock and it just went halted so I think I am in big trouble here."

18. Cassels and the RR continued their conversation at 3:45 p.m. and the following was stated:

Cassels: ….my feeling is if there is any uncertainty at all, I don't want to do it, okay

RR: Right
Cassels: So, I want to stress that…

RR: and unfortunately I acted on it and I shouldn't have.

Cassels: I thought you were going to call back, but if, but it doesn't matter as long as the intention is not to do anything wrong and you're prepared to reverse it if there's any uncertainty, there shouldn't be any trouble.

RR: Okay

Cassels: And I am cause I to me it's not clear and I don't want to do anything that's not clear.

RR: The question is was it material obviously the Exchange has halted it, plus

Cassels & RR: it must have been material

RR: So it was a bad call on my part.

19. The sale of the 3,700 shares which were sold prior to the halt was subsequently reversed. Further, the sale of the 3,700 shares was never booked into CIM's clients' account.

20. The market price of Agricore at the time trading was halted on November 11, 2002 was $6.00. When Agricore resumed trading on November 12, 2002 it opened at $5.90 and closed at $5.31. By the close of markets on Friday, November 15, 2002 Agricore was trading at $5.14.

21. Cassels represents to Staff that when he initially contacted his RR and had the conversation described in paragraph 9, it was not his intention at that time to place an order to sell the Agricore shares, until he ascertained whether the bought deal was public and what the market conditions were. Cassels specifically advised his RR that he needed "guidance" as he did "not know if [he] was trading on inside information". It was Cassels understanding at the end of the initial conversation that his RR was going to ascertain market conditions, including determining if there was a bid for securities, and that no sale would be effected (no lower limit having been set) unless and until the RR got back to him and until there was confirmation that the bought deal was public.

22. Cassels represents to Staff that it was not his intention to trade on material inside information. However, Cassels acknowledges that his language was unclear, susceptible to misinterpretation and that the RR could have concluded that he had placed an order to sell the Agricore shares. Cassels recognizes that he ought to have used clearer language to express his intent and indeed has an obligation as a registrant to do so.

23. Cassels has participated in the securities industry since 1988 and has been a registrant since 1989. Cassels has not previously been the subject of any investigation or proceeding by Staff and his conduct has not previously been a concern for Staff.

24. Cassels has fully co-operated with Staff during the investigation and throughout the settlement negotiations both before and after the issuance of the Notice of Hearing.

Conduct Contrary to the Public Interest

25. Cassels conduct in failing to use clear and unambiguous instructions in communications with his RR constituted a breach of his obligation as a market participant under the Act to adhere to and act in accordance with high standards of responsible business conduct and was contrary to the public interest.

V. TERMS OF SETTLEMENT

26. Cassels agrees to the following terms of settlement:

(e) pursuant to clause 1 of subsection 127(1) of the Act, the registration granted to Cassels under the Act will be suspended for a period of 30 days effective from the date of the order of the Commission approving the Settlement Agreement;

(f) pursuant to clause 127(2) of the Act, Cassels is required to successfully complete the Canadian Securities Institute's Conduct and Practices Handbook Course within one year of the

date of the order of the Commission approving the Settlement Agreement;

(g) pursuant to clause 6 of subsection 127(1) of the Act, Cassels will be reprimanded by the Commission;

(h) pursuant to section 127.1 of the Act, Cassels agrees to make payment by certified cheque to the Commission in the amount of $6,000 in respect of a portion of the costs of the investigation and proceeding in relation to this matter; and

(i) Cassels agrees to attend, in person, the hearing before the Commission on November 17, 2004, or such other date as may be agreed to by the parties for the scheduling of the hearing to consider the Settlement Agreement.

VI. STAFF COMMITMENT

27. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Cassels in relation to the facts set out in Part IV of this Settlement Agreement, subject to the provisions of paragraphs 32 and 33 below.

VII. PROCEDURE FOR APPROVAL OF SETTLEMENT

28. Approval of this Settlement Agreement shall be sought at a public hearing of the Commission scheduled for November 17 2004 (the "Settlement Hearing") or such date as may be agreed to by Staff and Cassels.

29. Staff or Cassels may refer to any part, or all, of the Settlement Agreement at the Settlement Hearing. Staff and Cassels agree that the Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing, unless the parties agree that further evidence should be submitted at the Settlement Hearing.

30. If the Settlement Agreement is approved by the Commission, Cassels agrees to waive his right to a full hearing, judicial review or appeal of the matter under the Act.

31. Staff and Cassels agree and undertake that if the Settlement Agreement is approved by the Commission, he will not make any statement inconsistent with this Settlement Agreement.

32. If Cassels fails to honour the agreement contained in paragraph 31 of this Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against Cassels based on the facts set out in Part IV of this Settlement Agreement, as well as the breach of the Settlement Agreement.

33. If the Settlement Agreement is approved by the Commission, and at any subsequent time Cassels fails to honour any of the Terms of Settlement set out in Part V herein, Staff reserve the right to bring proceedings under Ontario securities law against Cassels based on the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement.

34. Whether or not the Settlement Agreement is approved by the Commission, Cassels agrees that he will not, in any proceeding, refer to or rely upon the Settlement Agreement or the settlement negotiations as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

35. If, for any reason whatsoever, the Settlement Agreement is not approved by the Commission, or an order in the form attached as Schedule "A" is not made by the Commission;

(a) the Settlement Agreement and its terms, including all settlement negotiations between Staff and Cassels leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Cassels;

(b) Staff and Cassels shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement negotiations; and

(c) the terms of the Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person except with the written consent of Staff and Cassels, or as may be required by law.

VIII. DISCLOSURE OF SETTLEMENT AGREEMENT

36. The Settlement Agreement and its terms will be treated as confidential by Staff and Cassels until approved by the Commission, and forever if, for any reason whatsoever, the Settlement Agreement is not approved by the Commission, except with the written consent of Staff and Cassels, or as may be required by law.

37. Any obligations of confidentiality shall terminate upon approval of the Settlement Agreement by the

Commission.

IX. EXECUTION OF SETTLEMENT AGREEMENT

38. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

39. A facsimile copy of any signature shall be as effective as an original signature.

Signed in the presence of:

"Wendy Berman" **"Robert Cassels"**

November 12, 2004.

Signed in the presence of:

Staff of the Ontario Securities Commission
Per:

"Michael Watson"

November 11, 2004"

2.2.2 Murray Hoult Pollitt and Pollitt & Co. Inc. - 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
MURRAY HOULT POLLITT AND
POLLITT & CO. INC.

ORDER
(Sections 127 and 127.1)

WHEREAS on August 30, 2004, the Ontario Securities Commission issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act* (the "Act") in respect of Murray Hoult Pollitt ("Pollitt") and Pollitt & Co. Inc. ("Pollitt & Co.");

AND WHEREAS Pollitt and Pollitt & Co. entered into a settlement agreement with Staff of the Commission (the "Settlement Agreement"), in which they agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and the Notice of Hearing and Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for Pollitt and Pollitt & Co. and from Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT:

(j) pursuant to clause 1 of subsection 127(1) of the Act, the registration of the Respondent Murray Pollitt as a trading officer be suspended effective the close of business today for a period of 30 days effective from the date of this Order;

(k) pursuant to subsection 127(2) and further to a review of its practices and procedures in 2002 and 2003, Pollitt & Co. forthwith retain Cassels Brock Regulatory Consulting Inc., at its sole expense, to ensure that its revised practices and procedures have been properly implemented and to ensure that compliance staff and trading officers are properly trained in their obligations, roles and responsibilities;

(l) pursuant to clause 6 of subsection 127(1) of the Act, the Respondents are reprimanded by the Commission; and

(m) pursuant to section 127.1 of the Act, the Respondents, or either of them, make payment by certified cheque to the Commission in the amount of $27,000 in respect of a portion of the costs of the investigation and proceeding in relation to this matter.

November 17, 2004.

SCHEDULE "A"

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

- AND -

IN THE MATTER OF
ROBERT CASSELS, MURRAY HOULT POLLITT
AND POLLITT & CO. INC.

SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE COMMISSION AND MURRAY HOULT POLLITT
AND POLLITT & CO. INC.

I. INTRODUCTION

10. By Notice of Hearing dated August 30, 2004, the Ontario Securities Commission announced that it proposed to hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, (the "Act") it is in the public interest for the Commission to make orders as specified therein.

II. JOINT SETTLEMENT RECOMMENDATION

11. Staff recommend settlement of the allegations against the Respondents Murray Pollitt and Pollitt & Co. Inc. (the "Respondents"), in accordance with the terms and conditions set out below. The Respondents agree to the settlement on the basis of the facts and conclusions agreed to as provided in Part IV and consent to the making of an order against them in the form attached as Schedule "A" on the basis of the facts set out in Part IV.

12. This settlement agreement, including the attached Schedule "A" (collectively, the "Settlement Agreement") will be released to the public only if and when the Settlement Agreement is approved by the Commission.

III. ACKNOWLEDGEMENT

13. Staff and the Respondents agree with the facts and conclusions set out in Part IV of this Settlement Agreement.

IV. AGREED FACTS

Background

14. Murray Hoult Pollitt ("Pollitt") is registered in Ontario under the Act as a trading officer and director and President of Pollitt & Co. Inc. ("Pollitt & Co."). Pollitt holds an approximate 75% ownership interest in Pollitt & Co.

15. Pollitt & Co. Inc is registered in Ontario as a securities dealer in the category of broker.

16. Robert Cassels ("Cassels") is registered in Ontario as an investment counsel and portfolio manager with the firm Cassels Investment Management Inc. ("CIM"). CIM was a client of Pollitt and Co. at the material time.

Pollitt & Co. is Invited to Participate in a "Bought Deal" Syndicate

17. In October, 2002, officials at Scotia Capital Inc. ("Scotia") commenced discussions with the CEO of United Grain Growers Limited (doing business as Agricore United ("Agricore"), respecting a potential $100 million convertible debenture "bought deal" financing. These discussions led to the formation of an underwriting syndicate to be led by Scotia and co-led by National Bank Financial Inc. ("NBF"). At the request of the Agricore CEO, Scotia invited Pollitt & Co. to participate as a junior member of the syndicate.

18. On November 11, 2002, at approximately 2:45 p.m. (all subsequent times referred to herein occurred on November 11, 2002), a brief conference call was convened by Scotia and NBF in order to formally invite certain other securities dealers, including Pollitt & Co., to participate in the syndicate. During this call, the terms of the anticipated financing were discussed. In the 15 minutes following this brief call, each of the dealers that were invited to participate, including Pollitt & Co., confirmed to Scotia their participation in the deal. At approximately 3:15 p.m., Scotia presented Agricore with a fully syndicated bought deal.

19. The principal shareholder had already agreed to purchase $45 million of the offering on November 8, 2002. The remaining $55 million of convertible debentures being offered for sale to the public (not including the dealers' option to acquire an additional $5 million) was allocated among the members of the syndicate. As a junior member of the syndicate, Pollitt & Co. was allocated 3% of the offering.

20. At approximately 3:26 p.m., Agricore notified Scotia that it was accepting the terms of the bought deal. It was intended that a press release, announcing the agreement in respect of the bought deal, would be issued at the close of the markets (4:00 p.m.) that day.

21. At approximately 3:38 p.m., at the issuer's request, trading in shares of Agricore was halted by the TSX. At approximately 3:40 p.m., Agricore issued a press release announcing that it had entered into a bought deal agreement to issue and sell to a syndicate of underwriters co-led by Scotia and NBF $100 million aggregate principal amount of 9.0% convertible unsecured subordinated debentures due November 30, 2007. The debentures were convertible at any time prior to maturity into the common stock of Agricore at $7.50 per share.

22. The market price of Agricore at the time trading was halted on November 11, 2002 was $6.00. When Agricore resumed trading on November 12, 2002 it opened at $5.90 and closed at $5.31. By the close of markets on Friday, November 15, 2002, Agricore was trading at $5.14.

Pollitt & Co. Market the Offering in Advance of the Press Release

23. Upon learning of the terms of the proposed bought deal, Pollitt concluded that the interest rate offered and the conversion terms would make the convertible debenture offering highly attractive to potential purchasers. He also considered that the convertible debenture offering would be highly dilutive to existing shareholders of Agricore, including clients of Pollitt & Co. As a result, Pollitt decided to provide certain clients, including CIM with a "heads up" about the bought deal prior to the transaction being generally disclosed by means of a press release and to advise that they should contact Scotia in the event that they wished to purchase any of the offering as Pollitt and Co. had only 3% of the offering. These communications were made subsequent to Pollitt & Co. being invited to participate in the bought deal syndicate at approximately 2:45 p.m. and prior to the issuance of any press release announcing the bought deal at approximately 3:38 p.m.

24. At approximately 3:03 p.m., Scotia received a call from one of the Pollitt & Co. institutional clients who had just been advised by Pollitt & Co. of the anticipated bought deal. The institutional client expressed an interest in purchasing securities pursuant to the bought deal. Concerned that a would-be investor had knowledge of the bought deal prior to the deal being announced in a press release, Scotia contacted the members of the syndicate to determine whether they had been marketing the bought deal in advance of the press release. At approximately 3:16 p.m., Scotia spoke with Pollitt who confirmed that Pollitt & Co. had been the source of the information provided to the institutional client in advance of the press release. Scotia immediately instructed Pollitt to stop all such communications.

25. At approximately 3:36 p.m., Scotia advised Pollitt & Co. that it was being excluded from the syndicate as a result of engaging in pre-marketing communications in respect of the bought deal prior to the issuance of a press release. In addition to Pollitt & Co.'s pre-marketing communications giving rise to potential violations of securities law, Pollitt & Co. could not sign the certificate required of all IDA members that

participate in a bought deal syndicate certifying that the member has complied with IDA By-law 29.13 (which prohibits pre-marketing communications prior to the issuance of a press-release).

26. One of the clients of Pollitt & Co. advised by Pollitt of the bought deal in advance of a press release was CIM. At approximately 3:08 p.m. Cassels at CIM received a voice mail message from Pollitt advising of the bought deal and indicating that if Cassels was interested in participating in the deal he should contact Pollitt. At approximately 3:14 p.m. Cassels spoke to Pollitt and was advised of the terms of the bought deal.

27. Pollitt acknowledges and admits that (i) he was in a special relationship with Agricore at the material time; (ii) the bought deal was a material fact; (iii) he had knowledge of that material fact; and (iv) he informed institutional clients of the bought deal prior to it being generally disclosed to the public.

Conduct Contrary to the Public Interest

28. The conduct of the Respondent Pollitt as described above, constituted a contravention of s.76(2) of the Act, clause 14.1 of National Instrument 44-101, and the Canadian Securities Administrators' Notice "Pre-Marketing Activities in the Context of Bought Deals" and was conduct contrary to the public interest.

29. The conduct of the Respondent, Pollitt & Co., as described above, was contrary to the public interest in that it failed to properly implement and enforce procedures to ensure that when participating as a member of a bought deal syndicate, no inappropriate pre-marketing activities were engaged in by directors, officers, employees or agents of the dealer, including communications which were contrary to s.76(2) of the Act, IDA By-Law 29.13, and inconsistent with the Canadian Securities Administrations Notice "Pre-Marketing Activities in the Context of Bought Deals".

Position of the Respondents and Mitigating Factors

30. Pollitt recognizes and admits the seriousness of his violation and takes full responsibility for it personally and on behalf of his company, Pollitt & Co. He is remorseful for his conduct and acknowledges that it was unbecoming of a registrant.

31. Pollitt acknowledges that the communications made by him on November 11, 2002, as described in paragraphs 14 and 17 were inappropriate and constituted a violation of the pre-marketing rules. He also acknowledges that his communications constituted “in effect” tipping and that such conduct is in violation of the Act.

32. Pollitt represents that it was not his intention or expectation that the clients he contacted, registrants themselves, would act upon the material information concerning the offering prior to any public announcement in a manner that contravened the Act. Rather, Pollitt represents that the purpose of his communications was to advise that the debenture offering would likely be highly sought after, given its very favourable terms opposite the common shares, and that Pollitt & Co. with only 3% of the offering would unlikely be able to satisfy any large demands of his clients.

33. Pollitt & Co. represents that it lost fees of approximately $200,000 by virtue of its expulsion from the underwriting syndicate. The Respondents accept that this loss was the necessary consequence of their improper conduct. The Respondents submit however, that, as a small brokerage, Pollitt & Co. has suffered disproportionate damage as a result of the publicity arising from the charges in this matter. Those damages include the loss or reduction of business from large institutional clients with a resultant reduction in revenues, difficulty in recruitment of senior staff and a reduction in incentive income for its employees. An example of the harm suffered by Pollitt & Co. is seen by the fact that, within the past few weeks, Pollitt & Co. has been excluded by the lead bank from an underwriting syndicate for a company Pollitt & Co. had previously dealt with, notwithstanding the fact that the company’s management wanted Pollitt & Co. to be part of the underwriting group. This alone cost Pollitt & Co. approximately $100,000.

34. Pollitt represents that it was not his intention to derive any direct benefit from his conduct, and in fact, neither Pollitt nor Pollitt & Co. did so benefit.

35. Pollitt represents that he has been a public advocate of shareholder rights, most recently with respect to transactions or proposed transactions involving Iamgold and Stelco.

36. Pollitt is 63 years of age. He has participated in the Ontario capital markets for approximately 40 years. His conduct has not previously been a concern for Staff. Pollitt & Co. has participated in the Ontario capital markets for approximately 20 years. The conduct of Pollitt & Co. has not previously been a concern for Staff.

37. Pollitt has been candid and fully co-operative with Staff from the very onset of its investigation and in connection with this settlement proceeding.

V. TERMS OF SETTLEMENT

38. The Respondents agree to the following terms of settlement:

(n) pursuant to clause 1 of subsection 127(1) of the Act, the registration of the Respondent Murray Pollitt as a trading officer is suspended for a period of 30 days effective from the date of the order of the Commission approving the Settlement Agreement;

(o) pursuant to subsection 127(2) and further to a review of its practices and procedures in 2002 and 2003, Pollitt & Co. will forthwith retain Cassels Brock Regulatory Consulting Inc., at its sole expense, to ensure that its revised practices and procedures have been properly implemented and to ensure that compliance staff and trading officers are properly trained in their obligations, roles and responsibilities;

(p) pursuant to clause 6 of subsection 127(1) of the Act, the Respondents will be reprimanded by the Commission;

(q) pursuant to section 127.1 of the Act, the Respondents, or either of them, agree to make payment by certified cheque to the Commission in the amount of $27,000 in respect of a portion of the costs of the investigation and proceeding in relation to this matter; and

i. the Respondent, Murray Pollitt, agrees to attend, in person, the hearing before the Commission on November 17, 2004.

VI. STAFF COMMITMENT

39. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against the Respondents in relation to the facts set out in Part IV of this Settlement Agreement, subject to the provisions of paragraphs 35 and 36 below.

VII. PROCEDURE FOR APPROVAL OF SETTLEMENT

40. Approval of this Settlement Agreement shall be sought at a hearing of the Commission scheduled for November 17, 2004 (the "Settlement Hearing") or such date as may be agreed to by Staff and the Respondents.

41. Staff or the Respondents may refer to any part, or all, of the Settlement Agreement at the Settlement Hearing. Staff and the Respondents agree that the Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing, unless the parties agree that further evidence should be submitted at the Settlement Hearing.

42. If the Settlement Agreement is approved by the Commission, the Respondents agree to waive their right to a full hearing, judicial review or appeal of the matter under the Act.

43. Staff and the Respondents agree and undertake that if the Settlement Agreement is approved by the Commission, they will not make any statement inconsistent with this Settlement Agreement.

44. If the Respondents fail to honour the agreement contained in paragraph 34 of this Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against the Respondents based on the facts set out in Part IV of this Settlement Agreement, as well as the breach of the Settlement Agreement.

45. If the Settlement Agreement is approved by the Commission, and at any subsequent time the Respondents fail to honour any of the Terms of Settlement set out in Part V herein, Staff reserve the right to bring proceedings under Ontario securities law against the Respondents based on the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement.

46. Whether or not the Settlement Agreement is approved by the Commission, the Respondents agree that they will not, in any proceeding, refer to or rely upon the Settlement Agreement or the settlement negotiations as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

47. If, for any reason whatsoever, the Settlement Agreement is not approved by the Commission, or an order in the form attached as Schedule "A" is not made by the Commission;

(d) the Settlement Agreement and its terms, including all settlement negotiations between Staff and the Respondents leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and the Respondents;

(e) Staff and the Respondents shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement negotiations; and

(f) the terms of the Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person except with the written consent of Staff and the Respondents, or as may be required by law.

VIII. DISCLOSURE OF SETTLEMENT AGREEMENT

48. The Settlement Agreement and its terms will be treated as confidential by Staff and the Respondents until approved by the Commission, and forever if, for any reason whatsoever, the Settlement Agreement is not approved by the Commission, except with the written consent of Staff and the Respondents, or as may be required by law.

