**The Ontario Securities Commission**

# OSC Bulletin

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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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# Chapter 1

# Notices / News Releases

## 1.1 Notices

### 1.1.1 Current Proceedings Before The Ontario Securities Commission

**JANUARY 2, 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
Suite 1700, Box 55
20 Queen Street West
Toronto, Ontario
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THE COMMISSIONERS

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| David A. Brown, Q.C., Chair | — | DAB |
| Paul M. Moore, Q.C., Vice-Chair | — | PMM |
| Kerry D. Adams, FCA | — | KDA |
| Paul K. Bates | — | PKB |
| Robert W. Davis, FCA | — | RWD |
| Harold P. Hands | — | HPH |
| Robert W. Korthals | — | RWK |
| Mary Theresa McLeod | — | MTM |
| H. Lorne Morphy, Q.C. | — | HLM |
| Robert L. Shirriff, Q.C. | — | RLS |
| Suresh Thakrar | — | ST |
| Wendell S. Wigle, Q. C. | — | WSW |

SCHEDULED OSC HEARINGS

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

s. 127

E. Cole in attendance for Staff

Panel: TBA

February 19, 2004 to March 10, 2004 **ATI Technologies Inc., Kwok Yuen Ho, Betty Ho, JoAnne Chang, David Stone, Mary de La Torre, Alan Rae and Sally Daub**

s. 127

M. Britton in attendance for Staff

Panel: TBA

May 2004 **Gregory Hyrniw and Walter Hyrniw**

s. 127

Y. Chisholm in attendance for Staff

Panel: TBA

**ADJOURNED SINE DIE**

**Buckingham Securities Corporation, Lloyd Bruce, David Bromberg, Harold Seidel, Rampart Securities Inc., W.D. Latimer Co. Limited, Canaccord Capital Corporation, BMO Nesbitt Burns Inc., Bear, Stearns & Co. Inc., Dundee Securities Corporation, Caldwell Securities Limited and B2B Trust**

**Global Privacy Management Trust and Robert Cranston**

**Philip Services Corporation**

**Robert Walter Harris**

**Andrew Keith Lech**

**S. B. McLaughlin**

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

### 1.1.2 Workshops on National Instrument 43-101: Standards of Disclosure for Mineral Projects

**WORKSHOPS ON NATIONAL INSTRUMENT 43-101: STANDARDS OF DISCLOSURE FOR MINERAL PROJECTS**

Learn about changes in National Instrument 43-101 straight from the regulators. Gain practical knowledge that will help you do your job.

The Ontario Securities Commission is offering two information sessions on National Instrument 43-101 in January 2004.

**GUIDANCE ON TECHNICAL DISCLOSURE AND TECHNICAL ISSUES**

Date: Thursday, January 15

Time: 8:30 am – 12 noon

Location: Ontario Club
5th Floor, Commerce Court South
Toronto, Ontario

This session will be of interest to qualified persons, company officers and directors.

**TECHNICAL REPORTS – MEETING REGULATORY REQUIREMENTS**

Date: Monday, January 19

Time: 8:30 am – 12 noon

Location: Ontario Club
5th Floor, Commerce Court South
Toronto, Ontario

This session will be of interest to qualified persons who have a basic knowledge of NI 43-101.
Tips about preparing technical reports and press releases will be discussed.

**SPEAKERS AT BOTH WORKSHOPS**

Deborah McCombe, Chief Mining Consultant, Corporate Finance, Ontario Securities Commission
Doug Welsh, Legal Counsel, Corporate Finance, Ontario Securities Commission

**REGISTRATION**

All participants are asked to register. Please contact Teresa Nitsopoulos at the Prospectors and Developers Association of Canada at 416-362-1969 ext. 221.

## 1.3 News Releases

### 1.3.1 OSC Supports Call for Single National Securities Regulator

**FOR IMMEDIATE RELEASE**
**December 17, 2003**

**OSC SUPPORTS CALL FOR SINGLE NATIONAL SECURITIES REGULATOR**

**TORONTO –** The Ontario Securities Commission (OSC) supports the call for a single national securities regulator issued today by the Wise Persons' Committee (WPC).

"I'm certain it is no surprise that we support the call for Canada to move to a single securities regulator," said OSC Chair David Brown. Mr. Brown indicated that the OSC will review the report in detail before commenting on any specific issues and recommendations contained in the report. "I commend the WPC on the extensive consultations and analysis undertaken in preparing their report and the accompanying research papers."

Mr. Brown added that he concurs that there is considerable interest and momentum for securities regulatory reform in Canada at this time. "In this regard, I look forward to discussing the report with Ontario Finance Minister Sorbara, our regulatory colleagues in other Canadian jurisdictions as well as market participants. This report will undoubtedly contribute to the debate as we move forward with reforms for our securities regulatory system," added Brown.

The Ontario Securities Commission's mandate is to provide protection to investors from unfair, improper or fraudulent practices; and to foster fair and efficient capital markets and confidence in their integrity.

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### 1.3.2 OSC Issues Freeze Directions in the Matter of ATI Technologies Inc., Kwok Yuen Ho, Betty Ho, Jo-Anne Chang, David Stone, Mary de la Torre, Alan Rae, and Sally Daub

**FOR IMMEDIATE RELEASE**
**December 22, 2003**

**OSC ISSUES FREEZE DIRECTIONS IN THE MATTER OF ATI TECHNOLOGIES INC., KWOK YUEN HO, BETTY HO, JO-ANNE CHANG, DAVID STONE, MARY DE LA TORRE, ALAN RAE, AND SALLY DAUB**

**TORONTO –** On December 5, 2003, the Ontario Securities Commission issued Directions to two financial institutions to hold the contents of an account held in the name of Sovereign Ltd. On December 11, 2003, the Commission applied to continue the Directions in the Ontario Superior Court of Justice. The Court adjourned the Application on consent to February 10, 2004 and continued the Directions to that date.

On January 16, 2003 Staff of the Ontario Securities Commission issued a Statement of Allegations against ATI Technologies Inc. and others including Jo-Anne Chang and David Stone. In the Statement of Allegations, Staff alleged that Chang and Stone committed illegal insider trading through QDOS Capital Corp., a company incorporated by Chang and Stone in the Turks and Caicos. In the Statement of Allegations, Staff further alleged that Chang and Stone moved the illegally obtained funds through various offshore entities. Staff allege that the funds eventually were transferred to the Sovereign Ltd. account. Staff allege that the funds in the Sovereign Ltd. account were obtained as a result of contraventions of Ontario securities law.

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### 1.3.3 CSA News Release - Securities Regulators Release New National Disclosure Rule

**For Immediate Release**
**Dec. 19, 2003**

**SECURITIES REGULATORS RELEASE NEW NATIONAL DISCLOSURE RULE**

**Calgary** – Securities regulators have taken another significant step toward a uniform legislative and regulatory framework for Canadian public companies with today's advance notice of a new national rule for continuous disclosure.

The new rule – National Instrument 51-102 *Continuous Disclosure Obligations* – will eliminate the problem of companies having to meet different disclosure requirements in multiple jurisdictions in which they report, and will form a basis for implementing an integrated disclosure system. The continuous disclosure requirements addressed by NI 51-102 include: financial statements, annual information forms, management's discussion and analysis (MD&A), material change reports, business acquisition reports and statements of executive compensation.

"The introduction of this new, single harmonized rule demonstrates a cooperative effort by all CSA jurisdictions in establishing a single set of financial reporting and other disclosure requirements for companies that are reporting issuers in more than one jurisdiction," said Stephen Sibold, Chair of the Canadian Securities Administrators and of the Alberta Securities Commission. "It will enhance the consistency of disclosure available to primary and secondary market investors, and assist in establishing a common approach to regulatory review of continuous disclosure filings."

Regulators expect that every CSA member will implement the new rule, and with necessary government approvals, the rule will come into force on March 30, 2004.

Last month, regulators issued a notice to all reporting issuers and their professional advisers to advise them of how the changes would affect their reporting obligations.

The new rule requires many companies with a fiscal year starting on or after Jan. 1, 2004 to report their first quarter interim financial statements earlier than before – within 45 days after the end of the quarter, reduced from the current 60 days. Only companies categorized as venture issuers will continue to have 60 days to file their interim reports.

MD&A must be prepared and filed according to the form prescribed by the new rule (Form 51-102F1) starting with first interim periods ending on or after Mar. 31, 2004. The MD&A will have to be filed at the same time as the financial statements. The regulators have also issued a notice indicating that issuers will have the option of filing their annual MD&A for fiscal years beginning before January 1, 2004 in the new form. If they do not use the new form for their annual MD&A, the first interim MD&A they file for fiscal years beginning on or after January 1, 2004 will have to contain all elements of the annual MD&A in Form 51-102F1.

Advance notice of national exemptions from certain continuous disclosure and other requirements for foreign reporting issuers was also released today. National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* details exemptions for foreign issuers.

The CSA is a council of the 13 securities regulators of Canada's provinces and territories. It coordinates and harmonizes regulation for the Canadian capital markets. More information is available at the CSA website, www.csa-acvm.ca.

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www.msc.gov.mb.ca

# Chapter 2

# Decisions, Orders and Rulings

## 2.1 Decisions

### 2.1.1 Caldwell Technology Fund and Caldwell International Fund - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – A mutual fund is deemed to have ceased being a reporting issuer, provided it meets the requirements set out in CAS Notice 12-307 and subject to additional representations.

**Applicable Ontario Statutory Provisions, Rules and Notices**

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

CSA Staff Notice 12-307 - Ceasing to be a Reporting Issuer under the Mutual Reliance Review System for Exemptive Relief Applications. (2003) 26 OSCB 6348.

December 17, 2003

**McCarthy Tetrault**

Attention: Cibele Natasha Antunes

Dear Ms. Antunes:

**Re: Caldwell Technology Fund and Caldwell International Fund (the Applicants) - application to cease to be reporting issuers under the securities legislation of the provinces of Alberta, Saskatchewan, Manitoba, Ontario, Newfoundland and Labrador, and Nova Scotia (collectively, the Jurisdictions)**

The Applicants have 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 reporting issuers in the Jurisdictions.

As the Applicants have represented to the Decision Makers that,

- the outstanding securities of the Applicants, including debt securities, are beneficially owned, directly or indirectly, by one securityholder, an officer of CIM;
- no securities of either Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;
- the Applicants are applying for relief to cease to be reporting issuers in all of the jurisdictions in Canada in which they are currently reporting issuers;
- neither of the Applicants is in default of any of its obligations under the Legislation as reporting issuers,

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 each Applicant is deemed to have ceased to be a reporting issuer.

"Leslie Byberg"

### 2.1.2 Moore Wallace Incorporated and R.R. Donnelley & Sons Company - MRRS Decision

**Headnote**

MRRS - registration relief for trades by Participants, Former Participants and Permitted Transferees of securities acquired under employee incentive plans - issuer bid relief for foreign issuer in connection with acquisition of shares under employee incentive plans.

**Applicable Ontario Statutory Provisions**

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

**Applicable Ontario Rule**

OSC Rule 45-503 - Trades to Employees, Executives and Consultants.

**Applicable Instrument**

Multilateral Instrument 45-102 - Resale of Securities.

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

**AND**

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

**AND**

**IN THE MATTER OF**
**MOORE WALLACE INCORPORATED**

**AND**

**IN THE MATTER OF**
**R.R. DONNELLEY & SONS COMPANY**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the Decision Maker) in each of British Columbia, Alberta, Saskatchewan, Ontario, Québec and Newfoundland and Labrador (the Jurisdictions) has received an application from Moore Wallace Incorporated (Moore Wallace) and R.R. Donnelley & Sons Company (Donnelley, and together, Moore Wallace and Donnelley are sometimes referred to as the Filer) for a decision under the securities legislation of the Jurisdictions (the Legislation) that:

the following requirements (collectively, the GAAP Reconciliation Requirements) shall not apply to the Filer with respect to disclosure in a joint management information circular and proxy statement (the Circular) of Moore Wallace and Donnelley to be sent to the securityholders of Moore Wallace in connection with a proposed combination (the Transaction) of Moore Wallace and Donnelley pursuant to a combination agreement (the Combination Agreement) dated November 8, 2003 between Moore Wallace and Donnelley:

(i) the requirement that historical financial statements of Donnelley and Wallace Computer Services (defined below), and *pro forma* financial statements of Donnelley, all prepared in accordance with U.S. generally accepted accounting principles (U.S. GAAP) be accompanied by a supplementary note to explain and quantify the effect of material differences between Canadian generally accepted accounting principles (Canadian GAAP) and U.S. GAAP that relate to measurements, and provide disclosure consistent with Canadian GAAP requirements to the extent not already reflected in the financial statements, including a reconciliation of the financial statements to Canadian GAAP;

(ii) the requirement that the Donnelley auditor's report and the Wallace Computer Services auditor's report disclose any material differences in the form and content of its respective auditor's reports as compared to a Canadian auditor's report, and confirming that the auditing standards applied are substantially equivalent to Canadian generally accepted auditing standards;

(iii) the requirement that the management discussion and analysis (MD&A) prepared by Donnelley provide a restatement of those parts of the Donnelley MD&A that would read differently if the Donnelley MD&A were based on statements prepared in accordance with Canadian GAAP; and

(iv) the requirement that the Donnelley MD&A provide a cross-reference to the notes in the financial statements that reconcile the differences between U.S. GAAP and Canadian GAAP;

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

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

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

1. Moore Wallace is a corporation continued under the *Canada Business Corporations Act* (the CBCA). Moore Wallace's registered office is located at 6100 Vipond Drive, Mississauga, Ontario, Canada, L5T 2X1. Moore Wallace's principal executive office is located at 1200 Lakeside Drive, Bannockburn, Illinois, U.S.A.

2. Moore Wallace is, and has been for the last twelve months, a reporting issuer (or equivalent) in each of the provinces and territories in Canada and is not on the list of reporting issuers in default in any of those jurisdictions. Moore Wallace is also subject to the reporting requirements of the United States *Securities Exchange Act of 1934*, as amended (the 1934 Act), and to the best of its knowledge, is not in default of any requirement of the federal securities laws of the United States.

3. The authorized capital of Moore Wallace consists of (i) an unlimited number of common shares (the Moore Wallace Common Shares), of which 158,037,148 are issued and outstanding, (ii) an unlimited number of preference shares, issuable in series, of which none are issued and outstanding, and (iii) an unlimited number of Series 1 Preference Shares, of which none are issued and outstanding, all as of the close of business on October 31, 2003.

4. The Moore Wallace Common Shares are listed and posted for trading on The Toronto Stock Exchange (the TSX) and the New York Stock Exchange (the NYSE) under the symbol "MWI".

5. On May 15, 2003, Moore Wallace announced the completion of its acquisition of Wallace Computer Services, Inc. (Wallace Computer Services) pursuant to an agreement and plan of merger dated as of January 16, 2003, as amended and restated as of April 14, 2003, between Moore Corporation Limited (the predecessor to Moore Wallace), Moore Holdings U.S.A. Inc., M-W Acquisition, Inc. and Wallace Computer Services. Following the acquisition of Wallace Computer Services, Moore Corporation Limited changed its name to Moore Wallace Incorporated.

6. Donnelley is a corporation incorporated under the laws of the State of Delaware. Its principal executive office is located at 77 West Wacker Drive, Chicago, Illinois, 60601-1696, U.S.A.

7. Donnelley is subject to the reporting requirements of the 1934 Act and is not a reporting issuer (or equivalent) under the securities legislation of any province or territory in Canada.

8. The authorized capital of Donnelley consists of (i) 500,000,000 shares of common stock (the Donnelley Common Stock), and (ii) 2,000,000 shares of preferred stock, of which 500,000 shares have been designated as Series A Junior Participating Stock. As of the close of business on October 31, 2003, 113,621,530 shares of Donnelley Common Stock were issued and outstanding.

9. The Donnelley Common Stock is listed and posted for trading on the NYSE, the Chicago Stock Exchange and the Pacific Stock Exchange under the symbol "DNY".

10. The Transaction is proposed to be effected by way of an arrangement (the "Arrangement") pursuant to section 192 of the Canada Business Corporations Act (the CBCA), involving Moore Wallace, Donnelley, a wholly-owned subsidiary of Donnelley, all of the holders of Moore Wallace Common Shares, all of the holders of options to purchase Moore Wallace Common Shares (the Moore Wallace Options) and all of the holders of restricted stock units with respect to the Moore Wallace Common Shares (the Moore Wallace RSUs).

11. As a result of the Arrangement, Moore Wallace will become an indirect wholly-owned subsidiary of Donnelley. Pursuant to the terms of the Arrangement, Donnelley will acquire all of the outstanding Moore Wallace Common Shares (other than those Moore Wallace Common Shares held by shareholders who properly exercise their dissent rights) and in exchange therefor, the holders of Moore Wallace Common Shares will receive 0.63 (the Exchange Ratio) of a share of Donnelley Common Stock for each Moore Wallace Common Share held, together with an associated right pursuant to a rights agreement dated as of April 25, 1996 between Donnelley and First Chicago Trust Company of New York.

12. Each Moore Wallace Option will be exchanged for, or converted into, an option (a Replacement Option) to purchase that number of shares of Donnelley Common Stock equal to the product of the Exchange Ratio multiplied by the number of Moore Wallace Common Shares subject to such Moore Wallace Option.

13. Each Moore Wallace RSU will be exchanged for, or converted into, a right (a Replacement RSU) to acquire or receive, as the case may be, that number of shares of Donnelley Common Stock equal to the product of the Exchange Ratio multiplied by the number of Moore Wallace Common Shares subject to such Moore Wallace RSU.

14. No fractional shares of Donnelley Common Stock will be delivered in exchange for Moore Wallace Common Shares pursuant to the Arrangement. Cash will be paid to holders of Moore Wallace

Common Shares in lieu of fractional shares of Donnelley Common Stock.

15. Donnelley has agreed to use its reasonable best efforts to obtain the listing on the TSX of all of the shares of Donnelley Common Stock, including those shares issuable pursuant to the Arrangement, and from time to time upon the exercise of Replacement Options and the vesting of Replacement RSUs. As a result of the listing of the Donnelley Common Stock on the TSX, Donnelley will become a reporting issuer in Ontario. As a result of the Transaction, Donnelley will become a reporting issuer in Alberta, British Columbia and Saskatchewan. The Moore Wallace Common Shares will be delisted from the TSX on or after the effective time of the Arrangement. Donnelley has also agreed to list on the NYSE the shares of Donnelley Common Stock issuable in exchange for Moore Wallace Common Shares pursuant to the Arrangement and issuable from time to time upon the exercise of Replacement Options and the vesting of Replacement RSUs.

16. Moore Wallace intends to apply to the Ontario Superior Court of Justice for an interim order (the Interim Order) providing for, among other things, that the Arrangement must be approved by 66 2/3% of the votes cast by holders of the Moore Wallace Common Shares, Moore Wallace Options and Moore Wallace RSUs, voting together as a class. The Interim Order is also expected to provide for the calling and holding of a special meeting of the holders of Moore Wallace Common Shares, Moore Wallace Options and Moore Wallace RSUs, voting together as a class, to consider the Arrangement.

17. In connection with the Transaction, Moore Wallace and Donnelley are in the process of preparing the Circular pursuant to which, among other things, the board of directors of Moore Wallace will recommend that securityholders of Moore Wallace approve the Arrangement and the board of directors of Donnelley will recommend that the stockholders of Donnelley approve the issuance of Donnelley Common Stock required to complete the Transaction. Moore Wallace anticipates that it will deliver the Circular to Moore Wallace securityholders in January or February of 2004.

18. Pursuant to the rules prescribed by the NYSE, Donnelley is also required to hold a special meeting of its stockholders to approve the issuance of Donnelley Common Stock to be issued in exchange for the outstanding Moore Wallace Common Shares, as well as upon the exercise of Replacement Options and the vesting of Replacement RSUs. In that connection, Donnelley and Moore Wallace are preparing the Circular to be delivered to Donnelley's stockholders and Moore Wallace's securityholders.

19. The Circular will contain disclosure of historical financial statements relating to Wallace Computer Services (in accordance with U.S. GAAP) in order to furnish Moore Wallace securityholders with complete and fulsome financial disclosure about Moore Wallace.

20. The Circular will contain prospectus-level disclosure (subject to such exemptive relief granted by the securities regulatory authorities of the Jurisdictions) of the business and affairs of Donnelley and Moore Wallace and of the particulars of the Transaction and the Arrangement.

21. In particular, the Circular will contain, or incorporate by reference (as applicable), the following financial statements:

    (a) audited consolidated balance sheets as at December 31, 2002 and 2001 of Donnelley and the related consolidated statements of income, stockholders' equity and cash flows for each of the years in the three year period ended December 31, 2002, together with the independent auditors' report thereon, all prepared in accordance with U.S. GAAP;

    (b) audited consolidated balance sheets as at December 31, 2002 and 2001 of Moore Wallace and the related consolidated statements of operations, retained earnings and cash flows for each of the years in the three year period ended December 31, 2002, together with the auditors' report thereon, all prepared in accordance with Canadian GAAP and reconciled to U.S. GAAP;

    (c) unaudited condensed consolidated interim statements of income and cash flows of Donnelley for each of the nine month periods ended September 30, 2003 and 2002, together with a consolidated balance sheet as at September 30, 2003, all prepared in accordance with U.S. GAAP;

    (d) unaudited consolidated interim statements of operations, retained earnings and cash flows of Moore Wallace for each of the nine month periods ended September 30, 2003 and 2002, together with a consolidated balance sheet as at September 30, 2003, all prepared in accordance with Canadian GAAP and reconciled to U.S. GAAP;

    (e) audited consolidated balance sheets as at July 31, 2002 and 2001 of Wallace Computer Services and the related

consolidated statements of operations, stockholders' equity and cash flows for each of the years in the three year period ended July 31, 2002, together with the independent auditors' report thereon, all prepared in accordance with U.S. GAAP;

(f) unaudited condensed interim statements of operations and cash flows of Wallace Computer Services for the nine month periods ended April 30, 2003 and 2002, together with a balance sheet as at April 30, 2003, all prepared in accordance with U.S. GAAP;

(g) unaudited *pro forma* consolidated balance sheet of Donnelley as at September 30, 2003 as if the Arrangement had taken place on that date, prepared in accordance with U.S. GAAP; and

(h) unaudited *pro forma* consolidated statements of income of Donnelley for the year ended December 31, 2002 and the nine-month period ended September 30, 2003, and the compilation reports thereon, as if both (i) the Arrangement and (ii) the acquisition of Wallace Computer Services had taken place on January 1, 2002, all prepared in accordance with U.S. GAAP.

22. Upon completion of the Arrangement, it is expected that former holders of Moore Wallace Common Shares resident in Canada will own approximately 14% of the then issued and outstanding shares of Donnelley Common Stock.

**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 GAAP Reconciliation Requirements shall not apply to the Filer in connection with the disclosure pertaining to Donnelley and Wallace Computer Services in the Circular.

December 17, 2003.

"Charlie MacCready"

### 2.1.3 Boardwalk Equities Inc. - MRRS Decision

**Headnote**

Mutual Reliance Review System - Rule 61-501 – Going private transaction – exemption from the valuation requirement granted in connection with a reorganization of a business into an open-ended real estate investment trust where a related party is receiving different consideration than the public shareholders. The transaction is subject to the minority approval requirements of the Rule 61-501. The public shareholders are receiving an information circular containing all the relevant information they require in order to make an informed decision, including regarding the different consideration and the tax consequences of the transaction.

**Applicable Ontario Rule**

Rule 61-501 - Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions, ss. 4.5 and 9.1.

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**ONTARIO AND QUÉBEC**

**AND**

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

**AND**

**IN THE MATTER OF**
**BOARDWALK EQUITIES INC.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario and Québec (the "Jurisdictions") has received an application from Boardwalk Equities Inc. ("Boardwalk") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirement to obtain a formal valuation (the "Valuation Requirement") in Ontario Securities Commission Rule 61-501 ("Rule 61-501") and Québec Policy Statement Q-27 ("Policy Q-27") shall not apply in connection with a proposed going private transaction occurring as part of the reorganization of Boardwalk's business pursuant to a multi-step transaction (the "Transaction");

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

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

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

1. Boardwalk was incorporated under the *Business Corporations Act* (Alberta) (the "ABCA") on July 14, 1993 and its head and registered office are located in Calgary, Alberta. Boardwalk has 46 direct or indirect wholly-owned subsidiaries.

2. Boardwalk is a reporting issuer or the equivalent in all of the provinces of Canada and is not currently in default of the securities legislation in such jurisdictions.

3. Boardwalk is authorized to issue an unlimited number of common shares (the "Common Shares") and an unlimited number of preferred shares (the "Preferred Shares"). As at September 30, 2003, Boardwalk had 50,481,000 Common Shares, 5,604,956 Preferred Shares, Series I, and 3,340,199 Preferred Shares, Series II issued and outstanding and 2,851,300 Common Shares reserved for issuance on the exercise of stock options ("Options") issued pursuant to Boardwalk's stock option plan.

4. The Common Shares are listed on the Toronto Stock Exchange and the New York Stock Exchange under the symbol "BEI".

5. Boardwalk is an owner/operator of multi-family rental communities with a total market capitalization of approximately Cdn. $2.1 billion.

6. As at September 30, 2003, Boardwalk Properties Company Limited ("BPCL") was the registered owner of 15,600,000 Common Shares, representing approximately 30.92% of the outstanding Common Shares. BPCL is owned as to 50% by Boardwalk Investment Limited ("BIL"), which is owned entirely by Sam Kolias, the President and Chief Executive Officer of Boardwalk, and as to 50% by Park Place Holdings Ltd. ("PPHL"), which is owned entirely by Van Kolias, the Senior Vice-President, Quality Control and Assistant Corporate Secretary of Boardwalk.

7. Pursuant to the Transaction, Boardwalk proposes to reorganize its business such that its revenue producing multi-family residential properties will be transferred into an open-ended real estate investment trust to be named "Boardwalk Real Estate Investment Trust" ("Boardwalk REIT").

8. Holders of Common Shares and holders of Options will be asked at a special meeting expected to be held on or about February 27, 2004, to approve the Transaction (the "Special Meeting"). In order to effect the Transaction, Boardwalk will require approval of the Transaction from, among others:

   (i) 66 2/3% of the votes cast by holders of Common Shares and Options, voting as a group; and

   (ii) a majority of the votes cast by holders of Common Shares excluding the votes attaching to the Common Shares beneficially owned or over which control or direction is exercised by BPCL, its affiliates and the directors and officers of Boardwalk.

9. Prior to, but in anticipation of, the Transaction the following will be completed (collectively, the "Pre-Transaction Steps"):

   (i) BPCL will incorporate a wholly-owned subsidiary ("Newco") under the ABCA;

   (ii) Boardwalk will incorporate two wholly-owned subsidiaries, one hereinafter referred to as "Boardwalk Subco" and the other as "Boardwalk GP";

   (iii) Boardwalk GP and Boardwalk will form a limited partnership ("Boardwalk LP"), with Boardwalk serving as the initial limited partner and Boardwalk GP as general partner. Boardwalk LP's authorized capital will consist of:

      (A) the initial limited partnership unit issued to Boardwalk;

      (B) an unlimited number of Class A Units ("LP A Units") which are entitled, among other things, to distributions of distributable income from Boardwalk LP equivalent to those received on LP B Units;

      (C) an unlimited number of Class B Units ("LP B Units") which are designed to be the economic and voting equivalent of the units of Boardwalk REIT ("REIT Units"), including in respect of the receipt of distributions, and providing a right of exchange, on a one-for-one basis, for REIT Units at the option of the holder; and

      (D) an unlimited number of Class C Units ("LP C Units") which are entitled, among other things, to receive distributions in an amount sufficient to pay interest payments and repay principal on the Retained Debt (as hereinafter defined);

(iv) Boardwalk will create Boardwalk REIT as an open-end mutual fund trust, the initial unit of which will be held by Boardwalk;

(v) Boardwalk REIT will create an open-end operating trust ("Operating Trust"), the initial unit of which will be held by Boardwalk REIT; and

(vi) the Preferred Shares of all series will be retracted pursuant to their terms.

10. The Transaction will be effected by way of the following steps, taken in the following sequence:

(i) Boardwalk will amalgamate with substantially all of its subsidiaries, other than (a) certain subsidiaries that serve as nominees to hold legal title to certain real property and (b) Boardwalk Subco and Boardwalk GP, to continue under the name "Boardwalk Equities Inc." ("Boardwalk Amalco");

(ii) Boardwalk Amalco will subscribe for LP C Units and an aggregate number of LP B Units equal to the number of Common Shares transferred by BPCL pursuant to the transaction described in subparagraph 10(v)(A), for nominal consideration;

(iii) Boardwalk Amalco will transfer, or cause to be transferred, all of its assets and business, whether directly or indirectly held (the "Properties"), to Boardwalk LP at fair market value for an aggregate purchase price of approximately $2.32 Billion, paid by the assumption of approximately $0.97 Billion in mortgage financing and other liabilities, the issuance by Boardwalk LP of an interest bearing note in the principal amount of approximately $0.84 Billion (the "LP Note") and an addition to the capital account of Boardwalk Amalco in respect of the LP B Units and LP C Units;

(iv) Boardwalk Amalco will transfer all of its LP B Units to Boardwalk Subco in exchange for common shares of Boardwalk Subco; and

(v) a plan of arrangement pursuant to Section 193 of the ABCA will become effective, with the following principal steps occurring in the following sequence:

(A) BPCL will sell approximately 1/3 of its Common Shares to Newco in consideration for common shares of Newco;

(B) Boardwalk Amalco will transfer the LP Note to Boardwalk REIT in exchange for REIT Units with an aggregate value equal to the principal amount of the LP Note;

(C) Boardwalk Amalco will transfer the shares of Boardwalk GP to Boardwalk REIT for cash;

(D) Boardwalk Amalco will redeem the initial REIT Unit for nominal consideration;

(E) Boardwalk Amalco will purchase 15,000 REIT Units for cash and distribute 100 REIT Units to each of 150 employees of Boardwalk Amalco for the purpose of qualifying Boardwalk REIT as a "mutual fund trust" under the *Income Tax Act* (Canada);

(F) Boardwalk REIT will transfer the LP Note, and the cash received pursuant to the transaction described in subparagraph 10(v)(E), to Operating Trust in exchange for a combination of units and notes of Operating Trust;

(G) Operating Trust will transfer the LP Note and cash to Boardwalk LP in exchange for LP A Units;

(H) Boardwalk Amalco will sell the REIT Units received by it pursuant to the transaction described in subparagraph 10(v)(B) to Newco for an interest-bearing note of Newco; and

(I) each outstanding Common Share, including all remaining Common Shares held by BPCL (if not previously sold to the public pursuant to a secondary offering), will be acquired by Newco in consideration of the issuance of one REIT Unit for each Common Share acquired.

11. Following the completion of the Transaction:

(i) the holders of Common Shares other than BPCL and its affiliates (the "Public Shareholders") will hold REIT Units instead of Common Shares;

(ii) BPCL and its affiliates (including BIL and PPHL) will indirectly hold LP B Units and may directly or indirectly hold REIT Units, depending upon whether BPCL has previously sold those Common Shares not exchanged for LP B Units pursuant to a secondary offering;

(iii) BPCL will own Newco and Newco will own all of the issued and outstanding Common Shares;

(iv) Boardwalk LP will directly or indirectly hold the Properties;

(v) Boardwalk REIT will directly or indirectly own all of the issued and outstanding securities of Boardwalk GP and Operating Trust; and

(vi) Boardwalk Amalco will directly own all of the LP C Units and will indirectly own all of the LP B Units, and Operating Trust will own all of the issued and outstanding LP A Units.

12. Following the completion of the Transaction, BPCL will have the right to appoint one trustee to the board of trustees of Boardwalk REIT, provided that BPCL and its affiliates continue to beneficially own, in the aggregate, a number of REIT Units and LP B Units that, upon surrender or exchange of the LP B Units, would equal at least five per cent of all then outstanding REIT Units (the "Appointee Right");

13. In connection with the transfer of the Properties from Boardwalk Amalco to Boardwalk LP described in paragraph 10(iii) above, Boardwalk LP will agree to provide Boardwalk Amalco's creditors a guarantee (the "Guarantee") in respect of certain Property-related debt owed by Boardwalk Amalco subsequent to the transfer (the "Retained Debt").

14. Boardwalk LP will also agree to indemnify and hold harmless Boardwalk Amalco and its affiliates (including BIL and PPHL) from and against any and all claims, demands, losses, penalties, costs, expenses, fees and liabilities, including, without limitation, legal fees and expenses, directly or indirectly arising out of, in connection with, or in respect of, the Properties subsequent to the effective date of the Transaction (the "Indemnity").

15. By virtue of the provision of the Appointee Right, Guarantee and Indemnity, and the issuance to Boardwalk Amalco of LP B Units in lieu of the REIT Units provided to the Public Shareholders (collectively, the "Unique Consideration"), the consideration per security ultimately received by BPCL and its affiliates (including BIL and PPHL) is not identical in amount and type to that paid to the Public Shareholders under the Transaction. As a result, the Transaction will constitute a "going private transaction" under Rule 61-501 and Policy Q-27 (the "Going Private Transaction").

16. The Unique Consideration has been provided to BPCL for reasons other than to increase the value of the consideration payable pursuant to the Transaction for the Common Shares held by BPCL. The Unique Consideration has been provided to BPCL to, among other things, offset certain negative tax implications and protect BPCL from liabilities relating to the Retained Debt and the Properties attendant upon the Transaction and uniquely accruing to BPCL.

17. Shareholders of Boardwalk will receive an information circular in connection with the Special Meeting (the "Information Circular") containing the information required pursuant to section 4.2 of Rule 61-501 and Policy Q-27, including the details of the Unique Consideration, the Transaction, and the tax consequences of the Transaction.

18. A formal valuation will create additional expense which will be outweighed by the benefit of the information it provides, since the Information Circular will contain all of the relevant information holders of Common Shares require in order to make an informed decision.

**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 Valuation Requirement shall not apply to the Going Private Transaction provided Boardwalk complies with all other applicable provisions of Rule 61-501 and Policy Q-27.

December 22, 2003.

"Ralph Shay"

### 2.1.4 D. E. Shaw Valence, L.P. - ss. 6.1(1) of MI 31-102 and s. 6.1 of OSC Rule 13-502

**Headnote**

International dealer exempted from the electronic funds transfer requirement pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 National Registration Database and activity fee contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 Fees waived in respect of this discretionary relief, subject to certain conditions.

**Rules Cited**

Multilateral Instrument 31-102 National Registration Database (2003) 26 O.S.C.B. 926, s. 6.1.
Ontario Securities Commission Rule 13-502 Fees (2003) 26 O.S.C.B. 867, ss. 4.1 and 6.1.

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

**AND**

**IN THE MATTER OF**
**D. E. SHAW VALENCE, L.P.**

**DECISION**
**(Subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* and section 6.1 of Rule 13-502 *Fees*)**

**UPON** the Director having received the application of D. E. Shaw Valence, L.P. (the Applicant) for an order pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* (MI 31-102) granting the Applicant relief from the electronic funds transfer requirement contemplated under MI 31-102 and for relief from the activity fee requirement contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 *Fees* (Rule 13-502) in respect of this discretionary relief;

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

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

1. The Applicant is a limited partnership incorporated under the laws of State of Delaware in the United States of America. The Applicant is not a reporting issuer. The Applicant is registered under the Act as an international dealer. The head office of the Applicant is located in New York, New York.

2. MI 31-102 requires that all registrants in Canada enrol with CDS Inc. (CDS) and use the national registration database (NRD) to complete certain registration filings. As part of the enrolment process, registrants are required to open an account with a member of the Canadian Payments Association from which fees may be paid with respect to NRD by electronic pre-authorized debit (electronic funds transfer or, the EFT Requirement).

3. The Applicant has encountered difficulties in setting up a Canadian based bank account for purposes of fulfilling the EFT Requirement.

4. The Applicant confirms that it is not registered in another category to which the EFT Requirement applies and that Ontario is the only jurisdiction in which it is registered.

5. Staff of the Canadian Securities Administrators has indicated that, with respect to applications from international dealers and international advisers (or applicants in equivalent categories of registration) for relief from the EFT Requirement, it is prepared to recommend waiving the fee normally required to accompany applications for discretionary relief (the Application Fee).

