

Reference: (1991), 14 O.S.C.B. 1807; Assigned number (2001) 24 O.S.C.B. 2405

**Staff Investigation in Respect of Loan by Stelco Inc.
to controlling shareholder of Clarus Corporation**

Commission staff has completed a review of the facts relating to the loan by Stelco Inc. ("Stelco") of approximately \$16.5 million on August 18, 1989 to Canadian Investors Corp. and certain other private companies (collectively, the "Borrowers") controlled, directly or indirectly, by Michael Cochrane and members of his family. The loan was secured by a pledge of assets which included certain shares in the capital of Clarus Corporation ("Clarus") constituting a 66% voting interest in Clarus.

Following a demand by Stelco for repayment of the loan, Stelco announced by press release on March 26, 1990 that it had taken possession on that date of the Clarus shares which had been pledged as collateral for the loan. The allegation has been made to the Commission that the loan and the realization of the security constitute an illegal take-over bid for shares of Clarus in contravention of the Securities Act (Ontario) (the "Act").

Commission staff is of the view that a transaction structured as a loan secured by a pledge of securities, which transaction may result in the acquisition by the lender of outstanding voting or equity securities which, together with securities beneficially owned or over which control or direction is exercised, on the date of the loan, by the lender or any person or company acting jointly or in concert with the lender, constitute in the aggregate 20% or more of the outstanding securities of that class of securities at the date of the loan, may in appropriate circumstances properly be viewed as an "offer to acquire" the pledged securities, which transaction is subject to Part [XX] of the Act. Commission staff is of the view that the proper characterisation of such a transaction turns on whether the loan was bona fide at the time it was made or whether it was an indirect means of accomplishing a takeover bid not otherwise permitted by the Act.

In making an assessment of the characterisation of such a transaction, Commission staff considers relevant whether the loan was made in the ordinary course of business of the lender, on ordinary business terms and with a reasonable expectation of repayment in full.

Following an extensive investigation, Commission staff concluded that at the time the loan was made by Stelco on August 18, 1989 it was a bona fide loan transaction and consequently should not be characterized as a take-over bid by Stelco in respect of the Clarus shares pledged as collateral for the loan. Accordingly, staff has determined that it will not recommend proceedings against Stelco before the Commission in respect of this matter.

In reaching this conclusion, staff considered relevant the following facts:

- the loan was for the purposes of refinancing an existing bona fide loan, with all proceeds going to the previous lender, and not for the purposes of financing a share acquisition;
- based on representations made by the Borrowers to Stelco at the time of the loan, Stelco was of the view that the loan was reasonably secured by the security package indirectly assigned to it by Unicorp Canada Corporation, the previous lender to the Borrowers and a sophisticated merchant banker;
- based on the representations made by the Borrowers to Stelco at the time of the loan, Stelco had a reasonable expectation that the loan would be repaid in full;
- the loan was a full recourse loan;
- Stelco had on two previous occasions extended financial assistance to Continuous Colour Coat Limited, a subsidiary of Clarus and a significant Stelco customer; and
- Stelco had extended financial assistance of similar magnitude and on substantially similar terms to other significant customers in the past in order to ensure the continuity of supply relationships with these customers, such that these lending arrangements could be considered to be in the ordinary course of business for Stelco.

This conclusion by staff does not constitute an assessment of the appropriateness of other conduct of Clarus, the Borrowers or Stelco in respect of this matter. In particular, this conclusion does not constitute a determination of whether or not Clarus, the Borrowers or Stelco at all times complied fully with applicable disclosure requirements or fiduciary duties under securities, corporate or other laws. These matters, to the extent within the jurisdiction of the Commission, remain under review by the Commission's Enforcement Branch.