49. Any obligations of confidentiality shall terminate upon approval of the Settlement Agreement by the Commission.

IX. EXECUTION OF SETTLEMENT AGREEMENT

50. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

42. A facsimile copy of any signature shall be as effective as an original signature.

Signed in the presence of:

"David Stevens" **"Murray Hoult Pollitt"**

November 12, 2004"

"David Stevens" **per "Murray Hoult Pollitt"**

November 12, 2004"

Signed in the presence of:

Staff of the Ontario Securities Commission
Per:
"Michael Watson"

November 11, 2004"

2.2.3 Allan Eizenga, Richard Jules Fangeat, Michael Hersey, Luke John Mcgee and Robert Louis Rizzuto - ss. 127(1)

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

- and -

IN THE MATTER OF
ALLAN EIZENGA, RICHARD JULES FANGEAT,
MICHAEL HERSEY,
LUKE JOHN MCGEE and ROBERT LOUIS RIZZUTO

- and –

IN THE MATTER OF
MICHAEL TIBOLLO

ORDER
(Subsection 127(1))

WHEREAS on September 24, 1998, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") respecting Luke John McGee ("McGee") and others and issued Amended Notices of Hearing against McGee and others on February 7, 2003 and May 21, 2004;

AND WHEREAS on September 24, 1998, the Commission made a Temporary Order as against McGee and others, such Temporary Order that was extended by Commission Orders dated October 9, 1998 and February 5, 1999 (the "Temporary Order");

AND WHEREAS McGee and Staff of the Commission entered into a Settlement Agreement in which they agreed to a proposed settlement of the proceedings, subject to the approval of the Commission (the "Settlement Agreement");

AND UPON reviewing the Settlement Agreement and the Amended Statement of Allegations of Staff of the Commission and upon hearing submissions from the agent for McGee and from Staff of the Commission, the Commission is of the opinion that it is in the public interest to make the following Order pursuant to subsection 127(1) of the Act;

IT IS ORDERED THAT:

1. the attached Settlement Agreement is approved;

2. pursuant to subsection 127(1), paragraph 2, trading in any securities by McGee cease for fifteen years commencing on the date of this Order except that, after three years, McGee is permitted to trade securities for his own account and the account of his registered retirement

savings plan (as defined in the *Income Tax Act (Canada)*) if the securities are:

(a) referred to in clause 1 of subsection 35(2) of the Act; or

(b) listed and posted for trading on the TSX or NYSE (or their successor exchanges); or

(c) issued by mutual funds that are reporting issuers in Ontario;

3. pursuant to subsection 127(1), paragraph 8, McGee is prohibited from becoming or acting as a director or officer of any issuer for fifteen years commencing on the date of this Order;

4. pursuant to subsection 127(1), paragraph 3, the exemption in subsection 34(b) of the Act does not apply to McGee for fifteen years commencing on the date of this Order;

5. pursuant to subsection 127(1), paragraph 6, McGee is reprimanded; and

6. the Temporary Order as against McGee no longer has any force or effect.

November 17, 2004.

"H. Lorne Morphy" "Robert W. Davis"

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

- and -

IN THE MATTER OF
ALLAN EIZENGA, RICHARD JULES FANGEAT,
MICHAEL HERSEY,
LUKE JOHN MCGEE and ROBERT LOUIS RIZZUTO

- and –

IN THE MATTER OF
MICHAEL TIBOLLO

SETTLEMENT AGREEMENT BETWEEN STAFF OF THE ONTARIO SECURITIES COMMISSION AND LUKE JOHN MCGEE

I. INTRODUCTION

1. On September 24, 1998, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") respecting Luke John McGee ("McGee") and others and issued Amended Notices of Hearing against McGee and others on February 7, 2003 and May 21, 2004 (collectively, the "Notice of Hearing").

2. By Temporary Order dated September 24, 1998, the Commission ordered that the exemptions contained in subsections 35(1)21 and 35(2)10 of the Act do not apply to McGee (the "Temporary Order"). The Temporary Order was extended by Commission Orders dated October 9, 1998 and February 4, 1999.

II. JOINT SETTLEMENT RECOMMENDATION

3. Staff agree to recommend settlement of the proceeding respecting McGee initiated by the Notice of Hearing in accordance with the terms and conditions set out below. McGee consents to the making of an order against him in the form attached as Schedule "A" based on the facts set out in Part III of this Settlement Agreement.

III. STATEMENT OF FACTS

Acknowledgement

4. Solely for the purposes of this proceeding, and of any other proceeding commenced by a securities regulatory agency, Staff and McGee agree with the facts set out in paragraphs 5 through 42 of this Settlement Agreement.

The Saxton Securities

5. Saxton Investments Ltd. ("Saxton") was incorporated on January 13, 1995. Allan Eizenga

("Eizenga") was an officer and a director of Saxton. Saxton and Eizenga established numerous other corporations. Eizenga was the president and a director of each of these companies.

6. McGee is a lawyer by training. He was called to the Ontario bar in March 1993. McGee practised civil litigation until approximately August 1995 when he became licensed as an insurance agent with the Financial Services Commission of Ontario. McGee has never been registered with the Commission.

7. McGee became actively involved in Saxton's business in the summer of 1996. By early 1997, McGee became Saxton's vice-president. He reported to Eizenga, the president of Saxton. Eizenga terminated McGee in December 1997.

8. Between January 1995 and September 1998, Ontario investors were sold securities of one or more of the following companies (the "Offering Corporations"):

The Saxton Trading Corp.
The Saxton Export Corp.
The Saxton Export (II) Corp.
The Saxton Export (III) Corp.
The Saxton Export (IV) Corp.
The Saxton Export (V) Corp.
The Saxton Export (VI) Corp.
The Saxton Export (VII) Corp.
The Saxton Export (VIII) Corp.
The Saxton Export (IX) Corp.
The Saxton Export (X) Corp.
The Saxton Export (XI) Corp.
The Saxton Export (XII) Corp.
The Saxton Export (XIII) Corp.
The Saxton Export (XIV) Corp.
The Saxton Export (XV) Corp.
The Saxton Export (XVI) Corp.
The Saxton Export (XVII) Corp.
The Saxton Export (XVIII) Corp.
The Saxton Export (XIX) Corp.
The Saxton Export (XX) Corp.
The Saxton Export (XXI) Corp.
The Saxton Export (XXII) Corp.
The Saxton Export (XXIII) Corp.
The Saxton Export (XXIV) Corp.
The Saxton Export (XXV) Corp.
The Saxton Export (XXVI) Corp.
The Saxton Export (XXVII) Corp.
The Saxton Export (XXVIII) Corp.
The Saxton Export (XXIX) Corp.
The Saxton Export (XXX) Corp.
The Saxton Export (XXXI) Corp.
The Saxton Export (XXXII) Corp.
The Saxton Export (XXXIII) Corp.
The Saxton Export (XXXIV) Corp.
The Saxton Export (XXXV) Corp.
The Saxton Export (XXXVI) Corp.
The Saxton Export (XXXVII) Corp.
The Saxton Export (XXXVIII) Corp.

9. All of the Offering Corporations were incorporated pursuant to the laws of Ontario. The sales of shares of the Offering Corporations (the "Saxton Securities") constituted trades in securities of an issuer that had not been previously issued.

10. The distribution of the Saxton Securities contravened Ontario securities law. None of the Offering Corporations filed a preliminary prospectus or a prospectus with the Commission. None of the Offering Corporations received a receipt for a prospectus from the Commission. None of the Offering Corporations filed an Offering Memorandum or a Form 20 with the Commission.

11. The Offering Corporations purported to rely on the "seed capital" prospectus exemption contained in subparagraph 72(1)(p) of the Act. Neither this exemption, nor any other prospectus exemption, was available to them.

12. None of the exemptions from the registration requirements in Ontario securities law was available for the sale of the Saxton Securities.

13. On or about October 7, 1998, the Court appointed KPMG Inc. ("KPMG") as the custodian of Saxton's assets. In early 1999, KPMG reported that the Offering Corporations had raised approximately $37 million from investors. All funds invested in the Offering Corporations had been transferred to Saxton. At that time, KPMG held the view that the value of the Saxton assets, at its highest [as reported by a related company, Sussex Group Ltd. ("Sussex")], was approximately $5.5 million. Sussex currently is being wound down by a court-appointed manager.

The Saxton Products and Business

14. The Saxton Group was a trade name that encompassed a complex network of related companies including Saxton, the Offering Corporations and Sussex Admiral Group Limited (Barbados), later renamed Sussex.

15. The Saxton Group's core business was the development and manufacturing of beverage and food products for the hospitality and tourist industries in Cuba and elsewhere in the Caribbean. Sussex was the Saxton Group's operating company. Among other things, Sussex held the Saxton Group's economic associations, operating contracts and supply agreements.

16. The primary function of every Offering Corporation was to raise investment capital for the Saxton Group's operations in Cuba and elsewhere by the sale of the Saxton Securities. The Offering Corporations funded Sussex's activities. Funds raised through the Offering Corporations were

pooled and transferred to Saxton. Saxton, in turn, invested directly and indirectly (through 1125956 Ontario Inc.), in the Saxton Group's operations. Investors associated their investment with the Saxton Group, not the Offering Corporations.

17. The Offering Corporations prepared Offering Memoranda. These Memoranda were virtually identical and provided little information about the Saxton Group's operations (into which funds invested in the Offering Corporations would flow) other than their geographic location.

18. The Offering Memoranda described the Saxton Securities as "speculative". They stated that: (i) there was no market for the shares; and (ii) dividends would be paid when profits were earned (but since the corporation had no operating history, there can be no assurance that it will be able to achieve any level of profitability).

19. Although, in fact, investors purchased shares, Saxton advertised and marketed the Saxton Securities as a "GIC", a "Fixed Dividend Account" product and an "Equity Dividend Account" product. The Saxton products were marketed and sold as RRSP-eligible and a no, or low, risk investment (notwithstanding that the Saxton Securities were described in the Offering Memoranda as "speculative").

20. The "GIC" promised investors an annual return of 10.25%. The Fixed Dividend Account product promised investors either a 10.25% annual return for a three year term compounded or a 12% annual return for a five year term compounded. Investors in the Equity Dividend Account product were told to expect 25% to 30% annual growth of their investment.

Management of Saxton

21. Between 1996 and December 1997, McGee actively participated in the illegal distributions of the Saxton Securities.

22. Between March and May 1996, McGee sold the Saxton Securities directly to 4 Ontario investors for a total amount sold of approximately $80,000. McGee earned commissions of 5% on such sales. Thereafter, McGee was involved with, among other things, the general promotion, solicitation and sale of the Saxton Securities and management of the operations.

23. McGee failed to conduct the appropriate due diligence to ensure that the Saxton Securities' distributions complied with Ontario securities law. The incorporation, and use, of the thirty-seven Offering Corporations was designed to circumvent the "seed capital" prospectus exemption requirement in subparagraph 72(1)(p) of the Act that sales be made to no more than twenty-five purchasers. McGee was aware of the corporate structure used by Saxton to distribute the Securities. McGee knew that the Corporations purported to rely on the "seed capital" prospectus exemption. To McGee's knowledge, once one Offering Corporation received funds from the maximum allowed twenty-five investors, investors were allocated to a different Offering Corporation.

24. McGee also was aware that several Saxton salespeople were not registered with the Commission to trade securities.

25. The Offering Memoranda did not provide investors with substantially the same information that a prospectus filed under the Act would provide. Further, many investors did not receive an Offering Memorandum prior to their investment. McGee failed to scrutinize adequately the accuracy and sufficiency of such Memoranda. He also failed to ensure that they were distributed to all salespeople and prospective investors.

26. The Saxton Group produced promotional and investor relations material, including business summaries. This material focused on the Group's beverage, beer, coffee and printing operations in Cuba. McGee participated in the drafting and review of this material. Among other things, the Saxton Group represented in its business summaries that it had established a strong foothold in the Cuban market, it was positioned to capture the resort and cruise line travel sector and it was experiencing high levels of successful growth.

27. In 1996, the Saxton Group produced a template letter that was sent to prospective and current investors. McGee signed many of these letters. These letters extolled the success and growth of the Group's Cuban operations at minimal risk exposure to investors. Among other things, they stated that: "Since Saxton began its operations over three years ago, straight equity investors have earned returns in excess of 30% in each of the last three years. The Group's fixed dividend investors are currently receiving an impressive 10¼% return locked in over a three year period. Both investments qualify for, and are ideal for aggressive growth within or outside an investors' RRSP." McGee never reviewed any Saxton financial statements.

28. The Group actively promoted what it called the "20/20 Rule". According to the 1996 template letters, investors would deal only with a principal of the corporation such that, "from the moment you participate in this exciting investment alternative, you will know that the people you are dealing with will not earn a penny unless a return of more than 20% is generated". To McGee's knowledge, independent salespeople earned 5% commissions on their sales of the Saxton

Securities. In addition, Rick Fangeat ("Fangeat") and McGee earned trailer fees.

29. The Saxton Group produced quarterly account statements. These statements were delivered directly to investors from the Saxton head office and were accompanied by a covering letter. These covering letters gave a brief update on the Cuban and other businesses and were signed by Eizenga, and in at least one instance by McGee. McGee did not participate in the generation of the quarterly account statements but was aware that the Group was distributing such statements to investors.

30. Shareholders who invested in the "GIC/Fixed Dividend Account" product received quarterly account statements that reflected a "market value" increase of between 10.25% or 12% (and thus, showed the rate of return promised to investors). The quarterly account statements provided to shareholders who invested in the "Equity Dividend Account" product reflected a "market value" increase of between 25% and 30% (and thus, showed the rate of return which investors had been told to expect).

31. The quarterly account statements could not be substantiated by any accounting or financial data in Saxton's possession. There was no sound way of establishing the net results of the Saxton operations. Saxton never prepared financial statements or any record of revenue generation by the Saxton operations.

32. The quarterly account statements purported to disclose an increase in the market value for the quarter for the Saxton Securities. McGee knew that there was no market for the Saxton Securities and thus, no market value could be, or should have been, attributed to such Securities. The Offering Memoranda stated that there was no market for the shares.

33. The quarterly account statements provided to investors and salespeople provided misplaced comfort and confidence in the legitimacy of the Saxton Group business and the stability, quality and risk of their investment.

34. Although many of the Saxton salespeople operated out of Fangeat's office and Fangeat liaised with head office on such salespeople's behalf, McGee had some direct dealings with salespeople by way of telephone conversations, individual and group meetings, group presentations and written operations updates. Through this contact, McGee made various inaccurate or misleading representations to the Saxton salespeople including the following:

(a) that they did not need to be registered with the Commission to sell the Saxton Securities;

(b) that the sales of the Saxton Securities complied with Ontario securities law; and

(c) information relating to the sales, financial state and profitability of the Saxton operations.

35. The Saxton salespeople knew that McGee was part of the Saxton management team and had a law degree (McGee told salespeople he was a lawyer and he listed his L.L.B. degree on his Saxton business card and when he signed letters as the Saxton vice-president). Because of McGee's position and professional training, salespeople may have relied on McGee's representations. Salespeople, in turn, may have relayed the information provided by McGee to their clients.

36. McGee also dealt with individuals that had invested in Saxton by way of letters, telephone conversations, individual and group meetings and trips to Cuba. Through this contact, McGee made various inaccurate or misleading representations to investors. Investors may have relied on McGee's representations given that he was part of the Saxton management team.

37. In or about 1997, the Saxton Group embarked on a plan to take the companies public and listed on a recognized stock exchange by way of a reverse takeover. It was contemplated that Sussex's assets would be vended in to F.S.P.I. Technologies Corp., a company listed on the Alberta Stock Exchange.

38. In or about mid-1997, in the course of the going public process, McGee began to have some concerns that Saxton could not account for all the funds raised from Ontario investors through the sale of the Saxton Securities. Accordingly, McGee sought outside legal advice.

39. In August 1997, the Saxton Group, Eizenga, McGee and others received legal advice that the distribution of the Saxton Securities had not complied with Ontario securities law and that no further funds should be raised. Further, the company needed to compile the appropriate books and records to account for the monies raised from the Saxton Securities distributions.

40. McGee attempted to compile the corporate and financial information necessary to prepare an accounting of investor funds. To his knowledge, however, the Saxton Group continued to distribute the Saxton Securities. He failed to take the appropriate steps to stop the sale of the Saxton Securities. He did not inform the salespeople

directly of the legal advice received, although Fangeat was aware of such advice. He did not contact the Commission or any other law enforcement agency.

McGee's Remuneration

41. In addition to commissions paid on his own direct sales, between the summer of 1996 and early 1997, McGee was paid 2.5% of all monies raised through the purchase of the Saxton Securities. Commencing in February 1997, McGee received a salary for his work with Saxton. In connection with his involvement in Saxton, McGee earned, in approximately one year, in excess of $500,000.

42. By virtue of the conduct described in Part III above, McGee participated in the illegal distributions of the Saxton Securities and engaged in unregistered trading contrary to section 25 of the Act. No registration exemption was available to him. McGee's conduct was contrary to Ontario securities law and the public interest.

IV. MCGEE'S POSITION

43. McGee takes the position and represents to Staff that:

(a) He relied extensively on the representations and direction of Eizenga and others on the management team;

(b) With respect to paragraphs 17 and 18 above, he did not participate in the preparation of the Offering Memoranda. Eizenga assured McGee that the Offering Memoranda were backed by a legal opinion from the London, Ontario office of a national law firm. McGee never saw this purported opinion;

(c) With respect to subparagraphs 34(a) and (b) above, McGee understood from Eizenga that salepeople did not have to be registered and believed that the structure was legal based upon the purported legal opinion from the London, Ontario office of a national law firm;

(d) In preparing promotional materials and investor updates, McGee received information from Michael Tibollo respecting the status, growth and success of the Cuban operations and from Eizenga respecting the corporate structure and returns on the Saxton Securities. All such documentation was approved by Eizenga before it was disseminated; and

(e) McGee supported and assisted in the retainer of counsel that led to the opinion described in paragraph 39 above. Once he received such legal opinion, McGee supported and participated in a process designed to trace investor funds and salvage value in the business for investors. He was terminated by Eizenga before that task was completed. During this process, Eizenga failed to co-operate and consistently attempted to frustrate McGee's efforts.

V. TERMS OF SETTLEMENT

44. McGee agrees to the following terms of settlement:

(a) the making of an order:

(i) approving this settlement;

(ii) that trading in any securities by McGee cease for fifteen years with the exception that, after three years from the date of the approval of this settlement, McGee is permitted to trade securities for his own account and the account of his registered retirement savings plan (as defined in the *Income Tax Act (Canada)*) if the securities are:

(a) referred to in clause 1 of subsection 35(2) of the Act; or

(b) listed and posted for trading on the TSX or NYSE (or their successor exchanges); or

(c) issued by mutual funds that are reporting issuers in Ontario;

(iii) that McGee is prohibited from becoming or acting as a director or officer of any issuer for fifteen years;

(iv) that the exemption in subsection 34(b) of the *Securities Act* does not apply to McGee for fifteen years;

(v) reprimanding McGee; and

(vi) that the Temporary Order no longer has any force or effect; and

(b) McGee will co-operate fully with Staff with respect to its outstanding proceeding in the Saxton matter including testifying as a witness for Staff.

VI. STAFF COMMITMENT

45. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against McGee in relation to the facts set out in Part III of this Settlement Agreement.

VII. APPROVAL OF SETTLEMENT

46. Approval of the settlement set out in this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for November 17, 2004 at 2:00 p.m. or such other date as may be agreed to by Staff and McGee (the "Settlement Hearing"). McGee will attend in person at the Settlement Hearing.

47. Counsel for Staff or McGee may refer to any part, or all, of this Settlement Agreement at the Settlement Hearing. Staff and McGee agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.

48. If this settlement is approved by the Commission, McGee agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.

49. Staff and McGee agree that if this settlement is approved by the Commission, they will not make any public statement inconsistent with this Settlement Agreement.

50. If, for any reason whatsoever, this settlement is not approved by the Commission, or an order in the form attached as Schedule "A" is not made by the Commission:

(a) this Settlement Agreement and its terms, including all discussions and negotiations between Staff and McGee leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and McGee;

(b) Staff and McGee shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Amended Statement of Allegations of Staff, unaffected by this Settlement Agreement or the settlement discussions/negotiations;

(c) the terms of this Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person, except with the written consent of Staff and McGee or as may be required by law; and

(d) McGee agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement, the settlement discussions/negotiations or the process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

VIII. DISCLOSURE OF SETTLEMENT AGREEMENT

51. Except as permitted under paragraph 47 above, this Settlement Agreement and its terms will be treated as confidential by Staff and McGee until approved by the Commission, and forever, if for any reason whatsoever this settlement is not approved by the Commission, except with the consent of Staff and McGee, or as may be required by law.

52. Any obligations of confidentiality shall terminate upon approval of this settlement by the Commission.

IX. EXECUTION OF SETTLEMENT AGREEMENT

53. This Settlement Agreement may be signed in one or more counterparts that together shall constitute a binding agreement.