6. For Ontario registrants, the requirement for payment of the Application Fee is set out in section 4.1 of Rule 13-502.

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

**IT IS THE DECISION** of the Director, pursuant to subsection 6.1(1) of MI 31-102 that the Applicant is granted relief from the EFT Requirement for so long as the Applicant:

A. makes acceptable alternative arrangements with CDS for the payment of NRD fees;

B. pays its participation fee under the Act to the Commission by cheque, draft, money order or other acceptable means at the time of filing its application for annual renewal, which shall be no later than the first day of December in each year;

C. pays any applicable activity fees, or other fees that the Act requires it to pay to the Commission, by cheque, draft, money order or other acceptable means at the appropriate time; and

D. is not registered in any Jurisdiction in another category to which the EFT Requirement applies;

**PROVIDED THAT** the Applicant submits a similar application in any other Canadian jurisdiction where it becomes registered as an international dealer or international adviser or in an equivalent registration category;

**AND IT IS THE FURTHER DECISION** of the Director, pursuant to section 6.1 of Rule 13-502, that the Application Fee will be waived in respect of the application for this Decision.

September 30, 2003.

"David M. Gilkes"

### 2.1.5 Jerome P. Greene & Associates LLC - ss. 6.1(1) of MI 31-102 and s. 6.1 of OSC Rule 13-502

**Headnote**

International dealer exempted from the electronic funds transfer requirement pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 National Registration Database and activity fee contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 Fees waived in respect of this discretionary relief, subject to certain conditions.

**Rules Cited**

Multilateral Instrument 31-102 National Registration Database (2003) 26 O.S.C.B. 926, s. 6.1.
Ontario Securities Commission Rule 13-502 Fees (2003) 26 O.S.C.B. 867, ss. 4.1 and 6.1.

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

**AND**

**IN THE MATTER OF**
**JEROME P. GREENE & ASSOCIATES LLC**

**DECISION**
**(Subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* and section 6.1 of Rule 13-502 *Fees*)**

**UPON** the Director having received the application of Jerome P. Greene & Associates LLC (the Applicant) for an order pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* (MI 31-102) granting the Applicant relief from the electronic funds transfer requirement contemplated under MI 31-102 and for relief from the activity fee requirement contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 *Fees* (Rule 13-502) in respect of this discretionary relief;

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

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

1. The Applicant is incorporated under the laws of the State of Indiana in the United States of America. The Applicant is not a reporting issuer. The Applicant is registered under the Act as an international dealer. The head office of the Applicant is located in Indianapolis, Indiana.

2. MI 31-102 requires that all registrants in Canada enrol with CDS Inc. (CDS) and use the national registration database (NRD) to complete certain registration filings. As part of the enrolment

process, registrants are required to open an account with a member of the Canadian Payments Association from which fees may be paid with respect to NRD by electronic pre-authorized debit (electronic funds transfer or, the EFT Requirement).

3. The Applicant has encountered difficulties in setting up a Canadian based bank account for purposes of fulfilling the EFT Requirement.

4. The Applicant confirms that it is not registered in another category to which the EFT Requirement applies and that Ontario is the only jurisdiction in which it is registered.

5. Staff of the Canadian Securities Administrators has indicated that, with respect to applications from international dealers and international advisers (or applicants in equivalent categories of registration) for relief from the EFT Requirement, it is prepared to recommend waiving the fee normally required to accompany applications for discretionary relief (the Application Fee).

6. For Ontario registrants, the requirement for payment of the Application Fee is set out in section 4.1 of Rule 13-502.

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

**IT IS THE DECISION** of the Director, pursuant to subsection 6.1(1) of MI 31-102 that the Applicant is granted relief from the EFT Requirement for so long as the Applicant:

A. makes acceptable alternative arrangements with CDS for the payment of NRD fees;

B. pays its participation fee under the Act to the Commission by cheque, draft, money order or other acceptable means at the time of filing its application for annual renewal, which shall be no later than the first day of December in each year;

C. pays any applicable activity fees, or other fees that the Act requires it to pay to the Commission, by cheque, draft, money order or other acceptable means at the appropriate time; and

D. is not registered in any Jurisdiction in another category to which the EFT Requirement applies;

**PROVIDED THAT** the Applicant submits a similar application in any other Canadian jurisdiction where it becomes registered as an international dealer or international adviser or in an equivalent registration category;

**AND IT IS THE FURTHER DECISION** of the Director, pursuant to section 6.1 of Rule 13-502, that the Application Fee will be waived in respect of the application for this Decision.

September 30, 2003.

"David M. Gilkes"

### 2.1.6 First Montauk Securities Corp. - ss. 6.1(1) of MI 31-102 and s. 6.1 of OSC Rule 13-502

**Headnote**

International dealer exempted from the electronic funds transfer requirement pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 National Registration Database and activity fee contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 Fees waived in respect of this discretionary relief, subject to certain conditions.

**Rules Cited**

Multilateral Instrument 31-102 National Registration Database (2003) 26 O.S.C.B. 926, s. 6.1.
Ontario Securities Commission Rule 13-502 Fees (2003) 26 O.S.C.B. 867, ss. 4.1 and 6.1.

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

**AND**

**IN THE MATTER OF**
**FIRST MONTAUK SECURITIES CORP.**

**DECISION**
**(Subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* and section 6.1 of Rule 13-502 *Fees*)**

**UPON** the Director having received the application of First Montauk Securities Corp. (the Applicant) for an order pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* (MI 31-102) granting the Applicant relief from the electronic funds transfer requirement contemplated under MI 31-102 and for relief from the activity fee requirement contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 *Fees* (Rule 13-502) in respect of this discretionary relief;

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

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

1. The Applicant is incorporated under the laws of the State of New York in the United States of America. The Applicant is not a reporting issuer. The Applicant is registered under the Act as an international dealer. The head office of the Applicant is located in Red Bank, New Jersey.

2. MI 31-102 requires that all registrants in Canada enrol with CDS Inc. (CDS) and use the national registration database (NRD) to complete certain registration filings. As part of the enrolment process, registrants are required to open an account with a member of the Canadian Payments Association from which fees may be paid with respect to NRD by electronic pre-authorized debit (electronic funds transfer or, the EFT Requirement).

3. The Applicant has encountered difficulties in setting up a Canadian based bank account for purposes of fulfilling the EFT Requirement.

4. The Applicant confirms that it is not registered in another category to which the EFT Requirement applies and that Ontario is the only jurisdiction in which it is registered.

5. Staff of the Canadian Securities Administrators has indicated that, with respect to applications from international dealers and international advisers (or applicants in equivalent categories of registration) for relief from the EFT Requirement, it is prepared to recommend waiving the fee normally required to accompany applications for discretionary relief (the Application Fee).

6. For Ontario registrants, the requirement for payment of the Application Fee is set out in section 4.1 of Rule 13-502.

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

**IT IS THE DECISION** of the Director, pursuant to subsection 6.1(1) of MI 31-102 that the Applicant is granted relief from the EFT Requirement for so long as the Applicant:

A. makes acceptable alternative arrangements with CDS for the payment of NRD fees;

B. pays its participation fee under the Act to the Commission by cheque, draft, money order or other acceptable means at the time of filing its application for annual renewal, which shall be no later than the first day of December in each year;

C. pays any applicable activity fees, or other fees that the Act requires it to pay to the Commission, by cheque, draft, money order or other acceptable means at the appropriate time; and

D. is not registered in any Jurisdiction in another category to which the EFT Requirement applies;

**PROVIDED THAT** the Applicant submits a similar application in any other Canadian jurisdiction where it becomes registered as an international dealer or international adviser or in an equivalent registration category;

**AND IT IS THE FURTHER DECISION** of the Director, pursuant to section 6.1 of Rule 13-502, that the Application Fee will be waived in respect of the application for this Decision.

September 30, 2003.

"David M. Gilkes"

### 2.1.7 SG Asset Management (Singapore) Ltd. - ss. 6.1(1) of MI 31-102 and s. 6.1 of OSC Rule 13-502

**Headnote**

International adviser exempted from the electronic funds transfer requirement pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 National Registration Database and activity fee contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 Fees waived in respect of this discretionary relief, subject to certain conditions.

**Rules Cited**

Multilateral Instrument 31-102 National Registration Database (2003) 26 O.S.C.B. 926, s. 6.1.
Ontario Securities commission Rule 13-502 Fees (2003) 26 O.S.C.B. 867, ss. 4.1 and 6.1.

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

**AND**

**IN THE MATTER OF**
**SG ASSET MANAGEMENT (SINGAPORE) LTD.**

**DECISION**
**(Subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* and section 6.1 of Rule 13-502 *Fees*)**

**UPON** the Director having received the application of SG Asset Management (Singapore) Ltd. (the Applicant) for an order pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* (MI 31-102) granting the Applicant relief from the electronic funds transfer requirement contemplated under MI 31-102 and for relief from the activity fee requirement contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 *Fees* (Rule 13-502) in respect of this discretionary relief;

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

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

1. The Applicant is incorporated under the laws of Singapore. The Applicant is not a reporting issuer. The Applicant is registered under the Act as an international adviser. The head office of the Applicant is located in Singapore.

2. MI 31-102 requires that all registrants in Canada enrol with CDS Inc. (CDS) and use the national registration database (NRD) to complete certain registration filings. As part of the enrolment process, registrants are required to open an

account with a member of the Canadian Payments Association from which fees may be paid with respect to NRD by electronic pre-authorized debit (electronic funds transfer or, the EFT Requirement).

3. The Applicant has encountered difficulties in setting up a Canadian based bank account for purposes of fulfilling the EFT Requirement.

4. The Applicant confirms that it is not registered in another category to which the EFT Requirement applies and that Ontario is the only jurisdiction in which it is registered.

5. Staff of the Canadian Securities Administrators has indicated that, with respect to applications from international dealers and international advisers (or applicants in equivalent categories of registration) for relief from the EFT Requirement, it is prepared to recommend waiving the fee normally required to accompany applications for discretionary relief (the Application Fee).

6. For Ontario registrants, the requirement for payment of the Application Fee is set out in section 4.1 of Rule 13-502.

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

**IT IS THE DECISION** of the Director, pursuant to subsection 6.1(1) of MI 31-102 that the Applicant is granted relief from the EFT Requirement for so long as the Applicant:

A. makes acceptable alternative arrangements with CDS for the payment of NRD fees;

B. pays its participation fee under the Act to the Commission by cheque, draft, money order or other acceptable means at the time of filing its application for annual renewal, which shall be no later than the first day of December in each year;

C. pays any applicable activity fees, or other fees that the Act requires it to pay to the Commission, by cheque, draft, money order or other acceptable means at the appropriate time; and

D. is not registered in any Jurisdiction in another category to which the EFT Requirement applies;

**PROVIDED THAT** the Applicant submits a similar application in any other Canadian jurisdiction where it becomes registered as an international dealer or international adviser or in an equivalent registration category;

**AND IT IS THE FURTHER DECISION** of the Director, pursuant to section 6.1 of Rule 13-502, that the Application Fee will be waived in respect of the application for this Decision.

September 30, 2003.

"David M. Gilkes"

### 2.1.8 Mogavero, Lee & Co., Inc. - ss. 6.1(1) of MI 31-102 and s. 6.1 of OSC Rule 13-502

**Headnote**

International dealer exempted from the electronic funds transfer requirement pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 National Registration Database and activity fee contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 Fees waived in respect of this discretionary relief, subject to certain conditions.

**Rules Cited**

Multilateral Instrument 31-102 National Registration Database (2003) 26 O.S.C.B. 926, s. 6.1.
Ontario Securities Commission Rule 13-502 Fees (2003) 26 O.S.C.B. 867, ss. 4.1 and 6.1.

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

**AND**

**IN THE MATTER OF**
**MOGAVERO, LEE & CO., INC.**

**DECISION**
**(Subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* and section 6.1 of Rule 13-502 *Fees*)**

**UPON** the Director having received the application of Mogavero, Lee & Co., Inc. (the Applicant) for an order pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* (MI 31-102) granting the Applicant relief from the electronic funds transfer requirement contemplated under MI 31-102 and for relief from the activity fee requirement contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 *Fees* (Rule 13-502) in respect of this discretionary relief;

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

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

1. The Applicant is incorporated under the laws of the State of New York in the United States of America. The Applicant is not a reporting issuer. The Applicant is registered under the Act as an international dealer. The head office of the Applicant is located in New York, New York.

2. MI 31-102 requires that all registrants in Canada enrol with CDS Inc. (CDS) and use the national registration database (NRD) to complete certain registration filings. As part of the enrolment process, registrants are required to open an account with a member of the Canadian Payments Association from which fees may be paid with respect to NRD by electronic pre-authorized debit (electronic funds transfer or, the EFT Requirement).

3. The Applicant has encountered difficulties in setting up a Canadian based bank account for purposes of fulfilling the EFT Requirement.

4. The Applicant confirms that it is not registered in another category to which the EFT Requirement applies and that Ontario is the only jurisdiction in which it is registered.

5. Staff of the Canadian Securities Administrators has indicated that, with respect to applications from international dealers and international advisers (or applicants in equivalent categories of registration) for relief from the EFT Requirement, it is prepared to recommend waiving the fee normally required to accompany applications for discretionary relief (the Application Fee).

6. For Ontario registrants, the requirement for payment of the Application Fee is set out in section 4.1 of Rule 13-502.

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

**IT IS THE DECISION** of the Director, pursuant to subsection 6.1(1) of MI 31-102 that the Applicant is granted relief from the EFT Requirement for so long as the Applicant:

A. makes acceptable alternative arrangements with CDS for the payment of NRD fees;

B. pays its participation fee under the Act to the Commission by cheque, draft, money order or other acceptable means at the time of filing its application for annual renewal, which shall be no later than the first day of December in each year;

C. pays any applicable activity fees, or other fees that the Act requires it to pay to the Commission, by cheque, draft, money order or other acceptable means at the appropriate time; and

D. is not registered in any Jurisdiction in another category to which the EFT Requirement applies;

**PROVIDED THAT** the Applicant submits a similar application in any other Canadian jurisdiction where it becomes registered as an international dealer or international adviser or in an equivalent registration category;

**AND IT IS THE FURTHER DECISION** of the Director, pursuant to section 6.1 of Rule 13-502, that the Application Fee will be waived in respect of the application for this Decision.

September 30, 2003.

"David M. Gilkes"

### 2.1.9 Dougherty & Company LLC - ss. 6.1(1) of MI 31-102 and s. 6.1 of OSC Rule 13-502

**Headnote**

International dealer exempted from the electronic funds transfer requirement pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 National Registration Database and activity fee contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 Fees waived in respect of this discretionary relief, subject to certain conditions.

**Rules Cited**

Multilateral Instrument 31-102 National Registration Database (2003) 26 O.S.C.B. 926, s. 6.1.
Ontario Securities Commission Rule 13-502 Fees (2003) 26 O.S.C.B. 867, ss. 4.1 and 6.1.

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

**AND**

**IN THE MATTER OF**
**DOUGHERTY & COMPANY LLC**

**DECISION**
**(Subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* and section 6.1 of Rule 13-502 *Fees*)**

**UPON** the Director having received the application of Dougherty & Company LLC (the Applicant) for an order pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* (MI 31-102) granting the Applicant relief from the electronic funds transfer requirement contemplated under MI 31-102 and for relief from the activity fee requirement contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 *Fees* (Rule 13-502) in respect of this discretionary relief;

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

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

1. The Applicant is incorporated under the laws of the State of Delaware in the United States of America. The Applicant is not a reporting issuer. The Applicant is registered under the Act as an international dealer. The head office of the Applicant is located in Minneapolis, Minnesota.

2. MI 31-102 requires that all registrants in Canada enrol with CDS Inc. (CDS) and use the national registration database (NRD) to complete certain registration filings. As part of the enrolment process, registrants are required to open an

account with a member of the Canadian Payments Association from which fees may be paid with respect to NRD by electronic pre-authorized debit (electronic funds transfer or, the EFT Requirement).

3. The Applicant has encountered difficulties in setting up a Canadian based bank account for purposes of fulfilling the EFT Requirement.

4. The Applicant confirms that it is not registered in another category to which the EFT Requirement applies and that Ontario is the only jurisdiction in which it is registered.

5. Staff of the Canadian Securities Administrators has indicated that, with respect to applications from international dealers and international advisers (or applicants in equivalent categories of registration) for relief from the EFT Requirement, it is prepared to recommend waiving the fee normally required to accompany applications for discretionary relief (the Application Fee).

6. For Ontario registrants, the requirement for payment of the Application Fee is set out in section 4.1 of Rule 13-502.

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

**IT IS THE DECISION** of the Director, pursuant to subsection 6.1(1) of MI 31-102 that the Applicant is granted relief from the EFT Requirement for so long as the Applicant:

A. makes acceptable alternative arrangements with CDS for the payment of NRD fees;

B. pays its participation fee under the Act to the Commission by cheque, draft, money order or other acceptable means at the time of filing its application for annual renewal, which shall be no later than the first day of December in each year;

C. pays any applicable activity fees, or other fees that the Act requires it to pay to the Commission, by cheque, draft, money order or other acceptable means at the appropriate time; and

D. is not registered in any Jurisdiction in another category to which the EFT Requirement applies;

**PROVIDED THAT** the Applicant submits a similar application in any other Canadian jurisdiction where it becomes registered as an international dealer or international adviser or in an equivalent registration category;

**AND IT IS THE FURTHER DECISION** of the Director, pursuant to section 6.1 of Rule 13-502, that the Application Fee will be waived in respect of the application for this Decision.

September 30, 2003.

"David M. Gilkes"

### 2.1.10 D. E. Shaw Securities, LLC - ss. 6.1(1) of MI 31-102 and s. 6.1 of OSC Rule 13-502

**Headnote**

International dealer exempted from the electronic funds transfer requirement pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 National Registration Database and activity fee contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 Fees waived in respect of this discretionary relief, subject to certain conditions.

**Rules Cited**

Multilateral Instrument 31-102 National Registration Database (2003) 26 O.S.C.B. 926, s. 6.1.
Ontario Securities Commission Rule 13-502 Fees (2003) 26 O.S.C.B. 867, ss. 4.1 and 6.1.

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

**AND**

**IN THE MATTER OF**
**D. E. SHAW SECURITIES, LLC**

**DECISION**
**(Subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* and section 6.1 of Rule 13-502 *Fees*)**

**UPON** the Director having received the application of D. E. Shaw Securities, LLC (the Applicant) for an order pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* (MI 31-102) granting the Applicant relief from the electronic funds transfer requirement contemplated under MI 31-102 and for relief from the activity fee requirement contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 *Fees* (Rule 13-502) in respect of this discretionary relief;

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

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

1. The Applicant is incorporated under the laws of the State of Delaware. The Applicant is not a reporting issuer. The Applicant is registered under the Act as an international dealer. The head office of the Applicant is located in New York, New York.

2. MI 31-102 requires that all registrants in Canada enrol with CDS Inc. (CDS) and use the national registration database (NRD) to complete certain registration filings. As part of the enrolment process, registrants are required to open an account with a member of the Canadian Payments Association from which fees may be paid with respect to NRD by electronic pre-authorized debit (electronic funds transfer or, the EFT Requirement).

3. The Applicant has encountered difficulties in setting up a Canadian based bank account for purposes of fulfilling the EFT Requirement.

4. The Applicant confirms that it is not registered in another category to which the EFT Requirement applies and that Ontario is the only jurisdiction in which it is registered.

5. Staff of the Canadian Securities Administrators has indicated that, with respect to applications from international dealers and international advisers (or applicants in equivalent categories of registration) for relief from the EFT Requirement, it is prepared to recommend waiving the fee normally required to accompany applications for discretionary relief (the Application Fee).

6. For Ontario registrants, the requirement for payment of the Application Fee is set out in section 4.1 of Rule 13-502.

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

**IT IS THE DECISION** of the Director, pursuant to subsection 6.1(1) of MI 31-102 that the Applicant is granted relief from the EFT Requirement for so long as the Applicant:

A. makes acceptable alternative arrangements with CDS for the payment of NRD fees;

B. pays its participation fee under the Act to the Commission by cheque, draft, money order or other acceptable means at the time of filing its application for annual renewal, which shall be no later than the first day of December in each year;

C. pays any applicable activity fees, or other fees that the Act requires it to pay to the Commission, by cheque, draft, money order or other acceptable means at the appropriate time; and

D. is not registered in any Jurisdiction in another category to which the EFT Requirement applies;

**PROVIDED THAT** the Applicant submits a similar application in any other Canadian jurisdiction where it becomes registered as an international dealer or international adviser or in an equivalent registration category;

**AND IT IS THE FURTHER DECISION** of the Director, pursuant to section 6.1 of Rule 13-502, that the Application Fee will be waived in respect of the application for this Decision.

September 30, 2003.

"David M. Gilkes"

### 2.1.11 HD Brous & Co., Inc. - ss. 6.1(1) of MI 31-102 and s. 6.1 of OSC Rule 13-502

**Headnote**

International dealer exempted from the electronic funds transfer requirement pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 National Registration Database and activity fee contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 Fees waived in respect of this discretionary relief, subject to certain conditions.

**Rules Cited**

Multilateral Instrument 31-102 National Registration Database (2003) 26 O.S.C.B. 926, s. 6.1.
Ontario Securities Commission Rule 13-502 Fees (2003) 26 O.S.C.B. 867, ss. 4.1 and 6.1.

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

**AND**

**IN THE MATTER OF**
**HD BROUS & CO., INC.**

**DECISION**
**(Subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* and section 6.1 of Rule 13-502 *Fees*)**

**UPON** the Director having received the application of HD Brous & Co., Inc. (the Applicant) for an order pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* (MI 31-102) granting the Applicant relief from the electronic funds transfer requirement contemplated under MI 31-102 and for relief from the activity fee requirement contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 *Fees* (Rule 13-502) in respect of this discretionary relief;

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

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

1. The Applicant is incorporated under the laws of the State of Delaware in the United States of America. The Applicant is not a reporting issuer. The Applicant is registered under the Act as an international dealer. The head office of the Applicant is located in Great Neck, New York.

2. MI 31-102 requires that all registrants in Canada enrol with CDS Inc. (CDS) and use the national registration database (NRD) to complete certain registration filings. As part of the enrolment process, registrants are required to open an

account with a member of the Canadian Payments Association from which fees may be paid with respect to NRD by electronic pre-authorized debit (electronic funds transfer or, the EFT Requirement).

3. The Applicant has encountered difficulties in setting up a Canadian based bank account for purposes of fulfilling the EFT Requirement.

4. The Applicant confirms that it is not registered in another category to which the EFT Requirement applies and that Ontario is the only jurisdiction in which it is registered.

5. Staff of the Canadian Securities Administrators has indicated that, with respect to applications from international dealers and international advisers (or applicants in equivalent categories of registration) for relief from the EFT Requirement, it is prepared to recommend waiving the fee normally required to accompany applications for discretionary relief (the Application Fee).

6. For Ontario registrants, the requirement for payment of the Application Fee is set out in section 4.1 of Rule 13-502.

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

**IT IS THE DECISION** of the Director, pursuant to subsection 6.1(1) of MI 31-102 that the Applicant is granted relief from the EFT Requirement for so long as the Applicant:

A. makes acceptable alternative arrangements with CDS for the payment of NRD fees;

B. pays its participation fee under the Act to the Commission by cheque, draft, money order or other acceptable means at the time of filing its application for annual renewal, which shall be no later than the first day of December in each year;

C. pays any applicable activity fees, or other fees that the Act requires it to pay to the Commission, by cheque, draft, money order or other acceptable means at the appropriate time; and

D. is not registered in any Jurisdiction in another category to which the EFT Requirement applies;

**PROVIDED THAT** the Applicant submits a similar application in any other Canadian jurisdiction where it becomes registered as an international dealer or international adviser or in an equivalent registration category;

**AND IT IS THE FURTHER DECISION** of the Director, pursuant to section 6.1 of Rule 13-502, that the Application Fee will be waived in respect of the application for this Decision.

October 13, 2003.

"David M. Gilkes"

### 2.1.12 Segall Bryant & Hamill - ss. 6.1(1) of MI 31-102 and s. 6.1 of OSC Rule 13-502

**Headnote**

International adviser exempted from the electronic funds transfer requirement pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 National Registration Database and activity fee contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 Fees waived in respect of this discretionary relief, subject to certain conditions.

**Rules Cited**

Multilateral Instrument 31-102 National Registration Database (2003) 26 O.S.C.B. 926, s. 6.1.
Ontario Securities commission Rule 13-502 Fees (2003) 26 O.S.C.B. 867, ss. 4.1 and 6.1.

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

**AND**

**IN THE MATTER OF**
**SEGALL BRYANT & HAMILL**

**DECISION**
**(Subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* and section 6.1 of Rule 13-502 *Fees*)**

**UPON** the Director having received the application of Segall Bryant & Hamill (the Applicant) for an order pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* (MI 31-102) granting the Applicant relief from the electronic funds transfer requirement contemplated under MI 31-102 and for relief from the activity fee requirement contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 *Fees* (Rule 13-502) in respect of this discretionary relief;

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

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

1. The Applicant is a partnership registered under the laws of the State of Minnesota in the United States of America. The Applicant is not a reporting issuer. The Applicant is registered under the Act as an international adviser. The head office of the Applicant is located in Chicago, Illinois.

2. MI 31-102 requires that all registrants in Canada enrol with CDS Inc. (CDS) and use the national registration database (NRD) to complete certain registration filings. As part of the enrolment process, registrants are required to open an account with a member of the Canadian Payments Association from which fees may be paid with respect to NRD by electronic pre-authorized debit (electronic funds transfer or, the EFT Requirement).

3. The Applicant has encountered difficulties in setting up a Canadian based bank account for purposes of fulfilling the EFT Requirement.

4. The Applicant confirms that it is not registered in another category to which the EFT Requirement applies and that Ontario is the only jurisdiction in which it is registered.

5. Staff of the Canadian Securities Administrators has indicated that, with respect to applications from international dealers and international advisers (or applicants in equivalent categories of registration) for relief from the EFT Requirement, it is prepared to recommend waiving the fee normally required to accompany applications for discretionary relief (the Application Fee).

6. For Ontario registrants, the requirement for payment of the Application Fee is set out in section 4.1 of Rule 13-502.

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

**IT IS THE DECISION** of the Director, pursuant to subsection 6.1(1) of MI 31-102 that the Applicant is granted relief from the EFT Requirement for so long as the Applicant:

A. makes acceptable alternative arrangements with CDS for the payment of NRD fees;

B. pays its participation fee under the Act to the Commission by cheque, draft, money order or other acceptable means at the time of filing its application for annual renewal, which shall be no later than the first day of December in each year;

C. pays any applicable activity fees, or other fees that the Act requires it to pay to the Commission, by cheque, draft, money order or other acceptable means at the appropriate time; and

D. is not registered in any Jurisdiction in another category to which the EFT Requirement applies;

**PROVIDED THAT** the Applicant submits a similar application in any other Canadian jurisdiction where it becomes registered as an international dealer or international adviser or in an equivalent registration category;

**AND IT IS THE FURTHER DECISION** of the Director, pursuant to section 6.1 of Rule 13-502, that the Application Fee will be waived in respect of the application for this Decision.

September 30, 2003.

"David M. Gilkes"

### 2.1.13 Deutsche Bank Trust Company Americas - ss. 6.1(1) of MI 31-102 and s. 6.1 of OSC Rule 13-502

**Headnote**

International adviser exempted from the electronic funds transfer requirement pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 National Registration Database and activity fee contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 Fees waived in respect of this discretionary relief, subject to certain conditions.

**Rules Cited**

Multilateral Instrument 31-102 National Registration Database (2003) 26 O.S.C.B. 926, s. 6.1.
Ontario Securities commission Rule 13-502 Fees (2003) 26 O.S.C.B. 867, ss. 4.1 and 6.1.

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

**AND**

**IN THE MATTER OF**
**DEUTSCHE BANK TRUST COMPANY AMERICAS**

**DECISION**
**(Subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* and section 6.1 of Rule 13-502 *Fees*)**

**UPON** the Director having received the application of Deutsche Bank Trust Company Americas (the Applicant) for an order pursuant to subsection 6.1(1) of Multilateral Instrument 31-102 *National Registration Database* (MI 31-102) granting the Applicant relief from the electronic funds transfer requirement contemplated under MI 31-102 and for relief from the activity fee requirement contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 *Fees* (Rule 13-502) in respect of this discretionary relief;

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

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

1. The Applicant is incorporated under the laws of the State of New York in the United States of America. The Applicant is not a reporting issuer. The Applicant is registered under the Act as an international adviser. The head office of the Applicant is located in New York, New York.

2. MI 31-102 requires that all registrants in Canada enrol with CDS Inc. (CDS) and use the national registration database (NRD) to complete certain registration filings. As part of the enrolment

process, registrants are required to open an account with a member of the Canadian Payments Association from which fees may be paid with respect to NRD by electronic pre-authorized debit (electronic funds transfer or, the EFT Requirement).

3. The Applicant has encountered difficulties in setting up a Canadian based bank account for purposes of fulfilling the EFT Requirement.

4. The Applicant confirms that it is not registered in another category to which the EFT Requirement applies and that Ontario is the only jurisdiction in which it is registered.

5. Staff of the Canadian Securities Administrators has indicated that, with respect to applications from international dealers and international advisers (or applicants in equivalent categories of registration) for relief from the EFT Requirement, it is prepared to recommend waiving the fee normally required to accompany applications for discretionary relief (the Application Fee).

6. For Ontario registrants, the requirement for payment of the Application Fee is set out in section 4.1 of Rule 13-502.

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

**IT IS THE DECISION** of the Director, pursuant to subsection 6.1(1) of MI 31-102 that the Applicant is granted relief from the EFT Requirement for so long as the Applicant:

A. makes acceptable alternative arrangements with CDS for the payment of NRD fees;

B. pays its participation fee under the Act to the Commission by cheque, draft, money order or other acceptable means at the time of filing its application for annual renewal, which shall be no later than the first day of December in each year;

C. pays any applicable activity fees, or other fees that the Act requires it to pay to the Commission, by cheque, draft, money order or other acceptable means at the appropriate time; and

D. is not registered in any Jurisdiction in another category to which the EFT Requirement applies;

**PROVIDED THAT** the Applicant submits a similar application in any other Canadian jurisdiction where it becomes registered as an international dealer or international adviser or in an equivalent registration category;

**AND IT IS THE FURTHER DECISION** of the Director, pursuant to section 6.1 of Rule 13-502, that the Application Fee will be waived in respect of the application for this Decision.

September 30, 2003.

"David M. Gilkes"

### 2.1.14 Dundee Wealth Management Inc. - MRRS Decision

**Headnote**

Mutual Reliance Review System - Take-over bid – Relief from the prohibition against collateral benefits and from the identical consideration requirement. Payment in cash in lieu of part cash and part shares of the offeror permitted for holders of shares of the offeree resident in the United States. Employment and consulting agreements entered into between offeror and selling security holders who are also senior officers and/or directors of the offeree or an affiliated company, share purchase agreement and assignment agreement entered into between offeror and selling security holder - agreements negotiated at arm's length and on commercially reasonable terms – agreements entered into for reasons other than to increase the value of the consideration paid to the selling security holders for their shares and that the agreements may be entered into despite the prohibition against collateral benefits. Offeror agrees to obtain minority approval of subsequent going private transaction.

**Statute Cited**

Securities Act R.S.O. 1990, c. S.5, as amended, ss. 97(1), 97(2), 104(2)(a) and 104(2)(c).

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

**AND**

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

**AND**

**IN THE MATTER OF**
**DUNDEE WEALTH MANAGEMENT INC.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Ontario and Québec (the "Jurisdictions") has received an application from Dundee Wealth Management Inc. (the "Offeror") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the provisions in the Legislation:

(a) prohibiting an offeror making or intending to make a take-over bid and any person or company acting jointly or in concert with the offeror from entering into any collateral agreement, commitment or understanding with any holder or beneficial owner of securities of the offeree issuer that has the effect of providing to the holder or owner a consideration of greater value than that offered to other holders of the same class of securities (the "Prohibition on Collateral Benefits"); and

(b) requiring an offeror to offer identical consideration to all holders of securities that are of the same class when a take-over bid is made (the "Identical Consideration Requirement"),

will not apply in connection with the offer (the "Offer"), made by the Offeror pursuant to the Legislation, to purchase all of the issued and outstanding common shares (the "CPFG Shares") of Cartier Partners Financial Group Inc. ("CPFG").

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

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

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

1. The Offeror is a corporation incorporated under the laws of Ontario and has its head office at Scotia Plaza, 55th Floor, 40 King Street West, Toronto, Ontario M5H 4A9. The Offeror is a reporting issuer in all the provinces of Canada and in no other jurisdiction and is not in default of any of the requirements of the Legislation.

2. The authorized capital of the Offeror includes an unlimited number of common shares (the "DWMI Shares") of which, as of October 31, 2003, there were 55,581,165 shares outstanding. The DWMI Shares are listed on the Toronto Stock Exchange.

3. CPFG is a corporation incorporated under the laws of the province of Alberta. The head office of CPFG is located at 130 Dufferin Avenue, Suite 1000, London, Ontario N6A 5R2. CPFG is a reporting issuer in the provinces of British Columbia and Alberta and in no other jurisdiction in Canada and, to the knowledge of the Offeror, is not in default of any of the requirements of the Legislation.

4. The authorized capital of CPFG consists of an unlimited number of common shares of which, to the Offeror's knowledge, 173,128,102 CPFG Shares were issued and outstanding as of October 30, 2003. The CPFG Shares are listed on the TSX Venture Exchange (the "TSXV").

5. Cartier Capital Limited Partnership ("Cartier Capital") is a limited partnership constituted under

the laws of the province of Québec. The head office of Cartier Capital is located at 1800 McGill College Avenue, Suite 2350, Montréal, Québec H3A 3J6. Cartier Capital is not a reporting issuer in any jurisdiction.

6. The largest shareholder of CPFG is Cartier Capital, which currently holds 119,460,836 CPFG Shares, representing approximately 69% of all outstanding CPFG Shares as of October 30, 2003.

7. The limited partners of Cartier Capital are Services Financiers CDPQ Inc., a subsidiary of the Caisse de dépôt et placement du Québec ("CDP"), and Placements Phimax Inc. ("Phimax"). All of the outstanding securities of Phimax are owned, directly or indirectly, by Jean Dumont, Chairman of the Board and Director of CPFG and President of Cartier Capital, Pierre Duhamel, managing director of Cartier Capital, Patrick Lincoln, Secretary, Executive Vice-President and Director of CPFG and managing director of Cartier Capital, Jean Morissette, Executive Vice-President and Director of CPFG and managing director of Cartier Capital and Marc St-Pierre, Chief Investment Officer of CPFG and managing director of Cartier Capital (collectively, the "Executives"). The Executives have an indirect interest in CPFG through their ownership of shares of Phimax.

8. Cartier Mutual Funds Inc. ("CMF") is a corporation incorporated under the laws of Canada. The head office of CMF is located at 1800 McGill College Avenue, Suite 2350, Montréal, Québec H3A 3J6. CMF is the manager, investment advisor and promoter of mutual funds held by CPFG (the "Funds"). 70% of the shares of CMF are held by CPFG and 30% of the shares of CMF are held by Cartier Capital.

9. As of October 31, 2003, CPFG and CMF owe an aggregate of $86.4 million to Cartier Capital pursuant to an amended and restated loan agreement among CMF and Cartier Capital dated as of June 25, 2003, and an amended and restated loan agreement among CPFG and Cartier Capital dated as of June 25, 2003 (collectively, the "Shareholder Loans"). As at December 31, 2003, the aggregate amount outstanding under the Shareholders Loans is expected to be approximately $90 million.

10. On May 22, 2003, following the announcement by Cartier Capital of its intention to solicit offers for the CPFG Shares, the shares that it holds in CMF, and the Shareholder Loans, CPFG's board of directors (the "Board") formed a committee of independent directors (the "Special Committee") to consider potential offers to acquire all of the CPFG Shares and make recommendations regarding such potential offers to the Board.

11. Pursuant to an engagement letter dated September 18, 2003, the Special Committee retained KPMG Corporate Finance Inc. ("KPMG") to provide it with an opinion (the "Fairness Opinion") as to the fairness of any offer to purchase all CPFG Shares, including the Offer, and shares of CMF held by Cartier Capital. KPMG issued its Fairness Opinion with respect to the Offer on November 17, 2003.

12. Cartier Capital and the Offeror entered into a lock-up agreement (the "Lock-up Agreement") dated as of November 11, 2003, as amended on November 17, 2003, pursuant to which:

    (a) the Offeror agreed, subject to certain conditions, to make an offer to purchase all of the CPFG Shares;

    (b) Cartier Capital agreed, subject to certain conditions, to deposit or cause to be deposited all of the CPFG Shares that it owns under the Offer; and

    (c) the Offeror and Cartier Capital entered into the Share Purchase Agreement (defined below) and the Assignment Agreement (defined below).