54. A facsimile copy of any signature shall be as effective as an original signature.

November 11, 2004

"David Roebuck" "Luke McGee"

November 12, 2004 **STAFF OF THE ONTARIO SECURITIES COMMISSION**

"Michael Watson"

Schedule "A"

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

- and -

IN THE MATTER OF
ALLAN EIZENGA, RICHARD JULES FANGEAT,
MICHAEL HERSEY,
LUKE JOHN MCGEE and ROBERT LOUIS RIZZUTO

- and –

IN THE MATTER OF
MICHAEL TIBOLLO

ORDER
(Subsection 127(1))

WHEREAS on September 24, 1998, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") respecting Luke John McGee ("McGee") and others and issued Amended Notices of Hearing against McGee and others on February 7, 2003 and May 21, 2004;

AND WHEREAS on September 24, 1998, the Commission made a Temporary Order as against McGee and others, such Temporary Order that was extended by Commission Orders dated October 9, 1998 and February 5, 1999 (the "Temporary Order");

AND WHEREAS McGee and Staff of the Commission entered into a Settlement Agreement executed on November <*>, 2004 (the "Settlement Agreement") in which they agreed to a proposed settlement of the proceedings, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and the Amended Statement of Allegations of Staff of the Commission and upon hearing submissions from the agent for McGee and from Staff of the Commission, the Commission is of the opinion that it is in the public interest to make the following Order pursuant to subsection 127(1) of the Act;

IT IS ORDERED THAT:

7. the attached Settlement Agreement is approved;

8. pursuant to subsection 127(1), paragraph 2, trading in any securities by McGee cease for fifteen years commencing on the date of this Order except that, after three years, McGee is permitted to trade securities for his own account and the account of his registered retirement savings plan (as defined in the *Income Tax Act (Canada)*) if the securities are:

   (a) referred to in clause 1 of subsection 35(2) of the Act; or

   (b) listed and posted for trading on the TSX or NYSE (or their successor exchanges); or

   (c) issued by mutual funds that are reporting issuers in Ontario;

9. pursuant to subsection 127(1), paragraph 8, McGee is prohibited from becoming or acting as a director or officer of any issuer for fifteen years commencing on the date of this Order;

10. pursuant to subsection 127(1), paragraph 3, the exemption in subsection 34(b) of the Act does not apply to McGee for fifteen years commencing on the date of this Order;

11. pursuant to subsection 127(1), paragraph 6, McGee is reprimanded; and

12. the Temporary Order as against McGee no longer has any force or effect.

November 17, 2004.

2.2.4 Capital Advisors Group, Inc. - ss. 74.1

Headnote

U. S. registered investment adviser and its representatives, officers, and directors exempted from the adviser registration requirement of the Act in connection with providing securities-related advisory services to clients that are resident in the U.S.

Statutes Cited

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

U.S. *Investment Advisors Act of 1940*, s. 203

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

AND

IN THE MATTER OF
CAPITAL ADVISORS GROUP, INC.

ORDER
(Subsection 74(1) of the Act)

UPON the application (the Application) of Capital Advisors Group, Inc. (CAG), to the Ontario Securities Commission (the Commission) for an order pursuant to subsection 74(1) of the Act, that CAG and persons who are representatives, directors or officers of CAG who will act on behalf of CAG from offices located in the Province of Ontario (such persons, the CAG Advisers) and, at the relevant times, are registered in the United States to act as advisers on behalf of CAG, shall not be subject to section 25 of the Act which prohibits a person or company from acting as an adviser unless the person or company is registered as an adviser under the Act, or is registered under the Act as a representative or as a partner or as an officer of a registered adviser and is acting on behalf of the adviser;

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

AND UPON CAG having represented to the Commission that;

1. CAG is a corporation incorporated under the laws of New Jersey, U.S.A. with its head office located in Newton, Massachusetts, U.S.A.

2. CAG was established to provide advice with respect to securities to persons or companies (the U.S. Clients) that are at the relevant time resident or located in the United States of America.

3. CAG is registered with the United States Securities and Exchange Commission (SEC) as an investment adviser under section 203 of the *Investment Advisers Act of 1940* to carry on the business of an adviser.

4. CAG is not a registrant under the Act.

5. None of the CAG Advisers will act on behalf of CAG for a client resident or located in the Province of Ontario unless the CAG Adviser is, at the relevant time, registered under the Act as a representative or officer of CAG and is acting on behalf of CAG, which is, in turn, registered to act as an adviser under the Act.

6. The CAG Advisers will act on behalf of CAG as advisers to the U.S. Clients out of offices located in the Province of Ontario.

7. CAG and the CAG Advisers will comply with all registration and other requirements of applicable United States securities laws in respect of advising U.S. Clients.

8. All U.S. Clients of CAG will enter into advisory agreements and receive such documents and disclosure as are mandated under applicable United States securities laws.

IT IS ORDERED THAT Section 25 of the Act shall not apply to CAG, or to the CAG Advisers acting on its behalf, in acting as an adviser to U.S. Clients, as described above, provided that:

(a) in acting as an adviser to the U.S. Clients, CAG and the CAG Advisers acting on its behalf, comply with all applicable registration and other requirements of United States securities legislation; and

(b) in acting as an adviser to the U.S. Clients, CAG acts only through the CAG Advisers.

August 27, 2004.

"Paul K. Bates" "Robert L. Shirriff"

2.2.5 Bear, Stearns & Co. Inc. - s. 147

Headnote

Section 147 of the Act – Registrant registered in the categories of international advisor and international dealer under the Act – section 4.1 of Rule 35-502 – Registrant exempt from requirement in subsection 21.10(3) of the Act that it file annual audited financial statements prepared in accordance with Canadian GAAP with the Commission and the requirement in subsection 33(2)(b) of the Act that it notify the Director of changes in information relating to information about directors and officers that was not required to be furnished to the Director upon initial registration.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 21.10(3), 33(2)(b), 147

Rules Cited

Ontario Securities Commission Rule 35-502 – Non Resident Registrants, s. 4.1

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

AND

RULE 35-502 MADE UNDER THE SECURITIES ACT,
R.R.O. 1990 (THE "RULE")

AND

IN THE MATTER OF
BEAR, STEARNS & CO. INC.

ORDER
(Section 147 of the Act)

UPON the application of Bear, Stearns & Co. Inc. ("the Registrant") to the Ontario Securities Commission (the "Commission") for an order pursuant to section 147 of the Act that the Registrant be exempt from (i) the requirement under subsection 21.10(3) of the Act relating to the filing of financial statements prepared in accordance with Canadian generally accepted accounting principles ("Canadian GAAP"); and (ii) the requirement under subsection 33(2) of the Act to notify the Director of certain changes in information;

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

AND UPON the Registrant having represented to the Commission that:

1. The Registrant is registered with the Commission as an adviser in the category of international adviser (investment counsel and portfolio manager) and as a dealer in the category of international dealer.

2. The Registrant is a corporation organized under the laws of the State of Delaware and having its principal place of business at 383 Madison Avenue, New York, NY 10179. The Registrant is a global investment banking, security trading and brokerage firm and is registered as an investment adviser and as a broker-dealer with the United States Securities and Exchange Commission and is also a member of the American Stock Exchange, the Boston Stock Exchange, the Chicago Board Options Exchange, the Chicago Stock Exchange, the Cincinnati Stock Exchange, the International Securities Exchange, NASDAQ, the New York Stock Exchange, the Pacific Stock Exchange, and the Philadelphia Stock Exchange. The Registrant is also a registered futures commission merchant with the United States National Futures Association and the United States Commodity Trading Commission and is a member of the National Association of Securities Dealers.

3. Pursuant to Section 4.1 of the Rule an international adviser may apply for an exemption from the requirement to file annual audited financial statements prepared in accordance with Canadian GAAP as required under subsection 21.10(3) of the Act only if it is not registered in any category of registration in addition to international adviser. As the Registrant is registered with the Commission under both the categories of international adviser (investment counsel and portfolio manager) and international dealer, it does not qualify to file for the exemption from the requirement to file annual audited financial statements provided for in section 4.1 of the Rule.

4. In the absence of the requested ruling, subsection 21.10(3) of the Act would require the Registrant to file with the Commission, annual audited financial statements prepared in accordance with Canadian GAAP. The Registrant is not otherwise required to prepare its financial statements in accordance with Canadian GAAP and is not otherwise required to file annual audited financial statements with the Commission because it is staff practice to not require a registrant who is registered in Ontario solely in the category of international dealer to provide annual financial statements.

5. The requirement to prepare annual audited financial statements in accordance with Canadian GAAP will be expensive and time-consuming for the Registrant and will place unnecessary compliance burdens on the Registrant.

6. Subsection 33(2)(b) of the Act requires a registrant to notify the Director of a change in the directors or officers of the registrant. It has been

staff practice to require an applicant for registration as an international adviser to provide, at the time of the application, information about only those directors and officers who will be providing advice to Ontario residents.

7. The requirement that the Registrant notify the Director of changes in information required to be reported under subsection 33(2)(b) of the Act to the extent that the change required to be reported relates to information about directors and officers that was not required to be furnished to the Director upon the filing of the Registrant's initial registration application will be expensive and time-consuming for the Registrant and will place unnecessary compliance burdens on the Registrant.

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

IT IS ORDERED, pursuant to section 147 of the Act, that, for so long as the Registrant is registered only in the categories of international adviser and international dealer under the Act, the Registrant is exempt from:

(i) the requirement under subsection 21.10(3) of the Act that it file annual audited financial statements prepared in accordance with Canadian GAAP with the Commission in connection with its registration as an adviser in the category of international adviser in Ontario; and

(ii) the requirement under subsection 33(2)(b) of the Act that it notify the Director of changes in information relating to information about directors and officers of the Registrant that was not required to be furnished to the Director upon the Registrant's initial registration as an international adviser under the Act.

June 27, 2003.

"Paul M. Moore" "H. Lorne Morphy"

2.2.6 British Columbia Investment Management Corporation - ss. 74(1)

Headnote

Subsection 74(1) of the Act – relief granted from the prospectus requirements in connection with certain over-the-counter derivatives transactions.

Ontario Statutes

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

Rules Cited

Proposed Rule 91-504 – Over-The-Counter Derivatives (2000), 23 OSCB 5

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

AND

IN THE MATTER OF
BRITISH COLUMBIA INVESTMENT MANAGEMENT CORPORATION

ORDER
(Subsection 74(1) of the Act)

UPON the application of the British Columbia Investment Management Corporation (**bcIMC**) to the Ontario Securities Commission (the **Commission**) for a ruling under subsection 74(1) of the Act that certain over-the-counter (**OTC**) derivatives transactions entered into between bcIMC and certain counterparties are not subject to sections 25 and 53 of the Act;

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

AND UPON bcIMC having represented to the Commission that:

1. bcIMC was established on November 1, 1999 as a corporation pursuant to the *Public Sector Pension Plans Act* S.B.C. 1999, c. 44 (the **Pension Plans Act**);

2. Pursuant to the Pension Plans Act, the sole shareholder of bcIMC is the Minister of Finance for the Province of British Columbia who holds such share on behalf of the Government of the Province of British Columbia;

3. The purposes of the formation of bcIMC was, as of January 1, 2000 to carry out the duties previously undertaken by the Office of the Chief Investment Officer (Ministry of Finance and Corporate Relations) for the Province of British Columbia which were then being exercised pursuant to the

Financial Administration Act R.S.B.C. 1966, c. 138 (the **Financial Administration Act**);

4. bcIMC has been established to provide, among other things, funds management services to certain persons as set out in the Pension Plans Act;

5. Pursuant to section 16 of the Pension Plans Act, bcIMC is deemed to be an agent of the Government of British Columbia;

6. In order to carry out its duties under the Pension Plans Act, bcIMC would like to be able to trade in OTC Derivatives (as defined in Appendix 2 to this Ruling) with certain counterparties who are Qualified Parties (as defined in Appendix 1 to this Ruling) in the Province of Ontario;

7. When relying upon this Ruling bcIMC will only trade in OTC Derivatives with parties in Ontario that meet the definition of "Qualified Party";

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

IT IS RULED, pursuant to subsection 74(1) of the Act, that OTC Derivatives transactions entered into between bcIMC and certain counterparties in Ontario as contemplated by paragraph 6 of this Ruling shall be exempt from sections 25 and 53 of the Act, provided that:

(i) each transaction is between bcIMC and a Qualified Party acting as principal, or a Qualified Party not acting as principal in accordance with section 4 of Appendix 1 to this Order; and

(ii) no settlement of an OTC Derivative transaction is made by way of the physical delivery of securities that are not Freely Tradeable, as defined in Appendix 2 to this Ruling.

THIS ORDER shall terminate six months after the coming into force of a rule or other regulation under the Act that specifically concerns trades in OTC Derivatives.

October 8, 2004.

"Paul M. Moore" "Susan Wolburgh Jenah"

APPENDIX 1

OVER-THE-COUNTER DERIVATIVES QUALIFIED PARTIES

Interpretation

(1) The terms "subsidiary" and "holding body corporate" used in paragraphs (w), (x) and (y) of subsection (3) of this Appendix 1 have the same meaning as they have in the *Business Corporations Act* (Ontario).

(2) All requirements contained in this Appendix 1 that are based on the amounts shown on the balance sheet of an entity apply to the consolidated balance sheet of the entity.

Qualified Parties Acting as Principal

(3) The following are Qualified Parties for all OTC Derivatives transactions, if acting as principal:

Banks

(a) a bank listed in Schedule I or II to the *Bank Act* (Canada);

(b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada);

(c) a bank subject to the regulatory regime of a country that is a member of the Basel Accord, or that has adopted the banking and supervisory rules set out in the Basel Accord, if the bank has a minimum paid up capital and surplus, as shown on its last audited balance sheet, in excess of $25 million or its equivalent in another currency;

Credit Unions and Caisses Populaires

(d) a credit union central, federation of caisses populaires, credit union or regional caisse populaire, located, in each case, in Canada;

Loan and Trust Companies

(e) a loan corporation or trust corporation registered under the *Loan and Trust Corporations Act* (Ontario) or under the *Trust and Loan Companies Act* (Canada), or under comparable legislation in any other province or territory of Canada;

(f) a loan company or trust company subject to the regulatory regime of a country that is a member of the Basel Accord, or that

has adopted the banking and supervisory rules set out in the Basel Accord, if the loan company or trust company has a minimum paid up capital and surplus, as shown on its last audited balance sheet, in excess of $25 million or its equivalent in another currency;

Insurance Companies

(g) an insurance company licensed to do business in Canada or a province or territory of Canada;

(h) an insurance company subject to the regulatory regime of a country that is a member of the Basel Accord, or that has adopted the banking and supervisory rules set out in the Basel Accord, if the insurance company has a minimum paid up capital and surplus, as shown on its last audited balance sheet, in excess of $25 million or its equivalent in another currency;

Sophisticated Entities

(i) a person or company that, together with its affiliates,

(i) has entered into one or more transactions involving OTC Derivatives with counterparties that are not its affiliates, if

(A) the transactions had a total gross dollar value of or equivalent to at least $1 billion in notional principal amount; and

(B) any of the contracts relating to one of these transactions was outstanding on any day during the previous 15-month period; or

(ii) had total gross marked-to-market positions of or equivalent to at least $100 million aggregated across counterparties, with counterparties that are not its affiliates in one or more transactions involving OTC Derivatives on any day during the previous 15-month period,

Individuals

(j) an individual who either alone or jointly with the individual's spouse, has a net worth of at least $5 million, or its equivalent in another currency, excluding the value of his or her principal residence;

Governments/Agencies

(k) Her Majesty in Right of Canada or any province or territory of Canada and each crown corporation, instrumentality and agency of a Canadian federal, provincial or territorial government;

(l) a national government of a country that is a member of the Basel Accord, or that has adopted the banking and supervisory rules set out in the Basel Accord, and each instrumentality and agency of that government or corporation wholly-owned by that government;

Municipalities

(m) any Canadian municipality with a population in excess of 50,000 and any Canadian provincial or territorial capital city;

Corporations and other Entities

(n) a company, partnership, unincorporated association or organization or trust, other than an entity referred to in paragraph (a), (b), (c), (d), (e), (f), (g) or (h), with total revenues or assets in excess of $25 billion or its equivalent in another currency, as shown on its last financial statements to be audited only if otherwise required;

Pension Plan or Fund

(o) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a provincial pension commission, if the pension fund has total net assets, as shown on its last audited balance sheet, in excess of $25 million, provided that, in determining net assets, the liability of a fund for future pension payments shall not be included;

Mutual Funds and Investment Funds

(p) a mutual fund or non-redeemable investment fund if each investor in the fund is a Qualified Party;

(q) a mutual fund that distributes its securities in Ontario, if the portfolio adviser of the fund is registered as an adviser, other than a securities adviser, under the Act or securities legislation elsewhere in Canada;

(r) a non-redeemable investment fund that distributes its securities in Ontario, if the portfolio manager of the fund is registered as an adviser, other than a securities adviser, under the Act or securities legislation elsewhere in Canada;

Brokers/Investment Dealers

(s) a person or company registered under the Act or securities legislation elsewhere in Canada as a broker or an investment dealer or both;

(t) a person or company registered under the Act as an international dealer if the person or company has total assets, as shown on its last audited balance sheet, in excess of $25 million or its equivalent in another currency;

Futures Commission Merchants

(u) a person or company registered under the *Commodity Futures Act* (Ontario) as a dealer in the category of futures commission merchant, or in an equivalent capacity elsewhere in Canada;

Charities

(v) a registered charity under the *Income Tax Act* (Canada) with assets not used directly in charitable activities or administration, as shown on its last audited balance sheet, of at least $5 million or its equivalent in another currency;

Affiliates

(w) a wholly-owned subsidiary of any of the organizations described in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (n), (o), (s), (t) or (u);

(x) a holding body corporate of which any of the organizations described in paragraph (w) is a wholly-owned subsidiary;

(y) a wholly-owned subsidiary of a holding body corporate described in paragraph (x);

(z) a firm, partnership, joint venture or other form of unincorporated association in which one or more of the organizations described in paragraph (w), (x) or (y) have a direct or indirect controlling interest;

Guaranteed Party

(aa) a party whose obligations in respect of the OTC Derivatives transaction for which the determination is made is fully guaranteed by another Qualified Party.

Qualified Party Not Acting as Principal

(4) The following are qualified parties, in respect of all OTC Derivative Transactions:

Managed Accounts

(1) Accounts of a person, company, pension fund or pooled fund trust that are fully managed by a portfolio manager or financial intermediary referred to in paragraph (a), (d), (e), (g), (s), (t), (u) or (w) of subsection (3) or a broker or investment dealer acting as trustee or agent for the person, company, pension fund or pooled trust under section 148 of the Regulations.

Subsequent Failure to Qualify

(5) A party is a Qualified Party for the purpose of any OTC Derivatives transaction if it, he or she is a Qualified Party at the time it, he or she enters into the transaction.

APPENDIX 2

DEFINITIONS

"Clearing Corporation" means an association or organization through which Options or futures contracts are cleared and settled.

"Contract for Differences" means an agreement, other than an Option, a Forward Contract, a spot currency contract or a conventional floating rate debt security, that provides for:

(a) an exchange of principal amounts; or

(b) the obligation or right to make or receive a cash payment based upon the value, level or price, or on relative changes or movements of the value, level or price of, an Underlying Interest.

"Forward Contract" means an agreement, not entered into or traded on or through an organized market, stock exchange or futures exchange and cleared by a clearing corporation, to do one or more of the following on terms or at a price established by or determinable by reference to the agreement and at or by a time established by or determinable by reference to the agreement:

(a) make or take delivery of the Underlying Interest of the agreement; or

(b) settle in cash instead of delivery.

"Freely Tradeable" means, in respect of securities, that:

(a) the securities are not non-transferable;

(b) the securities are not subject to any escrow requirements;

(c) the securities do not form part of the holdings of any person or company or combination of person or companies referred to in paragraph (c) of the definition of "distribution" in the Act;

(d) the securities are not subject to any cease trade order imposed by a Canadian securities regulatory authority;

(e) all hold periods imposed by Canadian securities legislation before the securities can be traded without a prospectus or in reliance on a prospectus exemption have expired; and

(f) any period of time for which the issuer has to have been a reporting issuer before the securities can be traded without a prospectus or in reliance on a prospectus exemption has passed.

"Option" means an agreement that provides the holder with the right, but not the obligation, to do one or more of the following on terms or at a price determinable by reference to the agreement at or by a time established by the agreement:

(a) receive an amount of cash determinable by reference to a specified quantity of the Underlying Interest of the Option.

(b) purchase a specified quantity of the Underlying Interest of the Option.

(c) sell a specified quantity of the Underlying Interest of the Option.

"OTC Derivative" means an Option, a Forward Contract, or a Contract for Differences of a type commonly considered to be a derivative, in which

(a) the agreement relating to the Option, Forward Contract or Contract for Differences is not part of a fungible class of agreements that are standardized as to their material economic terms;

(b) the creditworthiness of a party having an obligation under the agreement would be a material consideration in entering into or determining the terms of the agreement; and

(c) the agreement is not entered into or traded on or through an organized market, stock exchange or futures exchange and cleared by a clearing corporation.

"Underlying Interest" means, for a derivative, the security, commodity, financial instrument, currency, interest rate, foreign exchange rate, economic indicator, index, basket, agreement or reit, and, if applicable, the relationship between any of the foregoing, from or on which the market price, value or payment obligations of the derivative are derived or based.

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
CDA International Inc.	23 Nov 04	03 Dec 04		
DXStorm.com Inc.	24 Nov 04	06 Dec 04		
Tengtu International Corp.	23 Nov 04	03 Dec 04		
Terra Industries Inc.	23 Nov 04	03 Dec 04		

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
MDC Partners Inc.	19 Nov 04	02 Dec 04			
Straight Forward Marketing Corporation	18 Nov 04	01 Dec 04			
Star Navigation Systems Group Ltd.	18 Nov 04	01 Dec 04			
ECLIPS Inc.	08 Nov 04	22 Nov 04		23 Nov 04	
Argus Corporation Limited	25 May 04	03 Jun 04	03 Jun 04		
Hollinger Canadian Newspapers, Limited Partnership	18 May 04	01 Jun 04	01 Jun 04		
Hollinger Inc.	18 May 04	01 Jun 04	01 Jun 04		
Hollinger International Inc.	18 May 04	01 Jun 04	01 Jun 04		
Nortel Networks Corporation	17 May 04	31 May 04	31 May 04		
Nortel Networks Limited	17 May 04	31 May 04	31 May 04		

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Chapter 5

Rules and Policies

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

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

Notice of Amendments

Each member of the Canadian Securities Administrators (the CSA) is amending National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (the Instrument) and Companion Policy 54-101CP (the Policy).

The amendments to the Instrument have been or are expected to be made by each member of the CSA, and will be implemented as

- a rule in each of British Columbia, Alberta, Manitoba, Ontario, Prince Edward Island, Nova Scotia and Newfoundland and Labrador;
- a commission regulation in Saskatchewan and Québec;
- a policy or code in New Brunswick, the Northwest Territories, Nunavut and the Yukon.

We also expect that the amendments to the Policy will be adopted in all jurisdictions.

In Ontario, the amendments to the Instrument and the other material required by the Act to be delivered to the Chair of the Management Board of Cabinet (the Minister) were delivered on November 26, 2004. If the Minister does not reject the amendments or return them to the Commission for further consideration, the amendments will come into force on February 9, 2005. The amendments to the Policy will come into force on the date that the amendments to the Instrument come into force.

In Québec, the Instrument is a regulation made under section 331.1 of the Act and must be approved, with or without amendment, by the Minister of Finance. The Instrument will come into force on the date of its publication in the Gazette officielle du Québec or on any later date specified in the regulation. It must also be published in the Bulletin.

Provided all necessary ministerial approvals are obtained, the amendments to the Instrument will come into force on February 9, 2005.

Substance and Purpose of the Amendments

The Instrument and Policy came into effect on July 1, 2002. The primary purpose of the Instrument is to ensure that beneficial owners of securities of a reporting issuer can receive proxy-related materials and provide instructions on how the securities they beneficially own are to be voted. To achieve this purpose, the Instrument sets out detailed procedures by which proxy-related materials are provided to the beneficial owner, and the beneficial owner provides voting instructions. The Instrument also imposes obligations on the reporting issuer, the depository and intermediaries who hold on behalf of the beneficial owner. We have been monitoring the Instrument and Policy since they came into effect. We have also published CSA Staff Notice 54-301 *Frequently Asked Questions*. The amendments are intended to make the Instrument and Policy clearer and also improve the regulatory regime set out in the Instrument.

Details of the proposed amendments were contained in a notice and request for comments published in October 2003.

Summary of Written Comments Received by the CSA

We published the amendments for comment in October 2003. The comment period expired January 2, 2004. During the comment period we received submissions from six commenters. We have considered the comments received and thank all the

commenters. The names of the commenters and a summary of their comments, together with our responses, are contained in Appendices A and B to this notice.

After considering the comments, we have made some changes to the amendments as proposed in the notice published in October 2003. As these changes are not material, we are not republishing the amendments for a further comment period.

Summary of Changes to the Amendments

This section describes changes made to the amendments published for comment in October 2003 other than those changes that are of a minor nature, or those made only for the purposes of clarification or for drafting reasons.

- *Client Response Form*

We have amended the note to the client response form portion of Form 54-101F1 to make it clearer that in the case of investment funds, where specific instructions concerning receipt of the investment fund's annual report or financial statements have been provided to the investment fund, the instructions in the client response form with respect to financial statements will not apply.

- *Companion Policy*

Explanations of the interaction of the Instrument and National Instrument 51-102 *Continuous Disclosure Obligations* have been added.

- *Transition*

We have added a transition provision so that a reporting issuer that has filed a notice of a meeting and record date before the coming into force of these amendments is, with respect to that meeting, exempt from these amendments if the reporting issuer complies with the provisions of the Instrument as unamended.

Text of Amendments

The text of the amendments follows the Appendices.

Questions

Please refer your questions to any of:

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November 26, 2004.

Appendix A
Summary of Comments and CSA Responses

Definition of Special Meeting

Two commenters supported the replacement of the references to "non routine" in the instrument with "special resolution".

One commenter said that the special meeting definition and concept may not strike the right balance between ensuring that beneficial owners are properly informed of significant issues and their desire not to receive materials. The commenter cited the following examples of matters that could be considered to be significant but which would be excluded from the special meeting definition:

- the election of directors, particularly if there is a contest as to board composition;
- non-proxy related materials, such as those relating to take-over bids, issuer bids, rights offerings, class actions or securityholder elections in non-proxy related matters;
- the corporate law concept of special meetings does not necessarily cover significant issues relating to mutual funds;
- certain shareholder proposals can be significant enough that they should fall into the significant category.

The commenter suggested that further consideration is required and that it would be preferable at this time to leave the definition of routine business in place. The commenter also suggested that any amendments to the routine business definition at this time would pose undue costs to intermediaries. The commenter also stated that the proposed amendments do not clearly address how beneficial owners who made elections under NP 41 or under the instrument prior to amendment should be treated.

Response: We have attempted to achieve the right balance between ensuring that beneficial owners are properly informed of significant issues and their desire not to receive materials by providing that beneficial owners may elect to receive only proxy-related materials that are sent in connection with a meeting at which a special resolution is being submitted to securityholders. We believe that the concept of special resolution is an improvement over the concept of non-routine business as it strikes a better balance. Using the concept of special resolution also results in greater certainty for issuers and beneficial owners than would a concept which attempted to encompass all matters that could be considered to be significant to beneficial owners.

Non-proxy related materials will continue to be sent to securityholders if required to be sent by corporate or securities law, as the client response form does not affect these. We believe that transition costs of the change from the non-routine business concept will be outweighed by the cost savings that will be realized from the reduction in material that will be required to be mailed. We have not amended the proposed amendments to the transitional provisions as an intermediary would not be prevented from seeking new instructions from the client after the amendments become effective.

Should beneficial owners be permitted to decline to receive all materials?

Two commenters suggested that, rather than provide beneficial owners with three choices (to decline to receive all materials, to choose to receive only proxy-related materials relating to special meetings, or to choose to receive all materials), beneficial owners should have two clear choices (to choose to receive all materials or to decline to receive all materials). This approach would eliminate the need of the CSA to attempt to determine which materials are deemed significant and would eliminate any concerns that beneficial owners would be left with a false sense that they will receive all materials related to significant matters. One of the commenters suggested that more consideration needs to be given to the question of whether beneficial owners should be entitled to determine whether they wish to receive materials related to significant issues before any amendments are made and suggested that any amendments at this time would pose undue costs to intermediaries and create added confusion for beneficial owners.

Response: We believe that three choices are appropriate, and permitting securityholders to choose to receive only proxy-related materials that are sent in connection with a meeting at which a special resolution is being submitted to securityholders strikes the right balance between ensuring that beneficial owners are properly informed of significant issues and their desire not to receive materials. The use of the concept of special resolution should lessen concerns that securityholders will have a false sense that they will receive all materials related to significant matters. The CSA believe that the proposed amendments will not pose undue costs to intermediaries or create confusion for beneficial owners, as the concept of special resolution provides a standard that is already used in corporate law.

Interaction of NI 54-101 with NI 51-102 *Continuous Disclosure Obligations* and NI 81-106 *Investment Fund Continuous Disclosure*

One commenter noted that there are duplicative and conflicting requirements in NI 54-101 and NI 51-102 that will lead to confusion:

- Beneficial owners who have given their intermediary a global, one-time-only instruction that they want to receive proxy materials and financial statements for all securities in their accounts, in accordance with NI 54-101, would receive annual solicitations from multiple issuers pursuant to NI 51-102 with respect to financial statements (but not proxy materials), which would lead to significant costs and require additional resources in the case of investment managers holding securities of large numbers of issuers for large numbers of clients.

- The global one-time-only instruction under NI 54-101 will relate to proxy materials and financial statements, but the annual solicitations from issuers under NI 51-102 will relate only to some of this material.

- Beneficial owners could selectively request financial statements of some issuers, but would not be able to make this choice in respect of proxy materials, which are typically distributed in the same envelope.

- It is not clear how beneficial owners would be advised that failing to request financial statements from issuers on an annual basis overrides their NI 54-101 instructions.

- The CSA suggest that the annual request form be delivered to beneficial owners as part of the proxy materials, but a beneficial owner might question why the request form refers to the financial statements and MD&A but excludes the proxy materials.

- As there is no deadline for responding to issuers' annual solicitations, and as beneficial owners may order financial statements under NI 51-102 for up to two years, issuers and intermediaries would be unable to accurately estimate the quantities of material to order.

Response: The requirement in NI 51-102 to send the request form only to those securityholders that have indicated they want to receive materials under NI 54-101 is appropriate. The basic principle behind the delivery requirement is that only those investors that want the financial statements should receive copies of them. The request form under NI 51-102 gives securityholders an opportunity to respond to each issuer individually and "customize" their instructions on an issuer-by-issuer basis.

The Companion Policy to NI 51-102 indicates that failing to request the financial statements and MD&A will override the instructions given under NI 54-101, to the extent those instructions relate to the financial statements and MD&A only. Failing to request the financial statements will not affect securityholders' right to receive other meeting materials in accordance with their instructions. We have also added this explanation to the Companion Policy to NI 54-101.

One commenter said that NI 51-102, NI 81-106 and NI 54-101 should fit together without gaps or inconsistencies, and suggested that the CSA consider providing guidance to all market participants on which instrument is paramount in the event of conflict.

Response: Although NI 51-102 and NI 54-101 provide for different requirements with respect to financial statements and proxy-related material, the CSA believe that these requirements are not conflicting and will not cause undue confusion. It was considered to be important that NI 51-102 include a requirement that securityholders receive a notice annually reminding them that they may request financial statements for specific issuers. The Companion Policy to NI 51-102 indicates that failing to request the financial statements and MD&A will override the instructions given under NI 54-101, to the extent those instructions relate to the financial statements and MD&A only. We have also added this explanation to the Companion Policy to NI 54-101.

One commenter suggested that beneficial owners who do not respond to issuers annually (which may be due to not realizing that failing to respond to the NI 51-102 request form will override the NI 54-101 instructions with respect to financial statements or a lack of resources to deal with multiple requests from issuers) could result in a beneficial owner wanting to vote but not being able to do so without the financial statements, or voting nonetheless, leading to a corporate governance deficiency and calling into question the integrity of the vote.

Response: Investors that want the financial statements will still have access to the statements. Once they request the statements, issuers must deliver a copy within 10 days of receiving the request, if the financial statements have already been filed. We do not agree that delivering the financial statements only on request will result in corporate governance deficiencies. The effect of NI 51-102 and NI 54-101 is to give securityholders choice as to what materials to receive.

One commenter suggested that because of the unique business and legal arrangements that apply to the mutual funds industry, mutual funds, mutual fund securities and mutual fund dealers should be explicitly carved out of the application of NI 54-101. The commenter stated that the requirement to obtain instructions from investors as to whether they object to their beneficial ownership information being disclosed is unnecessary and possibly misleading in the context of mutual funds since client information is provided by dealers to mutual fund managers because of tax reporting obligations that are fulfilled by fund managers on behalf of clients. The commenter also noted that the client response form election with respect to receiving financial statements and meeting materials will be unnecessary in relation to mutual funds as NI 81-106 will require mutual funds to identify which clients wish to receive financial statements, and according to industry practice mutual fund managers send meeting materials directly to all securityholders.

Response: The requirement to obtain instructions as to whether investors object to their beneficial ownership information being disclosed, and whether an exemption for mutual funds should be provided in NI 54-101 or NI 81-106, will require further consideration.

Proposed NI 81-106 provides that an investment fund that complies with the provisions of that instrument dealing with the delivery of financial statements and management reports is exempt from the financial statement delivery requirements of NI 54-101. The note to the client response form has been amended to make it clearer that where specific instructions concerning receipt of the investment fund's annual report or financial statements have been provided to an investment fund, the instructions in the client response form with respect to financial statements will not apply. We have retained the instructions in the client response form with respect to financial statements because investment funds that are not mutual funds may not have beneficial owner information and may want to use NI 54-101 to obtain that information. We believe the provisions of NI 54-101 with respect to mailings in connection with meetings can be relevant to investment funds, and we have not amended these provisions.

Costs

One commenter said that the activities and costs involved in implementing the proposed amendments would be significant, time consuming and expensive, although the benefits to be gained are unclear. The commenter suggested that further consideration be given to the issues.

Response: We believe that the proposed amendments make the instrument clearer and improve the regulatory regime. In particular, in our view, the amendment to permit beneficial owners to decline to receive all proxy-related materials and to permit beneficial owners to choose to receive only proxy-related materials relating to special meetings instead of non-routine business strikes the right balance between ensuring that beneficial owners can receive information on significant issues and their desire not to receive materials.

General Comments

Three commenters noted that the effective date should not fall during the peak proxy season in the first half of the year. Two commenters suggested that the instrument include a transition period in order that the necessary changes can be made to securityholder response forms and computer systems can be reprogrammed before the amendments to the instrument become effective. One commenter suggested that an effective date later than June 30, 2004 would interfere with the effective date for implementation of the second stage of NI 54-101.

Response: The effective date of February 9, 2005 will not interfere with the peak proxy season. We have also added a transition provision so that a reporting issuer that has filed a notice of a meeting and record date before the coming into force of these amendments is, with respect to that meeting, exempt from these amendments if the reporting issuer complies with the provisions of the Instrument as unamended.

One commenter asked that the CSA consider amending the provisions dealing with legal proxies to continue the process that was followed under NP 41, whereby beneficial owners could indicate on the voting instruction form that they or a third party appointee would attend the meeting in person and the intermediary would issue cumulative proxies to the transfer agent. The commenter suggested that the requirement under NI 54-101 that the beneficial owner make a separate request for a legal proxy which must be prepared and mailed by the intermediary to the beneficial owner has the following implications:

- It is inefficient and imposes higher processing costs, and where late requests are received, it is less likely the beneficial owner will receive the legal proxy in time to attend the meeting;
- Except under section 2.18, it is not clear who is to pay the processing costs;
- Sections 2.19 and 4.6 require reporting issuers and intermediaries to tabulate and execute voting instructions received, but does not deal with the situation where a legal proxy has been delivered; it is difficult to reconcile voting instructions with votes cast in person using a proxy. The commenter suggested that sections 2.19 and

4.6 be amended to exempt reporting issuers and intermediaries from the obligation to tabulate or execute voting instructions in these circumstances.

Response:

The CSA acknowledge that it may be difficult to reconcile voting instructions with votes cast in person using a proxy where a beneficial owner completes the voting instructions and also requests a legal proxy. This issue will require further consideration.

Two commenters said that the CSA should reconsider the issue of responsibility for the cost of delivery to OBOs. One of the commenters noted that where none of the issuer, the intermediary or the OBO agrees to pay for the costs of delivery, the OBO may not receive proxy-related materials. The commenters suggested that issuers should be responsible to pay for OBO delivery, as this would support efficiency, equitable and clearly defined obligations and similar treatment of all securityholders.

Response: These concerns were raised by a number of commenters when NI 54-101 was published for comment on three occasions in 1998 and 2000. The CSA decided to permit the market to determine how the costs of sending to OBOs would be borne where the matter is not addressed by local rule. As we have indicated in response to earlier comments, we believe it would be unfair to require the reporting issuer to pay for sending materials to beneficial securityholders who have chosen not to identify themselves to the reporting issuer. In addition, the amendments will permit OBOs, as well as NOBOs, to decline to receive all securityholder materials, so that OBOs will not be in a position of having to pay for delivery of materials they do not wish to receive.

Appendix B
List of Commenters

ADP Investor Communications

Computershare Trust Company of Canada

Investment Dealers Association of Canada

Investment Funds Institute of Canada

Pacific Corporate Trust Company

RBC Global Services

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

PART ONE – AMENDMENTS

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

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

(b) The definition of "routine business" in section 1.1 of the National Instrument is repealed;

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

"special resolution" for a meeting,

(a) has the same meaning given to the term "special resolution" under corporate law, or

(b) if no such term exists under corporate law, means a resolution that is required to be passed by at least two-thirds of the votes cast;

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

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

(h) whether the meeting is a special meeting.

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

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

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

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

(a) may seek new instructions from its client in relation to the matters to which the client response form pertains; and

(b) in the absence of new instructions from the client, shall rely on the instructions previously given or deemed to have been given by the client under NP41 in respect of that account, on the following basis:

(i) If the client chose to permit the intermediary to disclose the client's name and security holdings to the issuer of the security or other sender of material, the client is a NOBO under this Instrument;

(ii) If the client was deemed to have permitted the intermediary to disclose the client's name and security holdings to the issuer of the security or other sender of material, the intermediary may choose to treat the client as a NOBO under this Instrument;

(iii) If the client chose not to permit the intermediary to disclose the client's name and security holdings to the issuer of the security or other sender of material, the client is an OBO under this Instrument;

(iv) If the client chose not to receive material relating to annual or special meetings of securityholders or audited financial statements, the client is considered to have declined under this Instrument to receive:

(A) proxy-related materials that are sent in connection with a securityholder meeting;

(B) financial statements and annual reports that are not part of proxy-related materials; and

(C) materials sent to securityholders that are not required by corporate or securities law to be sent to registered securityholders;

(v) If the intermediary was permitted not to provide material relating to annual meetings of securityholders or audited financial statements, the client is considered to have declined under this Instrument to receive:

(A) proxy-related materials that are sent in connection with a securityholder meeting that is not a special meeting;

(B) financial statements and annual reports that are not part of proxy-related materials; and

(C) materials sent to securityholders that are not required by corporate or securities law to be sent to registered securityholders;

(vi) If the client chose to receive material relating to annual or special meetings of securityholders and audited financial statements, the client is considered to have chosen under this Instrument to receive all securityholder materials sent to beneficial owners of securities;

(vii) The client is considered to have chosen under this Instrument as the client's preferred language of communication the language that has been customarily used by the intermediary to communicate with the client.

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

4.8 Fees from Persons or Companies other than Reporting Issuers

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

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

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

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

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

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

1.6 Part 7 of the National Instrument is repealed and the following substituted:

Part 7 USE OF NOBO LIST AND INDIRECT SENDING OF MATERIALS

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

(a) sending securityholder materials to NOBOs in accordance with this Instrument;

(b) an effort to influence the voting of securityholders of the reporting issuer;

(c) an offer to acquire securities of the reporting issuer; or

(d) any other matter relating to the affairs of the reporting issuer.

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

(a) an effort to influence the voting of securityholders of the reporting issuer;

(b) an offer to acquire securities of the reporting issuer; or

(c) any other matter relating to the affairs of the reporting issuer.

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

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

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

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

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

(a) proxy-related materials, including annual reports and financial statements, that are sent in connection with a securityholder meeting;

(b) annual reports and financial statements that are not part of proxy-related materials; and

(c) materials that a reporting issuer or other person or company sends to securityholders that are not required by corporate or securities law to be sent to registered holders.

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

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

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

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

☐ **I WANT to receive ALL securityholder materials sent to beneficial owners of securities.**

☐ **I DECLINE to receive ALL securityholder materials sent to beneficial owners of securities. *(Even if I decline to receive these types of materials, I understand that a reporting issuer or other person or company is entitled to send these materials to me at its expense.)***

☐ **I WANT to receive ONLY proxy-related materials that are sent in connection with a special meeting.**

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

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

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

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

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

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

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

PART TWO – EFFECTIVE DATE AND TRANSITION

2.1 Effective date of instrument - These amendments come into effect on February 9, 2005.

2.2 Transition – A reporting issuer that has filed a notice of a meeting and record date with the securities regulatory authority in accordance with the provisions of the National Instrument before the coming into force of these amendments is, with respect to that meeting, exempt from these amendments if the reporting issuer complies with the provisions of the National Instrument in force on February 8, 2005.

AMENDMENTS TO
COMPANION POLICY 54-101CP
COMMUNICATION WITH BENEFICIAL OWNERS
OF SECURITIES OF A REPORTING ISSUER

PART ONE – AMENDMENTS

1.1(a) Subsection 2.1(1) of the Companion Policy 54-101CP (the Companion Policy) is amended by deleting from the final sentence the words "; an example of these types of materials would be corporate communications containing product information."

(b) Subsection 2.2(1) of the Companion Policy is amended by adding the following sentence to the end of the subsection:

Subsection 2.12(3) does not require a reporting issuer to send proxy-related materials to all beneficial owners outside Canada. A reporting issuer need only send proxy-related materials to beneficial owners who hold through proximate intermediaries that are either participants in a recognized depository, or intermediaries on the depository's intermediary master list.