13. Pursuant to a share purchase agreement (the "Share Purchase Agreement") between the Offeror, Cartier Capital and CMF dated November 11, 2003, and amended on November 17, 2003, the Offeror agreed, subject to certain conditions, to purchase from Cartier Capital 1,109,703 common shares of CMF owned by Cartier Capital for an aggregate purchase price of $4,000,000, to be satisfied by the payment of $3,086,950 in cash and 120,934 DWMI Shares (being the same effective cash/DWMI Shares ratio as under the cash alternative under the Offer).

14. Pursuant to an assignment and assumption agreement (the "Assignment Agreement") between the Offeror, Cartier Capital, CPFG and CMF dated November 11, 2003, and amended on November 17, 2003, Cartier Capital agreed, subject to certain conditions, to assign to the Offeror all of its rights and the Offeror agreed to assume all of Cartier Capital's obligations pursuant to the Shareholder Loans, and the Offeror agreed to pay in consideration therefor a cash amount equal to all principal and interest due thereunder on the date on which the Offeror will first take-up the CPFG Shares deposited under the Offer.

15. The Offeror and CPFG have entered into a support agreement (the "Support Agreement") dated as of November 11, 2003, as amended November 17, 2003, pursuant to which CPFG agreed, subject to certain conditions, to recommend to its shareholders (other than Cartier

Capital) to tender the CPFG Shares that they hold in accordance with the terms and conditions of the Offer.

16. The Offeror has offered to purchase all of the CPFG Shares for consideration per CPFG Share of (i) 0.021192 of a DWMI Share plus (ii) at the option of such holder, any combination of cash ("Cash Consideration") and DWMI Shares to a maximum of $0.54 cash, if such holder chooses all cash, and to a maximum of 0.071523 of a DWMI Share, if such holder chooses all DWMI Shares, subject to a maximum number of additional DWMI Shares of 4,112,340, (provided that if holders of CPFG Shares elect to receive, in aggregate, a greater number of additional DWMI Shares, each holder's election for additional DWMI Shares will be reduced pro-rata). Pursuant to its deposit of CPFG Shares, Cartier Capital has elected to receive all cash in respect of the electable portion of the consideration under the Offer. Assuming CPFG does not issue any additional CPFG Shares and Cartier Capital does not change its cash election, if all remaining CPFG Shareholders elect to receive DWMI Shares, the number of DWMI Shares available under the Offer will be sufficient to satisfy such elections without proration.

17. The Offer was made by way of a single offer and take-over bid circular mailed simultaneously to all holders of CPFG Shares on November 24, 2003, and prepared in accordance with applicable securities legislation (including "prospectus-level" disclosure of the Offeror and pro-forma financial statements) and such other terms and conditions as are required by law.

18. The Offer is conditional on, among other things, (a) acceptance of the Offer by holders of CPFG Shares holding an aggregate of not less than 66 2/3% of the CPFG Shares on a fully diluted basis, and (b) approval of any Going Private Transaction (as defined below) by holders of that number of CPFG Shares, other than Excluded Shares (as defined below), as would constitute a majority of CPFG Shares that may be voted as part of a minority vote pursuant to Policy 5.9 of the TSXV ("TSXV Policy 5.9"), Ontario Securities Commission Rule 61-501 ("OSC Rule 61-501"), or Policy Statement No. Q-27 (Quebec) ("Policy Q-27") ("Majority of the Minority Approval") at a meeting of shareholders of CPFG held to consider a "going private transaction" as defined in such Policies and Rule (a "Going Private Transaction"). For the purposes of the foregoing, "Excluded Shares" means all CPFG Shares which the Offeror would not be permitted to treat as "minority" shares for the purposes of a Going Private Transaction pursuant to TSXV Policy 5.9, OSC Rule 61-501, or Policy Q-27, which for greater certainty shall include, without limitation, all CPFG Shares beneficially owned, directly or indirectly, or controlled or directed by any of Cartier Capital, the CDP, Phimax, and the Executives, and the relevant interested parties and related parties of any of the foregoing, and any person or company acting jointly or in concert with any of the foregoing in respect of the relevant transactions.

19. The Offeror does not beneficially own any CPFG Shares and has no intention of acquiring any CPFG Shares other than pursuant to the Offer prior to the expiry of the Offer.

20. The Offeror's operating subsidiaries are held through its direct subsidiary, DWM Inc. ("DWM"). The Offeror holds an 81.7% interest in DWM and the remaining 18.3% interest in DWM is held by CDP. The Offeror and CDP are parties to a shareholders agreement dated October 2, 2002 relating to DWM (the "DWM Shareholders' Agreement").

Pursuant to the DWM Shareholders' Agreement: (i) the Offeror and the CDP have pre-emption rights with respect to the issue of additional securities of DWM; (ii) the shareholders and DWM's major subsidiaries have agreed to certain restrictions on the transfer and hypothecation of DWM securities or of DWM's major subsidiaries or assets; (iii) the shareholders have agreed to certain rights of first offer and rights of matching offer in respect to transfers of securities of DWM; (iv) DWM and its major subsidiaries have granted CDP rights of matching offer on the sale of shares of the major subsidiaries or of all or substantially all of the assets of the major subsidiaries; and (v) tag along and drag along rights, in certain cases at a price equal to the greater of fair market value and the price offered by a third party purchaser, have been granted to CDP and DWMI.

The Offeror has agreed to enter into an agreement with DWM pursuant to which following the acquisition by the Offeror of 100% of the CPFG Shares, the Offeror will transfer the CPFG Shares, the CMF shares and the Shareholder Loans to DWM (the "Subsequent Transfer") in exchange for consideration equal to the aggregate purchase price paid by the Offeror to acquire the CPFG Shares and the CMF shares and to assume the Shareholder Loans.

The CDP has consented to the Subsequent Transfer. Pursuant to the DWM Shareholders' Agreement, each of the Offeror and CDP have rights of preemption (the "Preemption Rights") with respect to the issuance of additional securities of DWM. Under the Preemption Rights, each of the Offeror and CDP have the right to acquire additional securities of DWM in a manner proportional to each of their holdings, on a fully diluted basis, in DWM so as to give each of them the opportunity to maintain its percentage interest

in DWM on a fully diluted basis. In connection with the completion of these transactions, DWM will be issuing additional securities to the Offeror. Pursuant to CDP's Preemption Rights, CDP will have the opportunity to acquire additional securities in DWM to maintain its current interest in DWM of 18.3%. Should CDP choose not to exercise its Preemption Rights at all, its interest in DWM following the completion of the above transactions will be diluted. At this time, CDP has not indicated its intentions with respect to the Preemption Rights.

21. The Fairness Opinion prepared by KPMG states that: "Based upon and subject to the foregoing and such other matters as we considered relevant, KPMG is of the opinion that as of November 17th, 2003, the Offer is fair, from a financial point of view, to the holders of common shares of Cartier [i.e. CPFG]. As part of this Fairness Opinion, KPMG has taken into consideration the value attributed to CCLP's [i.e. Cartier Capital's] 30% interest in CMF, and the value of the non-cash consideration received pursuant to the Offer."

22. The Share Purchase Agreement and the Assignment Agreement (collectively, the "CCLP Agreements") were negotiated at arm's length and on terms and conditions that are commercially reasonable. The CCLP Agreements have been entered into for valid business purposes and not for the purpose of providing Cartier Capital with a collateral benefit or greater consideration for its CPFG Shares than the consideration to be received by the other holders of CPFG Shares.

23. The Offeror would not have agreed to make the Offer without simultaneously acquiring control over 100% of CMF since the latter is a subsidiary of CPFG and is acting as manager of the Funds.

24. The consideration for the transfer of all the shares of CMF represents approximately 8% to 10% of CMF's assets under management (plus associated debt) which, the Offeror understands, is within valuation ranges standard in the industry. Furthermore, the consideration payable, pursuant to the Share Purchase Agreement, to Cartier Capital for the CMF common shares it owns represents less than 2% of the entire transaction price and, as described in paragraph 13 above, is structured in the same manner as the consideration under the cash alternative under the Offer.

25. The Assignment Agreement provides for the assignment of the Shareholder Loans in consideration for the payment by the Offeror to Cartier Capital of an amount equal to the amounts that will be outstanding pursuant to such loans on the date on which the Offeror will first take-up the CPFG Shares deposited under the Offer. The entering into the Assignment Agreement will not have the effect of providing Cartier Capital with an amount any greater than the amount that it would have received upon the repayment of the Shareholder Loans by the borrowers, which repayment obligation would have been triggered upon completion of the Offer by the change of control provisions contained in the Shareholder Loans.

26. Pursuant to consulting agreements dated November 11, 2003, between the Offeror and each of Jean Dumont, Chairman of the Board and Director of CPFG and President of Cartier Capital, and Patrick Lincoln, Secretary, Executive Vice-President and Director of CPFG and managing director of Cartier Capital and Pierre Duhamel, managing director of Cartier Capital, Messrs. Dumont and Lincoln have agreed to provide (i) services to the Offeror similar to those they currently provide to CPFG and its subsidiaries, and (ii) advice to the Offeror in relation to the integration of the Offeror, CPFG and their respective subsidiaries for a period of six months, and Mr. Duhamel has agreed to provide advice to the Offeror in relation to the integration of the Offeror, CPFG and their respective subsidiaries for a period of two months (collectively, the "Consulting Agreements").

27. Pursuant to services agreements dated November 11, 2003, between the Offeror and each of Jean Morissette, Executive Vice-President and Director of CPFG and managing director of Cartier Capital and Marc St-Pierre, Chief Investment Officer of CPFG and managing director of Cartier Capital, Messrs. Morissette and St-Pierre have agreed to provide (i) services as an employee of the Offeror similar to those they currently provide to CPFG and its subsidiaries, and (ii) advice to the Offeror in relation to the integration of the Offeror, CPFG and their respective subsidiaries on an ongoing basis (collectively, the "Employment Agreements" and, together with the Consulting Agreements, the "Services Agreements").

28. The monthly remuneration payable to each of the Executives pursuant to their respective Services Agreement is approximately 1/12th of such Executive's aggregate annual compensation paid by CPFG, Cartier Capital and CMF. Furthermore, each of the Executives have agreed, either pursuant to their respective Services Agreement or under separate agreement, to non-solicitation and non-competition provisions which are of significant value to the Offeror.

29. The compensation payable to Messrs. Morissette and St-Pierre under their respective Employment Agreement will be finalized after completion of the purchase of the CPFG Shares under the Offer. Such final compensation will be at market rates, and within the Offeror's payout structure in terms

of salary, performance incentives and benefits, for executives at the level of Messrs. Morissette and St-Pierre.

30. The consideration to be paid to Cartier Capital and the Executives for their CPFG Shares to be deposited under the Offer is identical to the consideration to be paid to all other holders of CPFG Shares.

31. The Services Agreements have been negotiated at arm's length and on terms and conditions that are commercially reasonable. The Services Agreements have been entered into primarily for the purpose of assuring DWMI that the integration of Cartier into DWMI and the continued operations of the integrated company will be as successful as possible following completion of the Offer and not for the purpose of providing the Executives with a collateral benefit or greater consideration for their CPFG Shares than the consideration to be received by the other holders of CPFG Shares.

32. DWMI Shares issuable to CPFG shareholders resident in the United States ("U.S. Shareholders") pursuant to the Offer will not be registered or otherwise qualified for distribution under the *Securities Act of 1933* in the United States.

33. According to the shareholder register of CPFG, as of November 7, 2003, there was one U.S. Shareholder holding a total of 20,000 CPFG Shares representing less than 1% of the total outstanding CPFG Shares.

34. A demographic summary report of an investor communication company dated as of November 18, 2003, states that an additional six U.S. Shareholders hold an aggregate of 433,909 CPFG Shares representing approximately 2.5% of the total outstanding CPFG Shares.

35. The Offeror has been advised by its United States legal counsel that it may become subject to reporting or registration requirements under United States securities laws if the Offeror has a certain number of beneficial shareholders in the United States.

36. The Offeror wishes to avoid a broad distribution of securities in the United States so as to avoid the time and expense of complying with the reporting and registration requirements under United States securities laws.

37. The Offeror proposes to deliver the DWMI Shares subject to the Offer, which U.S. Shareholders would otherwise be entitled to receive, to Computershare Trust Company of Canada (the "Depositary"), for sale by the Depositary on behalf of such U.S. Shareholders, as soon as practicable following the payment date for the CPFG Shares tendered by the U.S. Shareholders that are acquired under the Offer. In lieu of receiving the DWMI Shares, each U.S. Shareholder will receive, in addition to the Cash Consideration to which they are entitled, a cash payment equal to such U.S. Shareholder's *pro rata* portion of the net proceeds, after expenses and less any applicable withholding taxes, received by the Depositary upon the sale of the DWMI Shares to which the U.S. Shareholder would otherwise be entitled.

38. The consideration offered to U.S. Shareholders will be increased at the same time and on the same basis as any increase offered by the Offeror to the holders of CPFG Shares resident in Canada.

39. Any sale of DWMI Shares described in paragraph 37 above will be done in a manner intended to maximize the consideration to be received from the sale by the applicable U.S. Shareholder and minimize any adverse impact of the sale on the market for DWMI Shares.

40. Except as to the extent that relief from the Prohibition on Collateral Benefits and Identical Consideration Requirement is granted herein, the Offer is being made in compliance with the requirements under the Legislation concerning take-over bids.

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

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

**THE DECISION** of the Decision Makers under the Legislation is that, in connection with the Offer:

(I) the CCLP Agreements and the Services Agreements are being made for reasons other than to increase the value of the consideration to be paid to Cartier Capital or the Executives for their CPFG shares under the Offer, and may be entered into despite the Prohibition on Collateral Benefits provided that any Going Private Transaction completed by the Offeror subsequent to the Offer receives Majority of the Minority Approval as set out in paragraph 18 above; and

(II) the Offeror is exempt from the Identical Consideration Requirement insofar as the U.S. Shareholders who would otherwise receive DWMI Shares under the Offer will receive cash proceeds as set out in paragraph 37 above.

December 22, 2003.

"H. Lorne Morphy" "Suresh Thakrar"

### 2.1.15 Kyrgoil Holding Corporation - MRRS Decision

**Headnote**

Clause 104(2)(c) - Issuer exempt from the issuer bid requirements of Part XX in connection with the proposed acquisition and purchase for cancellation of common shares of the issuer where the cancellation of the shares is consideration for the purchase of 50% of the shares another company - transaction between issuer and majority shareholders of issuer - transaction approved by special committee of independent directors - transaction is a related party transaction subject to OSC Rule 61-501 – Issuer intends to comply with the minority approval and valuation requirement of Rule 61-501- full disclosure is provided in the information circular.

**Statutes Cited**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 95, 96, 97, 98, 100 and 104(2)(c).

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO**
**AND NEWFOUNDLAND AND LABRADOR**

**AND**

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

**AND**

**IN THE MATTER OF**
**KYRGOIL HOLDING CORPORATION**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, Saskatchewan, Manitoba, Ontario and Newfoundland and Labrador, (collectively, the "Jurisdictions") has received an application from Kyrgoil Holding Corporation ("Kyrgoil") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the provisions of the Legislation relating to delivery of an offer and issuer bid circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up of and payment for securities tendered to an issuer bid, disclosure, restrictions upon purchases of securities, identical consideration and collateral benefits (collectively, the "Issuer Bid Requirements") shall not apply to the payment from Petrofac Resources International Limited ("Petrofac") to Kyrgoil of a portion of the purchase price for common shares of Kyrgyz Petroleum Company ("KPC") owned by Kyrgoil by the cancellation of common shares in Kyrgoil owned by Petrofac;

**AND WHEREAS** pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the

"System"), the Ontario Securities Commission is the principal regulator for this application;

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

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

1. Kyrgoil, a corporation originally incorporated under the *Business Corporations Act* (Ontario), was continued as an international business company under the *International Business Companies Act* ("IBCA") of the British Virgin Islands ("BVI") effective November 20, 2000.

2. Kyrgoil is a reporting issuer in the Provinces of British Columbia, Alberta and Ontario. Its common shares are listed on the Toronto Stock Exchange (the "TSX").

3. The authorized capital of Kyrgoil is an unlimited number of common shares ("Kyrgoil Shares"). As of the date hereof, 132,444,141 Kyrgoil Shares and 3,040,000 options to acquire Kyrgoil Shares are outstanding.

4. Kyrgoil's primary asset is 50% of the outstanding common shares of KPC (the "KPC Interest"), which owns and operates an oil refinery (the "Refinery") in the Kyrgyz Republic. A company controlled by the government of the Kyrgyz Republic owns the other 50% of the outstanding common shares of KPC. Petrofac manages the Refinery pursuant to a management agreement with Kyrgoil.

5. To the knowledge of Kyrgoil, Petrofac also currently owns 85,302,104 Kyrgoil Shares, or approximately 64.4% of the outstanding Kyrgoil Shares.

6. Kyrgoil is proposing to complete a business combination (the "Business Combination") with a group of companies (collectively, the "PDA Group") engaged in the exploration for, and extraction of, oil and natural gas in Indonesia, Malaysia, Spain and the United Kingdom.

7. The PDA Group consists of the following companies:

   (a) Asia Petroleum Development Limited ("Asia-PD"), a corporation incorporated under the laws of BVI on September 2, 2002;

   (b) Petroleum Development Associates (Asia) LLC ("PDA-Asia"), a corporation incorporated under the laws of Delaware on December 4, 2001;

   (c) Petroleum Development Associates LLC ("PDA"), a corporation incorporated under the laws of Delaware on June 22, 2000; and

   (d) Petroleum Development Associates Spain LLC ("PDA-Spain"), a corporation incorporated under the laws of Delaware on October 11, 2001.

8. None of the companies in the PDA Group is a reporting issuer in any of the Jurisdictions.

9. The Business Combination includes the following steps:

   (a) the shareholders of Asia-PD, PDA-Asia, PDA and PDA-Spain transferred their shares of such companies to Petroleum Development Associates (Oil & Gas) Limited ("PDA Holdco"), a corporation incorporated in the BVI under the IBCA;

   (b) PDA Holdco will complete a private placement (the "Private Placement") of securities (the "Private Placement Shares"); and

   (c) PDA Holdco will amalgamate with Kyrgoil under the IBCA to form an amalgamated corporation ("Amalco") on the following basis:

      (i) outstanding shares of PDA Holdco will be exchanged for an aggregate of 23,920,000 common shares of Amalco ("Amalco Shares");

      (ii) each Private Placement Share will be converted into 1.84 Amalco Shares;

      (iii) outstanding Kyrgoil Shares will be exchanged on a one-for-ten basis for Amalco Shares (13,289,414 Amalco Shares);

      (iv) outstanding options to acquire Kyrgoil Shares will be exchanged on a one-for-ten basis for options to acquire Amalco Shares; and

      (v) the exact number of Amalco Shares to be issued as outlined above will be adjusted based on the financial position of the PDA Group and Kyrgoil as at or immediately prior to the closing of the Business Combination.

10. Kyrgoil and the PDA Group have prepared and delivered to the shareholders of Kyrgoil and PDA Holdco a joint information circular (the "Information Circular") in respect of shareholders meetings to be held on or about December 29, 2003 by such companies to consider and vote on approving the Business Combination.

11. In May 2003, the board of directors of Kyrgoil established a special committee (the "Independent Committee"), consisting of Gary Van Nest and Christopher Harrop, directors who are independent of Petrofac. The Independent Committee was established to consider strategic alternatives available to Kyrgoil, including the possible disposition of the KPC Interest, the acquisition of new business opportunities or the liquidation of KPC.

12. In July 2003, Kyrgoil commenced a bidding process for the sale of the KPC Interest. In August 2003, the Independent Committee selected a preferred bidder (the "Bidder") for the KPC Interest. However, in August and September 2003, the Bidder could not establish that it would be able to complete the transaction on terms satisfactory to the Independent Committee.

13. Kyrgoil appointed a qualified and independent valuator (the "Valuator") to prepare a formal valuation of the KPC Interest in 2001, which was completed in May 2002. The Independent Committee requested an updated valuation from the Valuator to reflect changes in KPC's operations and financial performance. The Valuator delivered a final valuation of the KPC Interest (the "Valuation") to the Independent Committee in September 2003.

14. On October 6, 2003, Christopher Harrop, the Senior Vice President of Canaccord Capital Corporation, resigned from the Independent Committee due to a perceived conflict of interest with respect to his interest in Canaccord Capital Corporation, which was retained to provide financial advice to the PDA Group in connection with the Private Placement.

15. On October 6, 2003, Kyrgoil received an unsolicited bid from Peterofac for the KPC Interest, which the Independent Committee subsequently determined was superior to the bids previously received by Kyrgoil. On October 13, 2003, the Independent Committee notified the Bidder that its bid was rejected.

16. On October 16, 2003, the board of directors of Kyrgoil, on the recommendation of the Independent Committee, approved the sale of the KPC Interest by Kyrgoil to Petrofac (the "KPC Interest Sale"). On October 22, 2003, Kyrgoil and Petrofac executed a share purchase agreement (the "Share Purchase Agreement").

17. The aggregate purchase price for the KPC Interest under the Share Purchase Agreement is US$4 million, to be satisfied at closing by (i) a cash payment by Petrofac of US$1 million and (ii) the cancellation of 50,000,000 Kyrgoil Shares or, if the closing occurs after completion of the Business Combination, the number of Amalco Shares corresponding to 50,000,000 Kyrgoil Shares (the "Kyrgoil Share Cancellation"). The number of Kyrgoil Shares to be cancelled was determined by dividing the portion of the purchase price to be satisfied by the Kygroil Share Cancellation, that is US$3 million, by the average closing price of the Kyrgoil Shares on the TSX for the 20 trading days prior to October 16, 2003.

18. The Independent Committee also retained the Valuator to prepare a formal valuation of the Kyrgoil Shares to be cancelled in the Kyrgoil Share Cancellation (the "Non-Cash Consideration Valuation"). The Valuator delivered the Non-Cash Consideration Valuation to the Independent Committee in November 2003.

19. The closing of the KPC Interest Sale is not conditional upon the completion of the Business Combination. However, completion of the KPC Interest Sale is conditional, among other things, upon receipt of the approval of the minority shareholders of Kyrgoil, approval of the TSX or TSX Venture Exchange and consent of the government of the Kyrgyz Republic (collectively, the "Consents"). The parties intend to close the KPC Interest Sale as soon as practicable after receipt of the Consents.

20. The Kyrgoil Share Cancellation is an issuer bid for which no exemption is available from the Issuer Bid Requirements. The number of Kyrgoil Shares that Petrofac would deliver to Kyrgoil for cancellation (i) constitutes more than 5% of the outstanding Kyrgoil Shares and (ii) is anticipated to constitute more than 5% of the Amalco Shares outstanding after completion of the Business Combination.

21. Details of the KPC Interest Sale and the Kyrgoil Share Cancellation have been described in detail in the Information Circular.

22. The KPC Interest Sale constitutes a related party transaction under Ontario Securities Commission Rule 61-501 ("Rule 61-501") because Petrofac owns more than 10% of the outstanding voting securities of Kyrgoil. Kyrgoil has complied or intends to comply with the valuation and minority approval requirements of Rule 61-501 by having obtained the Valuation and the Non-Cash Consideration Valuation and by asking the minority shareholders of Kyrgoil to vote on approving the KPC Interest Sale at the special shareholders' meeting to consider the Business

Combination to be held on or about December 29, 2003.

23. Petrofac has represented to Kyrgoil that Petrofac did not, at the time the Share Purchase Agreement was entered into, and does not at this time, know of any material non-public information in respect of Kyrgoil, KPC or the Refinery.

**AND WHEREAS** pursuant to the System, this Mutual Reliance Review System 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 Issuer Bid Requirements of the Legislation shall not apply to the Kyrgoil Share Cancellation.

December 23, 2003.

"H. Lorne Morphy" "Suresh Thakrar"

### 2.1.16 Talisman Energy Inc. - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Application

– issuer exempt from certain disclosure requirements of NI 51-101 subject to conditions, including the condition to provide a modified statement of reserves data and other information relating to its oil and gas activities containing the information contemplated by, and consistent with, US Disclosure Requirements and US Disclosure Practices.

– issuer exempt from requirement of NI 51-101 that reserves evaluator be independent from issuer, subject to conditions.

**Applicable National Instrument**

National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities – s. 2.1, s. 3.2, s. 4.2(1)(a)(ii) and (iii), s. 4.2(1)(b) and (c), s. 5.3, s. 5.8(a), s. 5.15(a), s. 5.15(b)(i), s. 5.15(b)(iv) and s. 8.1(1).

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**ALBERTA, BRITISH COLUMBIA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR, YUKON, NORTHWEST TERRITORIES AND NUNAVUT**

**AND**

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

**AND**

**IN THE MATTER OF**
**TALISMAN ENERGY INC.**

**MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (the Decision Maker) in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (the Jurisdictions) has received an application from Talisman Energy Inc. (the Filer) for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer be exempted from the following requirements contained in the Legislation:

   1.1 to disclose information concerning oil and gas activities in accordance with sections 2.1, 4.2(1)(a)(ii) and (iii), 4.2(1)(b) and (c), 5.3, 5.8(a), 5.15(a), 5.15(b)(i) and 5.15(b)(iv) of National Instrument 51-101 *Standards of*

*Disclosure for Oil and Gas Activities* (NI 51-101) (collectively, the Canadian Disclosure Requirements);

1.2 that the qualified reserves evaluator appointed under section 3.2 of NI 51-101 be independent of the Filer (the Independent Evaluator Requirement); and

1.3 in Québec, to comply with National Policy Statement No. 2-B *Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators* (NP 2-B) until such time as NI 51-101 is implemented in Québec;

2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief applications (the System), the Alberta Securities Commission is the principal regulator for this application;

3. AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions*, Québec Commission Notice 14-101 or Appendix 1 of Companion Policy 51-101CP;

4. AND WHEREAS the Filer has represented to the Decision Makers that:

4.1 the Filer's head office is in Calgary, Alberta;

4.2 the Filer is an oil and gas issuer that produced an average of more than 100,000 BOEs of oil and gas (converted in the ratio 6 Mcf of gas to 1 bbl of oil) per day in its most recent financial year;

4.3 the Filer is a reporting issuer or equivalent in each of the Jurisdictions;

4.4 the Filer currently has registered securities under the 1934 Act;

4.5 the Filer's common shares are listed on both the Toronto Stock Exchange and the New York Stock Exchange and the Filer's preferred securities are listed on the New York Stock Exchange;

4.6 the Filer is active in capital markets outside Canada where it competes for capital with foreign issuers, and intends to offer securities in the US in the future;

4.7 the Filer believes that a significant portion of its securities are held, or its security holders are located, outside Canada;

4.8 the Filer understands that, for purposes of making an investment decision or providing investment analysis or advice, a significant portion of its investors, lenders and investment analysts in both Canada and the US routinely compare the Filer to US and international oil and gas issuers, and accordingly comparability of its disclosure to their disclosure is of primary relevance to market participants;

4.9 the Filer is subject to different disclosure requirements related to its oil and gas activities under US securities legislation (US Disclosure Requirements) than under the Legislation;

4.10 disclosure concerning oil and gas activities routinely provided by issuers in the US (US Disclosure Practices) differs from the Canadian Disclosure Requirements;

4.11 compliance in Canada with Canadian Disclosure Requirements, and conformity in the US with US Disclosure Requirements and US Disclosure Practices, would require that the Filer either

4.11.1 prepare two separate versions of much of its public disclosure with respect to its oil and gas activities, or

4.11.2 file, to the extent that the SEC permits, information that differs from the US Disclosure Requirements and accompany that information with a warning addressed to the US investor;

exposing the Filer to increased costs, resulting in information that could confuse investors and other market participants, and possibly disadvantaging the Filer in competing for investment capital in the US;

4.12 the Filer's internally-generated reserves data are as reliable as independently-generated reserves data for the following reasons:

4.12.1 the Filer has qualified reserves evaluators within the meaning of NI 51-101; and

4.12.2 the Filer has a well-established reserves evaluation process that is at least as rigorous as would be the case were it to rely upon independent reserves evaluators or auditors; and

4.13 the Filer has adopted written evaluation practices and procedures using the COGE Handbook modified to the extent necessary to reflect the definitions and standards under US Disclosure Requirements;

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

6. AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that

provides the Decision Maker with the jurisdiction to make the Decision has been met;

7. THE DECISION of the Decision Makers under the Legislation is that:

7.1 The Filer is exempt from the Canadian Disclosure Requirements for so long as:

7.1.1 **Annual Filings** – the Filer files with the securities regulatory authorities the following not later than the date on which it is required by the Legislation to file audited financial statements for its most recent financial year:

7.1.1.1 a modified statement of reserves data and other information relating to its oil and gas activities containing the information contemplated by, and consistent with, US Disclosure Requirements and US Disclosure Practices, and for this purpose, US Disclosure Requirements or US Disclosure Practices include:

(i) the information required by the FASB Standard,

(ii) the information required by SEC Industry Guide 2 "Disclosure of Oil and Gas Operations", as amended from time to time, and

(iii) any other information concerning matters addressed in Form 51-101F1 that is required by FASB or by the SEC, and

7.1.1.2 a modified report of qualified reserves evaluators in a form acceptable to the regulator; and

7.1.1.3 except in British Columbia, a modified report of management and directors on reserves data and other information in a form acceptable to the regulator;

7.1.2 **Use of COGE Handbook** – the Filer's estimates of reserves and related future net revenue (or, where applicable, related standardized measure of discounted future net cash flows (the standardized measure)) are prepared or audited in accordance with the standards of the COGE Handbook modified to the extent necessary to reflect the terminology and standards of the US Disclosure Requirements;

7.1.3 **Consistent Disclosure** – subject to changes in US Disclosure Requirements or US Disclosure Practices, the Filer is consistent in its application of standards relating to oil and gas information and its disclosure of such information, within and between reporting periods;

7.1.4 **Disclosure of this Decision and Effect** – the Filer

7.1.4.1 at least annually, files on SEDAR (either as a separate document or in its annual information form) a statement:

(i) of the Filer's reliance on this Decision,

(ii) that explains generally the nature of the information that the Filer has disclosed or intends to disclose in the year in reliance on this Decision and that identifies the standards and the source of the standards being applied (if not otherwise readily apparent), and

(iii) to the effect that the information that the Filer has disclosed or intends to disclose in the year in reliance on this Decision may differ from the corresponding information prepared in accordance with NI 51-101 standards (if that is the case), and explains the difference (if any); and

7.1.4.2 includes, reasonably proximate to all other written disclosure that the Filer makes in reliance on this Decision, a statement:

(i) of the Filer's reliance on this Decision,

(ii) that explains generally the nature of the

information being disclosed and identifies the standards and the source of the standards being applied (if it is not otherwise readily apparent),

(iii) that the information disclosed may differ from the corresponding information prepared in accordance with NI 51-101 standards, and

(iv) that reiterates or incorporates by reference the disclosure referred to in paragraph 7.1.4.1(iii);

7.1.5 **Voluntary extra disclosure** –if the Filer makes public disclosure of a type contemplated in NI 51-101 or Form 51-101F1, but not required by US Disclosure Requirements, and:

7.1.5.1 if the disclosure is of a nature and subject matter referred to in Part 5 of NI 51-101 (other than in a provision included in the definition of Canadian Disclosure Requirements), and if there are no US Disclosure Requirements specific to that type of disclosure, the disclosure is made in compliance with Part 5 of NI 51-101,

7.1.5.2 if the disclosure includes estimates that are in substance estimates of reserves or related future net revenue in categories not required under US Disclosure Requirements,

(i) the disclosure

(A) applies the relevant categories set out in the COGE Handbook, or

(B) sets out the categories being used in enough detail to make them understandable to a reader, identify the source of those categories, states that those categories differ from the categories set out in the COGE Handbook (if that is the case) and either explains any differences (if any) or incorporates by reference disclosure referred to in paragraph 7.1.4.1(iii) if that disclosure explains the differences,

(ii) if the disclosure includes an estimate of future net revenue or standardized measure, it also includes the corresponding estimate of reserves (although disclosure of an estimate of reserves would not have to be accompanied by a corresponding estimate of future net revenue or standardized measure),

(iii) if the disclosure includes an estimate of reserves for a category other than proved reserves (or proved oil and gas reserve quantities), it also includes an estimate of proved reserves (or proved oil and gas reserve quantities) based on the same price and cost assumptions with the price assumptions disclosed,

(iv) unless the extra disclosure is made involuntarily (as contemplated in section 8.4(b) of Companion Policy 51-101CP), the Filer includes disclosure of the same type in subsequent annual filings for as long as the information is material, and

(v) for the purpose of paragraph 7.1.5.2 (iv), if the triggering disclosure was an estimate for a particular property, unless that property is

highly material to the Filer, its subsequent annual disclosure of that type of estimate also includes aggregate estimates for the Filer and by country (or, if appropriate and not misleading, by foreign geographic area), not only estimates for that property, for so long as the information is material;

7.2 the Filer is exempt from the Independent Evaluator Requirement for so long as:

7.2.1 **Internal Procedures** – the Filer maintains internal procedures that will permit preparation of the modified report of qualified reserves evaluator, and preparation of the modified report of management and directors on reserves data and other information;

7.2.2 **Explanatory and Cautionary Disclosure** – the Filer discloses

7.2.2.1 at least annually, the Filer's reasons for considering the reliability of internally-generated reserves data to be not materially less than would be afforded by strict adherence to the requirements of NI 51-101, including a discussion of:

(i) factors supporting the involvement of independent qualified evaluators or auditors and why such factors are not considered compelling in the case of the Filer, and

(ii) the manner in which the Filer's internally-generated reserves data are determined, reviewed and approved, its relevant disclosure control procedures and the related role, responsibilities and composition of responsible management, the board of directors of the Filer and (if applicable) the reserves committee of the board of directors of the Filer; and

7.2.2.2 in each document that discloses any information derived from internally-generated reserves data and reasonably proximate to that disclosure, the fact that no independent qualified reserves evaluator or auditor was involved in the preparation of the reserves data; and

7.2.3 **Disclosure of Conflicting Independent Reports** – the Filer discloses and updates its public disclosure if, despite this Decision, it obtains a final report on reserves data from an independent qualified reserves evaluator or auditor that contains information that is materially different from the Filer's public disclosure record in respect of such reserves data;

7.3 the Filer is exempt from the prospectus and annual information form requirements of the Legislation that require a Filer to disclose information in a prospectus or annual information form in accordance with NI 51-101, but only to the extent that the Filer relies on and complies with this Decision; and

7.4 in Québec, until NI 51-101 comes into force in Québec, the Filer is exempt from the requirements of NP 2-B and may satisfy requirements under the Legislation of Québec that refer to NP 2-B by complying with the requirements of NI 51-101 as varied by this Decision.

8. This Decision, as it relates to either the Canadian Disclosure Requirements or the Independent Evaluator Requirement, will terminate in a Jurisdiction one year after the effective date in that Jurisdiction of any substantive amendment to the Canadian Disclosure Requirements or the Independent Evaluator Requirement, respectively, unless the Decision Maker otherwise agrees in writing.

December 17, 2003.

"Glenda A. Campbell" "Stephen R. Murison"

### 2.1.17 Chartwell Seniors Housing Real Estate Investment Trust - MRRS Decision

**Headnote**

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

**Applicable Ontario Statutory Provisions**

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

**Multilateral Instrument**

Multilateral Instrument 45-102 - Resale of Securities.

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

**AND**

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

**AND**

**IN THE MATTER OF**
**CHARTWELL SENIORS HOUSING REAL ESTATE INVESTMENT TRUST**

**MRRS DECISION DOCUMENT**

**WHEREAS** the Canadian securities regulatory authority or regulator (the **Decision Maker**) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the **Jurisdictions**) has received an application from Chartwell Seniors Housing Real Estate Investment Trust (the **REIT**) for a decision pursuant to the securities legislation of the Jurisdictions (the **Legislation**) that the requirements contained in the Legislation to be registered to trade in a security and to file and obtain a receipt for a preliminary prospectus and a final prospectus (the **Registration and Prospectus Requirements**) shall not apply to the distribution and resale of units of the REIT (**Units**) pursuant to a distribution reinvestment plan to be implemented by the REIT (the **DRIP**);

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

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

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

1. The REIT is an unincorporated, open-ended investment trust established under the laws of the Province of Ontario by a declaration of trust.

2. The beneficial interests in the REIT are divided into Units and the REIT is authorized to issue an unlimited number of Units.