(c) Subsection 2.4(2) of the Companion Policy is repealed and the following substituted:

(2) For the purposes of the Instrument, if an intermediary that holds securities has discretionary voting authority over the securities, it will be the beneficial owner of those securities for purposes of providing instructions in a client response form, and would not also be an "intermediary" with respect to those securities.

1.2 (a) Subsection 3.2(3) of the Companion Policy is repealed and the following substituted:

(3) New intermediary searches may have to be conducted if the nature of the business to be transacted at the meeting is materially changed. If the nature of the business is changed to add business that results in the meeting becoming a special meeting, it may be necessary to conduct new intermediary searches in order to ensure that beneficial owners that had elected to receive only proxy-related materials that are sent in connection with a special meeting receive proxy-related materials for the meeting.

1.3 (a) Section 4.1 of the Companion Policy is amended by adding the following sentence to the end of the section:

Section 4.6 of National Instrument 51-102 *Continuous Disclosure Obligations* requires reporting issuers to send annually a request form to the registered holders and beneficial holders of its securities that the holders may use to request a copy of the reporting issuer's financial statements and MD&A. Failing to return the request form or otherwise specifically request a copy of the financial statements or MD&A from the reporting issuer will override the beneficial owner's standing instructions under this Instrument in respect of the financial statements.

(b) Part 4 of the Companion Policy is amended by adding the following section 4.8:

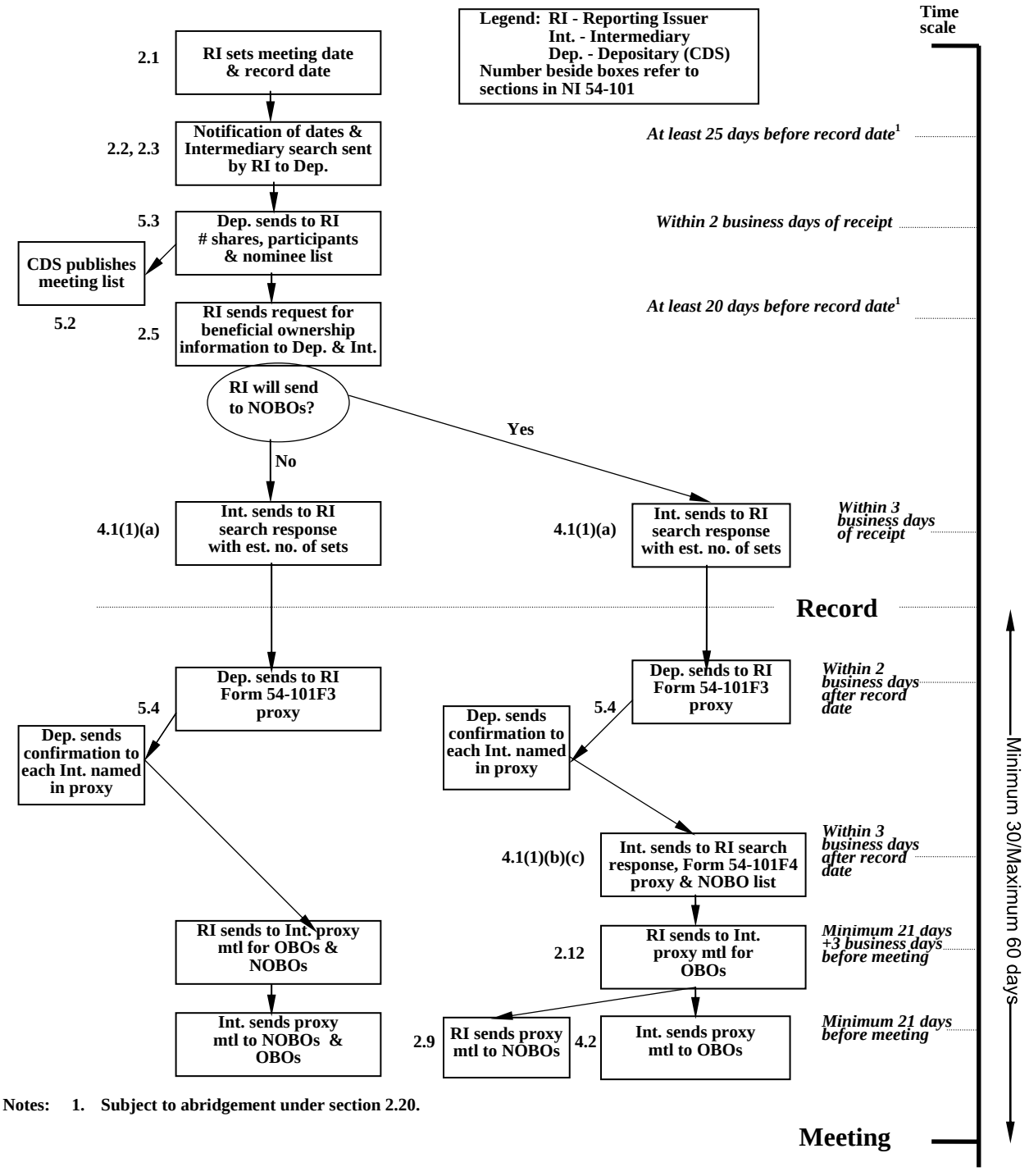
4.8 Instructions from Existing Clients – A client deemed to be a NOBO under NP41 can continue to be treated as a NOBO under paragraph 3.3(b)(ii) of this Instrument. However, intermediaries are responsible for ensuring that they comply with their obligations under privacy legislation with respect to their clients' personal information. Intermediaries may find that, notwithstanding paragraph 3.3(b)(ii), privacy legislation requires that they take measures to obtain their clients' consent before they disclose their clients' names and security holdings to a reporting issuer or other sender of material.

1.4 Subsection 5.4(4) of the Companion Policy is amended by deleting the first sentence of that subsection and substituting the following:

Section 3.2 of the Instrument requires intermediaries that hold securities on behalf of a client in an account to obtain the electronic mail address of the client, if available, and if applicable, to enquire whether the client wishes to consent to electronic delivery of documents by the intermediary to the client.

1.5 Appendix A of the Companion Policy is deleted in its entirety and the following substituted:

Appendix A
Proxy Solicitation under NI 54-101



Notes: 1. Subject to abridgement under section 2.20.

PART TWO – EFFECTIVE DATE

2.1 These amendments come into effect on February 9, 2005.

Chapter 6

Request for Comments

6.1.1 Request for Comments - Proposed Amendments to Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings and Companion Policy 52-109CP

REQUEST FOR COMMENTS

PROPOSED AMENDMENTS TO
MULTILATERAL INSTRUMENT 52-109
CERTIFICATION OF DISCLOSURE IN ISSUERS' ANNUAL AND INTERIM FILINGS
AND
COMPANION POLICY 52-109CP

Request for public comment

This Notice accompanies:

- a proposed amendment instrument (the Proposed Amendment Instrument) amending Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (the Certification Instrument); and
- proposed amendments (the Proposed CP Amendments and together with the Proposed Amendment Instrument, the Proposed Amendments) to Companion Policy 52-109CP to the Certification Instrument (the Companion Policy).

The Proposed Amendments are being published for a 90-day comment period by the securities regulatory authorities in every province and territory in Canada, other than British Columbia (the Participating Jurisdictions or we).

The Proposed Amendment Instrument is expected to be made by each of the Participating Jurisdictions and will be implemented as:

- a rule in each of Alberta, Manitoba, Ontario, Nova Scotia and Newfoundland and Labrador;
- a Commission regulation in Saskatchewan and a regulation in the Northwest Territories;
- a policy in each of New Brunswick, Prince Edward Island and Yukon; and
- a code in Nunavut.

It is expected that the Proposed CP Amendments will be adopted as a policy in each of Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, the Northwest Territories, Nunavut and Yukon.

In Québec, since the Certification Instrument and the Companion Policy have not been adopted yet, the Proposed Amendment Instrument is being published as Proposed Amendments to Proposed *Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings*, and the Proposed CP Amendments are being published as Proposed Amendments to Proposed Policy Statement 52-109 to *Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings*.

Background to the Certification Instrument and the Companion Policy

The Certification Instrument and the Companion Policy were initiatives of the Participating Jurisdictions.

The Certification Instrument and the Companion Policy came into force on March 30, 2004 in each of the Participating Jurisdictions, other than Québec. In Québec, the Certification Instrument will be adopted as a regulation made under section 331.1 of *The Securities Act* (Québec) once it is approved, with or without amendment, by the Minister of Finance, and will come into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation. The Companion Policy will be implemented as a policy in Québec.

The purpose of the Certification Instrument is to improve the quality and reliability of financial and other continuous disclosure reporting by reporting issuers. We believe that this in turn will help to maintain and enhance investor confidence.

Current filing requirements under the Certification Instrument

Under the Certification Instrument, issuers are required to file annual certificates for each financial year beginning on or after January 1, 2004. The form of annual certificate is Form 52-109F1 (the full annual certificate); however, issuers are permitted to file annual certificates in Form 52-109FT1 (the bare annual certificate) for financial years ending on or before March 30, 2005.

Issuers are also required to file interim certificates for each interim period beginning on or after January 1, 2004. The form of interim certificate is Form 52-109F2 (the full interim certificate); however, issuers are permitted to file interim certificates in Form 52-109FT2 (the bare interim certificate) for interim periods that occur before the end of the first financial year for which issuers are required to file full annual certificates.

The differences between the full certificates and the bare certificates under the current filing requirements are summarized in the table below:

Summary of Representations[1]	**Bare Interim Certificate**	**Bare Annual Certificate**	**Full Interim Certificate**	**Full Annual Certificate**
The certifying officers have reviewed the annual filings or interim filings. *Paragraph 1*	Required	Required	Required	Required
Based on the certifying officers' knowledge, the issuer's annual filings or interim filings do not contain any misrepresentations. *Paragraph 2*	Required	Required	Required	Required
Based on the certifying officers' knowledge, the financial statements and other financial information in the annual filings or interim filings fairly present the financial condition, results of operations and cash flows of the issuer for the relevant period. *Paragraph 3*	Required	Required	Required	Required
The certifying officers are responsible for establishing and maintaining disclosure controls and procedures and have designed (or caused to be designed) such disclosure controls and procedures. *Introductory language to paragraph 4 and paragraph 4(a)*	Not required	Not required	Required	Required
The certifying officers are responsible for establishing and maintaining internal control over financial reporting and have designed (or caused to be designed) such internal control over financial reporting. *Introductory language to paragraph 4 and paragraph 4(b)*	Not required	Not required	Required	Required
The certifying officers have evaluated the effectiveness of disclosure controls and procedures and caused the issuer to disclose their conclusions. *Paragraph 4(c)*	Not required	Not required	Not Required	Required
The certifying officers have caused the issuer to disclose certain changes in internal control over financial reporting. *Paragraph 5*	Not required	Not required	Required	Required

[1] Please see Forms 52-109F1, 52-109FT1, 52-109F2 and 52-109FT2 for the prescribed wording of the required representations.

Substance and purpose of the Proposed Amendments

The Proposed Amendments contain the following changes to the Certification Instrument and the Companion Policy:

1. ***Deferral of certification regarding internal control over financial reporting***

The Proposed Amendments allow certifying officers to omit the following representations from their full annual certificates filed for financial years ending on or before June 29, 2006 and their full interim certificates filed for certain permitted interim periods:

(a) the representation that the certifying officers are responsible for establishing and maintaining internal control over financial reporting;

(b) the representation that the certifying officers have designed internal control over financial reporting, or caused it to be designed under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP; and

(c) the representation that they have caused the issuer to disclose in the issuer's MD&A any change in the issuer's internal control over financial reporting that occurred during the issuer's most recent period that materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.

The permitted interim periods are those interim periods that occur before the end of the first financial year for which an issuer is required to file full annual certificates that include the representations described in paragraphs (a), (b) and (c) above.

If the Proposed Amendments are made, issuers will be permitted to file annual certificates and interim certificates for the specified financial years and interim periods in the forms set out in Appendices A and B to this Notice.

2. ***Appendix A to the Companion Policy***

In light of the changes to the Certification Instrument described above, the Proposed Amendments also include consequential changes to Appendix A to the Companion Policy.

We believe that it is critical for our markets that all reporting issuers have sound internal control over financial reporting. The Proposed Amendments will allow additional time for certifying officers to satisfy themselves that they have an appropriate basis for providing the representations regarding internal control over financial reporting in their full annual certificates and full interim certificates.

Authority – Ontario

In Ontario, securities legislation provides the Ontario Securities Commission (the Commission) with rule-making or regulation-making authority regarding the subject matter of the Certification Instrument.

Paragraph 143(1) 22 of the *Securities Act* (Ontario) (the Act) authorizes the Commission to make rules prescribing requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to the requirements under the Act.

Paragraph 143(1) 25 of the Act authorizes the Commission to make rules prescribing requirements in respect of financial accounting, reporting and auditing for the purposes of the Act, the regulations and the rules.

Paragraph 143(1) 39 of the Act authorizes the Commission to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Act, the regulations or the rules and all documents determined by the regulations or the rules to be ancillary to the documents, including financial statements, proxies and information circulars.

Paragraphs 143(1) 58 and 59 of the Act authorize the Commission to make rules requiring reporting issuers to devise and maintain systems of disclosure controls and procedures and internal controls, the effectiveness and efficiency of their operations, including financial reporting and assets control.

Paragraphs 143(1) 60 and 61 of the Act authorize the Commission to make rules requiring chief executive officers and chief financial officers of reporting issuers to provide certification relating to the establishment, maintenance and evaluation of the systems of disclosure controls and procedures and internal controls.

Related instruments

The Certification Instrument is related to:

- National Instrument 51-102 *Continuous Disclosure Obligations*;
- National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*; and
- National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*.

Alternatives

We did not identify any alternatives that we believed accomplished the purposes of the Certification Instrument, as discussed above, while allowing additional time for certifying officers to satisfy themselves that they have an appropriate basis for providing the representations regarding internal control over financial reporting.

Anticipated costs and benefits

The anticipated costs and benefits of implementing the Certification Instrument were previously outlined in the paper entitled *Investor Confidence Initiatives: A Cost-Benefit Analysis*, which was published on June 27, 2003. The Proposed Amendments do not impose any additional requirements upon reporting issuers. As a result, we believe that the benefits of the Proposed Amendments outweigh the costs, if any.

Reliance on unpublished studies, etc.

In developing the Proposed Amendments, we did not rely upon any significant unpublished study, report or other written materials.

Comments

Interested parties are invited to make written submissions on the Proposed Amendments. Submissions received by February 24, 2005 will be considered. **Due to timing concerns, comments received after the deadline will not be considered**.

Submissions should be addressed to the following securities regulatory authorities:

Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick Securities Commission
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

Please deliver your comments to the addresses below. Your comments will be distributed to the other participating CSA members.

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
Fax: (416) 593-2318
E-mail: jstevenson@osc.gov.on.ca

Anne-Marie Beaudoin, Directrice du secrétariat
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria

C.P. 246, 22e étage
Montréal, Québec, H4Z 1G3
Fax: (514) 864-6381
E-mail: consultation-en-cours@lautorite.com

A diskette containing the submissions (in Windows format, preferably Word) should also be submitted.

Comment letters submitted in response to requests for comments are placed on the public file in certain jurisdictions and form part of the public record, unless confidentiality is requested. Comment letters will be circulated among the securities regulatory authorities, whether or not confidentiality is requested. Although comment letters requesting confidentiality will not be placed in the public file, freedom of information legislation in certain jurisdictions may require securities regulatory authorities in those jurisdictions to make comment letters available. Persons submitting comment letters should therefore be aware that the press and members of the public may be able to obtain access to any comment letters.

Questions
Please refer your questions to any of:

Ontario Securities Commission

John Carchrae
Chief Accountant
(416) 593 8221
jcarchrae@osc.gov.on.ca

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Text of the Proposed Amendments

The text of the Proposed Amendments follows.

Date: November 26, 2004

APPENDIX A

Sample annual certificate permitted to be filed
for financial years ending on or before June 29, 2006
Form 52-109F1 - Certification of Annual Filings

I, ***‹identify the certifying officer, the issuer, and his or her position at the issuer›***, certify that:

1. I have reviewed the annual filings (as this term is defined in Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*) of ***‹identify issuer›*** (the issuer) for the period ending ***‹state the relevant date›***;

2. Based on my knowledge, the annual filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, with respect to the period covered by the annual filings;

3. Based on my knowledge, the annual financial statements together with the other financial information included in the annual filings fairly present in all material respects the financial condition, results of operations and cash flows of the issuer, as of the date and for the periods presented in the annual filings;

4. The issuer's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures ~~and internal control over financial reporting~~ for the issuer, and we have:

   (a) designed such disclosure controls and procedures, or caused them to be designed under our supervision, to provide reasonable assurance that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which the annual filings are being prepared;

   ~~(b) designed such internal control over financial reporting, or caused it to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer's GAAP; and~~

   (c) evaluated the effectiveness of the issuer's disclosure controls and procedures as of the end of the period covered by the annual filings and have caused the issuer to disclose in the annual MD&A our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by the annual filings based on such evaluation; and

~~5. I have caused the issuer to disclose in the annual MD&A any change in the issuer's internal control over financial reporting that occurred during the issuer's most recent interim period that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.~~

Date: .....

_____
[Signature]
[Title]

APPENDIX B

Sample interim certificate permitted to be filed
for permitted interim periods
Form 52-109F2 - Certification of Interim Filings

I ***‹identify the certifying officer, the issuer, and his or her position at the issuer›***, certify that:

1. I have reviewed the interim filings (as this term is defined in Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*) of ***‹identify the issuer›***, (the issuer) for the interim period ending ***‹state the relevant date›***;

2. Based on my knowledge, the interim filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, with respect to the period covered by the interim filings;

3. Based on my knowledge, the interim financial statements together with the other financial information included in the interim filings fairly present in all material respects the financial condition, results of operations and cash flows of the issuer, as of the date and for the periods presented in the interim filings;

4. The issuer's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures ~~and internal control over financial reporting~~ for the issuer, and we have:

   (a) designed such disclosure controls and procedures, or caused them to be designed under our supervision, to provide reasonable assurance that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which the interim filings are being prepared; and

   ~~(b) designed such internal control over financial reporting, or caused it to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer's GAAP; and~~

~~5. I have caused the issuer to disclose in the interim MD&A any change in the issuer's internal control over financial reporting that occurred during the issuer's most recent interim period that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.~~

Date: .....

_____
[Signature]
[Title]

MULTILATERAL INSTRUMENT 52-109
CERTIFICATION OF DISCLOSURE IN ISSUERS' ANNUAL AND INTERIM FILINGS
AMENDMENT INSTRUMENT

1. Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* is amended by this Instrument.

2. Subsection 5.2(1) is amended by adding the following after paragraph (b):

   "(c) Notwithstanding Part 2 or paragraphs 5.2(1)(a) and (b), an issuer that is required to file an annual certificate in Form 52-109F1 in respect of a financial year ending on or before June 29, 2006 may omit from the Form 52-109F1:

      (i) the words "and internal control over financial reporting" in the introductory language in paragraph 4;

      (ii) paragraph 4(b); and

      (iii) paragraph 5."

3. Subsection 5.2(2) is amended by adding the following after paragraph (b):

   "(c) Notwithstanding Part 3 or paragraphs 5.2(2)(a) and (b), an issuer that is required to file an interim certificate in Form 52-109F2 for a permitted interim period may omit from the Form 52-109F2:

      (i) the words "and internal control over financial reporting" in the introductory language in paragraph 4;

      (ii) paragraph 4(b); and

      (iii) paragraph 5.

   (d) For the purpose of paragraph 5.2(2)(c), a permitted interim period is an interim period that occurs prior to the end of the first financial year in respect of which an issuer is required to file an annual certificate in Form 52-109F1 that includes:

      (i) the words "and internal control over financial reporting" in the introductory language in paragraph 4;

      (ii) paragraph 4(b); and

      (iii) paragraph 5."

4. This Instrument comes into force on ●.

COMPANION POLICY 52-109CP
CERTIFICATION OF DISCLOSURE IN ISSUERS' ANNUAL AND INTERIM FILINGS
AMENDMENTS

1. Appendix A to 52-109CP is amended by adding the following at the end of footnote 4:

   "In accordance with subsection 5.2(1) of the Instrument, an issuer that is required to file a full annual certificate in respect of any financial year ending on or before June 29, 2006 may omit from the full annual certificate:

   (i) the words "and internal control over financial reporting" in the introductory language in paragraph 4;

   (ii) paragraph 4(b); and

   (iii) paragraph 5."

2. Appendix A to 52-109CP is amended by adding the following at the end of footnote 5:

   "In accordance with subsection 5.2(2) of the Instrument, an issuer that is required to file a full interim certificate in respect of any permitted interim period may omit from the full interim certificate:

   (i) the words "and internal control over financial reporting" in the introductory language in paragraph 4;

   (ii) paragraph 4(b); and

   (iii) paragraph 5.

   A permitted interim period is an interim period that occurs prior to the end of the first financial year in respect of which an issuer is required to file a full annual certificate that includes the items set out in paragraphs (i), (ii) and (iii) in footnote 4 above."

3. These amendments are effective on ●.

Chapter 7

Insider Reporting

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

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

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

Chapter 8

Notice of Exempt Financings

REPORTS OF TRADES SUBMITTED ON FORM 45-501F1

Transaction Date	Purchaser	Security	Total Purchase Price ($)	Number of Securities
09-Nov-2004	8 Purchasers	ACE/SECURITY Laminates Corporation - Units	2,106,748.80	3,241,152.00
02-Nov-2004	4 Purchasers	Advertising Directory Solutions Holdings Inc. - Notes	4,817,692.80	4,817,693.00
12-Nov-2004	Credit Risk Advisors	Affinia Group, Inc - Notes Elliott & Page	1,789,050.00	1,500,000.00
28-Oct-2004	17 Purchasers	AltaCanada Energy Corp. - Common Share Purchase Warrant	1,514,778.05	1,996,465.00
05-Nov-2004	Alan L. Russell	Anterra Corporation - Common Shares	9,000.00	30,000.00
12-Nov-2004	Fred Berlet Kathy Kumpula	Aurogin Resources Ltd. - Flow-Through Shares	30,000.00	300,000.00
01-Nov-2004	John D. Hutton Michael Florence	Axonwave Software Inc. - Preferred Shares	75,000.60	65,790.00
10-Nov-2004	15 Purchasers	Bankers Petroleum Ltd. - Units	3,578,960.00	6,507,200.00
05-Nov-2004	32 Purchasers	BCS Global Networks Inc. - Common Share Purchase Warrant	653,458.20	7,938,040.00
02-Nov-2004	Dynamic Global Precious Metals Dynamic Canadian Precious Metals	Brazauro Resources Corporation - Common Shares	510,000.00	600,000.00
04-Nov-2004	29 Purchasers	Brick Brewing Co. Limited - Units	3,145,800.00	1,966,125.00
11-Nov-2004	Aur Resources Inc.	Cancor Mines Inc. - Common Share Purchase Warrant	500,000.00	200,000.00
15-Oct-2004 to 21-Oct-2004	Centaur Balanced	Centaur Balanced Fund - Units	92,836.98	6,971.00
15-Oct-2004 to 21-Oct-2004	Centaur Bond Fund	Centaur Bond Fund - Units	63,493.18	6,291.00
01-Oct-2004 to 07-Oct-2004	Centaur Canadian Equity	Centaur Canadian Equity - Units	67,064.12	738.00
15-Oct-2004 to 21-Oct-2004	Centaur International	Centaur International Fund - Units	15,641.81	2,005.00

15-Oct-2004 to 21-Oct-2004	Centaur Money Market	Centaur Money Market - Units	597,229.99	59,723.00
15-Oct-2004 to 21-Oct-2004	Centaur Small Cap	Centaur Small Cap - Units	7,503.74	123.00
14-Oct-2004 to 21-Oct-2004	Centaur US Equity	Centaur US Equity - Units	28,544.72	736.00
04-Nov-2004	Kilmer Corporate L.P. Investments	CFI Capital Inc. - Common Shares	1.00	100.00
28-Oct-2004	21 Purchasers	Committee Bay Resources Ltd. - Flow-Through Shares	2,774,941.20	1,541,634.00
05-Nov-2004	United Jewish Appeal of Greater Toronto	Creststreet Resource Fund Limited - Units	16,414.00	1,011.00
01-Nov-2004	45 Purchasers	Creststreet Windpower Development LP - Limited Partnership Units	2,905,000.00	290,500.00
04-Nov-2004	30 Purchasers	Crowflight Minerals Inc. - Flow-Through Shares	2,627,000.00	6,727,500.00
27-Oct-2004	11 Purchasers	Deep Resources Ltd. - Common Shares	858,930.00	928,800.00
29-Oct-2004	Dr. Anthony Liscio	Dexior Financial Inc. - Preferred Shares	180,000.00	180,000.00
03-Nov-2004	3 Purchasers	Diablo Technologies Inc. - Preferred Shares	3,791,666.00	14,800,211.00
02-Nov-2004	5 Purchasers	DragonWave Inc. - Preferred Shares	1,273,899.58	6,669,631.00
10-Nov-2004	11 Purchasers	Find Energy Ltd. - Common Shares	10,912,590.00	2,798,100.00
02-Nov-2004 to 12-Nov-2004	3 Purchasers	First Leaside Technologies Limited Partnership - Limited Partnership Units	376,689.00	307,000.00
28-Oct-2004	4 Purchasers	First Narrows Resources Corp - Units	262,500.00	1,200,000.00
02-Nov-2004 to 12-Nov-2004	3 Purchasers	F.L. Securities Inc. - Notes	112,417.00	3.00
01-Nov-2004	Financial Industry Opportunities Fund Inc.	Gatehouse Capital Inc. - Debentures	250,000.00	1.00
01-Nov-2004	Financial Industry Opportunities Fund Inc.	Gatehouse Capital Inc. - Warrants	1.00	1.00

02-Nov-2004	64 Purchasers	Greater Halifax Limited Partnership - Limited Partnership Units	4,750,000.00	190.00
05-Nov-2004	Gordon Ewart	Huntington Exploration Inc - Common Shares	25,000.00	208,333.00
14-Jul-2004	Miller Thompson LLP	Jaguar Mining Inc. - Common Shares	18,999.66	4,222.00
15-Nov-2004	Credit Risk Advisors	KI Holdings Inc. - Notes	742,005.04	1,000,000.00
01-Nov-2004	7 Purchasers	Majescor Resources Inc. - Common Share Purchase Warrant	187,500.00	7,002,333.00
01-Nov-2004	11 Purchasers	Majescor Resources Inc. - Shares	1,988,200.00	750,000.00
29-Oct-2004	44 Purchasers	Momentas Corporation - Convertible Debentures	840,000.00	168.00
04-Nov-2004	4 Purchasers	Newpact Energy Corp. - Common Shares	279,000.00	186,000.00
30-Jun-2004	69 Purchasers	Newport Private Yield LP - Limited Partnership Units	2,792,500.00	28,204,250.00
31-Aug-2004	143 Purchasers	Newport Private Yield LP - Units	16,794,355.85	1,531,633.00
30-Sep-2004	88 Purchasers	Newport Private Yield LP - Units	8,302,884.41	757,217.00
29-Oct-2004	5 Purchasers	Northern Continental Resources Inc. - Units	369,799.20	616,332.00
30-Sep-2004	Kathleen Knight Child Trust Doug Murdoch Child Trust	Palisade Capital Limited Partnership - Units	300,788.46	126.00
26-Oct-2004	Elsa Lambert	Parian XIX Real Estate Limited Partnership - Limited Partnership Units	200,000.00	200.00
12-Nov-2004	Nursing Homes and Related Industries Pension Plan	Real Assets US Social Equity Index Fund - Units	7,023.85	1,021.00
05-Nov-2004	Kraemer;Ross C Patstar;Inc	Ridgeway Petroleum Corp. - Units	62,500.00	83,333.00
19-Nov-2003	10 Purchasers	Ross River Minerals Inc. - Units	612,320.00	1,530,800.00
08-Nov-2004	42 Purchasers	Roxmark Mines Limited - Units	2,410,259.94	20,085,500.00
03-Nov-2004	13 Purchasers	RSX Energy Inc. - Common Shares	2,770,750.50	2,003,167.00
09-Nov-2004	PO FCPR Limited	Sagard Rail Invest - Shares	23,126,850.00	23,126,850.00
15-Nov-2004	3 Purchasers	Santoy Resources Ltd. - Units	74,999.98	681,818.00
08-Nov-2004	Pui-Ling Stanley Chan 1378346 Ontario Inc	Skywave Mobile Communications Inc. - Notes	688,000.00	688,000.00
29-Oct-2004	Chabet Holdings Inc William F. White	South American Gold and Copper Company Limited - Units	220,000.00	3,142,857.00
18-Nov-2004	4 Purchasers	Spry Energy Ltd. - Common Shares	616,200.00	154,050.00

01-Nov-2004	3 Purchasers	Standard Diversified Fund - Limited Partnership Units	276,960.00	277.00
03-Nov-2004	The VenGrowth II Investment Business Development Bank of Canada	TENXC WIRELESS INC. - Preferred Shares	9,824,001.71	251,818,735.00
03-Nov-2004	Venture Coaches Fund L.P.	TENXC WIRELESS (DELAWARE) INC. - Stock Option	774,926.52	1,259,086.00
04-Nov-2004	Ellipsis Neurotherapeutics Inc	Transition Therapeutics Inc. - Common Shares	1,400,000.00	4,884,956.00
16-Nov-2004	11 Purchasers	Tri Origin Exploration Ltd. - Units	394,500.00	2,630,000.00
02-Nov-2004	Redcliff Capital Inc.	Triacta Power Technologies Inc. - Common Shares	40,000.00	80,000.00
19-Nov-2004	12 Purchasers	TriLoch Resources Inc. - Shares	1,833,000.00	611,000.00
10-Nov-2004	3 Purchasers	Tyhee Development Corp. - Flow-Through Shares	1,646,550.00	3,659,000.00
10-Nov-2004	6 Purchasers	Tyhee Development Corp. - Units	1,246,000.00	3,115,000.00
04-Nov-2004 Units	3 Purchasers	United Carina Resources Corp. -	16,000.00	80,000.00
30-Sep-2004 Units	9 Purchaser	Watertowne International Inc. -	411,990.43	2,059,960.00
08-Nov-2004 Shares	6 Purchasers	Yangarra Resources Inc. - Common	1,664,819.52	2,134,384.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Apollo Gold Corporation
Type and Date:
Preliminary Short Form Prospectus dated November 19, 2004
Receipted on November 22, 2004
Offering Price and Description:
US$10,500,999.50 - Up to 2,559,333 Common Shares and 1,535,600 Common Share Purchase Warrants to be issued on the exercise of 2,326,666 Special Warrants
US$8,756,000 principal amount of Convertible Debentures and up to 5,778,860 Common Share Purchase Warrants to be issued on the conversion of US$8,756,000 principal amount of Special Notes
Underwriter(s) or Distributor(s):
Regent Mercantile Bancorp Inc.
Promoter(s):
-
Project #711888

Issuer Name:
Blue Fyre One Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated November 19, 2004
Mutual Reliance Review System Receipt dated November 23, 2004
Offering Price and Description:
OFFERING: $600,000 (2,400,000 COMMON SHARES)
Price: $0.25 per Common Share
Underwriter(s) or Distributor(s):
Raymond James Ltd.
Promoter(s):
Michael Gaffney
Project #712165

Issuer Name:
Cutwater Capital Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary, Amended and Restated Preliminary CPC Prospectus dated November 17, 2004
Mutual Reliance Review System Receipt dated November 19, 2004
Offering Price and Description:
$400,000.00 - 2,666,666 Common Shares Price: $0.15 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Promoter(s):
Richard D. McGraw
Project #704702

Issuer Name:
Enbridge Income Fund
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Shelf Prospectus dated November 17, 2004
Mutual Reliance Review System Receipt dated November 17, 2004
Offering Price and Description:
$900,000,000.00 - Ordinary Units Debt Securities Medium Term Notes
Underwriter(s) or Distributor(s):
ScotiaCapital Inc.
Promoter(s):
-
Project #710651

Issuer Name:
Front Street Resource Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated November 22, 2004
Mutual Reliance Review System Receipt dated November 23, 2004
Offering Price and Description:
Series A, B and F Units
Underwriter(s) or Distributor(s):
Front Street Capital 2004
Promoter(s):
-
Project #712179

Issuer Name:
GGOF Resource Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated November 22, 2004
Mutual Reliance Review System Receipt dated November 23, 2004
Offering Price and Description:
Mutual Fund Units and F Class Units
Underwriter(s) or Distributor(s):
Guardian Group of Funds Ltd.
Guardian Group of Funds Ltd.
Promoter(s):
-
Project #712265

Issuer Name:
Glencairn Gold Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated November 22, 2004
Mutual Reliance Review System Receipt dated November 22, 2004
Offering Price and Description:
$10,001,000.00 - 13,700,000 Units Price: $0.73 per Unit
Underwriter(s) or Distributor(s):
Orion Securities Inc.
McFarlane Gordon Inc.
RBC Dominion Securities Inc.
Desjardins Securities Inc.
Promoter(s):
-
Project #712001

Issuer Name:
Granby Industries Income Fund
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Prospectus dated November 18, 2004
Mutual Reliance Review System Receipt dated November 22, 2004
Offering Price and Description:
$ * - * Units Price: $10.00 per Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
TD Securities Inc.
Promoter(s):
Torquest Partners Value Fund, L.P.
Project #705040

Issuer Name:
ING Canada Inc.
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Prospectus dated November 19, 2004
Mutual Reliance Review System Receipt dated November 22, 2004
Offering Price and Description:
$ * - 32,000,000 Common Shares Price: $ * per Common share
Underwriter(s) or Distributor(s):
Merrill Lynch Canada Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
UBS Securities Canada Inc.
National Bank Financial Inc.
HSBC Securities (Canada) Inc.
Promoter(s):
-
Project #701712

Issuer Name:
Intrawest Corporation
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated November 17, 2004
Mutual Reliance Review System Receipt dated November 17, 2004
Offering Price and Description:
(1) US$226,000,000 7.50% Senior Exchange Notes due October 15, 2013
(2) Cdn$125,000,000 6.875% Senior Exchange Notes due October 15, 2009
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #710477

Issuer Name:
Jaguar Mining Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated November 22, 2004
Mutual Reliance Review System Receipt dated November 23, 2004
Offering Price and Description:
$ * - * Units Price: $ * per Unit
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Promoter(s):
-
Project #712390

Issuer Name:
KeySpan Facilities Income Fund
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated November 18, 2004
Mutual Reliance Review System Receipt dated November 18, 2004
Offering Price and Description:
$151,125,429.00 - 10,872,333 Units Price: $13.90 per Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Scotia Capital Inc.
National Bank Financial Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
Clarus Securities Inc.
First Associates Investments Inc.
FirstEnergy Capital Corp.
Peters & Co. Limited
Promoter(s):
Keyspan Corporation
Project #711287

Issuer Name:
MCL Capital Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary, Amended and Restated Preliminary Prospectus dated November 17, 2004
Mutual Reliance Review System Receipt dated November 19, 2004
Offering Price and Description:
$400,000.00 - 2,666,666 Common Shares Price: $0.15 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Promoter(s):
Richard D. McGraw
Project #704693

Issuer Name:
Novelis Inc.
Principal Regulator - Quebec
Type and Date:
Amended Preliminary Non-Offering Prospectus dated November 17, 2004
Mutual Reliance Review System Receipt dated November 17, 2004
Offering Price and Description:
Common Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
Travis Engen
Geoffery E. Merszei
Project #693181

Issuer Name:
PEYTO Energy Trust
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated November 18, 2004
Mutual Reliance Review System Receipt dated November 18, 2004
Offering Price and Description:
$85,300,000.00 - 2,000,000 Units Price: $42.65 per Unit
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
FirstEnergy Capital Corp.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Haywood Securities Inc.
National Bank Financial Inc.
Raymond James Ltd.
Peters & Company Limited
Promoter(s):
-
Project #711140

Issuer Name:
Rural LEC Acquisition LLC
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Prospectus dated November 19, 2004
Mutual Reliance Review System Receipt dated November 23, 2004
Offering Price and Description:
US$ Million (C$ Million) - 8,659,000 INCOME DEPOSIT SECURITIES (IDSs) US$8,500,000 % SENIOR SUBORDINATED NOTES DUE 2019
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Raymond James Ltd.
Promoter(s):
-
Project #689834

Issuer Name:
Stoneham Drilling Trust
Principal Regulator - Alberta
Type and Date:
Preliminary Prospectus dated November 19, 2004
Mutual Reliance Review System Receipt dated November 19, 2004
Offering Price and Description:
Up to $20,000,004.00 0 (Up to 1,666,667 Trust Units)
PRICE: $12.00 PER TRUST UNIT
Underwriter(s) or Distributor(s):
Raymond James Ltd.
FirstEnergy Capital Corp.
HSBC Securities (Canada) Inc.
Promoter(s):
Stoneham Drilling Inc.
Project #711769

Issuer Name:
Student Transportation of America Ltd.
Student Transportation of America ULC
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Prospectus dated November 16, 2004
Mutual Reliance Review System Receipt dated November 18, 2004
Offering Price and Description:
$ * - * Income Participating Securities
$ * - * Income Participating Securities
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
GMP Securities Ltd.
Scotia Capital Inc.
Promoter(s):
Student Transportation of America, Inc.
Project #706129/706138

Issuer Name:
Sunrise Senior Living Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Prospectus dated November 18, 2004
Mutual Reliance Review System Receipt dated November 19, 2004
Offering Price and Description:
$ * - * Units Price: $10.00 per Unit
Underwriter(s) or Distributor(s):
TD Securities Inc.
Scotia Capital Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
Canaccord Capital Corporation
Promoter(s):
Sunrise Senior Living, Inc.
Project #708572

Issuer Name:
Sunrise Senior Living Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Second Amended and Restated Preliminary Prospectus dated November 18, 2004
Mutual Reliance Review System Receipt dated November 22, 2004
Offering Price and Description:
$ * - * Units Price: $10.00 per Unit
Underwriter(s) or Distributor(s):
TD Securities Inc.
Scotia Capital Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
Canaccord Capital Corporation
Promoter(s):
Sunrise Senior Living, Inc.
Project #708572

Issuer Name:
TerraVest Income Fund
Principal Regulator - Alberta
Type and Date:
Preliminary Prospectus dated November 17, 2004
Mutual Reliance Review System Receipt dated November 18, 2004
Offering Price and Description:
$ * - * Units Price: $ * per Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Raymond James Ltd.
Canaccord Capital Corporation
Clarus Securities Inc.
First Associates Investments Inc.
Harris Partners Limited
Promoter(s):
-
Project #711172

Issuer Name:
Adaltis Inc.
Principal Regulator - Quebec
Type and Date:
Final Prospectus dated November 22, 2004
Mutual Reliance Review System Receipt dated November 22, 2004
Offering Price and Description:
$55,000,000.00 - 10,000,000 Common Shares Price: $5.50 per common share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Loewen, Ondaatje, McCutcheon Limited
CIBC World Markets Inc.
Desjardins Securities Inc.
BMO Nesbitt Burns Inc.
Promoter(s):
-
Project #697262

Issuer Name:
Canadian Capital Auto Receivables Asset Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 18, 2004
Mutual Reliance Review System Receipt dated November 18, 2004
Offering Price and Description:
(1) $275,000,000.00 - 3.154% Auto Loan Receivables-Backed Notes, Series 2004-2, Class A-1;
(2) $200,000,000.00 - 3.478% Auto Loan Receivables-Backed Notes, Series 2004-2, Class A-2; and
(3) $200,000,000.00 - 3.780% Auto Loan Receivables-Backed Notes, Series 2004-2, Class A-3
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
TD Securities Inc.
Promoter(s):
General Motors Acceptance Corporation of Canada, Limited
Project #705380

Issuer Name:
Canadian Hotel Income Properties Real Estate Investment Trust
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated November 19, 2004
Mutual Reliance Review System Receipt dated November 19, 2004
Offering Price and Description:
$55,000,000.00 - 6.00% Convertible Unsecured Subordinated Debentures Due 2014
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
RBC Dominion Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Canaccord Capital Corp.
HSBC Securities (Canada) Inc.
Promoter(s):
-
Project #706469

Issuer Name:
First Calgary Petroleums Ltd.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated November 19, 2004
Mutual Reliance Review System Receipt dated November 19, 2004
Offering Price and Description:
$86,760,000.00 - 6,000,000 Common Shares Price: $14.46 (£6.50) per Common Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Promoter(s):
-
Project #708030

Issuer Name:
frontierAltRefco Managed Futures Fund
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated November 19, 2004
Mutual Reliance Review System Receipt dated November 19, 2004
Offering Price and Description:
Trust Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
frontierAlt Investment Management Corporation
Refco Futures (Canada) Ltd.
Project #687579

Issuer Name:
ING Canadian Money Market Fund
ING Canadian Bond Fund
ING Canadian Balanced Fund
ING Canadian Equity Fund
ING Canadian Small Cap Equity Fund
ING US Equity Fund
ING US Equity RSP Fund
ING Global Equity Fund
ING Global Equity RSP Fund
ING Europe Equity Fund
ING Austral-Asia Equity Fund
ING Japan Equity Fund
ING Emerging Markets Equity Fund
ING Canadian Financial Services Fund
ING Canadian Resources Fund
ING Global Technology Fund
ING Global Communications Fund
ING Global Brand Names Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated November 18, 2004
Mutual Reliance Review System Receipt dated November 22, 2004
Offering Price and Description:
Investor Class Units, Exclusive Class Units & Institutional Class Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #696750

Issuer Name:
IPC US Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 17, 2004
Mutual Reliance Review System Receipt dated November 17, 2004
Offering Price and Description:
U.S. $40,000,000.00 - 6.0% Convertible Unsecured Subordinated Debentures Price: U.S. $1,000 per Debenture
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Desjardins Securities Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Capital Corporation
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Promoter(s):
-
Project #705604