3. Each Unit represents a proportionate undivided beneficial interest in the REIT and entitles holders of Units (**Unitholders**) to one vote at any meeting of Unitholders and to participate *pro rata* in any distributions by the REIT and, in the event of termination of the REIT, in the net assets of the REIT remaining after satisfaction of all liabilities.

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

5. The REIT filed a prospectus dated October 31, 2003 with the securities regulatory authority in each of the Jurisdictions to qualify the distribution of Units to the public in the Jurisdictions. A MRRS Decision document in respect of the prospectus was issued on October 31, 2003. The REIT is now a reporting issuer under the Legislation.

6. The REIT has been formed to directly or indirectly own, operate and manage seniors housing facilities, primarily in Canada. A portfolio of 44 seniors housing facilities will be acquired by the REIT on completion of the offering and related transactions.

7. The specific objectives of the REIT are: (i) to generate stable and growing cash distributions on a tax efficient basis; (ii) to enhance the value of the REIT's assets and maximize long-term Unit value through the management of its assets; and (iii) to expand the asset base of the REIT and increase its distributable income.

8. The REIT currently intends to make cash distributions to Unitholders monthly equal to, on an annual basis, approximately 87% of its distributable income on a basic basis, or approximately 90% of its distributable income accounting for Units granted under the LTIP.

9. The REIT intends to establish the DRIP pursuant to which Unitholders may, at their option, invest cash distributions paid on their Units in additional

Units (**Additional Units**). The DRIP will be available to Unitholders who are Canadian residents and who hold at least 1000 Units.

10. Distributions due to participants in the DRIP (**DRIP Participants**) will be paid to Computershare Trust Company of Canada in its capacity as agent under the DRIP (in such capacity, the **DRIP Agent**) and applied to purchase Additional Units. All Additional Units purchased under the DRIP will be purchased by the DRIP Agent directly from the REIT.

11. The price of Additional Units purchased with distributions due to DRIP Participants will be the volume weighted average of the closing price of the Units on the TSX for the five trading days immediately preceding the relevant distribution date.

12. DRIP Participants will receive a further distribution, payable in Units, equal in value to 3% of each cash distribution that is reinvested under the DRIP.

13. No commissions, service charges or brokerage fees will be payable by DRIP Participants in connection with the DRIP and all administrative costs will be borne by the REIT.

14. DRIP Participants may terminate their participation in the DRIP at any time by providing prior written notice to their broker. Such notice, if actually received at least five business days prior to a distribution record date, will have effect in respect of the next distribution date. If a DRIP Participant elects to terminate his or her participation in the DRIP, he or she will receive all further distributions in cash.

15. The REIT may amend, suspend or terminate the DRIP at any time, provided that such action shall not have a retroactive effect which would prejudice the interests of the DRIP Participants. All DRIP Participants will be sent written notice of any such amendment, suspension or termination.

16. The distribution of the Additional Units by the REIT pursuant to the DRIP cannot be made in reliance on registration and prospectus exemptions contained in the Legislation as the DRIP involves the reinvestment of Distributable Income distributed by the REIT and not the reinvestment of distributions of dividends, interest, capital gains or earnings or surplus of the REIT.

17. The distribution of the Additional Units by the REIT pursuant to the DRIP cannot be made in reliance on registration and prospectus exemptions contained in the Legislation for distribution reinvestment plans of mutual funds, as the REIT is not a "mutual fund" as defined in the Legislation because the Unitholders are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the REIT as contemplated in the definition of "mutual fund" in the Legislation.

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

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

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

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

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

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

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

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

(d) except in Québec, the first trade in Additional Units acquired pursuant to this Decision in a Jurisdiction shall be deemed a distribution or primary distribution to the public under the Legislation of such Jurisdiction unless the conditions in paragraphs 2 through 5 of subsections 2.6(3) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied; and

(e) in Québec, the first trade (alienation) in Additional Units acquired pursuant to this Decision shall be deemed a distribution or primary distribution to the public unless:

  (i) at the time of the first trade, the REIT is a reporting issuer in Québec and is not in default of

any requirement of the Legislation of Québec;

(ii) no unusual effort is made to prepare the market or to create a demand for the Additional Units;

(iii) no extraordinary commission or consideration is paid to a person or company in respect of the trade; and

(iv) if the seller of the Additional Units is an insider of the REIT, the seller has reasonable grounds to believe that REIT is not in default of any requirement of the Legislation of Québec.

December 23, 2003.

"H. Lorne Morphy" "Suresh Thakrar"

## 2.2 Orders

### 2.2.1 Vault Minerals Inc. - ss. 83.1(1)

**Headnote**

Subsection 83.1(1) – issuer deemed to be a reporting issuer in Ontario – issuer has been a reporting issuer in British Columbia since 1982 and in Alberta since 1999 – issuer's securities are listed and posted for trading on the TSX Venture Exchange – continuous disclosure requirements of British Columbia and Alberta substantively the same as those of Ontario.

**Applicable Ontario Statutory Provisions**

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

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

**AND**

**IN THE MATTER OF**
**VAULT MINERALS INC.**

**ORDER**
**(Section 83.1(1))**

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

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

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

1. Vault was incorporated under the laws of British Columbia on September 29, 1980 under the name "Sussex Resources Inc." by filing its memorandum and articles with the British Columbia Registrar of Companies. Vault changed its name on November 26, 1980 to "Diamond Resources Inc." and then on August 9, 1989 to "Diamond International Industries Inc." and finally on December 2, 1999 to "Vault Systems Inc." On December 21, 1999, Vault consolidated its share capital on an eight (8) old for one (1) new share basis. On May 16, 2003, Vault's shareholders approved a special resolution to consolidate Vault's share capital on a six (6) old for one (1) new share basis and changed its name to "Vault Minerals Inc." and accordingly, on June 18, 2003, Vault's name change and share consolidation were effected.

2. Vault's principal business office is located at 430 – 580 Hornby Street, Vancouver, British Columbia V6C 3B6. The registered office of Vault is located at Suite 1600, 609 Granville Street, Vancouver, British Columbia V7Y 1C3.

3. Vault has been a reporting issuer under the *Securities Act* (British Columbia) (the **BC Act**) since June 3, 1982 and became a reporting issuer under the *Securities Act* (Alberta) (the **Alberta Act**) on November 26, 1999 as a result of the merger of the Vancouver Stock Exchange and the Alberta Stock Exchange to form the Canadian Venture Exchange (now known as the TSX Venture Exchange). Vault is not in default of any requirements of the BC Act or the Alberta Act.

4. Vault's common shares are listed for trading on the TSX Venture Exchange (**TSX-V**) under the symbol VMI. Vault is in compliance with all requirements of the TSX Venture Exchange.

5. Vault is not designated as a capital pool company by TSX-V.

6. The authorized capital of Vault consists of 100,000,000 common shares of which 8,397,371 were issued and outstanding as at December 31, 2002. As a result of Vault's recently completed share consolidation and the transaction referred to in paragraph 8 below, Vault has 6,785,541 shares outstanding.

7. On March 13, 2003, Vault entered into an agreement to acquire Goldaur Resources Inc. (**Goldaur**), a privately held Ontario company (the **Acquisition**). The transactions contemplated by the Acquisition were completed on July 22, 2003. The Acquisition was completed by way of statutory amalgamation under which Vault's subsidiary, 2026170 Ontario Limited amalgamated with Goldaur. The resulting company is now a wholly-owned subsidiary of Vault.

8. Under the amalgamation, Goldaur shareholders received an aggregate of 2,499,982 common shares of Vault and warrants entitling them to acquire an additional 2,499,982 common shares of Vault at a price equal to the lesser of $1.50 per share and 300% of the price per share at which Vault completes its first equity financing following a $526,00 private placement of units also completed on July 22, 2003. Goldaur shareholders also received contingent rights to receive an additional 499,988 shares if Vault has not raised $1,000,000 of new equity financing by December 31, 2003 and a further 499,988 shares if the requisite $1,000,000 of new equity financing has not been raised by June 30, 2004.

9. TSX-V requires all of its listed issuers, which are not otherwise reporting issuers in Ontario, to assess whether they have a significant connection

to Ontario as defined in Policy 1.1 of the TSX-V Corporate Finance Manual, and, upon first becoming aware that it has a significant connection to Ontario, to promptly make a *bona fide* application to the Commission to be deemed a reporting issuer in Ontario.

10. Upon completion of the Acquisition, completed by the amalgamation, Vault established a significant connection to Ontario in that a number of registered and/or beneficial shareholders, who collectively hold more than 20% of the outstanding common shares of Vault, are resident in Ontario.

11. The continuous disclosure requirements of the BC Act and the Alberta Act are substantially the same as the requirements under the Act.

12. The materials filed by Vault as a reporting issuer in the Provinces of British Columbia and Alberta since January 1, 1997 are available on the System for Electronic Document Analysis and Retrieval. Vault's continuous disclosure record is up to date and includes a description of Vault's material mineral projects.

13. Neither Vault nor any of its directors, officers nor, to the best knowledge of Vault and its directors and officers, any of its controlling shareholders has: (i) been the subject of any penalties or sanctions imposed by a court relating to the Canadian securities legislation or by a Canadian securities regulatory authority, (ii) entered into a settlement agreement with a Canadian securities regulatory authority, or (iii) been subject to any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor making an investment decision.

14. Neither Vault nor any of its directors, officers nor, to the best knowledge of Vault and its directors and officers, any of its controlling shareholders, is or has been subject to: (i) any known ongoing or concluded investigations by (a) a Canadian securities regulatory authority, or (b) a court or regulatory body, other than a Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision; or (ii) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver-manager or trustee, within the preceding 10 years.

15. Neither Vault nor any of its directors, officers nor, to the best knowledge of Vault and its directors and officers, any of its controlling shareholders is or has been at the time of such event a director or officer of any other issuer which is or has been subject to: (i) any cease trade or similar orders, or order that denied access to any exemptions under Ontario securities law, for a period of more than 30 consecutive days, within the preceding 10 years; or (ii) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver-manager or trustee, within the preceding 10 years.

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

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

December 16, 2003.

"Charlie MacCready"

### 2.2.2 Hampton Securities (USA), Inc. - s. 211 of Reg. 1015

**Headnote**

Application in connection with application for registration as an international dealer, for an order pursuant to section 211 of Regulation 1015 exempting the applicant from the requirement in subsection 208(2) of the Regulation that it carry on the business of an underwriter in a country other than Canada to be able to register in Ontario as an international dealer.

**Statutes Cited**

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

**Regulations Cited**

Regulation made under the Securities Act, R.R.O., Reg. 1015, as am., ss. 100(3), 208(2) and 211.

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

**AND**

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

**AND**

**IN THE MATTER OF**
**HAMPTON SECURITIES (USA), iNC.**

**ORDER**
**(Section 211 of the Regulation)**

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

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

**AND UPON** the Applicant having represented to the Commission that:

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

2. The Applicant is a corporation formed under the laws of the State of New York, United States of America, and has its principal place of business at 141 Adelaide Street West, Toronto, Ontario, but does not do business in Ontario.

3. The Applicant is registered as a broker-dealer with the United States Securities and Exchange Commission (the "SEC"), and with the appropriate state securities authority in state jurisdictions of the United States and the District of Columbia. The Applicant is also a member of the National Association of Securities Dealers (the "NASD").

4. The Applicant's principal business is providing securities executions to customers and registered traders.

5. The Applicant does not currently act as an underwriter (as defined in subsection 1(1) of the Act) in the United States of America. The Applicant does not currently act as an underwriter in any other jurisdiction outside of the United States.

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

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

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

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

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

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

December 19, 2003.

"Theresa McLeod" "Suresh Thakrar"

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# Chapter 3

# Reasons: Decisions, Orders and Rulings

**3.1 Reasons for Decision**

**3.1.1 Mr. X**

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

**AND**

**IN THE MATTER OF**
**MR. X, THE APPLICANT**

**Hearing:** October 15, 2003

| | | |
|---|---|---|
| **Panel:** | Paul M. Moore, Q.C. | - Vice-Chair (Chair of the Panel) |
| | H. Lorne Morphy, Q.C. | - Commissioner |
| | Wendell S. Wigle, Q.C. | - Commissioner |
| **Counsel:** | Kathryn Daniels | - For Staff of the Ontario Securities Commission |
| | Paul Steep | - For Mr. X, the applicant |
| | Lorne Honickman | - For the author |

**REASONS FOR DECISION**

**I. The Proceeding**

[1] This is an application for amendment (the Amendment) of an order (the Section 17 Order) under section 17(1) of the *Securities Act* (the Act) authorizing disclosure of information otherwise prohibited by section 16(1) of the Act. Because of the nature of the application, the hearing was held in camera.

**II. Background**

[2] In 2001 and 2002, the applicant volunteered to be interviewed by staff of the Commission concerning an investigation that was being conducted by staff (the Investigation). Subsequent to interviews of the applicant, two articles were published in a national newspaper containing information which the applicant had disclosed in the interviews. Following publication of these two articles, the applicant commenced an action for defamation (the Defamation Action) against the author of the articles and the national newspaper that published them.

[3] The statement of claim in the Defamation Action, alleges that one of the articles is libellous in its entirety and specifically complains about statements in the article attributable to the author.

[4] As a result of the publication of the articles, the Commission issued an investigation order (the Investigation Order) pursuant to section 11(1) (a) of the Act to investigate how information from the interviews of the applicant was leaked and included in the articles. Pursuant to the Investigation Order, a summons to the author was issued and the author attended at the Commission for an interview.

[5] No transcript of that interview of the author was provided to the panel on this application and we do not have information of what, if anything, the author, in fact disclosed to the Commission. However, staff counsel, in her submission, stated that staff's transcript of the interview does not contain information as to who gave the author the transcripts of the applicant's interviews.

[6] When the author was examined for discovery in the Defamation Action, the author initially refused to answer certain questions. The rationale now given for the refusal is in part that section 16(1) of the Act precluded the answering of those questions. Following this initial stage of the author's examination for discovery, the author applied for the Section 17 Order to permit certain disclosure in the next stage of the examination for discovery.

[7] The applicant was not aware of the application for the Section 17 Order by the author at the time it was made. The Section 17 Order was issued with the consent of both the author and staff. It provided that the author could disclose in the Defamation Action the "existence of the Investigation Order and questions…asked on any of the interviews."

[8] As the Section 17 Order did not expressly state that the author could disclose any answers that were given to the questions asked in the interviews, the applicant now seeks the Amendment to provide

(a) the Commission authorizes the author to disclose to the applicant and/or his counsel the information disclosed to the Commission including the questions asked together with the answers and the documents provided to the Commission pursuant to the Investigation Order;

(b) the Commission authorizes the applicant and/or his counsel to disclose in the Defamation Action anything disclosed in (a) by the author to them.

**III. Position of the Parties**

[9] While all counsel agreed that any order made under section 17(1) of the Act has to be made in the public interest, each differed in his or her submissions as to what was the public interest.

[10] It was also agreed by all counsel that section 16(1) of the Act did not prohibit the author from answering relevant questions on the examination for discovery simply on the ground that those questions had been asked and the information in response to the questions had been given during the author's interview.

[11] Counsel for the applicant submitted that there was a public interest in making the Amendment for two reasons.

[12] First, in voluntarily being interviewed by staff, the applicant had a reasonable expectation of privacy and confidentiality as to what was disclosed in the applicant's interviews. He submitted there is a public interest in the Commission creating circumstances where a person can be voluntarily interviewed and have it treated privately and confidentially. In these circumstances, the person who has given information confidentially to the Commission will want inquiries made as to how that privacy and confidentiality were abused. To satisfy this legitimate concern, there should be a remedy available.

[13] The second reason submitted by counsel for the applicant was to enable the applicant to use in the Defamation Action the responses of the author in the author's interview. Reference was made to the pleading of malice in that action and reliance was placed upon the decision of *Young v. Toronto Star Newspapers Ltd., et al*, [2003] O.J. No. 3100, issued July 29, 2003 ("Young").

[14] Counsel for the author strongly opposed any disclosure and submitted that no public interest had been shown which would justify the disclosure of the author's interview.

[15] Counsel for staff submitted that the onus in this matter was on the applicant to demonstrate that the public interest justifies the Amendment. We agree. She submitted that if the Section 17 Order had not been made, the Amendment should not be granted as the applicant had not met the onus to demonstrate that granting such order, as amended, is in the public interest. She submitted, however, that the Section 17 Order having been made, it is appropriate that the Amendment be made permitting disclosure in the terms sought by the applicant, as the Amendment is really a clarification of the Section 17 Order.

**IV. Analysis**

[16] One issue that arose on the application is whether the terms of the Section 17 Order, properly interpreted, in fact permits the author to disclose – not only the questions that were asked – but the answers given. If such was the case, this application by the applicant would not of course be necessary.

[17] Counsel for the author strongly opposed that interpretation. He submitted that the purpose of the author in seeking the order was only to be able to reveal on the author's examination for discovery that there was an investigation order issued and that the author was summonsed as a witness pursuant to which the author attended at the Commission for the purpose of an interview.

[18] Section 17(1) of the Act provides:

> If the Commission considers that it would be in the public interest, it may make an order authorizing the disclosure to any person or company of,
>
> (a) the nature or content of an order under section 11 or 12;
>
> (b) the name of any person examined or sought to be examined under section 13, any testimony given under section 13, any information obtained under section 13, the nature or content of any questions asked under section 13, the nature or content of any demands for the production of any document or other thing under section 13, or the fact that any document or other thing was produced under section 13; or
>
> (c) all or part of a report provided under section 15. 1994, c. 11, s. 358.

[19] It is of interest to note that section 17(1)(b) breaks down what can be disclosed pursuant to an order under Section 17, and distinguishes among "the nature or content of any questions asked under section 13" and, "any testimony given under section 13," and "any information obtained under section 13."

[20] The Section 17 Order appears to follow the distinctions made in section 17 as to the type of information that can be released in that it authorized the author to disclose the "existence of the investigation order and questions she was asked on any interview."

[21] To give the Section 17 Order a broader interpretation is simply not logical having regard to the purpose of the author in seeking the order. As a defendant in the Defamation Action, it would not make sense for the author to seek an order permitting disclosure on the examination for discovery of the answers given to questions when such could only assist the applicant in the civil action. The Section 17 Order was a consent order and just as the author is opposing the present application to permit the answers to be disclosed, the author would not have consented to such an order if it directed the answers to be given.

[22] Further, the fact that the applicant is making this application rather than seeking enforcement of the Section 17 Order demonstrates that the applicant must be accepting the author's interpretation of the order.

[23] Having regard to confidentiality in connection with the author's interviews imposed by section 16, and the onus that must be met for disclosure as found in section 17, any interpretation of the Section 17 Order should be strict. It would be contrary to the requirements set out in the matter of *Re Coughlan*, (2000) 24 O.S.C.B. 287, (Coughlan) to give the order a broader interpretation even if the words of the order were capable of that interpretation. Incidentally, in our view they are not.

[24] In *Coughlan*, Molloy J., in writing for the court, stated at paragraph 12 - 15:

> 12. I have referred in para. [5] above to the statutory framework as it existed at the time of Mr. Coughlan's examination in 1989. There was a statutory requirement that the information from the examination could not be disclosed without the OSC's consent. As well, there was a written OSC policy that the OSC considered it not to be in the public interest to consent to such release. Since 1988, there has been some development of the applicable law with respect to the requirement of confidentiality and the circumstances in which disclosure is authorized, both through case law and statutory amendment.
>
> 13. In *Biscotti v. Ontario (Securities Commission)* (1991), 1 O.R. (3d) 409 (Ont. C.A.), the Court of Appeal ruled that it was an error in principle for the OSC to make a blanket ruling prior to a hearing that it would not consent to the disclosure of s. 11 transcripts for use by the respondents at the hearing. The Court held that the OSC was required to make such a decision on a witness-by-witness basis, in each case exercising its discretion by weighing all the relevant interests and determining whether principles of fairness and justice required disclosure. The Court specifically rejected the suggestion that the confidentiality requirements under the then s. 14 of the Act were diminished once the investigation had been completed. The Court held that the Commission's rulings as to whether to disclose s. 11 material should be guided by the purposes for which s. 14 was enacted and cited with approval (at pp. 413-414) the following excerpt from the decision of the OSC Chairman as correctly setting out those purposes:
>
> > *The power of the Commission to compel a person to come forward and give statements under oath relating to an investigation is a broad and unusual power afforded by the Legislature to the Commission to enable it to carry out its responsibilities* to the public under the Securities Act. It is not a power to be lightly used *nor in our view should the information gathered be made available to anyone other than staff and counsel conducting the investigation, except in the most unusual circumstances. Any other treatment would prejudice the investigatory responsibilities of the Commission, and could severely prejudice persons whom the Commission staff require to give such statements.*
>
> The fact that, under s. 14 of the Act, statements made pursuant to s. 11 may not be disclosed in any way without the consent of the Commission itself indicates the understanding of the Legislature of the necessity of confidentiality. *This power to compel testimony under s. 11 is exercised, and the statements are given, in the course of an investigation on the understanding that they will not become public in any way.*
>
> We refer in this regard to OSC Policy 2.8, Section A, subsection 3. The information gathered is not intended to be and indeed cannot be used as evidence without appropriate proof at a hearing before the Commission.
>
> The right to compel a witness to make a statement under oath is perhaps the most important tool which staff has in conducting investigations. Information and opinions are divulged which could not be admitted in any proceedings before this tribunal or any other. The very nature of this process under which they are obtained in our view dictates that these statements should not be released or used in the manner suggested by the respondents.
>
> *There undoubtedly are circumstances in which the consent provided for in s. 14 might be given, but it appears to us that the basis for this consent should be that the confidentiality clearly provided for in the statute is outweighed by the public interest in disclosure.*
>
> 14. In *Re Glendale Securities Inc.* (1995), 18 O.S.C.B. 5975, the OSC applied the underlying principles of the Supreme Court's decision in *R. v. Stinchcombe*, [1991] 3 S.C.R. 326 (S.C.C.). *Stinchcombe* addressed the disclosure obligations of the Crown in criminal cases involving indictable offences. While holding that the Crown's obligation to disclose is not absolute, the Court ruled that the constitutional right of the accused to make full answer and defence requires that the Crown produce all relevant information whether or not it will be presented at trial. The Crown has discretion in relation to disclosure of irrelevant materials and the timing of disclosure. As well, the rules of privilege limit the Crown's disclosure obligations. The OSC found the principles relating to disclosure and fairness instructive in its deliberation on the fairness obligations of

> administrative tribunals. Particular reference was made to the elimination of the element of surprise from proceedings to better serve the interests of justice and to the fact that there are no proprietary rights in the "fruits of investigation."
>
> 15. The *Securities Act* has been revised since *Biscotti* and *Stinchcombe*. The disclosure requirements established by both cases have now been codified in the Act. Policy 2.8 (dealing with the OSC's position on disclosure) is no longer in force. The current law on confidentiality and disclosure is set out in ss. 16 and 17 of the *Securities Act*. Section 16(1) prohibits the disclosure of any information obtained from a s. 13 examination (the equivalent of the s. 11 examination in 1989), except in accordance with s. 17. Section 16(2) provides as follows:
>
> > 16(2) Any … testimony given or documents or other things obtained under section 13 shall be for the exclusive use of the Commission and shall not be disclosed or produced to any other person or company or in any other proceeding except in accordance with section 17.

[25] The Amendment would, in effect, allow the applicant to obtain a transcript of the Commission's interview of the author. Indeed, the applicant's counsel stated that this is what he was seeking. The applicant indicated that he sought a transcript for two reasons. The first was that the applicant was owed an explanation as to why there was leakage in what he disclosed during his interviews with the Commission. His counsel argued that, given the circumstances of those interviews, there was a reasonable expectation of privacy and non-disclosure.

[26] On this application, the applicant gave evidence concerning the circumstances under which he gave his interviews, but no evidence was given by him that he was given any assurance of non-disclosure. Even if such an assurance was presumed, in these circumstances, it does not justify the Amendment of the Section 17 Order.

[27] If there was any improper disclosure of the applicant's interviews, it is a matter for staff to pursue. Even if it was in the public interest to permit some disclosure, it would not justify releasing the entire transcript to the applicant (see *Coughlan*, where it is indicated the transcript should be reviewed prior to granting any order under Section 17).

[28] As previously noted, this panel has not seen the transcript of the author's interview but we do know from staff counsel that the transcript does not contain information as to who gave the author the transcripts. It simply would not be appropriate to release the entire transcript or even part of it when it does not appear to even contain the key question to which the applicant seeks an answer.

The second purpose for which the applicant sought the Amendment was to use the transcript in the Defamation Action. *Coughlan* sets out a number of considerations that have to be considered prior to an order under Section 17 being issued for the purpose of pending litigation. One is that it must be shown that the information sought is relevant to the litigation. As noted, counsel for the applicant referred to the pleading of malice and the recent decision of *Young*. The issue of malice in that case centred on the authenticity of the sources used by the Toronto Star writer in the article that was the subject of the defamation. Unlike that case, in this matter there appears to be no real issue as to the source of the information concerning the applicant's interviews and the accuracy of information.

[29] Accordingly, as it has not been shown that the transcript would be relevant and for the other considerations set out in *Coughlan*, it is not in the public interest to make the Amendment to aid the applicant in the Defamation Action.

[30] The onus in this application was on the applicant. For the reasons given, the onus has not been met. The application is dismissed.

December 17, 2003.

"Paul M. Moore" "H. Lorne Morphy" "Wendell S. Wigle"

## 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 |
|---|---|---|---|---|
| Canadian Baldwin Holdings Limited | 12 Dec 03 | 24 Dec 03 | 24 Dec 03 | |
| ePhone Telecom, Inc. | 19 Dec 03 | 31 Dec 03 | | |
| HNR Ventures Inc. | 09 Dec 03 | 19 Dec 03 | 19 Dec 03 | |

### 4.2.1 Management & Insider Cease Trading Orders

| Company Name | Date of Order or Temporary Order | Date of Hearing | Date of Extending Order | Date of Lapse/ Expire | Date of Issuer Temporary Order |
|---|---|---|---|---|---|
| Atlas Cold Storage Income Trust | 02 Dec 03 | 15 Dec 03 | 15 Dec 03 | | |
| Richtree Inc. | 23 Dec 03 | 05 Jan 03 | | | |
| RTICA Corporation | 21 Oct 03 | 03 Nov 03 | 03 Nov 03 | 23 Dec 03 | |
| Saturn (Solutions) Inc. | 21 Oct 03 | 03 Nov 03 | 03 Nov 03 | | |

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## Chapter 7

# Insider Reporting

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

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

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

## Chapter 8

# Notice of Exempt Financings

**Exempt Financings**

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

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

| Transaction Date | Purchaser | Security | Total Purchase Price ($) | Number of Securities |
|---|---|---|---|---|
| 01-Dec-2003 | Alexander and Maria Dekker | ABC American -Value Fund - Units | 150,000.00 | 18,262.00 |
| 01-Dec-2003 | Paul Fryer;Hans Wasmeier & Leslie Mcle | ABC Fully-Managed Fund - Units | 325,402.00 | 34,914.00 |
| 01-Dec-2003 | Robert & Maureen Chislett and Jeff Leigh Sorel Wortsman | ABC Fundamental - Value Fund - Units | 300,000.00 | 17,880.00 |
| 11-Dec-2003 | Lippai Holdings Inc. | Active Control Technology Inc. - Common Shares | 50,000.00 | 500,000.00 |
| 15-Dec-2003 | RCH Capital Ltd. | Active Control Technology Inc. - Common Shares | 0.00 | 500,000.00 |
| 10-Dec-2003 | Helen Suttie | Acuity Pooled Conservative Asset Allocation - Trust Units | 190,147.97 | 12,105.00 |
| 10-Dec-2003 12-Dec-2003 | 7 Purchasers | Acuity Pooled High Income Fund - Trust Units | 852,224.85 | 48,976.00 |
| 11-Dec-2003 | Susan Mawhood | Acuity Pooled High Income Fund - Trust Units | 100,000.00 | 5,739.00 |
| 08-Dec-2003 | Lorinda Farquhar;Donald Farquhar | Acuity Pooled Income Trust Fund - Trust Units | 305,039.62 | 22,699.00 |
| 03-Dec-2003 | Anthony Brunst;Roger Lavictoire | Adherex Technologies Inc. - Notes | 75,000.00 | 2.00 |
| 15-Dec-2003 | 4 Purchasers | Affinity Response (2003) Inc. - Common Shares | 63,054.00 | 42,036.00 |
| 04-Dec-2003 | 8 Purchasers | African Minerals Ltd. - Special Warrants | 15,942,681.48 | 2,000,000.00 |
| 16-Dec-2003 | 18 Purchasers | AIM PowerGen Corporation - Common Shares | 1,364,705.00 | 237,340.00 |

| | | | | |
|---|---|---|---|---|
| 02-Dec-2003 | Ontario Teachers' Pension Plan Board;The K2 Prinicpal Fund LP | AlarmForce Industries Inc. - Common Shares | 1,511,500.00 | 604,600.00 |
| 25-Nov-2003 | Elliott & Page Limited | Amerada Hess Corporation - Preferred Shares | 117,500.00 | 2,350.00 |
| 05-Dec-2003 | 37 Purchasers | Argo Energy Ltd. - Common Shares | 6,268,000.00 | 3,134,000.00 |
| 11-Dec-2003 | Pawnanjit Brah | AutoSoldNow Inc. - Common Shares | 30,000.00 | 120,000.00 |
| 09-Dec-2003 | 12 Purchasers | Avalon Resources Ltd. - Special Warrants | 1,421,204.00 | 726,462.00 |
| 01-Dec-2003 | 17 Purchasers | Azure Dynamics Corporation - Units | 703,902.78 | 1,675,959.00 |
| 11-Dec-2003 | J. Ronald Woods | Buckeye Energy Corporation - Units | 12,500.00 | 250,000.00 |
| 26-Dec-2003 | Ontario Teachers Pension Plan Board | Buffalo Wild Wings, Inc. - Common Shares | 850,000.00 | 50,000.00 |
| 01-Dec-2003 | 13 Purchasers | Cadbury Beverages Canada Inc. - Notes | 222,280,289.80 | 13.00 |
| 01-Dec-2003 | 51 Purchasers | CGX Energy Inc. - Common Shares | 1,788,750.00 | 7,155,000.00 |
| 12-Dec-2003 | Eric S. Sprott | CGX Energy Inc. - Common Shares | 100,000.00 | 312,500.00 |
| 19-Nov-2003 | AGF Management Limited | Chicago Mercantile Exchange Holdings Inc. - Common Shares | 46,364.00 | 692.00 |
| 05-Dec-2003 | 4 Purchasers | Claude Resources Inc. - Common Shares | 2,000,000.00 | 800,000.00 |
| 05-Dec-2003 | Sun Life Assurance Company | Clearwater Finance Inc. - Notes | 20,000,000.00 | 1.00 |
| 05-Dec-2003 | The Canada Life Assurance Company;The Manufacturers Life Insurance Company | Clearwater Finance Inc. - Notes | 20,000,000.00 | 2.00 |
| 12-Nov-2003 | Toronto Dominion Bank | Commercial Metals Company - Notes | 1,997,120.00 | 2,000,000.00 |
| 09-Dec-2003 | 12 Purchasers | Connacher Oil and Gas Limited - Common Shares | 2,998,590.00 | 2,855,800.00 |
| 09-Dec-2003 | 9 Purchasers | Connacher Oil and Gas Limited - Flow-Through Shares | 3,655,530.00 | 2,707,800.00 |
| 30-Dec-2003 | 7 Purchasers | Continuum Resources Ltd. - Units | 617,500.00 | 1,235,000.00 |
| 19-Dec-2003 | Sherfam Inc. | Counsel Corporation - Preferred Shares | 19,938,000.00 | 10,000,000.00 |
| 16-Jun-2003 | Deutsche Bank Securities Inc. | Crystallex International Corporation - Common Shares | 690,000.00 | 3,000,000.00 |

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|---|---|---|---|---|
| 28-Nov-2003 | 11 Purchasers | Diamond Fields International Ltd. - Units | 328,500.00 | 6,600,000.00 |
| 10-Dec-2003 | Kevin Overstrom;CMP 2003 Resources Limited Partnership | Diaz Resources Ltd. - Shares | 920,000.00 | 1,150,000.00 |
| 03-Dec-2003 | Leslie Brune | DNA Genotek Inc. - Convertible Debentures | 75,000.00 | 75,000.00 |
| 15-Dec-2003 | 2 Purchasers | DR Residential Mortgage Trust - Notes | 17,500,000.00 | 2.00 |
| 15-Dec-2003 | 7 Purchasers | Eastmain Resources Inc. - Flow-Through Shares | 1,849,997.20 | 1,761,904.00 |
| 10-Nov-2003 | 20 Purchasers | Endeavour Mining Capital Corp. - Common Shares | 10,376,565.00 | 3,007,700.00 |
| 09-Dec-2003 | The VenGrouth II;The Business Development | ENQ SEMICONDUCTOR INC. - Preferred Shares | 4,134,555.20 | 318,406.00 |
| 08-Dec-2003 | 177763 Canada Inc. | ESS Capital Inc. - Common Shares | 509,334.75 | 2,037,339.00 |
| 18-Dec-2003 | 8 Purchasers | EUROZINC MINING CORPORATION - Units | 3,236,150.00 | 12,944,600.00 |
| 09-Dec-2003 | 5 Purchasers | Fairborne Energy Ltd. - Common Shares | 7,348,725.00 | 1,088,700.00 |
| 04-Dec-2003 | 3 Purchasers | FatPower - Units | 40,400.00 | 505,000.00 |
| 28-Nov-2003 | Kohl ;Hans & Hazel | Fisgard Capital Corporation - Common Shares | 12,000.00 | 12,000.00 |
| 05-Dec-2003 | 44 Purchasers | Formation Capital Corporation - Units | 6,566,250.00 | 26,265,000.00 |
| 10-Nov-2003 | CI Capital Management | FormFactor - Common Shares | 52,000.00 | 2,000.00 |
| 31-Oct-2003 | Bruce Capital;Inc. | Fraser Mackenzie Limited - Common Shares | 175,000.00 | 175,000.00 |
| 19-Dec-2003 | 1 Purchaser | Fraser Mackenzie Limited - Common Shares | 50,000.00 | 50,000.00 |
| 10-Dec-2003 | The VenGrowth Advanced Life | GB Therapeutics Ltd. - Debentures | 2,000,000.00 | 20,000,000.00 |
| 08-Dec-2003 | 29 Purchasers | Globestar Mining Corporation - Units | 4,137,049.50 | 5,516,066.00 |
| 09-Dec-2003 | John Robinson | GLR Resources Inc. - Units | 60,000.00 | 100,000.00 |
| 11-Dec-2003 | 8 Purchasers | Gowest Amalgamated Resources Ltd. - Flow-Through Shares | 265,000.00 | 1,325,000.00 |
| 12-Dec-2003 | Aria Trust | Green Forest Securities Limited - Notes | 140,000,000.00 | 1.00 |
| 01-Dec-2002 20-Dec-2003 | 16 Purchasers | Hillsdale Canadian Aggressive Hedged Equity Fund - Units | 1,457,258.01 | 86,301.00 |

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|---|---|---|---|---|
| 01-Dec-2002<br>30-Nov-2003 | 12 Purchasers | Hillsdale Canadian Market Neutral Equity Fund - Units | 928,988.09 | 82,809.00 |
| 11-Dec-2003 | Sprott Asset Management Inc. | Homebank Technologies Inc. - Units | 888,000.00 | 2,400,000.00 |
| 01-Dec-2003 | 33 Purchasers | Imperial Metals Corporation - Units | 2,964,375.00 | 697,500.00 |
| 25-Nov-2003 | 20 Purchasers | Inca Pacific Resources Inc. - Units | 1,479,000.00 | 7,395,000.00 |
| 04-Dec-2003 | 15 Purchasers | Kalahari Resources Inc. - Units | 275,500.00 | 1,377,500.00 |
| 05-Dec-2003 | Jadonn Holding Corp. | KBSH Enhanced Income Fund - Units | 450,000.00 | 45,000.00 |
| 11-Dec-2003 | Alla Levine | KBSH Enhanced Income Fund - Units | 100,000.00 | 9,993.00 |
| 11-Dec-2003 | Heather McFarland | KBSH Enhanced Income Fund - Units | 40,000.00 | 3,997.00 |
| 11-Dec-2003 | David McFarland | KBSH Enhanced Income Fund - Units | 40,000.00 | 3,997.00 |
| 11-Dec-2003 | Heather and David McFarland | KBSH Enhanced Income Fund - Units | 50,000.00 | 4,997.00 |
| 11-Dec-2003 | Scott Biluk | KBSH Enhanced Income Fund - Units | 300,000.00 | 29,979.00 |
| 10-Dec-2003 | Shelly Mohr | KBSH Enhanced Income Fund - Units | 200,000.00 | 19,994.00 |
| 10-Dec-2003 | Decay Holdings Ltd. | KBSH Enhanced Income Fund - Units | 100,000.00 | 9,997.00 |
| 10-Dec-2003 | Jamie Biluk | KBSH Enhanced Income Fund - Units | 150,000.00 | 14,996.00 |
| 17-Dec-2003 | Susan Pennal | KBSH Enhanced Income Fund - Units | 500,000.00 | 49,816.00 |
| 12-Dec-2003 | Marina DiFrancesco | KBSH Private - Balanced Fund - Units | 150,000.00 | 15,480.00 |
| 12-Dec-2003 | Rita Baron | KBSH Private - Emerging Markets - Units | 42,000.00 | 4,823.00 |
| 12-Dec-2003 | Rita Baron | KBSH Private - Pacific Basin Fund - Units | 51,000.00 | 3,917.00 |
| 12-Dec-2003 | Rita Baron | KBSH Private - U.S. Equity Fund - Units | 55,000.00 | 3,870.00 |
| 01-Dec-2003 | Royal Bank of Canada | King Street Capital, Ltd. - Shares | 2,832,503.00 | 9,724.00 |
| 01-Dec-2003<br>01-Dec-2003 | 33 Purchasers | King & Victoria Fund L.P. - Limited Partnership Units | 9,592,750.00 | 5,716.00 |
| 01-Dec-2003 | 3 Purchasers | Kinwest Corporation - Common Shares | 57,240.00 | 42,400.00 |

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|---|---|---|---|---|
| 01-Dec-2003 | 8 Purchasers | Kirkland Lake Gold Inc. - Common Shares | 7,307,040.00 | 2,200,000.00 |
| 01-Dec-2003 | 8 Purchasers | Kirkland Lake Gold Inc. - Warrants | 7,307,040.00 | 1,100,000.00 |
| 25-Nov-2003 | Altamira Management Ltd. | KOS Pharmaceuticals, Inc. - Common Shares | 1,770,000.00 | 40,000.00 |
| 16-Dec-2003 | 6 Purchasers | Limerick Mines Limited - Special Warrants | 358,750.00 | 1,435,000.00 |
| 11-Dec-2003 | Canada Pension Plan Investment Board | Macquarie Essential Assets Partnership - Limited Partnership Units | 4,402,621.85 | 4,160,792.00 |
| 08-Dec-2003 | 14 Purchasers | Marathon PGM Corporation - Special Warrants | 467,500.00 | 935,000.00 |
| 01-Oct-2003 | 6 Purchasers | MCAN Performance Strategies - Limited Partnership Units | 3,139,380.07 | 30,981.00 |
| 03-Nov-2003 | Royal Palm | MCAN Performance Strategies - Limited Partnership Units | 230,000.00 | 2,128.00 |
| 03-Nov-2003 | Fahla Gran Investments | MCAN Performance Strategies - Limited Partnership Units | 500,000.00 | 4,891.00 |
| 01-Dec-2003 | Wifleur Inc.;Benjamin;Bernard D & Helen | MCAN Performance Strategies - Limited Partnership Units | 584,000.00 | 5,378.00 |
| 01-Dec-2003 | Wifleur Inc.;F. Lee Green | MCAN Performance Strategies - Limited Partnership Units | 1,150,000.00 | 11,837.00 |
| 04-Dec-2003 | Griffiths McBurney & Partners | Medbroadcast Corporation - Common Shares | 1,321,894.91 | 4,895,833.00 |
| 05-Dec-2003 | 10 Purchasers | Messina Minerals Inc. - Common Shares | 274,800.00 | 1,832,000.00 |
| 04-Dec-2003 | 65 Purchasers | MetalCorp Limited - Flow-Through Shares | 3,429,285.00 | 4,492,200.00 |
| 03-Dec-2003 | Wes Durie | Microsource Online, Inc. - Common Shares | 12,000.00 | 2,000.00 |
| 03-Dec-2003 | Larry White | Microsource Online, Inc. - Common Shares | 6,000.00 | 1,000.00 |
| 03-Dec-2003 | Jack Vanderweg | Microsource Online, Inc. - Common Shares | 12,000.00 | 2,000.00 |
| 01-Dec-2003 | D. Brian Harper | Milano Investments Limited Partnership - Limited Partnership Units | 56,948.00 | 1.00 |
| 09-Dec-2003 | 26 Purchasers | Miramar Mining Corporation - Flow-Through Shares | 8,412,444.25 | 2,345,645.00 |
| 05-Dec-2003 | Blackboard Ventures Inc. | New Enterprise Associated 11 - Limited Liability Interest | 19,567,500.00 | 1.00 |

| | | | | |
|---|---|---|---|---|
| 24-Nov-2003 | Brigitte Wittich;Glen Williams | New Solutions Financial (II) Corporation - Debentures | 500,000.00 | 500,000.00 |
| 20-Nov-2003<br>09-Dec-2003 | 3 Purchasers | Newpact Energy Corp. - Common Shares | 500,000.00 | 500,000.00 |
| 10-Dec-2003 | 3 Puerchasers | Nimcat Networks Incorporated - Preferred Shares | 5,000,000.00 | 7,212,031.00 |
| 12-Dec-2003 | Harjit Batth or Amarjit Batth | O'Donnell Emerging Companies Fund - Units | 50,000.00 | 6,836.00 |
| 05-Dec-2003 | 3 Purchasers | O'Donnell Emerging Companies Fund - Units | 98,388.87 | 13,316.00 |
| 15-Dec-2003 | Ray Laborie | Online Hearing.com Inc. - Convertible Debentures | 5,000.00 | 5,000.00 |
| 04-Dec-2003 | Ontario Municipal Employees Retirement Board | O&Y Real Estate Investment Trust - Notes | 9,600,000.00 | 1.00 |
| 03-Dec-2003 | 4 Purchasers | Passion Media Inc. - Shares | 125,000.00 | 833,334.00 |
| 27-Nov-2003 | 43 Purchasers | Petroleum Development Associates (Oil & Gas) Limited - Special Warrants | 2,627,186.59 | 2,654,317.00 |
| 11-Dec-2003 | 29 Purchasers | PharmaGap Inc. - Common Shares | 256,688.91 | 641,722.00 |
| 27-Nov-2003 | The Canada Life Assurance Company | Pioneer Trust - Notes | 10,000,000.00 | 1.00 |
| 27-Nov-2003 | Pacific & Western Bank of Canada | Pioneer Trust - Notes | 7,500,000.00 | 1.00 |
| 27-Nov-2003 | Aegon Capital Management Inc. | Pioneer Trust - Notes | 12,750,000.00 | 1.00 |
| 27-Nov-2003 | Pacific & Western Bank of Canada | Pioneer Trust - Notes | 10,000,000.00 | 1.00 |
| 01-Dec-2003 | 10 Purchasers | Plazacorp Retail Properties Ltd. - Convertible Debentures | 3,050,000.00 | 3,050.00 |
| 17-Dec-2003 | 11 Purchasers | Purcell Energy Ltd. - Common Shares | 6,511,500.00 | 2,170,500.00 |
| 01-Dec-2003<br>05-Dec-2003 | Edward Napke;David Garrard | Recognia Inc. - Notes | 9,000.00 | 2.00 |
| 28-Nov-2003 | 26 Purchasers | Rio Fortuna Exploration Corp. - Units | 475,000.00 | 9,437,500.00 |
| 03-Nov-2003<br>28-Nov-2003 | 1085 Purchasers | Second World Trader Inc. - Units | 2,472,017.00 | 4,752.00 |
| 11-Dec-2003 | 4 Purchasers | Sensus Metering Systems Inc. - Notes | 1,647,750.00 | 4.00 |
| 12-Dec-2003 | T.A.L Investment Counsel;Ltd.;Credit Rish Advisors | SEMCO Energy, Inc. - Notes | 4,118,292.00 | 8.00 |

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|---|---|---|---|---|
| 24-Nov-2003<br>03-Dec-2003 | 15 Purchasers | Shore Gold Inc. - Common Shares | 177,820.00 | 104,600.00 |
| 10-Dec-2003 | Caroline Cathcart;David Tawaststjerna | Skyharbour Resources Ltd. - Units | 30,000.00 | 200,000.00 |
| 03-Dec-2003 | Maple Leaf Foods Inc. | Smithfield Canada Limited - Shares | 440,578.00 | 440,578.00 |
| 11-Dec-2003 | 17 Purchasers | St Andrew Goldfields Ltd - Shares | 2,393,400.00 | 7,978,000.00 |
| 11-Dec-2003 | 31 Purchasers | St Andrew Goldfields Ltd - Units | 5,281,250.00 | 21,125,000.00 |
| 19-Dec-2003 | 9 Purchasers | St Andrew Goldfields Ltd - Units | 167,500.00 | 558,334.00 |
| 29-Dec-2003 | 17 Purchasers | St Andrew Goldfields Ltd - Units | 298,950.00 | 1,195,800.00 |
| 11-Dec-2003 | 4 Purchasers | St Andrew Goldfields Ltd - Warrants | 0.00 | 2,760,000.00 |
| 12-Dec-2003 | Tania & Charles Heintzman | Stonestreet Limited Partnership - Limited Partnership Units | 115,637.52 | 9,997.00 |
| 19-Dec-2003 | Augen Limited Partnership | StrataGold Corporation - Common Shares | 249,975.00 | 454,500.00 |
| 18-Nov-2003 | 4 Purchasers | Stratus Technologies, Inc. - Notes | 950,000.00 | 4.00 |
| 12-Dec-2003 | 75 Purchasers | Stylus Exploration Inc. - Special Warrants | 5,977,410.00 | 22,000,000.00 |
| 03-Dec-2003 | Gerry Griffiths;Bill-Wil Holdings Ltd. | Supratek Pharma Inc. - Common Shares | 405,006.00 | 115,716.00 |
| 10-Oct-2003 | Blackboard Ventures;Inc.;Ontario Municipal Employees | TCV V. L.P. - Limited Partnership Interest | 39,228,000.00 | 30,000,000.00 |
| 19-Dec-2003 | 22 Purchasers | Temagami Forest Products Inc. - Shares | 586,293.12 | 5,863.00 |
| 03-Nov-2003 | Henry Fiorillo Investments Ltd.;Ronald & Nancy Webb | The Alpha Fund - Limited Partnership Units | 1,250,000.00 | 10.00 |
| 01-Dec-2003 | 4 Purchasers | The Alpha Fund - Limited Partnership Units | 725,000.00 | 6.00 |
| 15-Dec-2003 | 3 Purchasers | The Governing Council of The University of Toronto - Debentures | 80,000,000.00 | 9.00 |
| 12-Dec-2003 | Mark Monaghan | Trigon Exploration Canada Ltd. - Units | 49,920.00 | 208,000.00 |
| 18-Dec-2003 | Sun Life Assurance Company of Canada | TriWest Capital Growth Fund Limited Partnership No.II - Limited Partnership Interest | 10,000,000.00 | 1.00 |

| | | | | |
|---|---|---|---|---|
| 14-Nov-2003 | 3 Purchasers | Tularik Inc. - Common Shares | 821,100.00 | 69,000.00 |
| 26-Nov-2003 | Thomas Murdoch;Margaret Murodch | United Carina Resources Corp. - Units | 7,500.00 | 75,000.00 |
| 19-Nov-2003 | RBC Dominion Securities | Valeant Pharmaceuticals International - Notes | 50,000.00 | 2.00 |
| 05-Dec-2003 | 5 Purchasers | Vedron Gold Inc. - Flow-Through Shares | 525,000.00 | 3,000,000.00 |
| 09-Dec-2003 | Gerald Shefsky | Verena Minerals Corporation - Units | 60,000.00 | 400,000.00 |
| 30-Nov-2003 | Catherine Bonnell | Vertex Balanced Fund - Units | 15,000.00 | 2,969.00 |
| 30-Nov-2003 | 6 Purchasers | Vertex Fund - Trust Units | 980,000.00 | 158,977.00 |
| 05-Dec-2003 | 3 Purchasers | Vigil Locating Systems Corporation - Units | 60,000.00 | 150,000.00 |
| 08-Dec-2003 | Charles Rosner Bronfman Family Trust | VLR Food Corporation - Common Shares | 600,000.00 | 250,000.00 |
| 01-Sep-2003 | Byron Kellar | Westmont Investment Management Inc. - Units | 50,000.00 | 50.00 |
| 05-Dec-2003 | 11 Purchasers | Winstar Resources Ltd. - Common Shares | 4,680,860.80 | 3,740,772.00 |
| 11-Dec-2003 | T.A.L. Investment Counsel;Ltd. | WMC Finance Co. - Notes | 1,318,200.00 | 1.00 |
| 10-Dec-2003 | 3 Purchasers | Workgroup Designs Ltd. - Common Shares | 110,000.00 | 733,333.00 |
| 16-Dec-2003 | 13 Purchasers | ZTEST Electronics Inc. - Units | 1,243,593.63 | 1,243,594.00 |

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

| Seller | Security | Number of Securities |
|---|---|---|
| Rodam Equities Ltd. | AlarmForce Industries Inc. - Common Shares | 100,000.00 |
| Arnold T. Kondrat | BRC Development Corporation - Common Shares | 400,000.00 |
| Chengfeng Zhou | China Ventures Inc. - Common Shares | 7,874,000.00 |
| CMG Reservoir Simulation Foundation | Computer Modelling Group Ltd. - Common Shares | 615,900.00 |
| Mustang Minerals Corp. | JML Resources Ltd. - Common Share Purchase Warrant | 697,483.00 |
| Mustang Minerals Corp. | JML Resources Ltd. - Common Shares | 2,431,999.00 |
| Irving Teitelbaum, Stephen Gross | La Senza Corporation - Shares | 300,000.00 |
| Paros Enterprises Limited | Morguard Corporation - Common Shares | 2,000,000.00 |
| Lee Heitman | Partner Jet Corp. - Common Shares | 2,703,544.00 |
| NCI 1997 Limited Partnership | SignalGene Inc. - Common Shares | 2,897,290.00 |

| | | |
|---|---|---|
| Network 1997 Limited Partnership | SignalGene Inc. - Common Shares | 2,311,979.00 |
| Netcap 1997 Limited Partnership | SignalGene Inc. - Common Shares | 1,185,255.00 |
| Network 1999 Technology Limited Partnership | SignalGene Inc. - Common Shares | 334,650.00 |
| NCI 1999 Technology Limited Partnership | SignalGene Inc. - Common Shares | 276,965.00 |
| Netcap 1999 Techlogy Limited Partnership | SignalGene Inc. - Common Shares | 223,861.00 |
| Andrew J. Malion | Spectra Inc. - Common Shares | 275,000.00 |

**REPORTS MADE UNDER SUBSECTION 2.7(1) OF MULTILATERAL INSTRUMENT 45-102 RESALE OF SECURITIES WITH RESPECT TO AN ISSUER THAT HAS CEASED TO BE A PRIVATE COMPANY OR PRIVATE ISSUER - FORM 45-102F1**

| Issuer | Date the Company Ceased to be a Private Company or Private Issuer |
|---|---|
| Marathon PGM Corporation | 12/8/03 |

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## Chapter 11

# IPOs, New Issues and Secondary Financings

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**Issuer Name:**
AIC Private Portfolio Counsel Canadian Pool
AIC Private Portfolio Counsel Global Pool
AIC Private Portfolio Counsel Bond Pool
AIC Private Portfolio Counsel Income Pool
Principal Regulator - Ontario
**Type and Date:**
Preliminary Simplified Prospectus dated December 22, 2003
Mutual Reliance Review System Receipt dated December 23, 2003
**Offering Price and Description:**
Class O Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
AIC Limited
**Project** #601652

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**Issuer Name:**
Barclays Advantaged Corporate Bond Fund
Principal Regulator - Ontario
**Type and Date:**
Preliminary Prospectus dated December 15, 2003
Mutual Reliance Review System Receipt dated December 17, 2003
**Offering Price and Description:**
$ * (Maximum) * Units Price: $10.00 per Unit
Minimum Purchase: 100 Units
**Underwriter(s) or Distributor(s):**
RBC Dominion Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
HSBC Securities (Canada) Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
Dundee Securities Corporation
First Associates Investments Inc.
Raymond James Ltd.
**Promoter(s):**
Barclays Global Investors Canada Limited
**Project** #599585

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**Issuer Name:**
BioMS Medical Corp.
Principal Regulator - Alberta
**Type and Date:**
Preliminary Short Form Prospectus dated December 22, 2003
Mutual Reliance Review System Receipt dated December 23, 2003
**Offering Price and Description:**
$ * - * Units Price: $ * per Unit
**Underwriter(s) or Distributor(s):**
Union Securities Ltd.
**Promoter(s):**
-
**Project** #601889

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**Issuer Name:**
Canadian Imperial Bank of Commerce
Principal Regulator - Ontario
**Type and Date:**
Preliminary Short Form Shelf Prospectus dated December 23, 2003
Mutual Reliance Review System Receipt dated December 24, 2003
**Offering Price and Description:**
$4,000,000,000.00 - Debt Securities (subordinated indebtedness)
Class A Preferred Shares
Class B Preferred Shares
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #602082

---

**Issuer Name:**
Credit Union Central of British Columbia
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Short Form Shelf Prospectus dated December 18, 2003
Mutual Reliance Review System Receipt dated December 22, 2003
**Offering Price and Description:**
$300,000,000.00 - Medium Term Notes (Unsecured)
**Underwriter(s) or Distributor(s):**
CIBC World Markets Inc.
TD Securities Inc.
RBC Dominion Secuities Inc.
**Promoter(s):**
-
**Project** #600602

**Issuer Name:**
Crescent Point Energy Trust
Principal Regulator - Alberta
**Type and Date:**
Preliminary Short Form Prospectus dated December 17, 2003
Mutual Reliance Review System Receipt dated December 18, 2003
**Offering Price and Description:**
$60,562,500.00 - 4,750,000 Trust Units Price: $12.75 per Trust Unit
**Underwriter(s) or Distributor(s):**
Scotia Capital Inc.
FirstEnergy Capital Corp.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Canaccord Capital Corporation
First Associates Investments Inc.
Haywood Securities Inc.
Raymond James Ltd.
**Promoter(s):**
-
**Project** #600176

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**Issuer Name:**
diversiTrust Income + Fund
Principal Regulator - Ontario
**Type and Date:**
Preliminary Prospectus dated December 19, 2003
Mutual Reliance Review System Receipt dated December 22, 2003
**Offering Price and Description:**
Maximum $ * (* Trust Units) Price: $10.00 per Trust Unit
Minimum Purchase: 100 Trust Units
**Underwriter(s) or Distributor(s):**
RBC Dominion Securities Inc.
CIBC World Markets Inc.
Dundee Securities Corporation
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
TD Securities Inc.
HSBC Securities (Canada) Inc.
Canaccord Capital Corporation
Raymond James Ltd.
Berkshire Securities Inc.
First Associates Investments Inc.
Wellington West Capital Inc.
**Promoter(s):**
Dynamic Mutual Funds Ltd.
**Project** #601165

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**Issuer Name:**
Falconbridge Limited
**Type and Date:**
Preliminary Short Form Shelf Prospectus dated December 22, 2003
Receipted on December 22, 2003
**Offering Price and Description:**
U.S. $600,000,000 Debt Securities (Unsecured)
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #601179

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**Issuer Name:**
Guest-Tek Interactive Entertainment Ltd.
Principal Regulator - Alberta
**Type and Date:**
Preliminary Prospectus dated December 18, 2003
Mutual Reliance Review System Receipt dated December 19, 2003
**Offering Price and Description:**
$ * - * Common Shares Price: $ * per Common Share
**Underwriter(s) or Distributor(s):**
BMO Nesbitt Burns Inc.
GMP Securities Ltd.
Research Capital Corporation
**Promoter(s):**
-
**Project** #600949

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**Issuer Name:**
Income & Equity Index Participation Fund
Principal Regulator - Alberta
**Type and Date:**
Preliminary Prospectus dated December 22, 2003
Mutual Reliance Review System Receipt dated December 22, 2003
**Offering Price and Description:**
Maximum $ * ( * Trust Units)
Price: $10.00 per Trust Unit
(Minimum Purchase: 100 Trust Units)
**Underwriter(s) or Distributor(s):**
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
HSBC Securities (Canada) Inc.
Desjardins Securities Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
First Associates Investments Inc.
Raymond James Ltd.
Bieber Securities Inc.
Wellington West Capital Inc.
**Promoter(s):**
Canadian Income Funds Group Inc.
Equity Lift Management Ltd.
**Project** #601287

**Issuer Name:**
Mackenzie Fixed Income Fund
Principal Regulator - Ontario
**Type and Date:**
Preliminary Simplified Prospectus dated December 19, 2003
Mutual Reliance Review System Receipt dated December 23, 2003
**Offering Price and Description:**
Series O Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Mackenzie Financial Corporation
**Project** #601345

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**Issuer Name:**
MD International Value Fund
Principal Regulator - Ontario
**Type and Date:**
Preliminary Simplified Prospectus dated December 16, 2003
Mutual Reliance Review System Receipt dated December 17, 2003
**Offering Price and Description:**
Mutual Fund Securities Net Asset Value
**Underwriter(s) or Distributor(s):**
MD Management Limited
MD Management Limited
**Promoter(s):**
MD Funds Management Inc.
**Project** #599472

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**Issuer Name:**
Meritas Balanced Portfolio Fund
Principal Regulator - Ontario
**Type and Date:**
Preliminary Simplified Prospectus dated December 18, 2003
Mutual Reliance Review System Receipt dated December 19, 2003
**Offering Price and Description:**
Mutual Fund Securities Net Asset Value
**Underwriter(s) or Distributor(s):**
Meritas Financial Inc.
**Promoter(s):**
Meritas Financial Inc.
**Project** #600478

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**Issuer Name:**
PRO-VEST GROWTH & INCOME FUND
Principal Regulator - Ontario
**Type and Date:**
Preliminary Prospectus dated December 17, 2003
Mutual Reliance Review System Receipt dated December 18, 2003
**Offering Price and Description:**
Maximum: $ * (* Units)
Minimum: $ * (* Units)
Price: $10.00 per Unit
Minimum Purchase: 200 Units
**Underwriter(s) or Distributor(s):**
National Bank Financial Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
TD Securities Inc.
HSBC Securities (Canada) Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
Dundee Securities Corporation
First Associates Investments Inc.
Raymond James Ltd.
Wellington West Capital Inc.
**Promoter(s):**
Sentry Select Capital Corp.
**Project** #600349

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**Issuer Name:**
STRATA Income Fund
Principal Regulator - Ontario
**Type and Date:**
Preliminary Prospectus dated December 23, 2003
Mutual Reliance Review System Receipt dated December 24, 2003
**Offering Price and Description:**
$ * - * Preferred Securities $10.00 per Preferred Security
$ * - * Capital Units $15.00 per Capital Unit
**Underwriter(s) or Distributor(s):**
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
TD Securities Inc.
National Bank Financial Inc.
HSBC Securities (Canada) Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
Wellington West Capital Inc.
Dundee Securities Corporation
First Associates Investments Inc.
Raymond James Ltd.
Acadian Securities Incorporated
Middlefield Capital Corporation
Research Capital Corporation
**Promoter(s):**
Middlefield Group Limited
Middlefield Strata Administration Limited
**Project** #601912

**Issuer Name:**
Symmetry US Stock Capital Class
Symmetry Specialty Stock Capital Class
Symmetry Registered Fixed Income Pool
Symmetry Managed Return Capital Class
Symmetry EAFE Stock Capital Class
Symmetry Canadian Stock Capital Class
Principal Regulator - Ontario
**Type and Date:**
Preliminary Simplified Prospectus dated December 19, 2003
Mutual Reliance Review System Receipt dated December 23, 2003
**Offering Price and Description:**
Series A, F and I Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Mackenzie Financial Corporation
**Project** #601377

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**Issuer Name:**
The Leadership Fund Inc.
Principal Regulator - Ontario
**Type and Date:**
Preliminary CPC Prospectus dated December 17, 2003
Mutual Reliance Review System Receipt dated December 18, 2003
**Offering Price and Description:**
$210,000.00 - 1,400,000 Common Shares Price: $0.15 Per Common Share
**Underwriter(s) or Distributor(s):**
Raymond James Ltd.
**Promoter(s):**
-
**Project** #599968

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**Issuer Name:**
The VenGrowth Advanced Life Sciences Fund Inc.
The VenGrowth II Investment Fund Inc.
Principal Regulator - Ontario
**Type and Date:**
Preliminary Prospectus dated December 18, 2003
Mutual Reliance Review System Receipt dated December 19, 2003
**Offering Price and Description:**
Class A Shares
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
APFA/AGFFP Sponsor Corp.
**Project** #600456

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**Issuer Name:**
Algonquin Power Venture Fund Inc.
**Type and Date:**
Final Prospectus dated December 18, 2003
Receipted on December 18, 2003
**Offering Price and Description:**
Class A Shares
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #584425

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**Issuer Name:**
AnorMED Inc.
Principal Regulator - British Columbia
**Type and Date:**
Final Short Form Prospectus dated December 17, 2003
Mutual Reliance Review System Receipt dated December 17, 2003
**Offering Price and Description:**
$25,480,000.00 - 5,200,000 Common Shares Price: $4.90 per Common Share
**Underwriter(s) or Distributor(s):**
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Raymond James Ltd.
Desjardins Securities Inc.
**Promoter(s):**
-
**Project** #598219

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**Issuer Name:**
Brookfield Properties Corporation
Principal Regulator - Ontario
**Type and Date:**
Final Short Form Prospectus dated December 23, 2003
Mutual Reliance Review System Receipt dated December 23, 2003
**Offering Price and Description:**
$200,000,000.00 - 8,000,000 Class AAA Preference Shares, Series I
**Underwriter(s) or Distributor(s):**
Scotia Capital Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
HSBC Securities (Canada) Inc.
Desjardins Securities Inc.
Research Capital Corporation
Canaccord Capital Corporation
Trilon Securities Corporation
Westwind Partners Inc.
**Promoter(s):**
-
**Project** #598733

**Issuer Name:**
Canadian Science and Technology Growth Fund Inc.
Principal Regulator - Ontario
**Type and Date:**
Final Prospectus dated December 19, 2003
Mutual Reliance Review System Receipt dated December 22, 2003
**Offering Price and Description:**
Class A Shares
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #589020

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**Issuer Name:**
CI World Equity Fund
CI Explorer Fund
CI American Growth Fund
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated December 16, 2003 to Final Simplified Prospectuses and Annual Information Forms dated July 15, 2003
Mutual Reliance Review System Receipt dated December 22, 2003
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
CI Mutual Funds Inc.
**Project** #550627

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**Issuer Name:**
Covington Fund II Inc.
**Type and Date:**
Final Prospectus dated December 19, 2003
Receipted on December 22, 2003
**Offering Price and Description:**
Class A Shares
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Covington Capital Corporation
**Project** #588843

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**Issuer Name:**
Dominion Canada Finance Company
Principal Regulator - Alberta
**Type and Date:**
Final Short Form Shelf Prospectus dated December 22, 2003
Mutual Reliance Review System Receipt dated December 22, 2003
**Offering Price and Description:**
Cdn. $500,000,000.00 - Medium Term Notes (unsecured)
**Underwriter(s) or Distributor(s):**
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
**Promoter(s):**
-
**Project** #597996

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**Issuer Name:**
Explorer Flow-Through Limited Partnership
Principal Regulator - Ontario
**Type and Date:**
Final Prospectus dated December 16, 2003
Mutual Reliance Review System Receipt dated December 17, 2003
**Offering Price and Description:**
Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Explorer Management Limited
Middlefield Group Limited
**Project** #595869

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**Issuer Name:**
Finning International Inc.
Principal Regulator - British Columbia
**Type and Date:**
Final Short Form Shelf Prospectus dated December 23, 2003
Mutual Reliance Review System Receipt dated December 23, 2003
**Offering Price and Description:**
$500,000,000.00 - Debt Securities (unsecured)
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #581043

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**Issuer Name:**
First Ontario Labour Sponsored Investment Fund Ltd.
**Type and Date:**
Final Prospectus dated December 19, 2003
Receipted on December 23, 2003
**Offering Price and Description:**
Class A Series I Shares and Class A Series III Shares
**Underwriter(s) or Distributor(s):**
Promittere Securities Limited
**Promoter(s):**
First Ontario Management Ltd.
**Project** #592299

**Issuer Name:**
Flowing Energy Corporation
Principal Regulator - Alberta
**Type and Date:**
Final Short Form Prospectus dated December 23, 2003
Mutual Reliance Review System Receipt dated December 23, 2003
**Offering Price and Description:**
$10,000,080.00 - 3,508,800 Units Price: $2.85 per Unit
**Underwriter(s) or Distributor(s):**
Octagon Capital Corporation
GMP Securities Ltd.
Canaccord Capital Corporation
**Promoter(s):**
Michael R. Binnion
**Project** #597283

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**Issuer Name:**
Gerdau Ameristeel Corporation
GUSAP Partners
**Type and Date:**
Final Short Form Prospectuses dated December 18, 2003
Receipted on December 18, 2003
**Offering Price and Description:**
US$405,000,000 103/8% Senior Notes due 2011 which may be delivered
upon the exchange of US$405,000,000 103/8% Senior Notes due 2011
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #597032 & 597025

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**Issuer Name:**
Golden Star Resources Ltd.
Principal Regulator - British Columbia
**Type and Date:**
Final Short Form Prospectus dated December 18, 2003
Mutual Reliance Review System Receipt dated December 18, 2003
**Offering Price and Description:**
US$7.50 per Common Share - 6,600,000 Common Shares
**Underwriter(s) or Distributor(s):**
BMO Nesbitt Burns Inc.
Orion Securities Inc.
Canaccord Capital Corporation
National Bank Financial Inc.
RBC Dominion Securities Inc.
Westwind Partners Inc.
**Promoter(s):**
-
**Project** #598541

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**Issuer Name:**
Hawker Resources Inc.
Principal Regulator - Alberta
**Type and Date:**
Final Short Form Prospectus dated December 19, 2003
Mutual Reliance Review System Receipt dated December 19, 2003
**Offering Price and Description:**
$45,360,000.00 - 11,200,000 Common Shares Price: $4.05 per Common Share
**Underwriter(s) or Distributor(s):**
Peters & Co. Limited
Tristone Capital Inc.
FirstEnergy Capital Corp.
GMP Securities Ltd.
CIBC World Markets Inc.
**Promoter(s):**
-
**Project** #598936

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**Issuer Name:**
Ivanhoe Mines Ltd.
Principal Regulator - British Columbia
**Type and Date:**
Final Short Form Prospectus dated December 17, 2003
Mutual Reliance Review System Receipt dated December 17, 2003
**Offering Price and Description:**
U.S.$49,996,800.00 - 5,760,000 Common Shares and 5,760,000 Share Purchase Warrants to be issued upon the exercise of 5,760,000 Special Warrants
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #597258

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**Issuer Name:**
Lawrence Enterprise Fund Inc.
**Type and Date:**
Final Prospectus dated December 15, 2003
Receipted on December 24, 2003
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #586123

**Issuer Name:**
Mackenzie Cundill Recovery Fund
Mackenzie Cundill Value Fund
Mackenzie Cundill RSP Value Fund
Mackenzie Ivy Foreign Equity Fund
Mackenzie Ivy RSP Foreign Equity Fund
Mackenzie Select Managers Fund
Mackenzie Select Managers RSP Fund
Mackenzie Universal European Opportunities Fund
Mackenzie Universal RSP European Opportunities Fund
Mackenzie Universal Global Future Fund
Mackenzie Universal RSP Global Future Fund
Mackenzie Universal International Stock Fund
Mackenzie Universal RSP International Stock Fund
Mackenzie Universal World Growth RRSP Fund
Mackenzie Cundill Global Balanced Fund
Mackenzie Ivy Global Balanced Fund
Mackenzie Ivy RSP Global Balanced Fund
Mackenzie Sentinel RRSP Global Bond Fund
Mackenzie Sentinel Tactical Global Bond Fund
Mackenzie Universal Canadian Resource Fund
Mackenzie Universal Precious Metals Fund
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectuses dated December 19, 2003
Mutual Reliance Review System Receipt dated December 24, 2003
**Offering Price and Description:**
Series A, C, F, I, O and T Units @ Net Asset Value
**Underwriter(s) or Distributor(s):**
Quadrus Investment Services Ltd.
**Promoter(s):**
Mackenzie Financial Corporation
**Project** #590264

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**Issuer Name:**
Mackenzie Cundill Canadian Security Fund
Mackenzie Growth Fund
Mackenzie Ivy Canadian Fund
Mackenzie Ivy Enterprise Fund
Mackenzie Maxxum Canadian Equity Growth Fund
Mackenzie Maxxum Canadian Value Fund
Mackenzie Maxxum Dividend Fund
Mackenzie Maxxum Dividend Growth Fund
Mackenzie Select Managers Canada Fund
Mackenzie Universal Canadian Growth Fund
Mackenzie Universal Future Fund
Mackenzie Universal U.S. Growth Leaders Fund
Mackenzie Universal RSP U.S. Growth Leaders Fund
Mackenzie Universal U.S. Blue Chip Fund
Mackenzie Universal RSP U.S. Blue Chip Fund
Mackenzie Balanced Fund
Mackenzie Cundill Canadian Balanced Fund
Mackenzie Ivy Growth and Income Fund
Mackenzie Maxxum Canadian Balanced Fund
Mackenzie Maxxum Pension Fund
Mackenzie Sentinel Bond Fund
Mackenzie Sentinel Cash Management Fund
Mackenzie Sentinel Corporate Bond Fund
Mackenzie Sentinel High Income Fund
Mackenzie Sentinel Income Fund
Mackenzie Sentinel Money Market Fund
Mackenzie Sentinel Mortgage Fund
Mackenzie Sentinel Real Return Bond Fund
Mackenzie Sentinel Short-Term Bond Fund
Mackenzie Universal Canadian Balanced Fund
Mackenzie Universal Canadian Tactical Fund
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectuses dated December 15, 2003
Mutual Reliance Review System Receipt dated December 18, 2003
**Offering Price and Description:**
Series A, , B, C, F, I, O, M and  Units @ Net Asset Value
**Underwriter(s) or Distributor(s):**
Quadrus Investment Services Inc.
Quadrus Investment Services Ltd.
**Promoter(s):**
Mackenzie Financial Corporation
**Project** #587479

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**Issuer Name:**
Nexen Inc.
Principal Regulator – Alberta
**Type and Date:**
Amendment #1 dated December 16, 2003 to Final Short Form Base Shelf Prospectus dated October 22, 2003
Mutual Reliance Review System Receipt dated December 18, 2003
**Offering Price and Description:**
US $2,000,000,000.00  -  Senior Debt Securities
Subordinated Debt Securities
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #580692

**Issuer Name:**
ProMetic Life Sciences Inc.
Principal Regulator - Quebec
**Type and Date:**
Final Short Form Prospectus dated December 18, 2003
Mutual Reliance Review System Receipt dated December 19, 2003
**Offering Price and Description:**
$20,000,000.40 - 10,526,316 Subordinate Voting Shares
PRICE: $1.90 per Subordinate Voting Share
**Underwriter(s) or Distributor(s):**
Loewen, Ondaatje, McCutcheon Limited
Canaccord Capital Corporation
Dundee Securities Corporation
**Promoter(s):**
-
**Project** #598960

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**Issuer Name:**
RoyNat Canadian Diversified Fund Inc.
Principal Regulator - Ontario
**Type and Date:**
Final Prospectus dated December 23, 2003
Mutual Reliance Review System Receipt dated December 24, 2003
**Offering Price and Description:**
Class A Shares
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
CLac B.E.S.T. Sponsor Inc.
6154417 Canada Inc.
6154409 Canada Inc.
**Project** #585229

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**Issuer Name:**
SAMSys Technologies Inc.
Principal Regulator - Ontario
**Type and Date:**
Final Prospectus dated December 18, 2003
Mutual Reliance Review System Receipt dated December 19, 2003
**Offering Price and Description:**
12,000,000 Common Shares and 6,000,000 Common Share Purchase Warrants
to be issued upon the exercise of 12,000,000 previously issued Special Warrants
**Underwriter(s) or Distributor(s):**
First Associates Investments Inc.
Clarus Securities Inc.
**Promoter(s):**
-
**Project** #595767