Issuer Name:
Diversified Defensive Portfolio
(Formerly Marquis Defensive Portfolio)
Diversified Conservative Portfolio
(Formerly Marquis Conservative Portfolio)
Diversified Balanced Portfolio
(Formerly Marquis Balanced Portfolio)
Diversified Growth Portfolio
(Formerly Marquis Growth Portfolio)
Diversified High Growth Portfolio
(Formerly Marquis High Growth Portfolio)
Diversified RSP High Growth Portfolio
(Formerly Marquis RSP High Growth Portfolio)
Diversified All Equity Portfolio
(Formerly Marquis All Equity Portfolio)
Diversified RSP All Equity Portfolio
(Formerly Marquis RSP All Equity Portfolio)
Diversified All Income Portfolio
(Formerly Marquis All Income Portfolio)
Principal Regulator - Ontario
Type and Date:
Amended and Restated Simplified Prospectuses and Annual Information Forms dated November 3rd, 2004, amending and restating the Simplified Prospectuses and Annual Information Forms of the above Issuers dated July 5th, 2004.
Mutual Reliance Review System Receipt dated November 18, 2004
Offering Price and Description:
Marquis Series and Viscount Series Units
Underwriter(s) or Distributor(s):
Goodman & Company, Investment Counsel Ltd.
Goodman & Company, Investment Counsel Ltd.
Promoter(s):
Goodman & Company, Investment Counsel Ltd.
Project #657034

Issuer Name:
Placer Dome Inc.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated November 16, 2004
Mutual Reliance Review System Receipt dated November 17, 2004
Offering Price and Description:
US$468,050,000.00 - 21,275,000 Common Shares PRICE: US$22.00 per Common Share
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Scotia Capital Inc.
Deutsche Bank Securities Limited
HSBC Securities (Canada) Inc.
Merrill Lynch Canada Inc.
UBS Securities Canada Inc.
BMO Nesbitt Burns Inc.
GMP Securities Ltd.
National Bank Financial Inc.
Salman Partners Inc.
Promoter(s):
-
Project #704992

Issuer Name:
Second Cup Royalty Income Fund
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated November 23, 2004
Mutual Reliance Review System Receipt dated November 23, 2004
Offering Price and Description:
$81,453,460.00 - 8,145,346 Units Price $10.00 per Unit
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
TD Securities Inc.
Promoter(s):
Cara Operations Limited
Project #699820

Issuer Name:
The Manufacturers Life Insurance Company
Principal Regulator - Ontario
Type and Date:
Final Short Form Shelf Prospectus dated November 19, 2004
Mutual Reliance Review System Receipt dated November 19, 2004
Offering Price and Description:
$1,500,000,000.00 - Debt Securities Class A Shares Class D Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #704460

Issuer Name:
Trimox Energy Inc.
Principal Regulator - Alberta
Type and Date:
Final Prospectus dated November 15, 2004
Mutual Reliance Review System Receipt dated November 17, 2004
Offering Price and Description:
5,000 Units ($5,000,000) And 4,000,000 Class A Shares ($4,000,000) Minimum Offering ($5,000,000) Price: $1,000 Per Unit - Minimum Subscription: Five Units ($5,000) or Price: $1.00 Per Class A Share – Minimum Subscription: 5,000 Class A Shares ($5,000)
Underwriter(s) or Distributor(s):
First Energy Capital Corp.
Promoter(s):
-
Project #697771

Issuer Name:
Luxell Technologies Inc.
Type and Date:
Rights Offering Circular dated November 23, 2004
Accepted dated November 23, 2004
Offering Price and Description:
Of 37,991,925 Rights to Subscribe for up to 5,427,418,187 Common Shares at a price of $0.40 per common share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #701951

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change in Category	Quadrus Investment Services Ltd.	From: Mutual Fund Dealer To: Mutual Fund Dealer and Limited Market Dealer	November 17, 2004
Change of Name	From: Cowans & Company Ltd. To: Weslosky & Cowans Ltd.	Limited Market Dealer	November 1, 2004
Change of Category	Robert W. Baird & Co.	From: International Dealer To: International Dealer and Non-Canadian Adviser (Investment Counsel and Portfolio Manager)	November 18, 2004
New Registration	Silver Oak Capital Corp.	Limited Market Dealer	November 22, 2004
New Registration	Crescent Financial Corporation	Limited Market Dealer	November 23, 2004
Change of Name	From: Credit Agricole Cheuvreux Indosuez North America, Inc. To: Credit Agricole Cheuvreux North America, Inc.	International Dealer	May 28, 2004

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 RS Market Integrity Notice – Request For Comments – Provisions Respecting a "Basis Order"

RS MARKET INTEGRITY NOTICE – REQUEST FOR COMMENTS – PROVISIONS RESPECTING A "BASIS ORDER"

November 26, 2004 No. 2004-030

REQUEST FOR COMMENTS

PROVISIONS RESPECTING A "BASIS ORDER"

Summary

The Board of Directors of Market Regulation Services Inc. ("RS") has approved amendments to the Universal Market Integrity Rules ("UMIR") to incorporate a definition of a "Basis Order" and to provide that the execution of a Basis Order should not establish the "last sale price" and that the execution would be exempt from the requirements of:

- Rule 3.1 – Restrictions on Short Selling;
- Rule 5.2 – Best Price Obligation;
- Rule 6.3 – Exposure of Client Orders; and
- Rule 8.1 – Client Principal Trading.

Rule-Making Process

RS has been recognized as a self-regulatory organization by the Alberta Securities Commission, British Columbia Securities Commission, Manitoba Securities Commission, Ontario Securities Commission and, in Quebec, by the Autorité des marchés financiers (the "Recognizing Regulators") and, as such, is authorized to be a regulation services provider for the purposes of the National Instrument 21-101 and National Instrument 23-101.

As a regulation services provider, RS will administer and enforce trading rules for the marketplaces that retain the services of RS. RS has adopted, and the Recognizing Regulators have approved, UMIR as the integrity trading rules that will apply in any marketplace that retains RS as its regulation services provider. Presently, RS has been retained to be the regulation services provider for: the Toronto Stock Exchange ("TSX"), TSX Venture Exchange and Canadian Trading and Quotation System, as recognized exchanges; and for Bloomberg Tradebook Canada Company and Liquidnet Canada Inc., as alternative trading systems.

The Rules Advisory Committee of RS ("RAC") reviewed the proposed amendments related to a "basis order" and recommended its adoption by the Board of Directors. RAC is an advisory committee comprised of representatives of each of: the marketplaces for which RS acts as a regulation services provider; Participants; institutional investors and subscribers; and the legal and compliance community.

The amendment to UMIR will be effective upon approval of the changes by the Recognizing Regulators following public notice and comment. Comments on the proposed amendments should be in writing and delivered by **December 31, 2004** to:

James E. Twiss,
Chief Policy Counsel,
Market Policy and General Counsel's Office,
Market Regulation Services Inc.,
Suite 900,
P.O. Box 939,
145 King Street West,
Toronto, Ontario. M5H 1J8

Fax: 416.646.7265
e-mail: james.twiss@rs.ca

A copy should also be provided to Recognizing Regulators by forwarding a copy to:

Cindy Petlock
Manager, Market Regulation
Capital Markets Branch
Ontario Securities Commission
Suite 1903, Box 55,
20 Queen Street West
Toronto, Ontario. M5H 3S8

Fax: (416) 595-8940
e-mail: cpetlock@osc.gov.on.ca

Background to the Proposed Amendments

Effective August 26, 2003, the TSX introduced four types of "specialty crosses". Three of these orders types had been specifically contemplated in the drafting of UMIR as:

- the "Volume-Weighted Average Price Trade" as defined by the TSX came within the UMIR definition of "Volume-Weighted Average Price Order";
- the "Special Trading Session Order" as defined by the TSX came within the UMIR definition of "Market-on-Close ";
- the "Contingent Order" as used by the TSX came within the UMIR definition of "Special Terms Order".

The fourth type of "specialty cross" introduced by the TSX was the "Basis Trade" which was defined by the TSX as:

> a transaction whereby a basket of securities or an index participation units is transacted at a price calculated in the prescribed manner which represents the average accumulation (or distribution) price of the position, subject to an agreed upon basis spread, achieved through the execution of related exchange-traded derivative instruments, which may include listed index futures, index options and index participation units in an amount that will correspond to an equivalent market exposure.

RS has treated a "Basis Trade" as defined by the TSX as a type of Special Terms Order for the purposes of UMIR. By Market Integrity Notice 2003-023, RS indicated the procedures to be followed in the handling of Basis Trades.

The amendments which are proposed would:

- incorporate into UMIR the criteria for and the procedure for the handling of a "Basis Order" as originally outlined for a "Basis Trade" in Market Integrity Notice 2003-023; and
- provide a definition of "Basis Order" that would allow the type of trade to be conducted on marketplaces other than the TSX.

Summary of the Proposed Amendments

Definition of a "Basis Order"

The proposed definition of "Basis Order" would have the following four components:

- the order would involve the purchase or sale of listed securities or quoted securities;
- notice would be provided to a Market Regulator prior to the entry of the order on a marketplace;
- the price of the resulting trade is determined in a manner acceptable to a Market Regulator based on the price achieved through the execution on that trading day of one or more transactions in a derivative instrument that is listed on an Exchange or quoted on a QTRS; and
- the securities included in the order comprise at least 80% of the component security weighting of the underlying interest of the derivative instruments used in the determination of the price.

In order to preclude abuse of a Basis Order merely to bypass better-priced orders for a particular security on a marketplace, notice of the order must be given to a Market Regulator prior to entry on a marketplace and the Market Regulator must be satisfied as to the calculation of the price for the trade. By a Circular dated June 10, 2004, the Bourse de Montréal Inc. ("Bourse") requested public comment on a proposed rule which would permit approved participants of the Bourse to arrange block trades of derivative contracts at price that is different from prevailing market prices provided that trade is at a price "which the Bourse would consider 'fair and reasonable' in light of the prices and sizes of the transactions in the cash and futures markets." If this proposed rule of the Bourse is approved, the Market Regulator will have to be satisfied that the price of any derivative trade on the Bourse has not been made outside of the prevailing market for that derivative merely to permit the Basis Order for the underlying listed security or quoted security to bypass better-priced orders for the underlying security on a marketplace.

Definition of "Last Sale Price"

A Basis Order will be executed at the average price of the accumulation or distribution of the underlying derivative position. As such, the price of the trade of a Basis Order may be above the best ask price or below the best bid price of a particular component security that is part of the Basis Order. It is therefore appropriate that the execution of a Basis Order not establish the "last sale price" of a security. Similarly, to the extent that a trade of Volume-Weighted Average Price Order is reported to a consolidated market display during regular trading hours (since the order will use only part of the trading day to establish the price) such an order should not establish the "last sale price". The amendments therefore propose to exclude trades resulting from a Basis Order and a Volume-Weighted Average Price Order from the definition of the last sale price.

Provision for Exemptions from UMIR Provisions

Given that the price at which a Basis Order will be executed is dependent on the average price of accumulation or distribution of the underlying derivative position, it is appropriate to provide the execution of a Basis Order with exemptions from certain requirements under UMIR including:

Rule	Description	Justification for Exemption from Requirement
3.1	Restrictions on Short Selling	The exemption from the requirement that the price not be less than the last sale price is supported by the fact that the Market Regulator must be satisfied that the price reflects trades in the derivative markets.
5.2	Best Price Obligation	The exemption from the requirement that a Participant take reasonable efforts to ensure that a sale is at the best bid price and a purchase is at the best ask price is justified since the Market Regulator must be satisfied as to the manner of the determination of the price and the client has consented to their order being executed at a price determined by transactions in the derivatives market.
6.3	Exposure of Client Orders	The requirement that client orders for 50 standard trading units or less be exposed on a marketplace ensures that the client receives timely execution at the best available price. The execution of a Basis Order has been agreed to based on transactions in the derivatives markets. As the client must consent to or direct that their order be treated as a Basis Order, it is not appropriate that their orders for the listed or quoted securities be exposed on a marketplace.
8.1	Client Principal Trading	If a principal or non-client account is trading the Basis Order with a client, the price will be determined in a manner satisfactory to a Market Regulator based on transactions in the derivative markets. It is therefore not possible to determine in advance if the execution price will in fact be a "better" price.

Appendices

The text of the amendments to the Rules respecting "basis orders" is set out in Appendix "A". Appendix "B" contains the text of the relevant provisions of the Rules as they would read on the adoption of the amendment. Appendix "B" also contains a marked version of the current provisions highlighting the changes introduced by the amendments.

Questions

Questions concerning this notice may be directed to:

James E. Twiss,
Chief Policy Counsel,
Market Policy and General Counsel's Office,

Market Regulation Services Inc.,
Suite 900,
P.O. Box 939,
145 King Street West,
Toronto, Ontario. M5H 1J8

Telephone: 416.646.7277
Fax: 416.646.7265
e-mail: james.twiss@rs.ca

ROSEMARY CHAN,
VICE PRESIDENT, MARKET POLICY AND GENERAL COUNSEL

Appendix "A"

Universal Market Integrity Rules

Proposed Amendments Respecting Basis Orders

The Universal Market Integrity Rules are amended by:

1. Amending Rule 1.1 to:

   (a) Add the following definition of "Basis Order":

   "Basis Order" means an order for the purchase or sale of listed securities or quoted securities:

   (a) where the intention to enter the order has been reported by the Participant or Access Person to a Market Regulator prior to the entry of the order;

   (b) that will be executed at a price which is determined in a manner acceptable to a Market Regulator based on the price achieved through the execution on that trading day of one or more transactions in a derivative instrument that is listed on an Exchange or quoted on a QTRS; and

   (c) that comprise at least 80% of the component security weighting of the underlying interest of the derivative instruments subject to the transaction or transactions described in clause (b).

   (b) Amend the definition of "last sale price" by deleting the phrase "Call Market Order" and substituting "Basis Order, Call Market Order or Volume-Weighted Average Price Order".

2. Amending clause (f) of subsection (2) of Rule 3.1 by:

   (a) deleting the word "or" at the end of subclause (ii);

   (b) inserting the phrase ", or" after the word "Order" in subclause (iii); and

   (c) adding the following as subclause (iv):

   (iv) a Basis Order.

3. Amending clause (c) of subsection (2) of Rule 5.2 by:

   (a) deleting the word "or" at the end of subclause (iii);

   (b) inserting the phrase ", or" after the word "Order" in subclause (iv); and

   (c) adding the following as subclause (v):

   (v) a Basis Order.

4. Amending clause (b) of subsection (1) of Rule 6.2 by adding the following as subclause (v.1):

   (v.1) a Basis Order.

5. Amending clause (h) of subsection (1) of Rule 6.3 by:

   (a) deleting the word "or" at the end of subclause (iv);

   (b) inserting the phrase ", or" after the word "Order" in subclause (v); and

   (c) adding the following as subclause (vi):

   (vi) a Basis Order.

6. Amending subsection (2) of Rule 8.1 by:

(a) deleting the word “or” at the end of clause (c);

(b) inserting the phrase “; or” after the word “Order” in clause (d); and

(c) adding the following as clause (e):

(e) a Basis Order.

Appendix "B"

Universal Market Integrity Rules

Text of Rule to Reflect Proposed Amendments
Respecting Basis Orders

Text of Provisions Following Adoption of Proposed Amendments	Text of Current Provisions Marked to Reflect Adoption of Proposed Amendments
1.1 Definitions **"Basis Order"** means an order for the purchase or sale of listed securities or quoted securities: (a) where the intention to enter the order has been reported by the Participant or Access Person to a Market Regulator prior to the entry of the order; (b) that will be executed at a price which is determined in a manner acceptable to a Market Regulator based on the price achieved through the execution on that trading day of one or more transactions in a derivative instrument that is listed on an Exchange or quoted on a QTRS; and (c) that comprise at least 80% of the component security weighting of the underlying interest of the derivative instruments subject to the transaction or transactions described in clause (b).	**1.1 Definitions** **"Basis Order"** means an order for the purchase or sale of listed securities or quoted securities: (a) where the intention to enter the order has been reported by the Participant or Access Person to a Market Regulator prior to the entry of the order; (b) that will be executed at a price which is determined in a manner acceptable to a Market Regulator based on the price achieved through the execution on that trading day of one or more transactions in a derivative instrument that is listed on an Exchange or quoted on a QTRS; and (c) that comprise at least 80% of the component security weighting of the underlying interest of the derivative instruments subject to the transaction or transactions described in clause (b).
"last sale price" means the price of the last sale of at least one standard trading unit of a particular security displayed in a consolidated market display but does not include the price of a sale resulting from an order that is a Basis Order, Call Market Order or Volume-Weighted Average Price Order.	"last sale price" means the price of the last sale of at least one standard trading unit of a particular security displayed in a consolidated market display but does not include the price of a sale resulting from an order that is a Basis Order, Call Market Order or Volume-Weighted Average Price Order.
3.1 Restriction on Short Selling (2) A short sale of a security may be made on a marketplace at a price below the last sale price if the sale is: … (f) the result of: (i) a Call Market Order, (ii) a Market-on-Close Order, (iii) a Volume-Weighted Average Price Order, or (iv) a Basis Order.	**3.1 Restriction on Short Selling** (2) A short sale of a security may be made on a marketplace at a price below the last sale price if the sale is: … (f) the result of: (i) a Call Market Order, (ii) a Market-on-Close Order, ~~or~~ (iii) a Volume-Weighted Average Price Order, or (iv) a Basis Order.

Text of Provisions Following Adoption of Proposed Amendments	Text of Current Provisions Marked to Reflect Adoption of Proposed Amendments
5.2 Best Price Obligation (2) Subsection (1) does not apply to the execution of an order which is: … (c) directed or consented to by the client to be entered on a marketplace as: (i) a Call Market Order, (ii) a Volume-Weighted Average Price Order, (iii) a Market-on-Close Order, (iv) an Opening Order, or (v) a Basis Order.	**5.2 Best Price Obligation** (2) Subsection (1) does not apply to the execution of an order which is: … (c) directed or consented to by the client to be entered on a marketplace as: (i) a Call Market Order, (ii) a Volume-Weighted Average Price Order, (iii) a Market-on-Close Order, ~~or~~ (iv) an Opening Order, or (v) a Basis Order.
6.2 Designations and Identifiers (1) Each order entered on a marketplace shall contain: … (b) a designation acceptable to the Market Regulator for the marketplace on which the order is entered, if the order is: (i) a Call Market Order, (ii) an Opening Order, (iii) a Market-on-Close Order, (iv) a Special Terms Order, (v) a Volume-Weighted Average Price Order, (v.1) a Basis Order, (vi) part of a Program Trade, (vii) part of an intentional cross or internal cross, (viii) a short sale which is subject to the price restriction under subsection (1) of Rule 3.1, (ix) a short sale which is exempt from the price restriction on a short sale in accordance with subsection (2) of Rule 3.1, (x) a non-client order,	**6.2 Designations and Identifiers** (1) Each order entered on a marketplace shall contain: … (b) a designation acceptable to the Market Regulator for the marketplace on which the order is entered, if the order is: (i) a Call Market Order, (ii) an Opening Order, (iii) a Market-on-Close Order, (iv) a Special Terms Order, (v) a Volume-Weighted Average Price Order, (v.1) a Basis Order, (vi) part of a Program Trade, (vii) part of an intentional cross or internal cross, (viii) a short sale which is subject to the price restriction under subsection (1) of Rule 3.1, (ix) a short sale which is exempt from the price restriction on a short sale in accordance with subsection (2) of Rule 3.1, (x) a non-client order,

Text of Provisions Following Adoption of Proposed Amendments	Text of Current Provisions Marked to Reflect Adoption of Proposed Amendments
(xi) a principal order, (xii) a jitney order, (xiii) for the account of a derivatives market maker, (xiv) for the account of a person who is an insider of the issuer of the security which is the subject of the order, (xv) for the account of a person who is a significant shareholder of the issuer of the security which is the subject of the order, or (xvi) of a type for which the Market Regulator may from time to time require a specific or particular designation.	(xi) a principal order, (xii) a jitney order, (xiii) for the account of a derivatives market maker, (xiv) for the account of a person who is an insider of the issuer of the security which is the subject of the order, (xv) for the account of a person who is a significant shareholder of the issuer of the security which is the subject of the order, or (xvi) of a type for which the Market Regulator may from time to time require a specific or particular designation.
6.3 Exposure of Client Orders (1) A Participant shall immediately enter on a marketplace a client order to purchase or sell 50 standard trading units or less of a security unless: … (h) the client has directed or consented to the order being entered on a marketplace as: (i) a Call Market Order, (ii) an Opening Order, (iii) a Special Terms Order, (iv) a Volume-Weighted Average Price Order, (v) a Market-on-Close Order, or (vi) a Basis Order.	**6.3 Exposure of Client Orders** (1) A Participant shall immediately enter on a marketplace a client order to purchase or sell 50 standard trading units or less of a security unless: … (h) the client has directed or consented to the order being entered on a marketplace as: (i) a Call Market Order, (ii) an Opening Order, (iii) a Special Terms Order, (iv) a Volume-Weighted Average Price Order, ~~or~~ (v) a Market-on-Close Order, or (vi) a Basis Order.
8.1 Client-Principal Trading (2) Subsection (1) does not apply if the client has directed or consented that the client order be: (a) a Call Market Order; (b) an Opening Order; (c) a Market-on-Close Order;	**8.1 Client-Principal Trading** (2) Subsection (1) does not apply if the client has directed or consented that the client order be: (a) a Call Market Order; (b) an Opening Order; (c) a Market-on-Close Order; ~~or~~

Text of Provisions Following Adoption of Proposed Amendments	Text of Current Provisions Marked to Reflect Adoption of Proposed Amendments
(d) a Volume-Weighted Average Price Order, or (e) a Basis Order.	(d) a Volume-Weighted Average Price Order, or (e) a Basis Order.