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**Issuer Name:**
Stressgen Biotechnologies Corporation
Principal Regulator - British Columbia
**Type and Date:**
Final Short Form Prospectus dated December 17, 2003
Mutual Reliance Review System Receipt dated December 17, 2003
**Offering Price and Description:**
$20,000,000.00 - 10,638,298 Units Price: $1.88 per Unit
**Underwriter(s) or Distributor(s):**
Canaccord Capital Corporation
Raymond James Ltd.
Desjardins Securities Inc.
Orion Securities Inc.
Dlouhy Merchant Group Inc.
**Promoter(s):**
-
**Project** #598377

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**Issuer Name:**
Synergy Canadian Growth Class
Synergy Canadian Momentum Class
Synergy Canadian Small Cap Class
Synergy Canadian Value Class
Synergy Canadian Style Management Class
Synergy Canadian Short-Term Income Class
Synergy Global Growth Class
Synergy Global Momentum Class
Synergy Global Value Class
Synergy Global Style Management Class
Synergy American Growth Class
Synergy European Momentum Class
Synergy Global Short-Term Income Class
Synergy Tactical Asset Allocation Fund
Synergy Extreme Canadian Equity Fund
Synergy Canadian Income Fund
Synergy Extreme Global Equity Fund
Principal Regulator - Ontario
**Type and Date:**
Amendment #3 dated December 15, 2003 to Final Simplified Prospectuses and Annual Information Forms dated August 25, 2003
Mutual Reliance Review System Receipt dated December 19, 2003
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
CI Mutual Funds Inc.
**Project** #558906

**Issuer Name:**
The VenGrowth Advanced Life Sciences Fund Inc.
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated December 17, 2003 to Final Prospectus dated December 10, 2002
Mutual Reliance Review System Receipt dated December 23, 2003
**Offering Price and Description:**
Class A Shares
Offering Price: Net Asset Value per Class A Share
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
APSFA/AGFFP SPONSOR CORP.
**Project** #482149

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**Issuer Name:**
The VenGrowth II Investment Fund Inc.
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated December 17, 2003 to Final Prospectus dated December 10, 2002
Mutual Reliance Review System Receipt dated December 23, 2003
**Offering Price and Description:**
Class A Shares
Offering Price: Net Asset Value per Class A Share
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
APSFA/AGFFP SPONSOR CORP.
**Project** #482151

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**Issuer Name:**
VentureLink Diversified Income Fund Inc.
**Type and Date:**
Amendment #2 dated December 12, 2003 to Final Prospectus dated November 29, 2002
Receipted on December 17, 2003
**Offering Price and Description:**
Class A Shares, Series I and II
**Underwriter(s) or Distributor(s):**
Skylon Funds Management Inc.
**Promoter(s):**
CFPA Sponsor Inc.
Skylon Funds Management Inc.
**Project** #485281

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**Issuer Name:**
VentureLink Fund Inc.
**Type and Date:**
Amendment #2 dated December 12, 2003 to Final Prospectus dated January 20, 2003
Receipted on December 17, 2003
**Offering Price and Description:**
Class A Shares Series I and II
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
VentureLink Partners Inc.
CFPA Sponsor Inc.
**Project** #501210

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**Issuer Name:**
Yamana Gold Inc.
Principal Regulator - Ontario
**Type and Date:**
Final Short Form Prospectus dated December 17, 2003
Mutual Reliance Review System Receipt dated December 17, 2003
**Offering Price and Description:**
Cdn.$20,000,000.00 - 6,250,000 Common Shares Price: Cdn.$3.20 per Common Share
**Underwriter(s) or Distributor(s):**
Canaccord Capital Corporation
BMO Nesbitt Burns Inc.
Sprott Securities Inc.
Westwind Partners Inc.
**Promoter(s):**
Santa Elina Mines Corporation
**Project** #598081

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**Issuer Name:**
Cogient Corp.
**Type and Date:**
Rights Offering dated December 11, 2003
Accepted December 17, 2003
**Offering Price and Description:**
Rights to Subscribe for Units 39,530,012 @ $0.15 per Unit
**Underwriter(s) or Distributor(s):**
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**Promoter(s):**
-
**Project** #589429

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# Chapter 12

# Registrations

### 12.1.1 Registrants

| Type | | Company | Category of Registration | Effective Date |
|---|---|---|---|---|
| Change of name | From:<br>To: | Middlefield Securities Limited<br>Middlefield Capital Corporation | Investment Dealer | December 5, 2003 |
| Change of name | From:<br>To: | UBS Warburg LLC<br>UBS Securities LLC | International Dealer | May 13, 2003 |
| Change of name | From:<br>To: | Dresdner Kleinwort Wasserstein, Inc.<br>Dresdner Kleinwort Wasserstein, LLC | International Dealer | June 16, 2003 |

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# Chapter 13

# SRO Notices and Disciplinary Proceedings

### 13.1.1 TSX Request for Comments - Amendments to Parts V, VI and VII of the Toronto Stock Exchange Company Manual in Respect of Non-Exempt Issuers, Changes in Structure of Issuers' Capital and Delisting Procedures

**TORONTO STOCK EXCHANGE**

**REQUEST FOR COMMENTS**

**AMENDMENTS TO PARTS V, VI AND VII OF THE TORONTO STOCK EXCHANGE COMPANY MANUAL IN RESPECT OF NON-EXEMPT ISSUERS, CHANGES IN STRUCTURE OF ISSUERS' CAPITAL AND DELISTING PROCEDURES**

On August 2, 2002 Toronto Stock Exchange ("TSX") originally published for comment amendments (the "Original Amendments") to Parts V, VI and VII of TSX Company Manual (the "Manual"). As a result of the comments received by TSX from the public and the Ontario Securities Commission (the "OSC") since that time, substantive and technical changes have been made to the Original Amendments and the new amendments to the Manual (the "Amendments") are therefore being republished for a 30 day comment period. The Amendments are intended to provide transparency to current standards and practices of TSX in respect of non-exempt issuers (Part V), changes in structure of issuers' capital (Part VI) and delisting procedures (Part VII). A blacklined copy of the amendment is available on the TSX website or by contacting the TSX directly.

The Amendments will be effective upon approval by the OSC following public notice and comment. Comments should be in writing and delivered by February 13, 2004 to:

Robert M. Fabes
Senior Vice President
Toronto Stock Exchange
The Exchange Tower
130 King Street West
Toronto, Ontario M5X 1J2
Fax: (416) 947-4547
Email: robert.fabes@tsx.com

A copy should also be provided to the:

Manager
Market Regulation
Capital Markets
Ontario Securities Commission
20 Queen Street West
Toronto, Ontario M5H 3S8

Comments will be publicly available unless confidentiality is requested.

**Overview**

TSX is seeking comments on the Amendments. The Amendments are intended to provide listed issuers with a complete and transparent set of TSX standards and practices allowing issuers and investors, and their respective advisors, to have certainty when planning and completing transactions. TSX believes that this will result in more efficient, cost effective access to Canadian capital markets.

The purpose of this Request for Comments and the Comparative Analysis table attached as Appendix A, is to provide the reader with the main themes of the Amendments. Specific questions are included under the heading "Principal Amendments" in order to draw attention to the primary themes of the Amendments. In addition, the Comparative Analysis table provides a summary overview of the principal amendments being proposed. Readers are encouraged to review the entirety of the text of the Amendments, attached as Appendix B, together with the material provided for in this Request for Comments, in order to gain a complete understanding of the Amendments.

Once finalized, the Amendments will constitute the entire body of TSX standards and practices in respect of non-exempt issuers (Part V), changes in structure of issuers' capital (Part VI) and delisting procedures (Part VII). As new standards and practices develop, TSX will continue to publish these by way of notices to issuers and their advisors and updates to the Manual.

**Background**

Over the years, TSX has developed a body of standards and staff practices which has not always been published. Recognizing the importance of transparency, this review was undertaken with the goal of publishing a complete set of standards and practices for issuers, investors and their respective advisors.

In conducting its review, TSX compiled all written and unwritten standards and practices. We also completed a comparative analysis of standards and practices of other exchanges (TSX Venture, New York Stock Exchange, Nasdaq, London Stock Exchange and Australian Stock Exchange). A number of key stakeholders across Canada were consulted, including issuers, lawyers, institutional investors and shareholder rights groups.

Following its review and consultation with key stakeholders, TSX published for comment the Original Amendments on August 2, 2002. As a result of the original request for comments, nine written comment letters were received by TSX, as well as comments and discussions with the OSC. An additional nine letters were received by TSX in support of one of the comment letters submitted. A summary of the comments received and the corresponding TSX responses is attached as Appendix C.

TSX gratefully acknowledges the time and effort of the commenters in providing their written comments. TSX also wishes to acknowledge Blake, Cassels & Graydon, LLP for their assistance in compiling background research material and providing analysis and recommendations for the Amendments.

**Principal Amendments**

A description and analysis of the principal amendments follows. In order to generate additional discussion and comment, TSX has indicated specific questions to be considered by readers. Certain proposed amendments which appeared in the Original Amendments have been highlighted in this Request for Comments as a result of significant public comment. Where the substantive provisions of the Amendments have not been changed since the Original Amendments and no significant public comments were received, no further questions have been posed. In addition, a number of new amendments which were not contained in the Original Amendments appear in at the end of this section (see Section 10. Additional Amendments).

Please note that attached as Appendix A is a Comparative Analysis in table form of the existing TSX standards and practices as compared with the principal amendments. Readers are encouraged to review this section together with the table and the full text of the Amendments in order to gain a complete understanding of the Amendments.

***1. Discretion***

Currently, TSX has the ability to exercise discretion in granting relief from certain provisions of the Manual or in imposing additional conditions on proposed transactions. While such discretion has been exercised consistently, TSX has not historically published the circumstances in which the exercise of such discretion occurs. Accordingly, proposed section 603 establishes that in exercising its discretion, TSX will consider the effect that the transaction may have on the quality of the TSX marketplace, based on factors which include the following:

(i) the involvement of insiders or other related parties of the listed issuer in the transaction or the negotiation of the transaction;

(ii) the material effect on control of the listed issuer;

(iii) the listed issuer's corporate governance practices;

(iv) the listed issuer's disclosure practices;

(v) the size of the transaction relative to the liquidity of the issuer; and

(vi) an order of a court or similar administrative regulatory body that has considered the security holders' interests.

Proposed Section 603 has been amended for the addition of items (v) and (vi) above and the correction of a typographical error. Otherwise, Section 603 has not been amended from the Original Amendments. Reference is made to Sections A1, B1, E1 and F1 in Appendix C – TSX Response to Public Comments. Some commenters proposed certain additional factors, pursuant to which subclauses (v) and (vi) were added. Certain other proposed factors are included in different specific exemptive relief provisions, such as the financial hardship exemption.

### *2. Definitions*

A number of terms are used in the Manual which do not currently have specified definitions. In order to ensure consistency in interpretation and application, TSX is proposing that certain key terms be properly defined. In particular, TSX is seeking specific comments on the following definitions.

**a. Market price** is proposed as meaning the VWAP (defined as the volume weighted average trading price of the listed securities, calculated by dividing the total value by the total volume of securities traded for the relevant period; where appropriate, TSX may exclude internal crosses and certain other special terms trades from the calculation) on TSX, or another stock exchange where the majority of the trading volume and value of the listed securities occurs, for the five trading days immediately preceding the relevant date. If the five day VWAP, in the opinion of TSX, does not accurately reflect the securities' current market price, the VWAP may be for such shorter or longer period as TSX determines based on relevant factors including liquidity, trading activity immediately before, during or immediately after the relevant period or any material events, changes or announcements occurring immediately before, during or immediately after the relevant period. Market price is to be determined as at the date (either the date of the binding agreement or some future date) provided for in the binding agreement obligating the issuer to issue the securities. TSX will accept a signed term sheet, engagement letter, letter of intent, agency agreement, underwriting agreement or other similar agreement as the binding agreement. If the listed securities are suspended from trading or have not traded on TSX or another stock exchange for an extended period of time, the market price will be the fair market value of the listed securities as determined by the listed issuer's board of directors.

This definition allows issuers to have greater flexibility in structuring their transactions while at the same time reducing the possibility that the market price can be artificially manipulated. While the current procedure is for market price to be determined based on the closing price on the trading day prior to TSX's receipt of notice of the proposed transaction (current section 619(b)), TSX currently allows such five day VWAP calculations on an as requested basis.

The proposed definition has been amended for the addition of the second last sentence and a minor amendment in the preceding sentence. Otherwise, the definition has not been amended from the Original Amendments. Reference of is made to A2, C2, D1 and F2 in Appendix C – TSX Response to Public Comments. Several commenters were concerned about the uncertainty of the relevant date from which the market price would be calculated. In order to clarify the intended calculation, TSX would accept a signed term sheet, engagement letter, letter of intent, agency agreement underwriting agreement or other similar agreement as the binding agreement. The relevant date would be such future date as provided for in the agreement or if none is provided for and the subscription price has been fixed in the agreement, the relevant date shall be the date of the agreement.

**Question 1: Consider whether the date of the signed term sheet, engagement letter, letter of intent, agency agreement underwriting agreement or other similar agreement, is an appropriate date from which to review the relevant market price, assuming a fixed subscription price is provided for within the agreement.**

In addition, the definition of VWAP has been amended to exclude internal crosses and certain other special terms trades from the calculation, where appropriate. Some commenters were concerned about the availability of trading information necessary to calculate VWAP. Listed Issuers are provided with a password protected, internet based product (www.tsxedge.com) which provides issuers with the total value and total volume for the calculation of VWAP over a specified period of time.

**b. Materially affect control** is proposed as meaning the ability of any security holder or combination of security holders acting together to influence the outcome of a vote of security holders, including the ability to block significant transactions. Such an ability will be affected by the circumstances of a particular case, including the presence or absence of other large security holdings, the pattern of voting behaviour by other holders at previous security holder meetings and the distribution of the voting securities. A transaction that results, or could result, in a new holding of more than 20% of the voting securities by one security holder or combination of security holders acting together will be considered to materially affect control, unless the circumstances indicate otherwise. Transactions resulting in a new holding of less than 20% of the voting securities may also materially affect control, depending on the circumstances.

While this term is used throughout the Manual, there is no published direction as to how TSX applies this phrase. The proposed definition is meant to clarify current TSX practice and create efficiencies in structuring transactions.

TSX currently does not require security holder approval for transactions which materially affect control of an issuer unless the dilution of the transaction exceeds 25% of the capital of the issuer or involves participation of insiders of the issuer. TSX proposes that any transaction which materially affects control, independent of other factors, will require security holder approval.

This definition has not been amended from the Original Amendments. Reference is made to A3 and F3 in Appendix C – TSX Response to Public Comments. Commenters were concerned that the definition was too ambiguous and indicated that they would prefer a bright line test to determine whether a transaction materially affected control. TSX believes that a bright line test, while desirable in the context of certain rules, would not be workable in this instance given that each transaction presents a

unique set of circumstances. In drafting the proposed definition, TSX continues to encourage issuers and their advisors to contact TSX staff during the planning stages of a transaction to discuss the application of TSX rules.

***3. Non-exempt Issuers***

Under Part V of the Manual, non-exempt issuers must pre-clear all material transactions with TSX. Historically, it is in those instances where a material transaction of a non-exempt issuer involves insiders, may materially affect control or is a transaction described in Part VI of the Manual that TSX imposes conditions on a proposed transaction.

Accordingly, TSX proposes revising Part V so that non-exempt issuers would continue to notify TSX of all material changes (proposed Section 501). TSX would only review those transactions involving insiders, materially affecting control or described in Part VI of the Manual.

Following the Original Amendments, changes were made to proposed Section 501(c) to include certain requirements for non-arm's length transactions based on the consideration to be received by the non-arm's length party and a percentage threshold of market capitalization of the listed issuer. If the value of the consideration to be received by such party exceeds 2% of the market capitalization, the transaction must be approved by the board and the value of the consideration must be established by independent evidence. In addition, if the value of the consideration to be received by the non-arm's length party exceeds 10% of the market capitalization, a disinterested security holder approval will be required.

**Question 2: Consider whether it is appropriate to require security holder approval for a transaction with a non-arm's length party where there is no issuance of securities and whether the 2%/10% threshold levels are appropriate?**

Certain minor amendments have been made to Section 501 to clarify this section, otherwise, the section has not been amended from the Original Amendments. No comments were received with respect to Question 4 on Non-Exempt Issuers in the Request for Comments attached to the Original Amendments.

***4. Private Placements, Acquisitions and Warrants***

Over time, TSX has developed a number of standards and practices in respect of the issuance of share capital by issuers by way of private placement. TSX has had to respond to a variety of transactions, resulting in TSX adopting a number of standards and practices which historically have not been published. The Amendments address the principal changes to such standards and practices.

**a. Dilutive transactions.**

Currently, security holder approval is required for any transaction which may result in more than 25% of an issuer's capital being issued or issuable in a six month period, calculated on a non-diluted basis (current section 620).

TSX proposes that, subject to TSX's discretion to impose restrictions on transactions involving insiders or materially affecting control, transactions involving the issuance of shares priced at or above market price not be reviewed by TSX (proposed section 607(c)). These transactions are economically neutral to all security holders and do not require TSX review. Reducing the scope of review in these instances will allow for more efficient access to capital markets.

In addition, TSX proposes that the 25% threshold for transactions priced below market be calculated on a per transaction basis rather than over a six month period (proposed section 607(g)). Current market conditions require that issuers act quickly when presented with favourable financing opportunities. Accordingly, the proposed TSX practice will allow for more efficient marketplace access.

Minor technical amendments have been made to the specific provisions related to dilutive transaction, otherwise the substance of the provisions remains the same. Reference is made to E2, F4 and F5 in Appendix C – TSX Response to Public Comments. Commenters were supportive of the proposed amendments to dilutive transactions.

**b. Pricing and Discounts.**

TSX is not proposing to change allowable discounts to market price for private placements (current section 619(b)).

Currently, TSX does not permit private placements to be priced below the allowable discount in any circumstances. TSX is proposing that security holders may approve a price per security which is below the stated discount (proposed section 607(e)).

Following the publication of the Original Amendments, an additional provision was added to proposed Section 607(e) to factor into subscription price any fees or other amounts payable by the issuer to the subscriber, where such fees are not commercially

reasonable. This provision is consistent with the current unwritten practice of TSX. TSX recognizes that certain fees, which are commercially reasonable should not be factored into the subscription price.

Apart from the above noted addition, while minor technical amendments have been made to proposed Section 607. Otherwise the substance of the provision remains the same. Reference is made to A4, B2 and E3 in Appendix C – TSX Response to Public Comments. Commenters were generally supportive of the proposed amendments in this area.

**c. Acquisitions.**

TSX proposes to clarify the standards and practices in place for the use of listed securities in payment of the purchase price for assets (current sections 623 and 624; proposed section 611). The proposed sections reflect current practice and clarify that additional documentation will be required if the assets are purchased from an insider. In addition, the Amendments propose that security holder approval may be required if the total number of securities issued or issuable exceed 25% of the issuer's capital. Following the publication of the Original Amendments, TSX subsequently eliminated the concept of measuring the issue price of securities to be issued or made issuable pursuant to an acquisition as a result of difficulties in assessing securities such as warrants and options. This approach is consistent with the current rules (current sections 623 and 624).

Proposed section 611 has been further amended to specifically include options issued in connection with an acquisition or assumed by the issuer as part of the acquistion. Any securities made issuable will be assessed under the above noted 25% test with respect to the requirement for security holder approval. Accordingly, the relief previously provided for under the security based compensation arrangement provisions (proposed section 613(g) in the Original Amendments) have been eliminated. In addition, the previous distinction proposed for public versus private target acquisitions has been eliminated.

**Question 3: Consider whether it is appropriate to accept options granted in connection with, or assumed under, an acquisition under the acquisition policies, rather than the security based compensation arrangement policies.**

TSX has been concerned about avoidance of the 25% dilution test where part of the acquisition consideration was cash, funded by privately placed securities. As a result, TSX has developed a practice of aggregating securities issued or made issuable pursuant to a private placement with any securities issued or made issuable pursuant to an acquisition where the two transactions are contingent or otherwise linked. For example if the consideration for an acquisition consists of shares and cash and the cash must be raised by way of private placement, TSX will review the issuance of the securities in the aggregate for the purposes of determining whether or not security holder approval will be required. This requirement is not currently codified in the Manual and was not contained in the Original Amendments. It has now been codified in the Amendments (proposed section 611(d)). A similar provision has been added to the requirements for backdoor listings for the purposes of determining whether a transaction constitutes a backdoor listing (proposed section 626(a)).

**Question 4: Consider whether it is appropriate to aggregate private placement securities with securities issued or made issuable as consideration for acquisitions for the purposes of determining whether security holder approval is required.**

**Question 5: Consider whether it is appropriate to aggregate private placement securities with securities issued or made issuable as consideration for acquisitions for the purposes of determining whether a transaction constitutes a backdoor listing.**

Other than the above noted change regarding the aggregation of certain private placement securities and certain other minor amendments, the substance of the provisions related to acquisitions remains the same. A statement of clarification has been added with respect to the determination of the price at which the securities are made issuable pursuant to an acquisition. Reference is made to A5, A25 and E4 in Appendix C – TSX Response to Public Comments. Commenters generally did not think it was necessary to require security holder approval for acquisitions which would result in a change of the nature of the business of the listed issuer. Some commenters were uncertain as to how the 25% dilution test would measure the issuance price of the consideration securities against the market price of the securities.

**d. Warrants.**

Currently, TSX has a prescribed set of requirements for warrants issued in a private placement (current section 622). Over time, as a result of requests from issuers, TSX has developed standards and practices in respect of warrants that historically have remained unpublished.

TSX proposes to continue to allow the granting of warrants in private placements. TSX will permit warrants to be exercisable at a price below market price, provided that security holder approval is obtained. All other conditions, such as number and term of warrants, are to be determined by the issuer (proposed section 608(a)). In addition, TSX proposes that warrants may be amended provided that disclosure of such amendments is made by way of press release 10 business days prior to the effective date of the change. Approval by security holders, other than those holding warrants proposed to be amended, will be required

in respect of amendments to the terms of warrants held by insiders of the listed issuer. In addition, security holder approval will be require for any issuer proposing to amend a warrant exercise price to a price less than the then current market price.

Currently, TSX permits the cashless exercise of warrants based on the difference between current market price and the exercise price of the warrants. A new subsection 608(c) has been added to the Original Amendments to provide for a cashless exercise of warrants which is based on current staff practice. While minor technical amendments have been made to the specific provisions related to warrants, the substance of the provisions remains the same. Reference is made to A7, B3 and F8 in Appendix C – TSX Response to Public Comments. Commenters were supportive of the proposed changes to the warrant requirements.

**e. Participation of insiders.**

The Manual states that TSX may impose additional conditions on non-arm's length transactions (current section 609) and over time certain practices have developed as a result of the application of that provision. Practices limiting insider participation in private placements were implemented to ensure investor confidence and promote a quality marketplace.

TSX recognizes that insiders need not always be treated differently from other investors. Investor confidence and market quality can be realized by limiting insider participation rather than restricting the terms upon which insiders can participate in transactions.

Accordingly, TSX proposes to formally limit insider participation without security holder approval in transactions over the course of a six month period to the ability to receive, or be entitled to receive, 10% of the issuer's capital, calculated on a non-diluted basis (proposed sections 607(g) and 611(b)). The proposal contemplates a disinterested security holder approval.

While minor amendments have been made to the specific provisions related to the participation of insiders in private placements, the substance of the provisions remains the same. Reference is made to B4, E4 and F9 in Appendix C – TSX Response to Public Comments. Commenters had mixed opinions about the appropriateness of the 10% threshold level for requiring shareholder approval. Commentors suggested matching the threshold level to the 25% market capitalization exemption found in OSC Rule 61-501. TSX has intentionally set a higher standard for its listed issuers for related party transactions. TSX continues to believe that it is important to public shareholders to have the opportunity to vote on any significant transaction with a related party and that a 25% market capitalization test is too high.

***5. Security Based Compensation Arrangements***

Current TSX standards and practice require security holder approval for security based compensation arrangements when certain factors, such as total securities issuable under all arrangements exceeding 10% of the issuer's capital, exist (current section 629). The existence of additional factors, such as insider participation above 10% of the issuer's capital, triggers the requirement for disinterested security holder approval (current section 630).

TSX proposes that generally all security based compensation arrangements be submitted to disinterested security holders for their approval, when instituted and every three years thereafter (proposed section 613(a)). These types of arrangements are sufficiently material and important to security holders so as to require their approval. Similar requirements are being proposed by other stock exchanges.

Security based compensation has become increasingly complex and important, varying from industry to industry. Based on this and on discussions with stakeholders, issuers, and ultimately their security holders, security holders rather than TSX (current section 633), are more appropriately positioned to determine the content of security based compensation arrangements. TSX proposes (proposed section 613(d)), however, to prescribe the disclosure to be provided to security holders when issuers seek security holder approval for such arrangements. Meaningful disclosure of the content of such arrangements is necessary for informed security holder approval.

Substantive and technical amendments have been made to proposed section 613 as a result of the public comments. Reference is made to A13, A26, A27, B5, F10, G1, G2, G3, G4, G5, H1, H2, I1 and J1 in Appendix C – TSX Response to Public Comments. As a result of the significant public comments received on these amendments, TSX has highlighted below a number of proposals which were contained in the Original Amendments, as well as a number of new proposals.

Currently, TSX requires a fixed maximum number of securities issuable under any security based compensation arrangements (current section 631). The Original Amendments proposed the removal of the requirement of a fixed maximum number, thereby permitting plans commonly known as "rolling maximum" or "evergreen" plans. Generally such plans would have a maximum number of securities available based on a percentage of the issuer's capital, thereby providing for a "rolling" number of securities issuable under such a plan. Increasingly, issuers have requested TSX acceptance of such plans, particularly as competitors listed on US exchanges are not similarly restricted.

**Question 6: Consider whether the requirement for a fixed maximum number of securities issuable under a security based compensation arrangement is necessary.**

Subsequent to the publication of the Original Amendments, certain provisions (proposed section 613(a)) have been added to permit the adoption of an arrangement provided that security holder approve the adoption of the arrangement, without excluding eligible insiders. Provided that: (i) the securities available under an arrangement combined with all of the issuer's other arrangements does not exceed 10% of the issued and outstanding securities; (ii) the unrelated board members recommend the adoption of the arrangement; and (iii) the issuer is included in the S&P/TSX Composite Index, TSX will require the approval of security holders, without the exclusion of insiders. Such arrangements will be subject to the three year shareholder renewal requirements.

**Question 7: Consider whether it is appropriate to permit the adoption of any security based compensation arrangement without excluding insiders from the security holder approval.**

**Question 8: Consider whether the conditions to permit the adoption of a security based compensation arrangement without excluding insiders from the security holder approval are appropriate, whether additional conditions should be added, whether the proposed conditions should be modified or whether some of the proposed conditions should be deleted.**

Subsequent to the publication of the Original Amendments, TSX proposes (proposed section 613(a)) that when instituted and every three years thereafter, all security based compensation arrangements be approved by the issuers' directors and disinterested security holders. In addition, TSX is proposing (proposed section 613(h)) that listed issuers be required to annually provide disclosure updating its security holders with respect to its security based compensation arrangements. This would entail providing details regarding any amendments made to any such arrangements and all other material terms of its security based compensation arrangements.

**Question 9: Consider whether security holder approval should be required for security based compensation arrangements on a periodic basis and whether every three years is the appropriate time for such periodic approval. Specific consideration should be given to the fact that TSX is currently proposing the acceptance of "evergreen" security based compensation arrangements as highlighted above.**

Under the current rules, TSX requires that in certain circumstances Restricted Securities (those securities which have a residuial right to share in the earnings and assets upon liquidation or windup, other than those securities which carry a right to vote which is not less than any other security on a per security basis, see proposed section 624(b)(v) for the complete definition) vote with the holders of other classes of securities which otherwise carry greater voting rights based on their proportionate residual equity (current section 630). The Original Amendments proposed that for all security based compensation arrangements, holders of Restricted Securities would be entitled to vote with other security holders on the basis of their residual equity interest (proposed section 613(a)). Certain commenters were concerned about such an entitlement on the part of the holders of the Restricted Securities and the disenfranchisement of such rights on the part of the other security holders.

**Question 10: Consider whether it is appropriate for holders of Restricted Securities to vote on security based compensation arrangements with other classes of security holder on the basis of their residual equity interest.**

In the Original Amendments, TSX proposed that if security holders approved a security based compensation arrangement which provided the directors with the discretion to make material amendments to the arrangement or individual options (whether or not such options were held by insiders), specific security holder approval would not be required. If an arrangement did not provide for such discretion, material amendments to plans or options held by insiders would be subject to security holder approval. The current rules require that any material amendments to a plan or options held by an insider require the specific approval of disinterested security holders at a meeting (current section 632). As a result of the public comments generated from the Original Amendments, TSX now proposes to require specific disinterested security holder approval for any amendment which would have the effect of reducing the exercise price or purchase price, or extending the original term of a security based compensation arrangement which benefits an insider (proposed section 613(i)(ii)).

**Question 11: Consider whether specific security holder should be required for amendments which reduce the exercise price or purchase price or extend the term of a security based compensation arrangement and whether any other material amendments should be subject to specific security holder approval.**

***6. Charitable Options***

TSX currently sets standards for the granting of options to registered charities (current sections 637.1 through 637.10). TSX recognizes that allowing issuers to set up such programs, within specified limits, does not affect the quality of the marketplace. Accordingly, TSX proposes to allow issuers to issue securities to registered charities provided that security holder approval will be required if the number of securities issued or issuable: (i) to one registered charity exceeds 2% of the number of securities of

the listed issuer which are outstanding, on a non-diluted basis, prior to the date of the issuance; or (ii) in a 12 month period in the aggregate exceeds 5% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis (proposed section 612).

No comments were received by TSX regarding the proposed amendments to charitable options and the provisions remain unchanged from the Original Amendments.

***7. Security Holder Approval***

Under current section 606 TSX developed certain practices in respect of security holder approval to protect investors and ensure a quality marketplace. Proposed section 604 formalizes these practices, including the circumstances under which security holder approval will be required, the form of such approval and the requirement to pre-clear security holder materials with TSX. In addition, the proposed section outlines when security holder approval by written consent will not be permitted.

Proposed section 604(c) states that the resolution approved by security holders must relate to a specific transaction and not to an unspecified future transaction. By requiring specific approval, TSX ensures that transactions requiring security holder approval are executed in the form approved by such security holders contributing to transparency in the marketplace. Consequently, it is proposed that blanket approval for private placements in excess of 25% of the issuer's capital no longer be accepted by TSX.

In addition, and similar to an exemption available to reporting issuers under certain policies of the Ontario Securities Commission, issuers may apply for an exemption from the requirement for security holder approval if: (i) the listed issuer is in serious financial difficulty; (ii) the application is made upon the recommendation of a committee of unrelated board members; (iii) the transaction is designed to improve the listed issuer's financial situation; and (iv) the transaction is reasonable for the listed issuer in the circumstances. This exemption will not be available in respect of the security holder approval required for security based compensation arrangements or for the issuance of securities to registered charities.

Formerly proposed Section 604(a)(iii) (public interest) has been removed. TSX determined that the formerly proposed section 604(a)(iii) created too much uncertainty as to when security holder approval would be required. A new section has been added (proposed section 604(f)) to provide for a 90% shareholder exemption. Please see section 10(a) below for further details. In addition, minor amendments have been made to proposed section 604 in order to clarify certain provisions. Section 604(a) was amended to clarify that security holder approval will be on a disinterested basis where the transaction has not been negotiated at arm's length. Other minor technical changes were made to the financial hardship exemption (proposed section 604(e)). Section 604 otherwise remains unamended. Reference is made to A9, A10, B6, B7, F11, F12 in Appendix C – TSX Response to Public Comments. Commenters were generally supportive of the withdrawal of the blanket shareholder approval for private placements and uniformly supportive of the financial hardship exemption.

***8. Suspension and Delisting***

Currently, Part VII of the Manual provides that an issuer will be delisted from TSX within 12 months from the date of its suspension from trading.

The 12 month suspension period was originally established to facilitate reinstatement of suspended issuers able to meet original listing requirements during that time. Historically, reinstatement following suspension has been a rare occurrence. In most cases, a suspended issuer lists on TSX Venture, becoming subject to oversight by both exchanges. The Amendments would eliminate: (i) the additional expense to issuers having to comply with two sets of standards and (ii) the potential of conflicting decisions resulting from differing standards.

Under current remedial review, prior to being suspended, issuers are provided with the opportunity to remedy their deficiencies. Security holders also have adequate time to liquidate their positions prior to any suspension decision.

The proposed revisions to Part VII provide that issuers, after being afforded an opportunity to be heard, will be delisted from TSX 30 days after the expiry of the 120 remedial period. Issuers subject to an expedited review process will be suspended immediately upon completion of the expedited review and delisted 30 days after the suspension date.

Minor technical amendments have been made to proposed Part VII in order to clarify certain provisions. Part VII remains otherwise unchanged. Reference is made to A11 in Appendix C – TSX Response to Public Comments.

***9. Change in Management***

Currently, only non-exempt issuers are required to submit Personal Information Forms for new officers and directors (current section 516). A quality marketplace is fostered by having quality participants. Ensuring the suitability of those persons in a position to influence management of a listed issuer is part of TSX's current mandate (current section 716 of the Manual).

Accordingly, TSX proposes that it review the suitability of new officers, directors and insiders for all listed issuers. The filing of a Personal Information Form will be required only if requested by TSX (proposed section 716).

No amendments have been made to proposed Section 716. Reference is made to A12 and F13 in Appendix C – TSX Response to Public Comments.

***10. Additional Amendments***

Following the publication of the Original Amendments, as a result of public comments and internal discussions certain additional new provisions were added to the Amendments. The subsequent amendments are discussed below.

**a. 90% Shareholder Exemption**

From time to time, TSX has received applications by listed issuers with a single significant security holder which holds or controls in excess of a majority of the votes of all security holders. Certain transactions which would normally require security holder approval, excluding the significant security holder may not necessarily be fair to that security holder. In instances where a very small minority of the voting securities of a listed issuer may govern or control the direction of that issuer without consideration of the position of the significant security holder may not necessarily be equitable to that security holder. TSX proposes to provide a security holder approval exemption from all TSX security holder requirements in circumstances where at least 90% of a listed issuer's voting and equity securities are held by one person or company (proposed Section 604(f)).

**Question 12: Consider whether a significant shareholder exemption from TSX imposed security holder approvals is appropriate and whether a 90% threshold is the appropriate level for the exemption.**

**b. Removal of the Exchange Take-over Bid, Issuer Bid and Normal Course Purchase Provisions**

Over time, TSX has had a significant decline in the applications received for Exchange Take-over and Issuer Bids through the facilities of TSX. Over the past two years, TSX has not received any applications for bids through the facilities of the exchange. As a result in the declining use of such bids, TSX proposes to remove the provisions for Exchange Bids, other than the provisions related to normal course issuer bids.

**Question 13: Consider whether the provisions for Exchange Take-over and Issuer Bids through the facilities of TSX should be maintained.**

In conjunction with the proposed removal of the Exchange Take-over and Issuer Bid provisions, TSX proposes to remove the provisions for normal course purchases. Currently, subsection 93(1)(b) of the *Securities Act* (Ontario) provides a similar provision for an exemption from the take-over bid requirements, however the statutory exemption imposes an additional restriction which is not contained in the current TSX provisions. For offerors of listed securities, purchases made under the statutory exemption must be made at a price which is not in excess of the last independent trade of a board lot of the relevant class of securities.

**Question 14: Consider whether the provisions for normal course purchases through the facilities of TSX should be maintained.**

**c. High Volume Normal Course Issuer Bid Exemption**

Under the current rules and policies of TSX, all issuers making purchases under a normal course issuer bids may not purchase more than 2% of the relevant class of securities outstanding in any 30 day period. TSX proposes to provide an exemption to the 2% purchase restriction for those issuers with high trading volumes on TSX (proposed section 628(a)). The exemption would be available to those issuers who had an average trading value per day on TSX of $10,000,000 or more for the previous three months. The exemption would be granted at the commencement of the bid, based on trading immediately before the bid notice and would be valid for the duration of the bid. The $10,000,000 average trading value is derived from TSX's highest rating of securities (A1) for TSX's market making system. Qualifying issuers would continue to be restricted by the aggregate number of securities which may be purchased under a normal course issuer bid (5% of the relevant class of securities outstanding or 10% of the public float of the relevant class of securities), as well as the other normal restrictions under the current rules and policies. The exemption must be disclosed in both the notice and related press release. The proposed exemption is based on the lack of market impact such purchases made under a normal course issuer bid will have on TSX.

**Question 15: Consider whether a high volume normal course issuer bid exemption from the 2% purchase restriction is appropriate and whether the $10,000,000 trading value is the appropriate level for qualifying for such an exemption.**

**d. Other Principal Market - Interlisted Issuer Exemption**

Currently, listed issuer (other than those qualifying in the foreign category at the time of their original listing) are required to comply with Parts IV, V (if non-exempt), VI and VII of the Manual. Frequently, TSX listed issuers who are also listed on another exchange frequently face conflicts in the requirements imposed by all of the exchanges such issuer is listed upon. TSX recognizes that some of the requirements in Part VI of the Manual may not be necessary where the listed issuer's principal market is elsewhere, although that issuer may not be in a position to qualify for TSX's foreign category. TSX is proposing to codify an interlisted issuer exemption (proposed Section 602(h)) from the requirements related to security holder approval, private placement, unlisted warrants and security based compensation arrangements. Qualifying issuers would be required to make specific application at the relevant time in relation to the proposed transaction and at such time must have at least 75% of the trading value and volume of its listed securities traded on another exchange for the preceding six months in order to qualify for the exemption. TSX understands that certain other markets (including Nasdaq and the New York Stock Exchange) provide certain exemptions to listed issuers based on the jurisdiction of incorporation, regardless of whether or not such market is the principal market for the issuer.

**Question 16: Consider whether an exemption from TSX requirements related to security holder approvals, private placements, unlisted warrants and security based compensation arrangements is appropriate and whether the 75% trading threshold is the appropriate level for such an exemption.**

**Public Interest**

In accordance with the "Protocol for Commission Oversight of Toronto Stock Exchange Rule Proposals" between the OSC and TSX, TSX must determine whether a change in policies is of "public interest". TSX believes that there are sufficient substantive changes to the Original Amendments to warrant public comment. TSX has benefited from public comment on the Original Amendments and believes that it is important for its key stakeholders to have an opportunity to review the amended policies prior to their implementation.
As a result, the Amendments will only become effective following public notice, a comment period and the approval of the OSC. Given that the Original Amendments were previously published for comment, TSX has established a 30 day comment period.

**Text of Amendments**

Attached as Appendix B is a draft of those sections of the Manual reflecting the Amendments. A blacklined version of the Amendments showing the changes from the Original Amendments is available on our website at: www.tsx.com. Other than in respect of Part VII, the Amendments are extensive and as a result the changes have not been marked from the current version of the Manual. In particular, we refer readers as follows:

1. Sections 501 to 613 addressing non-exempt issuers, private placements, warrants and share based compensation;

2. Section 628 through 632 addressing normal course issuer bids; the other provisions related to exchange take-over and issuer bids have been removed;

3. Section 641 addressing the effect of the Amendments on current transactions;

4. Part VII addressing the proposed delisting procedure; and

5. The second paragraph of Section 716 providing that TSX will review changes in management for all listed issuers.

Readers are advised that the policies currently appearing as appendixes to the Manual have now been incorporated into the Manual as follows:

1. Policy on small security holder selling and purchase arrangements (formerly Appendix D) – Sections 638 through 640;

2. Policy on sales from a control block through the facilities of the Exchange (formerly Appendix D) – Section 637;

3. Policy on restricted shares (formerly Appendix E) – Section 624;

4. Policy on normal course issuer bids (formerly contained in Appendix F) – Sections 628 through 632; and

5. Policy on security holder rights plans (formerly Appendix G) – Sections 633 through 636.

BY ORDER OF THE BOARD OF DIRECTORS

SHARON C. PEL
VICE PRESIDENT, CORPORATE DEVELOPMENT
GENERAL COUNSEL AND CORPORATE SECRETARY

**APPENDIX A**

**COMPARATIVE ANALYSIS**

| | Existing Standard [current reference] | Amended Standard [new reference] | Rationale |
|---|---|---|---|
| 1. | Not all TSX practices are written and/or published. | All TSX standards and practices will be in writing and published for issuers and their advisors. | Transparency of TSX policies will create greater certainty for issuers and their advisors. This will reduce the expense and time required for issuers to complete transactions. |
| 2. | Non-exempt TSX listed issuers must pre-clear all material changes with TSX. [ss.502 through 519] | TSX will require notice of all material changes and will review only those transactions which involve insiders or materially affect control. [s.501] | Limiting the types of transactions requiring TSX review will reduce the expense and time required for issuers to complete transactions.<br><br>TSX will continue to monitor transactions of non-exempt issuers as they require additional supervision. |
| 3. | TSX currently has undefined discretion with respect to imposing conditions on non-arm's length transaction, including the requirement for independent valuations. [S.513] | TSX will require independent evidence of the value of consideration and security holder approval for non-arm's length transaction where the value of the consideration exceed 2% and 10%, respectively, of the market capitalization of the issuer. This requirement will apply whether or not such transactions involve the issuance of listed securities. [s. 501(c)] | Specific provisions with defined parameters create transparency and increase efficiency in planning transactions. |
| 4. | TSX does not specify the time period for responding to a filing. [none] | Issuers will receive notice of acceptance or non-acceptance within 7 business days. For transactions not involving insiders or a material effect on control, the response time will be 3 business days. [ss.501(d), 602(c), 607(c)] | Specifying service response times provides issuers with certainty and guarantees quality customer service. |
| 5. | Not all terms and phrases used in the Manual are defined. [none] | All terms and phrases have been defined. [s.601] | Definitions create transparency and consistency of interpretation. |
| 6. | Market price is defined as the closing price on the day before TSX receives notice of the transaction. [s.619(b)] | Market price is based on a 5-day volume weighted average trading price. [definition of market price in s.601] | Weighted average trading prices are less susceptible to market manipulation. |
| 7. | TSX currently has unspecified discretion to impose conditions on transactions that may affect the quality of the marketplace. [none] | TSX continues to have discretion to impose conditions or grant exemptions in situations where marketplace quality may be compromised.<br><br>In order to assist issuers in understanding TSX principal basis for exercising its discretion, TSX has listed the key factors in exercising its discretion. [s.603] | TSX currently acts to ensure a quality marketplace. Specific mention of this discretion and the basis for exercising this discretion creates greater transparency. |

| | Existing Standard [current reference] | Amended Standard [new reference] | Rationale |
|---|---|---|---|
| 8. | TSX currently does not permit private placements to be completed at prices below the maximum allowable discount levels. [s. 619(b)] | Private placements below the applicable discount levels will be permitted provided that such placements are specifically approved by disinterested security holders [s.607(e)]. | If security holders approve a highly dilutive private placement, TSX should not otherwise restrict such transactions. The board of directors in exercising its fiduciary duties must act in the best interest of the security holders and in certain circumstances, such a private placement may be necessary.<br><br>Other exchanges do not regulate the price of securities privately placed. |
| 9. | Any transaction resulting in an issuance of more than 25% of an issuer's share capital in a six month period requires security holder approval. [s.620] | Subject to [s.603] above, transactions done at or above market price will not be reviewed. [s.607(c)]<br><br>In addition, the 25% limit on share capital issuances will be on a per transaction basis rather than the previous 6 months. [s.607(g)] | While unrestricted below market transactions affect the quality of the marketplace, transactions done at or above market are economically neutral to all security holders.<br><br>This practice is similar to that of other exchanges. |
| 10. | Currently, TSX aggregates securities issued pursuant to private placements with securities issued pursuant to acquisitions where the use proceeds of the private placement are used towards or connected to the acquisition, for the purposes of the 25% security holder approval requirements. [none] | This practice has been codified in the proposed amendments. [s. 611(d)] | Transparency of TSX policies will create greater certainty for issuers and their advisors. |
| 11. | TSX sets the standards for warrants issued to private placees. [s.622]<br><br>TSX has unwritten standards requirements for changes to existing warrants. [none]<br><br>Currently, TSX permits the cashless exercise of warrants. [none] | TSX will allow issuers to set the terms of warrants. The exercise price may be less than market price, provided that disinterested security holders approve the transaction. [s.608(a)]<br><br>Issuers may amend warrants provided that details of the changes are press released 10 days prior to the effective date. If insiders hold warrants to be amended, these must be approved by disinterested security holders. [s.608(b)]<br><br>A new subsection has been added to permit the cashless exercise of warrants. [s. 608(c)] | Transparency creates certainty and results in more efficient access to capital markets.<br><br>Subject to restrictions on exercise price and the making of amendments, TSX believes that issuers are in the best position to determine the commercial terms of warrants.<br><br>The provisions for the cashless exercise of warrants will assist issuers by increasing transparency. |
| 12. | TSX has unpublished standards for insider participation in private placements. Currently, insider participants may not benefit from more than one | All TSX standards in respect of private placements are published.<br><br>Insider participation above 10% of the issuer's share capital, calculated on a six month basis will require | Transparency creates certainty and results in more efficient access to capital markets.<br><br>The potential for undue influence by insiders is limited by the dilution |

| | Existing Standard [current reference] | Amended Standard [new reference] | Rationale |
|---|---|---|---|
| | "sweetner" (i.e., an insider could not receive a warrant and purchase shares at a discount even if all other placees are able to do so).<br><br>TSX exercises its discretion in requiring security holder approval for private placements to insiders and does not have a published rule with respect to such requirements.<br><br>[none] | disinterested security holder approval. [s.607(g)]<br><br>Subject to the dilution limits noted above, insider participants may participate on the same terms as other private placement participants. | requirement for security holder approval. |
| 13. | Private placees are required to undertake not to trade their securities for the longer of 4 months or the hold period under applicable securities legislation. [s.621] | TSX will not require an undertaking from private placees not to trade securities. [none] | Securities legislation provides for a complete regime in respect of the resale of securities purchase pursuant to an exemption from prospectus requirements. |
| 14. | Only certain share compensation arrangements are subject to security holder approval. [ss.629, 630] | Generally, all security based compensation arrangements will require disinterested security holder approval, when instituted and every three years thereafter. [s.613(a)] | Share based compensation is significant enough to security holders to always require their approval. With the removal of the requirement of a fixed maximum number issuable under any arrangement, a new requirement for approval every three years has been added.<br><br>We note that U.S. exchanges have proposed changes to their standards requiring shareholder approval for all share based compensation arrangements. |
| 15. | Only certain share compensation arrangements are subject to security holder approval. [ss.629, 630] | Certain security based compensation arrangements will require security holder approval, without the exclusion of insiders, when instituted and every three years after, provided that: (i) the securities available under all of the issuer's security based compensation arrangements does not exceed 10% of the issued and outstanding securities; (ii) the unrelated board members recommend the adoption of the arrangement; and (iii) the issuer is included in the S&P/TSX Composite Index. [s. 613(a)] | Security holder approval without the exclusion of insiders is sufficient for issuers proposing compensation arrangements which have limited dilution. The requirement for inclusion in the index and the recommendation of unrelated directors provide additional public interest safeguards. |
| 16. | Currently, only in circumstances where disinterested shareholder approval is required for a share compensation arrangement, TSX requires | Other than as noted above, all security based compensation arrangements will be subject to a disinterested security holder approval, including holders of Restricted Securities voting together with other equity securities on the basis | Holders of Restricted Shares are currently entitled to vote together with other holders of equity securities for the approval of share compensation arrangements where disinterested security holder approval is required. |

| | Existing Standard [current reference] | Amended Standard [new reference] | Rationale |
|---|---|---|---|
| | all security holders, including holders of Restricted Shares, are provided with a voting entitlement based on their residual equity interest, whether or not such a shares normally carry a vote. This requirement is triggered where more than 10% of the issued and outstanding securities are made available under share compensation arrangements. [s. 630] | of their residual interest. [s.613(a)] | With the proposed changes to disinterested security holder approval for all security based compensation arrangements, TSX proposes to carry forward this entitlement for all security based compensation arrangements. |
| 17. | All share compensation arrangements must have a fixed maximum number of securities issuable. Rolling maximums based on a percentage of an issuer's outstanding securities are not permitted. [s. 631] | The requirement for a fixed maximum number of securities has been removed. Issuers may have a rolling maximum based on a percentage of its outstanding securities. [none] | Issuers' security based compensation arrangements have grown increasingly complex and varied from industry to industry. Security holders are in the best position to determine what is appropriate for the issuer's security based compensation arrangements. Combined with the proposed renewal by disinterested security holders every three years, market quality will not be adversely affected.<br><br>We note that the US exchanges permit "evergreen" or rolling plans and that the failure to permit such plans may place Canadian issuers at a competitive disadvantage in providing incentive to its key employees. |
| 18. | TSX mandates certain terms for all share compensation arrangements. [ss.633, 634] | TSX will only mandate the disclosure required by issuers in respect of security based compensation arrangements. [s.613(d)]<br><br>Disclosure will be required on an annual basis, whether or not an arrangement is subject to security holder approval. This will include, among other things, details with respect to any amendments to outstanding options which have occurred during the past year. [s. 613(h)] | The importance of security based compensation arrangements varies based on the size and industry of the issuer.<br><br>While security holders need to know and approve the content of these arrangements, it is not appropriate for TSX to determine the terms of such arrangements. |
| 19. | TSX requires that material amendments to options held by insiders be approved by disinterested security holders. | TSX will require specific disinterested security holder approval for amendments to options held by an insider which entail a reduction in the exercise price or an extension to the term of the option. [s.613(i)]<br><br>Other material amendments to options held by insiders may be dealt with by the directors, without security holder approval, provided that the | Amendments to the price and term of an option held by an insider are significant enough to warrant specific security holder approval.<br><br>If a security based compensation arrangement, which is approved by security holders, provides the directors with the discretion to make other material amendments to options held by insiders, amendments (other than |

| Existing Standard [current reference] | Amended Standard [new reference] | Rationale |
|---|---|---|
| | arrangement specifically contemplates such discretion and provided that proper disclosure and approval is obtained for the plan. [s.613(d)(xii)] | those related to exercise price and term) are not significant enough to warrant a meeting of the security holders. Details of any such amendments would have to be disclosed on an annual basis. |
| 20. TSX currently has an unwritten rule which permits the adoption of a share compensation arrangement in connection with an arm's length acquisition of another business. [none] | Issuers will be permitted to grant options outside of its security based compensation arrangement in connection with an arm's length acquisition of another business. Securities issued in connection to or assumed pursuant to security based compensation arrangement(s) of a target company will be aggregated into the acquisition cost for the purposes of the security holder approval requirements. [s. 611(c)] | Transparency creates certainty and results in more efficient access to capital markets.<br><br>The grant of the options in connection to an arm's length acquisition, constitutes part of the acquisition cost. Frequently, the businesses to be acquired have outstanding options, which could not be rolled over into the existing arrangements of the issuer because of a limited availability of options. |
| 21. Charitable options may be granted with security holder approval and must meet TSX requirements. [ss.637.1 through 637.10] | Terms of charitable options are set by the issuer, other than exercise price which must be at least market price. Options for more than 2% of an issuer's capital to one registered charity or an aggregate of 5% on annual basis require security holder approval. [s.612] | While security holders need to know and approve the content of these options, it is not appropriate for TSX to determine the terms of such arrangements. |
| 22. Private placements in excess of 25% of an issuer's share capital in any six month period may be approved by security holder in advance, subject to certain restrictions. [none] | Specific security holder approval, rather than advanced unspecified approval, will be necessary for all transactions where such approval is required. [s. 604(c)] | With the proposed amendments to the requirements for security holder approval (see paragraph 10), the need for advance security holder approval will be reduced.<br><br>By requiring specific approval, transactions requiring security holder approval are executed in the form approved by such security holders contributing to transparency in the marketplace. |
| 23. Issuers cannot apply for an exemption from security holder approval requirements. [none] | Issuers will be able to apply for an exemption from security holder approval requirements (other than share compensation arrangements). This exemption will be automatically granted to issuers meeting quantitative continued listing requirements if the issuer (1) is in serious financial difficulty, (2) the transaction is designed to improve the issuer's financial situation and (3) based on the determination of the committee, the transaction is reasonable in the circumstances. The issuer's board, upon the recommendation of a committee of unrelated directors, must | It is in the best interest of security holders and the marketplace for issuers to enter into transactions in a timely manner when faced with financial difficulty. It is appropriate for TSX to defer to the decision of an issuer's unrelated directors in this regard.<br><br>The Ontario Securities Commission makes this exemption available in respect of related party and other special transactions. |

| Existing Standard [current reference] | Amended Standard [new reference] | Rationale |
|---|---|---|
| | determine that these three requirements are met.<br><br>Issuers applying for this exemption will be required to disclose in a press release the transaction and the fact that the exemption has been applied for prior to the completion of the transaction. [s.604(e)] | |
| 24. Currently, take-over and issuer bids may be completed through the facilities of the exchange. [Appendix F – Part VI of the TSX Trading Rules and Policies] | Other than with respect to the rules and policies regarding Normal Course Issuer Bids, the take-over and issuer bid provisions will be withdrawn. | TSX has had a significant decline in the applications received for exchange take-over and issuer bids through the facilities of the TSX. Over the most recent two years, TSX has not received any applications for bids through the facilities of the exchange. |
| 25. Currently, all issuers making purchases under a normal course issuer bids may not purchase more than 2% of the relevant class of securities outstanding in any 30 day period. | Those issuers with high trading volumes on the TSX would not be restricted by the 2% purchase restriction. s.628(a). The exemption would be available to those issuers who have an average trading value per day on the TSX of $10,000,000 or more for the previous three months. | Those issuers with significant trading on the TSX who purchased in excess of 2% of the securities subject to a normal course issuer bid would not have an impact on the quality of the market. |
| 26. TSX parameters for renewal of small shareholder selling and purchase arrangements are not published. | Two automatic renewals of 30 days each will be permitted provided that TSX is pre-notified and a press release is issued. [s.639(h)] | Transparency creates certainty and results in more efficient access to our capital market. |
| 27. Issuers on a post-consolidation basis must meet certain financial tests. [s.691] | Issuers on a post-consolidation basis must meet continued listing requirements. [s.621(b)] | As security holders must approve the consolidation, TSX should concentrate solely on continued listing requirements. |
| 28. Following a period during which they can remedy their non-compliance, issuers are suspended from the TSX but remain listed for a 12 month period. During this period, the issuer remains subject to TSX requirements and must meet TSX's original listing requirements to be reinstated for trading. [Part VII] | Issuers will be delisted from the TSX 30 days after the expiry of the 120 day remedy period and the right to be heard.<br><br>Where an issuer is subject to an expedited review, the issuer will be suspended immediately and delisted 30 days following the suspension date. Issuers will be required to meet TSX's original listing requirements in order to be reinstated. [Part VII] | Issuers are currently provided with the opportunity to remedy their deficiencies and security holders also have adequate time to liquidate their positions prior to any suspension decision.<br><br>The 12 month suspension period is of limited value to issuers. Historically, reinstatement following suspension has been a rare occurrence.<br><br>Under the Universal Market Integrity Rules issuers listed but not trading on the TSX could trade on another trading system. This would compromise the quality of the marketplace.<br><br>This amendment also avoids duplication of regulatory oversight for suspended issuers who transfer to |

| | Existing Standard [current reference] | Amended Standard [new reference] | Rationale |
|---|---|---|---|
| | | | TSX Venture Exchange. |
| 29. | Only non-exempt issuers are required to submit a Personal Information Form for new officers and directors. [s.516] | New officers, directors and other insiders of all listed issuers will be reviewed by TSX. Personal Information Forms will only be required if requested by TSX. [s.716] | A quality marketplace is fostered by having quality participants. Ensuring the suitability of those persons in a position to influence management of a listed issuer is part of TSX's current mandate under s. 716 of the Manual. |
| 30. | All listed issuers must comply with the requirements for security holder approval, without regard to whether or not the issuer has a large controlling significant security holder. [none] | An issuer with a single security holder, holding at least 90% of the votes and equity of the issuer will be exempted from all TSX security holder requirements. [s. 604(f)]. | In instances where a very small minority of the voting securities of a listed issuer may govern or control the direction of that issuer without consideration of the position of the significant security holder may not necessarily be equitable to that security holder. |
| 31. | Listed issuers with principal markets other than TSX, cannot apply for an exemption from the requirements of security holder approvals, private placements, unlisted warrants and share compensation arrangements. [none] | An issuer which has at least 75% of its volume and value of its listed securities traded on another exchange, will be granted an exemption from the requirements related to security holder approvals, private placements, unlisted warrants and security based compensation arrangements. [s. 602(h)] | Interlisted issuers frequently face conflicts in the requirements imposed by all of the exchanges such issuer is listed upon. Some of the requirements in Part VI of the Manual are not necessary where the listed issuer's principal market is elsewhere. |

## APPENDIX B

## REVISED PARTS V, VI AND VII OF THE TSX COMPANY MANUAL

### PART V - SPECIAL REQUIREMENTS FOR NON-EXEMPT ISSUERS

**501.** (a) This Part is applicable only to ''non-exempt issuers''. The decision as to whether an issuer is non-exempt is made by TSX at the time the issuer is originally approved for listing. Reference should be made to Section 309.1 (Industrial companies), 314.1 (Mining companies) or 319.1 (Oil and Gas companies) of this Manual, which outline the requirements for eligibility for exemption from this Section 501. If these requirements are not met at the time of original listing, the exemption may be granted at such later time as they are met either (i) on application in writing accompanied by the applicable fee by the non-exempt issuer (see Part VIII), or (ii) upon review by TSX. If an applicant is granted an exemption, the fee will be refunded. If an applicant is not granted an exemption, the fee is non-refundable. TSX may revoke a previously granted exemption in appropriate circumstances. Non-exempt issuers are designated in stock quotations in the financial press as ''subject to special reporting rules''.

(b) In addition to complying with all other parts of this Manual, every non-exempt issuer shall give prompt notice to TSX of any proposed material change in the business or affairs of the issuer. See Section 410 for a list of developments likely to require such notice. Material changes other than those described in Subsection 501(c) do not require TSX acceptance under this Part V and TSX will not issue a letter of confirmation or acceptance for such transactions.

(c) Transactions involving insiders or other related parties of the non-exempt issuer (both as defined in Section 601) and which do not involve an issuance or potential issuance of listed securities, or that are initiated or undertaken by the non-exempt issuer and materially affect control (as defined in Section 601) require TSX acceptance under this Part V before the non-exempt issuer may proceed with the proposed transaction. Failure to comply with this provision may result in the suspension and delisting of the non-exempt issuer's listed securities (see Part VII of this Manual).

If the value of the consideration to be received by the insider or other related party exceeds 2% of the market capitalization of the issuer, TSX will require that:

(i) the proposed transaction be approved by the board on the recommendation of the unrelated directors; and

(ii) the value of the consideration be established in an independent report.

In addition, if the value of the consideration to be received by the insider or other related party exceeds 10% of the market capitalization of the issuer, TSX will require that the transaction be approved by the issuer's security holders, other than the insider.

(d) TSX will advise the non-exempt issuer in writing generally within seven (7) business days of TSX's acceptance of a transaction described in Subsection 501(c).

(e) Where a non-exempt issuer proposes to enter into a transaction described in Subsection 501(c) any public announcement of the proposed transaction must disclose that TSX acceptance is required.

(f) Providing notice under Section 501(b) is in addition to the timely disclosure obligations of listed issuers set out in Sections 406 to 423.4 of this Manual, the provisions of Section 602 and all the other requirements set out in Part VI of this Manual.

(g) The notice required by this Section 501 should initially take the form of a letter addressed to TSX's Advisory Affairs division. For those transactions described in Subsection 501(c), the letter notice must also identify the application of Subsection 501(c) and must contain a request for acceptance. For those transactions described in Subsection 501(c), notices must also be accompanied by the applicable filing fee (see Part VIII). If applicable, the notice should include the appropriate Company Reporting Form (Appendix H: Company Reporting Forms). A press release or information circular filed with TSX does not constitute notice under this Section 501. The letter must contain the particulars of the proposed transaction, and state whether: (i) any insider has a beneficial interest, directly or indirectly, in the proposed transaction and the nature of such interest; and (ii) whether and how the transaction could materially affect control of the non-exempt issuer. Copies of all applicable executed agreements must be filed as part of the Section 501 notice as soon as they are available.

(h) If the proposed change entails an issuance, or potential issuance, of securities, the Section 501 and 602 notices should be combined in a single letter (see Part VI of this Manual).

(i) Any amendment to the terms of a transaction previously accepted by TSX under Subsection 501(c) requires the prior consent of TSX. This applies even if the original transaction specifically provided for the possibility of amendments, unless the amendment is solely due to standard anti-dilution provisions in the original agreement.

TSX normally considers notices within one week of receipt of the notice. Further information or documentation may be requested before TSX decides to accept or not accept notice of a transaction.

## PART VI – CHANGES IN CAPITAL STRUCTURE OF LISTED ISSUERS

### GENERAL

### 601. Definitions.

In Parts V and VI of this Manual, the following words and phrases have these definitions:

**"affiliated companies"** has the same meaning as found in the OSA and for greater certainty also includes those issuers that are similarly related, whether or not any of the issuers are corporations, companies, partnerships, limited partnerships, trusts, income trusts or investment trusts or any other organized entity issuing securities;

**"associate"** has the same meaning as found in the OSA;

**"company"** has the same meaning as found in the OSA;

**"convertible security"** means a security that, by its terms is convertible into or exchangeable for listed securities, but does not include warrants or other securities which are exercisable, carry a right to purchase or cause the purchase of listed securities for additional consideration;

**"CSA"** means the Canadian Securities Administrators;

**"insider"** has the same meaning as found in the OSA and also includes associates and affiliated companies of the insider; and 'issuances to insiders' includes direct and indirect issuances to insiders, their associates and affiliated companies;

**"issuer"** means a corporation, company, partnership, limited partnership, trust, income trust or investment trust or any other organized entity issuing securities;

**"listed issuer"** means any issuer having securities listed on TSX;

**"listed security"** or **"listed securities"** means a security or securities listed on TSX;

**"market price"** means the VWAP on TSX, or another stock exchange where the majority of the trading volume and value of the listed securities occurs, for the five trading days immediately preceding the relevant date. If the five day VWAP, in the opinion of TSX, does not accurately reflect the securities' current market price, the VWAP may be for such shorter or longer period as TSX determines based on relevant factors including liquidity, trading activity immediately before, during or immediately after the relevant period or any material events, changes or announcements occurring immediately before, during or immediately after the relevant period. Market price is as at the date (either the date of the binding agreement or some future date) provided for in the binding agreement obligating the issuer to issue the securities. TSX will accept a signed term sheet, engagement letter, letter of intent, agency agreement, underwriting agreement or other similar agreement as the binding agreement. If the listed securities are suspended from trading or have not traded on TSX or another stock exchange for an extended period of time, the market price will be the fair market value of the listed securities as determined by the listed issuer's board of directors;

**"materially affect control"** means the ability of any security holder or combination of security holders acting together to influence the outcome of a vote of security holders, including the ability to block significant transactions. Such an ability will be affected by the circumstances of a particular case, including the presence or absence of other large security holdings, the pattern of voting behaviour by other holders at previous security holder meetings and the distribution of the voting securities. A transaction that results, or could result, in a new holding of more than 20% of the voting securities by one security holder or combination of security holders acting together will be considered to materially affect control, unless the circumstances indicate otherwise. Transactions resulting in a new holding of less than 20% of the voting securities may also materially affect control, depending on the circumstances;

**"OSA"** means the *Securities Act* of the Province of Ontario as amended from time to time, the rules and policies thereunder and any replacement legislation;

**"OSC"** means the Ontario Securities Commission;

**"person"** has the same meaning as found in the OSA;

**"related party"** has the same meaning as found in the OSA;

**"security"** or **"securities"** has the same meaning as found in the OSA and references to 'security' or 'securities' hereunder shall be restricted to securities listed on TSX unless otherwise provided;

**"TSX"** means the Toronto Stock Exchange;

**"unrelated director"** has the same meaning as found in Section 474(2) or any replacement section; and

**"VWAP"** means the volume weighted average trading price of the listed securities, calculated by dividing the total value by the total volume of securities traded for the relevant period. Where appropriate, TSX may exclude internal crosses and certain other special terms trades from the calculation.

**602. General.**

(a) Every listed issuer shall immediately notify TSX in writing of any transaction involving the issuance or potential issuance of its listed securities or equity securities other than unlisted non-convertible non-voting preferred securities.

(b) A listed issuer may not proceed with a Subsection 602(a) transaction unless accepted by TSX. Failure to comply with this provision may result in the suspension and delisting of the listed issuer's listed securities (see Part VII of this Manual).

(c) Unless otherwise provided, TSX will advise the listed issuer in writing generally within seven (7) business days of receipt of by TSX of the Subsection 602(a) notice, of TSX's decision to accept or not to accept the notice, indicating its reasons. In reviewing the transaction described in the notice, TSX will consider the applicable provisions of this Manual.

(d) Where a listed issuer proposes to enter into a Subsection 602(a) transaction, any public announcement of the transaction must disclose that the transaction is subject to TSX acceptance or approval.

(e) The notice required by Subsection 602(a) should initially take the form of a letter addressed to TSX's Advisory Affairs division, requesting acceptance of the notice for filing, unless the applicable section of Part VI requires otherwise. A press release or information circular filed with TSX does not constitute notice under Section 602. The letter should contain the essential particulars of the transaction, and should state whether: (i) any insider has an interest, directly or indirectly, in the transaction and the nature of such interest; and (ii) whether and how the transaction could materially affect control of the listed issuer. A copy of any written agreement in respect of the transaction must be provided with the notice. TSX must be provided with prompt notice of any changes to the material terms of the transaction described in the notice, regardless of whether the amendment could entail a further issuance of securities. This applies even if the transaction as previously accepted by TSX specifically contemplated future amendments, unless the amendment is solely due to standard anti-dilution provisions in the original agreement. The listed issuer may not proceed with the proposed amendment unless it is accepted by TSX.

(f) The requirements of Section 602 are in addition to the timely disclosure obligations of listed issuers, as set out in Sections 406 to 423.4 of this Manual and to all applicable corporate and securities legislation.

(g) TSX normally considers notices within one week of receipt of the Subsection 602(a) notice. Further information or documentation may be requested before TSX decides to accept or not accept notice of a transaction.

(h) TSX will not apply its standards with respect to security holder approval (Section 604), private placements (Section 607), unlisted warrants (Section 608) and security based compensation arrangements (Section 614) to issuers listed on another exchange where at least 75% of the trading value and volume over the six months immediately preceding notification occurs on that other exchange. These issuers must still comply with Section 602, at which time TSX will notify the issuer of their eligibility under this Subsection 602(h) and the

documents and fees required for TSX acceptance of the notified transaction. The exemptions contained in this Subsection 602(h) are available to listed issuers not otherwise qualified for the exemptions provided to listed issuers qualifying as foreign companies under Section 324.

**603. Discretion.**

TSX has the discretion: (i) to accept notice of a transaction; (ii) to impose conditions on a transaction; and (iii) to allow exemptions from any of the requirements contained in Parts V or VI of this Manual.

In exercising this discretion, TSX will consider the effect that the transaction may have on the quality of the marketplace provided by TSX, based on factors including the following:

(i) the involvement of insiders or other related parties of the listed issuer in the transaction;

(ii) the material effect on control of the listed issuer;

(iii) the listed issuer's corporate governance practices;

(iv) the listed issuer's disclosure practices;

(v) the size of the transaction relative to the liquidity of the issuer; and

(vi) the existence of an order issued by a court or administrative regulatory body that has considered the security holders' interests.

**604. Security Holder Approval.**

(a) In addition to any specific requirement for security holder approval, TSX will generally require security holder approval as a condition of acceptance of a notice under Section 602 if, in the opinion of TSX, the transaction:

(i) may materially affect control of the listed issuer; or

(ii) provides consideration to insiders in aggregate of 10% or greater of the market capitalization of the issuer and has not been negotiated at arm's length.

If any insider of the issuer has a beneficial interest, direct or indirect, in the proposed transaction, TSX will regard such a transaction as not having been negotiated at arm's length.

(b) For other transactions, TSX's decision as to whether to require security holder approval will depend on the particular fact situation having specific regard to those items listed in Subsection 604(a). For the purposes of Subsection 604(a)(ii), the insiders participating in the transaction are not eligible to vote their securities in respect of such approval.

(c) If TSX requires security holder approval of a transaction, the resolution to be voted upon must relate specifically to the transaction in question, rather than an unspecified transaction that may take place in the future.

(d) Security holder approval is to be obtained from a majority of security holders voting at a duly called meeting of security holders. In certain circumstances where TSX requires security holder approval of a transaction, the listed issuer may be in a position to provide TSX with written evidence that holders of more than 50% of the voting securities of the listed issuer are familiar with the terms of the proposed transaction and are in favour of it. In such circumstances, TSX will give consideration to permitting the listed issuer to proceed with the transaction without holding a meeting of security holders to formally approve it; provided that listed issuers proceeding in this manner must disclose by way of press release such fact and the transaction to which such procedure relates at least 10 business days in advance of the closing of the transaction. The press release must be pre-cleared with TSX.

This procedure will not be available for security based compensation arrangements described in Section 613, backdoor listings described in Section 626 and security holder rights plans described in Section 634.

The disclosure provided to security holders in seeking security holder approval must be pre-cleared with TSX.

(e) Upon written application, and other than in respect of Sections 612 and 613, a listed issuer meeting continued listing requirements as set out in Part VII of this Manual will be exempted from security holder approval requirements if the application is accompanied by a resolution of the listed issuer's board of directors stating that:

(i) the listed issuer is in serious financial difficulty;

(ii) the application is made upon the recommendation of a committee of unrelated board members;

(iii) the transaction is designed to improve the listed issuer's financial situation; and

(iv) based on the determination of the committee referred to in (ii) above, that the transaction is reasonable for the listed issuer in the circumstances.

Listed issuers using this exemption will be required to issue a press release at least ten (10) business days in advance of the closing of the transaction disclosing the material terms of the transaction and that the listed issuer has relied upon this exemption. The press release must be pre-cleared with TSX.

(f) Security holder approval will not be required where at least ninety percent (90%) of an issuer's equity and outstanding voting securities are held by one person or company.

**605. Changes in Issued Securities.**

TSX must be notified immediately of any increase or decrease in the number of issued securities of a listed issuer. The notice must be on Form 1 "Change in Outstanding and Reserved Securities" found in Appendix H. Changes resulting from the issuance of securities over a prolonged period of time may be reported on a monthly basis. See Section 424 of this Manual. Please note that "nil" reports must be filed on a monthly basis.

**DISTRIBUTIONS OF SECURITIES OF A LISTED CLASS**

**606. Prospectus Offerings.**

(a) Listed issuers proposing to issue securities of a listed class pursuant to a prospectus must file one copy of the preliminary prospectus with TSX's Advisory Affairs division concurrently with the filing thereof with the applicable securities commissions.

(b) TSX will generally accept notice of distributions by way of prospectus. TSX may, however, apply the provisions of Section 607 to a prospectus distribution. In making such a decision TSX will consider factors such as:

(i) the method of the distribution;

(ii) the participation of insiders;

(iii) the number of placees;

(iv) the offering price; and

(v) the economic dilution.

(c) Prior to the filing of the final prospectus, TSX will notify the listed issuer of any required additional documentation.

(d) The additional securities will normally be listed as soon as the prospectus offering has closed. Upon request, the listing may take place prior to the closing of the offering. TSX staff will advise the issuer of the requirements in this regard. Any trading that takes place prior to closing will be on an ''if, as and when issued'' basis.

**607. Private Placements.**

(a) TSX defines the term ''private placement'' as an issuance of treasury securities for cash consideration or in payment of an outstanding debt of the listed issuer without prospectus disclosure, in reliance on an exemption from the prospectus requirements under applicable securities laws.

Securities issued for no cash consideration to registered charities as defined under the *Income Tax Act* (Canada) as described in Section 612, securities issued in payment of the purchase price for property described in Section 611, security based compensation arrangements described in Section 613, rights offerings described in Section 614 and backdoor listings described in Section 626 are not considered by TSX as being Section 607 private placements.

(b) This Section 607 is applicable to issuances of unlisted securities which are convertible into or exchangeable for securities of a class listed on TSX. This Section 607 is not applicable to private placements of securities which are neither of a class listed on TSX nor convertible into securities of a class listed on TSX.

(c) Other than those transactions described in Sections 604 and 717, private placements:

(i) offered at a price per security at or above market price, regardless of the number of listed securities issuable, or

(ii) for an aggregate number of listed securities issuable equal to or less than 25% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis, prior to the date of closing of the transaction where the price per security is less than the market price but within the applicable discounts set out in Subsection 607(e),

will be accepted by TSX generally within three (3) business days of TSX receiving notice thereof. Notice to TSX of this type of private placement is effected by submitting Form 11 "Private Placement – Expedited Filing" found in Appendix H.