13.1.2 TSX Inc. Notice - Approval of Amendments to the Rules of the Toronto Stock Exchange: Part 4, Division 6 – Market Makers

TSX INC. NOTICE

APPROVAL OF AMENDMENTS TO THE RULES OF THE TORONTO STOCK EXCHANGE: PART 4, DIVISION 6 – MARKET MAKERS

Introduction

In accordance with the Protocol for Commission Oversight of Toronto Stock Exchange Rule Proposals between the Ontario Securities Commission (OSC) and Toronto Stock Exchange (Protocol), TSX Inc. (TSX) has adopted and the OSC has approved certain amendments (Amendments) to the market making provisions in the Rules of the Toronto Stock Exchange (Rule Book). The Amendments will become effective on December 1, 2004.

Substance

The Amendments establish an additional method for a Market Maker Firm to allocate its assignments to another Market Maker Firm. Specifically, a Market Maker Firm will be able to: (i) exchange some or all of its securities of responsibility with another Market Maker Firm; or (ii) transfer all of its securities of responsibility to another Market Maker Firm in exchange for consideration if it is exiting the market making business.

In both instances, the recipient firm must produce a service level bid that is acceptable to TSX. In determining whether the proposed exchange or transfer is acceptable, TSX will take into account various considerations to be outlined in a Notice to Participating Organizations. TSX retains complete discretion in determining to whom an assignment will be transferred.

The Amendments also include other revisions that are not substantive.

Purpose

Many Participating Organizations intend to build market making as a viable component of their business operations. In order to do this, Market Maker Firms require the ability to transfer and exchange specific assignments with other Market Maker Firms in order to specialize and strengthen their strategic focus. The Amendments will facilitate the matching of securities assignments to Market Maker Firms that have skills and interest in a specific area. TSX believes that providing Market Maker Firms the flexibility to propose strategic transfers of assignments will result in Market Maker Firms that are internally focused on their market making duties.

The Amendments will also allow for the sale of a market making business by a Market Maker Firm that wants to exit the business. TSX believes that this change will bring certainty to Market Maker Firms who will be able to deal in a commercially reasonable manner with their market making business. The commercial flexibility that the Amendments will provide should result in Market Maker Firms that are internally focused on their market making duties.

We expect that the ultimate result of the Amendments will be that Market Maker Firms will be in a position to make significant contributions to market liquidity and market depth, as well as to moderate price volatility, thus improving market quality.

Non-Public Interest Rule

The Amendments are not considered to be a “public interest” rule. The Amendments merely change the process by which an assignment may be transferred from one qualified Market Maker to another. This is a procedural change rather than a substantive rule overhaul. The Amendments, which acknowledge the commercial aspect of the market making business, do not in any way affect the purpose or goals of the market making regime. TSX continues to be solely responsible for determining which Participating Organizations may perform market making functions.

Amendments

Part 4, Division 6 of the Rule Book *Market Makers*, is set out in Appendix A. The Amendments are underlined.

Timing

Because the Amendments are not considered to be a “public interest” rule, in accordance with the Protocol the Amendments were deemed to be approved by the OSC at the time TSX filed its Amendments submission on November 22, 2004. The Amendments will become effective on December 1, 2004.

APPENDIX A

DIVISION 6 – MARKET MAKERS **4-601 Appointment of Market Makers** (1) In order to have a reasonable market quoted for each listed security, the Exchange may from time to time allocate to a Market Maker specified securities of responsibility. (2) **Repeal proposed August 9, 2002 (pending regulatory approval)**	**Division 6 – MARKET MAKERS** **4-601 Appointment of Market Makers** (1) General Principles The primary responsibilities of Market Makers are to maintain a fair and orderly market in their securities of responsibility and generally to make a positive contribution to the functioning of the market. Each Market Maker must ensure that trading for the Market Maker's own account is reasonable under the circumstances, is consistent with just and equitable principles of trading, and is not detrimental to the integrity of the Exchange or the market. (2) Allocation of Securities The Exchange shall assign securities of responsibility to Market Makers. Such assignment shall be made in accordance with criteria as described below and additional detail that may be set forth from time to time in notices to Participating Organizations. Since certain privileges are accorded to Market Makers, some securities may be regarded as desirable ones in which to have responsibility. Where two or more Market Makers are contending for assignment of responsibility, the Exchange shall make the determination. There are two processes for allocating security assignments to Market Maker Firms: market-wide allocation assignments, and dealer-sponsored assignments. Under a market-wide allocation assignment, the Exchange publicizes the availability of an assignment of responsibility and then collects service level bids from interested Participating Organizations through a bidding process. Under a dealer-sponsored assignment, the Exchange receives a proposal from a Market Maker Firm to: (i) exchange one or more securities of responsibility with another Market Maker Firm; or (ii) transfer all of its securities of responsibility to another Market Maker Firm(s) in exchange for consideration if the Market Maker Firm is exiting the market making business. The Exchange then collects a service level bid from the proposed Market Maker Firm. Under both assignment methods, the Exchange reviews the service level bid(s) in making its determination. The Exchange categorizes listed securities according to "tiers" for certain purposes. These tiers are determined based on the level of trading activity in the securities. The two major tier categories are Tier A and Tier B. Securities that fall into the Tier A category are the most actively traded securities. Tier B covers securities that,

	on average, trade less actively. The Tiers are further divided into subtiers, again based on the level of trading activity. Market Maker Firms are required to have a minimum number of security assignments as determined by the Exchange, which may be waived from time to time by the Exchange. Further, Market Maker Firms are required to maintain a minimum ratio of Tier B securities for each Tier A security that is assigned. The applicable ratio shall be adjusted periodically based on the ratio of the total number of Tier A securities to Tier B securities traded on the Exchange. Market Maker Firms are also not permitted to have greater than a specified percentage of security assignments within any given tier classification, unless otherwise permitted by the Exchange. The Exchange retains the discretion to remove market making assignments, including, but not limited to, in circumstances where a Market Maker has been found to be non-compliant in accordance with Policy 4-607, and, in the case of a Market Maker Firm, where the Market Maker Firm undergoes a change in control. (3) Responsible Designated Traders A Market Maker Firm is required to designate a Responsible Designated Trader within the firm for each security that has been assigned by the Exchange to such Market Maker Firm. The Market Maker Firm must provide the Exchange with the names of all Responsible Designated Traders and their security assignments, and forthwith advise the Exchange of any changes to such information. Notwithstanding the appointment of Responsible Designated Traders, the Market Maker Firm will continue to be responsible for the market making obligations relating to the securities assigned to the firm. (4) Temporary Assignments On a periodic rotating basis (from month to month), Market Maker Firms are required to assume temporary responsibility for market making duties with respect to newly listed securities, and security assignments that have been discharged, until such time as those specific securities assigned to them on a temporary basis have been permanently assigned to a Market Maker.
4-602 Qualifications (1) No person shall be approved as a Market Maker unless such person has demonstrated market making experience that is acceptable to the Exchange. (2) No Participating Organization shall be approved as a Market Maker Firm unless the Participating Organization: (a) has provided sufficient trading desk and operations area support staff,	**4-602 Qualifications** (1) Designated Market Maker Contact Market Maker Firms are required to have experienced personnel to effectively perform the market making assignments. In addition to appointing a Responsible Designated Trader for each security of responsibility, a Market Maker Firm must designate an individual within the firm to manage the firm's market making responsibilities and to be the primary contact with the Exchange with respect to the firm's market making assignments.

(b) has installed a terminal acceptable to the Exchange that will permit it to properly carry out its market making responsibilities, and (c) satisfies the minimum capital requirements as determined by the Exchange in order for the Participating Organization to support its market making responsibilities. **Amended (April 3, 2000)**	(2) Capital Requirements Market Maker Firms are required to satisfy and maintain minimum capital requirements as determined by the Exchange from time to time, and shall notify the Exchange promptly in the event of a failure to meet such capital requirements. An example of the financial data that must be provided by a Market Maker Firm is set out in the form provided on the TSX website. The Exchange believes that it is paramount that Market Maker Firms have sufficient financial resources to effectively perform their market making responsibilities. Failure to satisfy the capital requirements may result in a reallocation of security assignments by the Exchange to another Market Maker.
4-603 Failure to Obtain Approval If an application for approval as a Market Maker is refused, no further application for the same person shall be considered within a period of 90 days after the date of refusal.	
4-604 Responsibilities of Market Makers Market Makers shall trade on behalf of their own accounts to a reasonable degree under existing circumstances, particularly when there is a lack of price continuity and lack of depth in the market or a temporary disparity between supply and demand and in each of their securities of responsibility shall: (a) contribute to market liquidity and depth, and moderate price volatility; (b) maintain a continuous two-sided market within the spread goal for the security agreed upon with the Exchange; (c) maintain a market for the security on the Exchange that is competitive with the market for the security on the other exchanges on which it trades; (d) perform their duties in a manner that serves to uphold the integrity and reputation of the Exchange; (e) in the case of a Market Maker Firm, arrange for a back-up Responsible Designated Trader for each security assignment, and in the case of a Market Maker that is an Approved Trader, arrange for a back-up Market Maker, who in their absence, will carry out the responsibilities set out in this Rule; (f) guarantee fills for odd lot and mixed lot orders at the current board lot quotation; (g) maintain the size of the Minimum Guaranteed	**4-604 Responsibilities of Market Makers** (1) Assistance to Market Surveillance Officials and Participating Organizations Market Makers shall report forthwith any unusual situation, rumour, activity, price change or transaction in any of their securities of responsibility to a Market Surveillance Official. As much as possible, Market Makers shall assist Participating Organizations' traders by providing them with information regarding recent trading activity and interest in their securities of responsibility. They shall assist traders in matching offsetting orders. Based on their knowledge of current market conditions, Market Makers shall, on a best efforts basis, identify anomalies in Participating Organizations' orders in the Book and bring them to the attention of those Participating Organizations or to the Exchange. (2) Availability and Coverage Each Market Maker must ensure that its securities of responsibility are continuously monitored during the trading day. In this regard, Market Makers must have adequate back-up procedures and coverage by qualified individuals in cases of any absences due to illness, vacation or other reasons. (3) Maintenance of a Two-Sided Market Market Makers must call a continuous two-sided market in their securities of responsibility. In order to assist them in carrying out this responsibility, Market Makers are given certain privileges and are exempted pursuant to Rule 3.1 of UMIR from the short sale rule when carrying out their market making obligations.

Fill requirements agreed upon with the Exchange;

(h) comply with the Minimum Guaranteed Fill requirements agreed upon with the Exchange, which include guaranteeing an automatic and immediate "one price" execution of MGF–eligible orders;

(i) be responsible for managing the opening of their securities of responsibility in accordance with Exchange Requirements and, if necessary, for opening those securities or, if appropriate, requesting that a Market Surveillance Official delay the opening;

(j) assume responsibility for certain additional listed securities in accordance with applicable Exchange Requirements;

(k) assist Participating Organizations in executing orders; and

(l) assist the Exchange by providing information regarding recent trading activity and interest in their securities of responsibility.

1. ***Spread Maintenance –*** Market Makers shall maintain the spread goal agreed upon with the Exchange in each of their securities of responsibility on a time-weighted average basis. The Exchange monitors spreads on an ongoing basis, and assesses the performance of Market Makers on a monthly basis.

2. ***Relief from Spread Goals -*** The initial establishment of a spread goal for a security is subject to negotiation between each Market Maker and the Exchange. The Market Maker shall notify the Exchange if the Market Maker is unable to maintain its spread goal. Any further changes to the spread goal are also subject to negotiation.

3. ***Odd-lot Responsibilities –*** General - Market Makers shall maintain an odd lot market at the board lot quotation.

Expiring Rights and Warrants – Market Makers shall not be responsible for providing bids and offers for odd lots in rights and warrants within 10 days of the date of expiry of the right or warrant. If a Market Maker chooses to trade odd lots of such securities during this period, the Market Maker must do so at the board lot quotation unless prior consent of a Market Surveillance Official for a wider spread is obtained.

Special Circumstances - The above exemption is also available in any securities that are affected by special circumstances relative to that security. If a Market Maker wishes to call an odd-lot market at a different price than the board lot market, the prior consent of a Market Surveillance Official must be obtained.

4. ***Relief from Responsibilities in Unusual Situations –*** In extreme cases, such as illiquidity in a security on expiry of a take-over bid, a Market Surveillance Official may relieve a Market Maker from its responsibility to maintain a posted bid or offer. This exemption is also available when a Market Maker's obligation to post an offer would require it to assume or to increase a short position in a security that the Market Maker cannot reasonably be expected to cover because of the relative liquidity of that security or lack of securities available for borrowing.

5. ***Client Priority and Frontrunning***

Client Priority - The in-house client priority rule in UMIR Rule 5.3 requires Participating Organizations to execute their client orders ahead of any non-client orders at the same price. This rule applies to trading by Market Makers. Market Makers may participate in trading with one or more of their firm's client orders if the Participating Organization obtains the express consent of the client(s) involved.

Frontrunning Client Orders – UMIR Rule 4.1 prohibits Participating Organizations, Approved Persons and persons associated with a Participating Organization from taking advantage of non-public material information

	concerning imminent transactions in equities, options or futures markets. Information about a trade is material if the trade would reasonably be expected to move the market in which the frontrunning trade is made. The frontrunning restrictions apply to Market Makers. Participating Organizations, Approved Persons and persons associated with a Participating Organization are prohibited from taking advantage of a client's order by trading ahead of it in the same or a related market. A trade made solely for the benefit of the client for whom the imminent transaction will be made, and a trade that is a bona fide hedge of a position that the Participating Organization has agreed to assume from a client, are exempt from the restrictions. *Frontrunning in Options and Futures* - The restrictions further prohibit a frontrunning trade in the options or futures markets with knowledge of an imminent undisclosed material transaction in any of the equities, options or futures markets, including transactions by another Participating Organization. Again, a trade made solely for the benefit of the client for whom the imminent transaction will be made, and a trade that is a bona fide hedge of a position that the Participating Organization has assumed or agreed to assume from a client, are exempt from the restrictions. *Tipping and Trading Ahead* - Participating Organizations and Approved Persons and persons associated with a Participating Organization are prohibited from tipping others about an imminent undisclosed material order to be executed for one of the firm' s clients in any market, including the equities market. The Participating Organization executing the order may, however, contact the Market Maker to ask for assistance (for example, to ask if the Market Maker knows of Participating Organizations who may want to take the other side of the trade). If details of an imminent material trade in one of their securities of responsibility have been disclosed by another Participating Organization to the Market Maker, the Market Maker is prohibited from trading ahead of that order unless the Market Maker receives the express consent of the Participating Organization involved. 6. ***Client-Principal Trading*** Trades by Market Makers with clients of their Participating Organization, whether made pursuant to their market-making obligations or not, must comply with all UMIR Requirements governing client-principal trading.
4-605 Stabilizing Trades (1) In this Rule, **"neutral trades"** means trades that would otherwise be destabilizing trades except that: (a) the Market Maker is unwinding a long or short position in a security taken previously; (b) the trade is made pursuant to the Market Maker's obligation to fill a MGF order;	**4-605 Stabilizing Trades** (1) <u>Reporting and Performance Measurement</u> In accordance with Rule 4-605(2), it is expected that at least 70% to 80% of Market Makers' trades in their securities of responsibility shall be stabilizing or neutral trades. Performance in this area will be measured periodically by the Exchange and reported to the Exchange. If 30% or more of a Market Maker's trades in their securities of responsibility are destabilizing trades,

(c) the trade is made pursuant to the Market Maker's obligation to maintain a specific maximum spread between bid and ask quotes; or (d) the trade is made for the purpose of maintaining a proportionate market (based on the conversion ratio) in a security that another security is convertible into or in the convertible security; provided that, in the case of the exceptions in (b), (c), and (d) above, the Market Maker is on the passive side of the trade. (2) At least 70% of Market Makers' trades in their securities of responsibility shall be stabilizing or neutral trades.	based on the number of transactions, share volume, dollar value of trading or any combination of those factors, the Market Maker's performance shall be considered unsatisfactory and the Market Maker may be subject to any of the penalties set out in this Policy. (2) Exemption for Certain Interlisted Securities In order to encourage trading in certain interlisted securities on the Exchange, Market Makers shall be exempt from the stabilization requirements in dealing in all U.S.-based interlisted issues and in those Canadian-based interlisted issues in which more than 25% of the trading occurred on exchanges in the United States or on NASDAQ in the preceding year. (3) Application of Stabilization Requirement to Trading in Other Markets The stabilization requirements apply to all trading by Market Makers in listed securities, whether on the Exchange or on another Canadian exchange. The exemptions contained in this Policy also apply to such trading.
4-606 Market Makers Leaving Securities of Responsibility A Market Maker intending to relinquish one or more securities of responsibility shall provide the Exchange with at least 60 days' prior notice in such form as may be required by the Exchange, unless such notice period or part thereof is waived by the Exchange.	**4-606 Market Makers Leaving Securities of Responsibility** ~~Pursuant to Rule 4-606, a Market Maker intending to relinquish one or more securities of responsibility shall provide the Exchange with at least 60 days' prior notice.~~ For purposes of assessing the performance of a Market Maker Firm, scores of assignments relinquished with notice will be incorporated into the aggregate score of the firm. Pursuant to Policy 4-601(4), a security assignment which has been relinquished may be assigned by the Exchange on a temporary basis to a Market Maker Firm pending permanent assignment. Without restricting the generality of Rule 4-606, the Exchange will consider waiving the 60 day notice period, or part thereof, where securities of responsibility are being assigned under a dealer-sponsored assignment.
4-607 Assessment of Market Maker Performance The Exchange shall review the approvals of all Market Makers at least once each calendar year and may review such approvals at other times.	**4-607 Assessment of Market Maker Performance** (1) Review of Performance The performance of each Market Maker shall be periodically reviewed by the Exchange, as provided in Rule 4-607. The Exchange shall determine whether the Market Maker is adhering to Exchange Requirements and shall assess the degree to which the Market Maker had made a positive contribution to the market in its securities of responsibility over the period. In making this assessment, considerable weight shall be placed on the degree to which the Market Maker has: (a) maintained a two sided market in its securities

	of responsibility; (b) traded within the spread goals for its securities of responsibility; (c) traded actively in its securities of responsibility such that trading liquidity has been improved; (d) met such additional criteria as may be communicated by the Exchange. (2) Criteria for Review The Exchange shall consider such performance or conduct unsatisfactory if the Market Maker has: (a) failed to meet the responsibilities set out in this Policy or to act in a manner that is consistent with the general intent of any of the Exchange Requirements relating to Market Makers; or (b) engaged in any conduct, manner of proceeding, or method of carrying on business that is unbecoming of a Market Maker, that is inconsistent with just and equitable principles of trade, or that is detrimental to the Exchange or the public. (3) Penalties for Non-Compliance Following a determination that a Market Maker has failed to satisfactorily perform its market making obligations, the Exchange may recommend that: (a) a Market Maker's approval be suspended or revoked; (b) a Market Maker's responsibility for one or more securities be removed and those reassigned; and (c) an investigation into a Market Maker's trading or activities be carried out. (d) **Repeal proposed August 9, 2002 (pending regulatory approval)** Prior to making any such recommendation, the Exchange shall notify the Market Maker of cases of non-performance or unsatisfactory conduct and shall provide the Market Maker with the opportunity to remedy such deficiency. However, if the Exchange reasonably believes that the non-compliance of a Market Maker has compromised the fairness and integrity of the market, the Exchange may, in its discretion, remove the market making assignments from that Market Maker without delay.

Chapter 25

Other Information

25.1 Approvals

25.1.1 Epic Capital Management Inc. - cl. 213(3)(b) of the LTCA

Headnote

Clause 213(3)(b) of the Loan and Trust Corporations Act – application by manager for approval to act as trustee of a mutual fund trust and other pooled funds to be established and managed by the applicant, and offered pursuant to a prospectus exemption.

Statutes Cited

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

November 19, 2004

McMillan Binch
BCE Place, Suite 4400
Bay Wellington Tower
181 Bay Street
Toronto, Ontario
M5J 2T3

Attention: Michael Ward

Dear Sirs/Mesdames:

Re: Epic Capital Management Inc. (the Applicant)
Application pursuant to clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario) (the LTCA) for approval to act as trustee
Application # 932/04

Further to the application dated November 3, 2004, as supplemented by correspondence dated November 12, 2004 and November 15, 2004 (collectively, the "Application") filed on behalf of the Applicant, and based on the facts set out in the Application, pursuant to the authority conferred on the Ontario Securities Commission (the "Commission") in clause 213(3)(b) of the LTCA, the Commission approves the proposal that the Applicant act as trustee of Epic Rsp Trust, and other pooled funds that may be established and managed by the Applicant, the securities of which will be offered pursuant to a prospectus exemption.

"Robert Shirriff" "Paul Bates"

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