For greater certainty, where the proceeds of a proposed private placement, in whole or in part, are used towards a transaction which results in a change in the nature of an issuer's business, such private placements will not be accepted under this Subsection 607(c). See Section 717 for additional details regarding the requirements for a change in the nature of an issuer's business.

(d) Private placements other than those described in Subsection 607(c) will be reviewed by TSX. TSX will advise the listed issuer generally within seven (7) business days of receipt of the notice that either TSX (i) accepts notice of the transaction and of any conditions attached to such acceptance, or (ii) does not accept the notice, indicating its reasons. Notice to TSX of this type of private placement is effected by submitting Form 12 "Private Placement – Regular Filing" found in Appendix H.

(e) The price per listed security for any private placement must not be lower than the market price less the applicable discount as follows:

| Market price | Maximum discount |
|---|---|
| $0.50 or less | 25% |
| $0.51 to $2.00 | 20% |
| Above $2.00 | 15% |

TSX will allow the price per listed security for a particular transaction to be less than as provided for in this Subsection 607(e) provided that the listed issuer has received security holder approval (other than by security holders participating directly or indirectly in the transaction and such security holders' associates and affiliates).

Anti-dilution provisions providing adjustments for events for which not all security holders are compensated and which may result in securities being issued at a price lower than market price less the applicable discount will be permitted, provided they have been approved by security holders excluding the votes attached to the securities held by insiders benefiting from these anti-dilution provisions.

TSX will discount the price per security by the amount of any fees or other amounts payable by the issuer to the subscriber, or its associates and affiliates, if the issuer cannot demonstrate that such amounts are commercially reasonable in the circumstances.

(f) For all private placements:

(i) subject to paragraph (ii), the transaction must not close and the securities must not be issued prior to acceptance thereof by TSX and not later than 45 days (or, in circumstances where security holder approval is required pursuant to Subsection 607(g), 135 days) from the date upon which the market price of the securities being issued is established;

(ii) an extension of the time period prescribed in paragraph (i) may be granted in justifiable circumstances, provided that a written request for an extension is filed with TSX's Advisory Affairs division in advance of the expiry of the 45-day period;

(iii) in the case of a private placement of convertible securities, the underlying listed securities will be considered as being issued at a price per security less than the market price, unless the conversion price of such convertible security is defined as at least market price at the time of conversion, and will be regarded as being part of the number of securities being issued pursuant to the transaction;

(iv) listed securities issuable upon the exercise of warrants will be considered as being issued at a price per security less than the market price and will be regarded as being part of the number of securities being issued pursuant to the transaction;

(v) successive private placements will be aggregated for the purposes of Subsections 607(c)(ii) and 607(g)(i) if they are proximate in time, have common placees and/or a common use of proceeds; and

(vi) the listed issuer must give TSX immediate notice in writing of the closing of the transaction.

(g) TSX will require that security holder approval be obtained for private placements:

(i) for an aggregate number of listed securities issuable greater than 25% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis, prior to the date of closing of the transaction where the price per security is less than the market price; or

(ii) that during any six month period are to insiders for listed securities or options, rights or other entitlements to listed securities greater than 10% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis, prior to the date of closing of the transaction.

For the purposes of Subsections 607(c) and 607(g)(i), any private placements providing flow-through tax credits to the subscribers will be considered as having a price per security less than the market price.

For the purposes of Subsection 607(g)(ii), the insiders participating in the private placement are not eligible to vote their securities in respect of such approval.

Subsection 607(g)(ii) shall also apply to circumstances in which insiders participate in a private placement pursuant to the exercise of a preemptive right.

**608. Unlisted Warrants.**

(a) Unless otherwise approved by the listed issuer's security holders (other than security holders receiving warrants directly or indirectly and such security holders' associates and affiliates), warrants to purchase listed securities may only be issued to a placee if the warrant exercise price is not less than the market price of the underlying security at the time provided for in the agreement obligating the issuer to issue the underlying listed securities. This Subsection 608(a) does not apply to warrants issued pursuant to prospectus offerings described in Section 606 and rights offerings described in Section 614.

(b) A listed issuer may apply to TSX to amend the warrant exercise price and the term of the warrant provided that:

(i) disclosure of such amendments is made by way of press release ten (10) business days prior to the effective date of the change; and

(ii) the application is accompanied by a filing fee (see Part VIII).

Security holder approval will be required for:

(i) amendments to warrants held, directly or indirectly, by insiders; or

(ii) amendments to warrants resulting in an exercise price which is less than the market price of the securities determined on the date of the amending agreement.

Security holder approval must exclude the votes attached to the securities held by insiders whose warrants are proposed to be amended.

A copy of the press release, and evidence of security holder approval if applicable, must be provided to TSX prior to the press release being issued.

(c) A listed issuer may apply to TSX to amend the warrant to provide for the exercise of the warrant without cash consideration by issuing the number of listed securities equal to:

(number of warrants exercised X market price at time of exercise) - (number of warrants exercised X exercise price) / market price at time of exercise

**609. Listed Warrants.**

(a) The listing of warrants on TSX is considered on a case-by-case basis.

(b) Warrants will not be listed unless the underlying securities are listed, or conditionally approved for listing, on TSX. In order for warrants to be eligible for listing on TSX, there must be at least 100 public holders of 100 warrants or more and at least 100,000 publicly held warrants. See Section 346 for the requirements respecting notations in prospectuses or other offering documents referring to a TSX listing.

(c) The warrant trust indenture, or other document prescribing the rights of warrant holders, must be pre-cleared by TSX and contain appropriate anti-dilution provisions to ensure that the rights of the holders are protected in the event of an amalgamation, merger, stock dividend, subdivision, consolidation or other form of capital reorganization, or in the case of a major asset distribution to security holders.

(d) Any proposed amendment to the terms of outstanding listed warrants must be accepted by TSX prior to the amendment becoming effective. Once warrants have been listed, TSX will not permit amendments to any of the essential terms of the warrants, such as the exercise price (except for anti-dilution purposes) or the expiry date. TSX will not list warrants in respect of which the warrant trust indenture (or equivalent document) entitles the directors of the issuer to change the exercise price (except for anti-dilution purposes) or which provides for the possibility of an amendment to the expiry date.

(e) Prior to the listing of warrants on TSX, the listed issuer will normally be required to take the necessary steps to ensure that the warrants are freely tradable by residents across Canada.

(f) To apply to have warrants listed on TSX, the listed issuer must file a letter application and draft warrant indenture with TSX's Advisory Affairs division.

(g) Notice of a listed issuer's intention to pay a subscription fee to one or more Participating Organizations for assisting in obtaining exercises of warrants must be given to TSX's Advisory Affairs division as soon as such an arrangement is entered into by the listed issuer.

TSX will not permit any arrangement to solicit clients to purchase or exercise warrants if the arrangement could have the effect of artificially changing the exercise price of the warrants or could subsidize certain market participants to exercise warrants at an exercise price that is not available to others. TSX will also not permit any arrangement between a listed issuer and a securities dealer that would have a similar effect, such as an over-the-counter derivatives transaction, or a direct subsidy, advisory fee or other form of payment, the impact of which would be to create an incentive to buy warrants at a higher price than would other wise be the case.

TSX will not permit soliciting dealer arrangements unless the following are provided for: (1) a maximum solicitation fee to be paid in respect of any one beneficial holder of warrants, similar to the maximum amount normally payable to soliciting dealers in a rights offering; (2) a prohibition on a solicitation fee being passed through to a client by a dealer, either directly or through indirect subsidies; and (3) full public disclosure of the essential terms of the soliciting dealer arrangement.

**610. Convertible Securities.**

(a) The conversion price of a convertible security privately placed is subject to Subsection 607(e) and may be:

(i) based on either of, but not the lower of, market price less the applicable discount, at the time of issuance of the convertible security or at the time of conversion of such security; or

(ii) based on the lower of market price, without any applicable discount, at the time of the issuance of convertible security or at the time of conversion of such security.

In all other instances, security holder approval will be required.

(b) Where two or more classes of securities are interconvertible and one is listed, the other must also be listed.

(c) A decrease in the conversion price of a previously issued convertible security must be submitted to TSX for approval and will be reviewed as a new private placement.

**611. Acquisitions.**

(a) Where a listed issuer proposes to issue securities as full or partial consideration for property (which may include securities or assets) purchased from an insider of the listed issuer, TSX may require that documentation such as an independent valuation or engineer's report be provided.

(b) Security holder approval will be required in those instances where the number of securities issued or issuable to insiders as a group in payment of the purchase price for an acquisition exceeds 10% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis, prior to the date of closing of the transaction. Insiders receiving securities pursuant to the transaction are not eligible to vote their securities in respect of such approval.

(c) Security holder approval will be required in those instances where the number of securities issued or issuable in payment of the purchase price for an acquisition exceeds 25% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis. Where the acquisition includes the assumption of security based compensation arrangements of a target issuer, securities issuable under such arrangements will be included in the securities issued or issuable with respect to the requirement for security holder approval. TSX will consider granting relief from this Subsection 611(c) where the assets acquired are not closely held.

(d) In calculating the number of securities issued or issuable in payment of the purchase price for an acquisition, any securities issued or issuable upon a concurrent private placement upon which the acquisition is contingent or otherwise linked will be included.

**611.1. Lettered Stock**

Subject to Section 611.1(e), where a listed issuer proposes to issue a certificate representing securities of a class listed on TSX, and the certificate requires a notation that the securities represented by the certificate are not freely transferable (commonly called "lettered stock"), the following rules will apply (assuming the restriction does not apply to all outstanding securities of the class):

(a) The listed issuer must inform by letter each holder of securities which are restricted as to transfer: (i) that such securities cannot be traded through the facilities of TSX since the certificate is not freely transferable and consequently is not "good delivery" in settlement of transactions on TSX; and (ii) that TSX would deem the selling security holder to be responsible for any loss incurred on a sale of such securities.

(b) The certificate must clearly show the following notation on its face:

"The securities represented by this certificate are listed on the Toronto Stock Exchange (the "TSX"); however, the said securities cannot be traded through the facilities of TSX since they are not freely transferable, and consequently any certificate representing such securities is not "good delivery" in settlement of transactions on TSX."

(c) The listed issuer must comply with such other requirements TSX may wish to impose with respect to the lettered stock.

(d) The notation required by TSX can be removed from the face of the certificate when all other notations that the securities are not freely transferable can be legally removed from the certificate.

(e) If the securities that have the transfer restriction are widely held to the extent of meeting TSX's public distribution requirements for original listing, TSX may permit the listing of the securities on TSX in a "special terms market", which is a market separate from that of the rest of the securities of the same class. In that case, the requirements set out in this Section may be modified accordingly. TSX's Advisory Affairs division should be contacted in connection with a proposed listing of this type.

**612. Securities Issued to Registered Charities.**

(a) Subject to Subsection 612(b), listed issuers may issue securities for no cash consideration to registered charities as defined under the *Income Tax Act* (Canada).

(b) Security holder approval will be required in those instances where the number of listed securities issued or issuable:

(i) to one registered charity exceeds 2% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis, prior to the date of the issuance; or

(ii) in a 12 month period in the aggregate exceeds 5% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis at the beginning of that 12 month period.

(c) Options, rights, warrants or other convertible securities issued to registered charities may not be exercisable at a price lower than the market price of the underlying security at the time of the grant.

(d) TSX's policy on timely disclosure requires immediate disclosure by its issuers of all "material information" as defined in the policy. The policy also recognizes that there are restricted circumstances where confidentiality may be justified on a temporary basis. Listed issuers may not set option exercise prices, or prices at which securities may otherwise by issued, on the basis of market prices which do not reflect material information of which management is aware but which has not been disclosed to the public.

**SECURITY BASED COMPENSATION ARRANGEMENTS**

**613.** (a) When instituted and every three years thereafter, all security based compensation arrangements must be approved by:

(i) a majority of the issuer's directors and by all its unrelated directors; and

(ii) subject to Subsections 613(b), (c) (g) and (i), by the listed issuer's security holders.

Insiders of the listed issuer entitled to receive a benefit under the arrangement are not eligible to vote their securities in respect of such approval, unless:

(i) the securities available under the arrangement, when combined with all of the listed issuer's other security based compensation arrangements, does not exceed 10% of the listed issuer's total issued and outstanding securities;

(ii) the unrelated board members recommend the adoption of the arrangement; and

(iii) the listed issuer is included in the S&P/TSX Composite Index.

When an individual is an associate, non-controlling director or senior officer of an insider, such individual will be eligible to vote. Security holder approval must be by way of a duly called meeting. For such security holder approval, holders of Restricted Securities, as defined in Section 624, must be entitled to vote with the holders of any class of securities of the listed issuer which otherwise carry greater voting rights, on a basis proportionate to their respective residual equity interests in the issuer. The exemption from security holder approval contained in Subsection 604(e) is not available in respect of security based compensation arrangements.

(b) For the purposes of this Section 613, security based compensation arrangements include:

(i) stock option plans for the benefit of employees, insiders, service providers or any one of such groups;

(ii) individual stock options granted to employees, service providers or insiders if not granted pursuant to a plan previously approved by the issuer's security holders;

(iii) stock purchase plans where the issuer provides financial assistance or where the issuer matches the whole or a portion of the securities being purchased;

(iv) stock appreciation rights involving issuances of securities from treasury;

(v) any other compensation or incentive mechanism involving the issuance or potential issuances of securities of the listed issuer; and

(vi) security purchases from treasury by an employee, insider or service provider which is financially assisted by the listed issuer by any means whatsoever.

For greater certainty, arrangements which do not involve the issuance from treasury or potential issuance from treasury of securities of the issuer are not security based compensation arrangements for the purposes of this Section 613.

For the purposes of Section 613, a "service provider" is a person or company engaged by the issuer to provide services for an initial, renewable or extended for a period of twelve months or more.

(c) Security holder approval is not required for security based compensation arrangements used as an inducement to a person not previously employed by and not previously an insider of the listed issuer, to enter into a contract of full time employment as an officer of the listed issuer, provided that the securities issuable to such person do not exceed 2% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis, prior to the date of the arrangement.

(d) Materials provided to security holders in respect of a meeting at which the approval of security based compensation arrangements will be requested must be pre-cleared with TSX. Such materials must provide disclosure in respect of:

(i) the eligible participants under the arrangement;

(ii) each of the following, as applicable:

i. the total number of securities issuable under each arrangement and the percentage of the listed issuer's currently outstanding capital represented by such securities,

ii. the total number of securities issuable under each arrangement, as a percentage of the listed issuer's currently outstanding capital, and

iii. the total number of securities issuable under actual grants or awards made and the percentage of the listed issuer's currently outstanding capital represented by such securities;

(iii) the maximum percentage, if any, of securities under each arrangement available to insiders of the listed issuer;

(iv) the maximum number of securities, if any, any one person or company is entitled to receive under each arrangement and the percentage of the listed issuer's currently outstanding capital represented by these securities;

(v) subject to Section 613(h)(i), the method of determining the exercise price for securities under each arrangement;

(vi) the method of determining the purchase price for securities under security purchase arrangements, with specific disclosure as to whether the purchase price could be below the market price of the securities;

(vii) the formula for calculating market appreciation of stock appreciation rights;

(viii) the ability for the issuer to transform a stock option into a stock appreciation right involving an issuance of securities from treasury;

(ix) the vesting of stock options;

(x) the term of stock options;

(xi) the causes of cessation of entitlement under each arrangement, including the effect of an employee's termination for or without cause;

(xii) the assignability of security based compensation arrangements benefits and the conditions for such assignability;

(xiii) the procedure for amending each arrangement, including specific disclosure as to whether security holder approval is required for amendments;

(xiv) any financial assistance provided by the listed issuer to participants under each arrangement to facilitate the purchase of securities under the arrangement, including the terms of such assistance;

(xv) entitlements under each arrangement previously granted but subject to ratification by security holders; and

(xvi) such other material information as may be reasonably required by a security holder to approve the arrangements.

Should a security based compensation arrangement not provide for the procedure for amending the arrangement, disinterested security holder approval will be required for such amendments.

(e) A listed issuer may grant options or rights under a security based compensation arrangement that has not been approved by security holders provided that no exercise of such option or right may occur until security holder approval is obtained.

(f) All security based compensation plans, and any amendments thereto, must be filed with TSX, along with evidence of security holder approval where required. Listed securities issuable under the arrangements will not be listed on TSX until such documentation is received.

(g) Issuers must disclose on an annual basis, in their information circulars, or other annual disclosure document distributed to all security holders, the terms of their security based compensation arrangements and any amendments that were adopted in the last fiscal year. The information circular must provide disclosure in respect of each of the items in Section 613(d) as well as the nature of the amendments adopted in the last fiscal year, including whether or not (and if not, why not) security holder approval was obtained for the amendment.

(h) Notwithstanding that a security based compensation arrangement has been approved by the issuer's security holders:

(i) the exercise price for any stock options granted under a security based compensation arrangement or otherwise must not be lower than the market price of the securities at the time the option is granted; and

(ii) security holder approval (excluding the votes of securities held directly or indirectly by insiders benefiting from the amendment) is required for (x) a reduction in the exercise price or purchase price or (y) an extension of the term, under a security based compensation arrangement benefiting an insider of the issuer.

(i) The granting of stock options under a plan and the issuance of securities under a stock option plan or other plan do not require the prior consent of TSX if the plan has been pre-cleared with TSX and the securities that are subject to issuance have been listed. However, stock options granted, exercised or cancelled under a plan must be reported to TSX on a monthly basis in the form of a duly completed From 1 – Change in Outstanding and Reserved Securities (Appendix H: Company Reporting Forms). If no listed securities are issued, no options have expired or been cancelled in any particular month, a notice for that month is required.

(j) TSX's policy on timely disclosure requires immediate disclosure by its issuers of all "material information" as defined in the policy. The policy also recognizes that there are restricted circumstances where confidentiality may be justified on a temporary basis. Listed issuers may not set option exercise prices, or prices at which securities may otherwise by issued, on the basis of market prices which do not reflect material information of which management is aware but which has not been disclosed to the public. Exceptions are where employees, at a previous time when they did not have knowledge of the undisclosed information, committed themselves to acquire the shares on specified terms through participation in a stock purchase plan, or where the granting of a stock option relates directly to the undisclosed event and the grantee is neither an employee nor an insider of the issuer at the time of the grant (e.g., where a stock option is granted to an employee of another company as part of the negotiations to acquire that company).

**RIGHTS OFFERINGS**

**614.** (a) A preliminary discussion with TSX's Advisory Affairs division is recommended to a listed issuer proposing to offer rights to its security holders.

(b) A rights offering by a listed issuer must be accepted for filing by TSX before the offering proceeds. The offering must also be cleared with the securities commissions having jurisdiction (see section 2.1 of National Instrument 45-101).

The rights offering must receive final acceptance from TSX and the securities commissionsat least seven trading days in advance of the record date for the rights offering, the record date being the date of the closing of the transfer books for the preparation of the final list of security holders who are entitled to receive rights. Exceptions to this requirement will be permitted by TSX only in cases where applicable legislation renders the requirement impracticable.

A listed issuer may not announce a firm record date for a rights offering before all necessary approvals have been received.

(c) A draft copy of the rights offering circular (''circular'' includes a prospectus, if applicable) must be filed with TSX's Advisory Affairs division concurrently with the filing thereof with the securities commissions. TSX will subsequently advise the listed issuer of any deficiencies in the draft circular and of the further documentation that will be required.

(d) If the rights offering is acceptable to TSX (subject only to the correction of minor deficiencies, if any, and the filing of the required documents), TSX will so advise the securities commissions.

(e) At least seven trading days in advance of the record date:

(i) all deficiencies raised by TSX must be resolved;

(ii) clearances for the rights offering must be obtained from all securities commissions having jurisdiction, and the listed issuer must so advise TSX;

(iii) all the terms of the rights offering must be finalized; and

(iv) TSX's Advisory Affairs division must receive all requested documents and applicable fees (see Section 804).

(f) There is no fee for the listing of rights on TSX, although there is a fee for listing securities issuable upon exercise of the rights. If such securities are of a class already listed, the listed issuer must list the maximum number of securities issuable under the rights offering.

(g) The information that must be contained in a rights offering circular is prescribed in the rules and policies of the securities commissions. See National Instrument 45-101 and Form 45-101F. TSX may have additional requirements, depending on the circumstances.

(h) The standard notation on final prospectuses or other offering documents referring to conditional approval of a listing is not appropriate for a rights offering circular with respect to the rights themselves, nor is such notation appropriate with respect to the securities issuable upon exercise of the rights if such securities are of a class already listed. The rights will normally be listed on TSX, as will the underlying securities (if of a class already listed), before the rights offering circular is mailed to the security holders.

(i) Rights which receive all required approvals will be automatically listed on TSX if the rights entitle the holders to purchase securities of a listed class. Rights which do not fall into this category will also normally be listed on TSX at the request of the listed issuer. If rights issued to security holders of a listed issuer entitle the holders to purchase securities of another issuer which is not listed, the rights will not be listed on TSX unless such securities have been conditionally approved for listing on TSX.

(j) Rights are listed on TSX on the second trading day preceding the record date. At the same time, the listed securities of the listed issuer commence trading on an ex-rights basis, which means that purchasers of the securities at that time are not entitled to receive the rights.

(k) When the rights offering circular and rights certificates are mailed to the security holders, the listed issuer must concurrently file with TSX's Advisory Affairs division two commercial copies of the rights offering circular and a definitive specimen of the rights certificate.

(l) Trading in rights on TSX ceases at 12:00 noon on the expiry date.

(m) TSX will generally require that rights be transferable, whether listed on TSX or not. Any proposed restriction on their transferability must receive the prior consent of TSX.

(n) The following requirements apply to rights which are listed on TSX, although TSX may, in appropriate circumstances, apply these requirements to rights not so listed:

(i) once the rights have been listed on TSX, TSX will not permit the essential terms of the rights offering, such as the exercise price or the expiry date, to be amended. However, under extremely exceptional circumstances, such as an unexpected postal disruption, TSX may grant an exemption from the requirement that the expiry date not be extended;

(ii) the rights offering must be open for a period of at least 21 calendar days following the date on which the rights offering circular is sent to security holders or such longer period as is necessary to ensure that security holders, including security holders residing in foreign countries, will have sufficient time to exercise or sell their rights on an informed basis;

(iii) security holders must receive exactly one right for each security held. An exemption from this requirement will be considered if the rights offering entitles security holders to purchase more than one security for each security held (prior to giving effect to any additional subscription privilege);

(iv) if the listed issuer proposes to provide a rounding mechanism, whereby security holders not holding a number of securities equally divisible by a specified number would have their entitlements adjusted upward, adequate arrangements must be made to ensure that beneficial owners of securities registered in the names of banks, trust companies, investment dealers or similar institutions will be treated, for purposes of such additional entitlements, as though they were registered security holders; and

(v) the rights offering must be unconditional.

(o) As soon as possible after the expiry of the rights offering, the listed issuer must advise TSX in writing of the number of securities issued as a result of the rights offering, including securities issued pursuant to any underwriting or similar arrangement.

**ADDITIONAL LISTINGS**

**615. General.**

(a) In addition to the requirements of Section 601, every listed issuer proposing to issue additional securities of a listed class, or to authorize such additional securities to be issued for a specific purpose, must apply to have the additional securities listed on TSX. Application must be made to list the maximum number of securities issuable pursuant to the proposed transaction.

With regard to the additional listing of securities sold by prospectus, see Section 606.

(b) In determining the number of additional securities to be listed, securities listed in connection with earlier transactions must not be taken into account. Credits for fee purposes or refunds will not be given for securities which have previously been listed but are no longer issued or authorized for issuance for a specific purpose.

**616. Documentation.**

(a) There is no prescribed form for an additional listing application. A letter notice pursuant to Section 601 will be regarded by TSX as including an application to list the applicable additional securities.

(b) The documentation required in connection with an additional listing application will depend on the nature of the application. In all cases, however, the following documentation will be required:

(i) copies of all relevant executed agreements;

(ii) an opinion of counsel that the securities to be listed have been validly created in accordance with applicable law and that the securities have been (or will be, when issued in accordance with the terms of the transaction) validly issued as fully paid and non-assessable; and

(iii) the additional listing fee (see Section 804).

**617. Stock Dividends.**

Listed issuers which issue stock dividends on a regular basis, whether pursuant to a formal stock dividend plan or otherwise, can either apply to list securities each time a dividend is declared or, alternatively, apply to list as a block the number of securities the listed issuer estimates will be issued as stock dividends over the next two years. The latter procedure could result in an ultimate saving in listing fees.

**SUBSTITUTIONAL LISTINGS**

**618. General.**

(a) Where a listed issuer proposes to change its name, split or consolidate its stock, or undergo a security reclassification, the listed issuer must make a substitutional listing application to TSX.

(b) Where a listed issuer proposes to undergo a change which would give rise to a substitutional listing, the listed issuer must pre-clear with TSX's Advisory Affairs division the materials for the requisite security holders' meeting.

**619. Name or Symbol Changes.**

(a) A listed issuer proposing to change its name must notify TSX's Advisory Affairs division as soon as possible after the decision to change the name has been made. The new name must be acceptable to TSX.

(b) If the proposed change is substantial, it may be appropriate for TSX to assign a new stock symbol to the listed issuer's securities. The listed issuer's choices, if any, in this regard should be communicated to TSX's Advisory Affairs division, in order of preference, in advance of the effective date of the name change. The symbol may consist of up to three letters (excluding the letters that differentiate between different classes of securities).

(c) The following documents must be filed with TSX's Advisory Affairs division in connection with a name change:

(i) a notarial or certified copy of the Certificate of Amendment, or equivalent document;

(ii) a definitive specimen of the new or over-printed security certificate;

(iii) a copy of the written notice from The Canadian Depository for Securities Limited disclosing the CUSIP number(s) assigned to the issuer's listed securities after giving effect to the name change (see Section 350); and

(iv) the substitutional listing fee (see Section 805).

(d) The listed issuer's securities will normally commence trading on TSX under the new name at the opening of business two or three trading days after all the documents set out in Subsection 619(c) are received by TSX.

(e) A listed issuer may request a change to the symbol assigned to its listed securities upon payment of the applicable fee (see Section 810).

**620. Stock Split.**

(a) There are two methods of effecting a stock split: the ''push-out'' method and the ''call-in'' method. If the stock split is accompanied by a security reclassification, either the push-out method or the call-in method may be used; otherwise the push-out method is preferable.

(b) Under the push-out method, the security holders keep the security certificates they currently hold, and security holders of record as of the close of business on a specified date (the ''record date'') are provided with additional or replacement security certificates by the listed issuer.

(c) Where the push-out method is to be used, the Certificate of Amendment, or equivalent document, giving effect to the split must be issued at least seven, and preferably not less than ten, trading days prior to the record date. Accordingly, if the stock split must be approved by security holders, the meeting of security holders must take place at least seven trading days in advance of the record date. If the push-out method is to be used, the following documents must be received by TSX's Advisory Affairs division at least seven trading days in advance of the record date:

(i) written confirmation of the record date including the time of day (''close of business'' will be sufficient for this purpose);

(ii) a notarial or certified copy of the Certificate of Amendment, or equivalent document;

(iii) an opinion of counsel that all the necessary steps have been taken to validly effect the split in accordance with applicable law and that the additional securities will be validly issued as fully paid and non-assessable;

(iv) a written statement as to the date on which it is intended that the additional security certificates will be mailed to the security holders;

(v) the substitutional listing fee (see Section 805); and

(vi) if the stock split is accompanied by a security reclassification,

(1) definitive specimens of the new security certificates; and

(2) a letter from The Canadian Depository for Securities Limited disclosing the CUSIP numbers assigned to each new class of securities (see Section 350).

(d) Where the push-out method is used, the securities will commence trading on TSX on a split basis at the opening of business on the second trading day preceding the record date.

(e) Under the call-in method, the listed issuer implements the stock split by replacing the security certificates currently in the hands of the security holders with new certificates. Letters of Transmittal are sent to the security holders requesting them to exchange their security certificates at the offices of the listed issuer's transfer agent.

(f) Where the call-in method is to be used, the following documents must be received by TSX's Advisory Affairs division on or before the day on which the Letters of Transmittal are mailed to the security holders:

(i) two copies of the Letters of Transmittal;

(ii) a notarial or certified copy of the Certificate of Amendment, or equivalent document;

(iii) an opinion of counsel that all the necessary steps have been taken to validly effect the split in accordance with applicable law and that the additional securities will be validly issued as fully paid and non-assessable;

(iv) definitive specimens of the new security certificates;

(v) a copy of the written notice from The Canadian Depository for Securities Limited disclosing the CUSIP numbers assigned to each new class of securities (see Section 350);

(vi) a written statement as to the intended mailing date of the Letters of Transmittal; and

(vii) the substitutional listing fee (see Section 805).

(g) Where the call-in method is used, the securities will normally commence trading on TSX on a split basis at the opening of business two or three trading days after later of the date all required documents are received by TSX and the date the Letters of Transmittal are mailed to the security holders.

(h) Where a listed issuer proposing to split its stock has warrants posted for trading on TSX, the form of warrant certificate must not be changed by virtue of the split, but any new warrant certificate issued by the issuer after the stock split becomes effective must contain a notation disclosing the effect of the stock split on the rights of

the warrant holders and a statement that the number of warrants represented by the warrant certificate for trading purposes is equal to the number imprinted in the top right-hand corner (or other location, if appropriate) of the certificate.

**621. Stock Consolidation.**

(a) A stock consolidation by a listed issuer requires the prior consent of TSX.

(b) A listed issuer undergoing a stock consolidation must meet, post-consolidation, the continued listing requirements contained in Part VII of this Manual (see Section 712).

(c) A stock consolidation must be accompanied by a concurrent change in the colour of the security certificates, or if a generic security certificate is used, a copy of such generic certificate, and a new CUSIP number.

(d) The following documents must be filed with TSX's Advisory Affairs division on or prior to the day on which the Letters of Transmittal are sent to the security holders:

(i) two copies of the Letters of Transmittal;

(ii) a notarial or certified copy of the Certificate of Amendment, or equivalent document;

(iii) opinion of counsel that all the necessary steps have been taken to validly effect the consolidation in accordance with applicable law;

(iv) a definitive specimen of the new security certificates;

(v) a copy of the written notice from The Canadian Depository for Securities Limited disclosing the new CUSIP number assigned to the securities (see Section 350);

(vi) a written statement as to the intended mailing date of the Letters of Transmittal; and

(vii) the substitutional listing fee (see Section 805).

In addition, the listed issuer may be required to file with TSX a completed form (Appendix D) showing the distribution of the securities on a post-consolidation basis.

(e) The securities will normally commence trading on TSX on a consolidated basis at the opening of business two or three trading days after the later of the date upon which all required documents are received by TSX and the date the Letters of Transmittal are mailed to the security holders.

**622. Security Reclassification (with no stock split).**

(a) The following documentation must be filed with TSX's Advisory Affairs division in connection with a security reclassification (with no stock split):

(i) a notarial or certified copy of the Certificate of Amendment, or equivalent document;

(ii) an opinion of counsel that all the necessary steps have been taken to validly effect the security reclassification in accordance with applicable law;

(iii) a definitive specimen of the new or over-printed security certificate;

(iv) a copy of the written notice from The Canadian Depository for Securities Limited disclosing the CUSIP number(s) assigned to the securities (see Section 350);

(v) the substitutional listing fee (see Section 805);

(vi) two copies of the Letters of Transmittal, if applicable; and

(vii) a written statement as to the intended mailing date of the Letters of Transmittal, if applicable.

(b) The reclassification will normally become effective for trading purposes at the opening of business two or three trading days after the later of the date upon which all required documents are received by TSX and the date the Letters of Transmittal are mailed to the security holders.

**SUPPLEMENTAL LISTINGS**

**623.** (a) A listed issuer proposing to list securities of a class not already listed should apply for the listing by letter addressed to TSX's Advisory Affairs division. The letter must be accompanied by one copy of the preliminary prospectus or, if applicable, the draft circular describing the provisions attaching to the securities.

(b) If TSX conditionally approves the listing of the securities, this fact may be disclosed in the final prospectus, or in other documents, in accordance with Section 346.

(c) The minimum public distribution requirements for a supplemental listing are the same as the minimum requirements for original listing as set out in Section 310. However, TSX will give consideration to listing nonparticipating preferred securities that do not meet these requirements if the market value of such securities outstanding is at least $2,000,000 and:

(i) if the securities are convertible into participating securities, such participating securities are listed on TSX and meet the minimum public distribution requirements for original listing; and

(ii) if the securities are not convertible into participating securities, the issuer is exempt from Section 501.

(d) The following documents must be filed with TSX's Advisory Affairs division within 90 days of TSX's conditional acceptance of the supplemental listing (or within such later time as TSX may stipulate):

(i) a notarial or certified copy of the resolution of the board of directors of the listed issuer authorizing the application to list the securities;

(ii) a notarial or certified copy of the Certificate of Amendment, or equivalent document, giving effect to the creation of the securities;

(iii) two commercial copies of the final prospectus, or other offering document, if applicable;

(iv) an opinion of counsel that the securities to be listed have been validly created in accordance with applicable law and that the securities are validly issued as fully paid and non-assessable;

(v) a definitive specimen of the security certificate;

(vi) a copy of the written notice from The Canadian Depository for Securities Limited disclosing the CUSIP number assigned to the securities (see Section 341);

(vii) one completed copy of the Statement Showing Number of Shareholders form (Appendix D) or, in the case of a prospectus underwriting, a certificate from the underwriter confirming that the securities have been distributed to at least 300 public board lot holders (unless TSX waives this requirement); and

(viii) the supplemental listing fee (see Section 806).

(e) In the case of the listing of securities being offered to the public, the listing may take place prior to the closing of the offering, at the listed issuer's request. TSX staff will advise the issuer of the requirements in this regard. Any trading that takes place prior to closing will be on an ''if, as and when issued'' basis.

**RESTRICTED SECURITIES**

**624.** (a) Except as otherwise provided in this Section 624, TSX's requirements respecting the listing of Restricted Securities (as defined in Subsection 624(b)) are applicable to all listed issuers having Restricted Securities listed on TSX, regardless of when the securities were listed. This Section needs to be read as a whole and in conjunction with OSC Rule 56-501. One of the principal objectives of this Section 624 is to alert investors of the fact that there are differences in the voting powers attached to the different securities of an issuer. This Section applies to non-incorporated entities to the extent applicable to ensure that the objective of this Section is met.

(b) For the purposes of this Section 624:

(i) **"Common Securities"** means Residual Equity Securities that are fully franchised, in that the holder of each such security has a right to vote each security in all circumstances calling for a vote under the applicable corporate or governing legislation, irrespective of the number of securities owned, that is not less, on a per security basis, than the right to vote attaching to any other security of an outstanding class of securities of the listed issuer;

(ii) **"Non-Voting Securities"** means Restricted Securities which do not carry the right to vote at security holders' meetings except for a right to vote in certain limited circumstances (e.g., to elect a limited number of directors or to vote in circumstances where the applicable corporate legislation provides the right to vote for securities which are otherwise non-voting);

(iii) **"Preference Securities"** means securities to which there is attached a genuine and non-specious preference or right over any class of Residual Equity Securities of the listed issuer;

(iv) **"Residual Equity Securities"** means securities which have a residual right to share in the earnings of the listed issuer and in its assets upon liquidation or winding up;

(v) **"Restricted Securities"** means Residual Equity Securities which are not Common Securities;

(vi) **"Restricted Voting Securities"** means Restricted Securities which carry a right to vote which is subject to some limit or restriction on the number or percentage of securities which may be voted by a person or company or group of persons or companies (except where the restriction or limit is applicable only to persons or companies who are not Canadians or residents of Canada); and

(vii) **"Subordinate Voting Securities"** means Restricted Securities, which carry a right to vote at security holders' meetings but another class of securities of the same listed securities carries a greater right to vote, on a per security basis.

(c) The legal designation of a class of securities, which shall be set out in the constating documents of the listed issuer and which shall appear on all security certificates representing such securities, shall, except where the securities are Preference Securities and are legally designated as such, include the words:

(i) "subordinate voting" if the securities are Subordinate Voting Securities;

(ii) "non-voting" if the securities are Non-Voting Securities;

(iii) "restricted voting" if the securities are Restricted Voting Securities;

or such other appropriate term as TSX may approve from time to time.

(d) TSX will abbreviate the above designations for Restricted Securities in certain publications of TSX and will identify Restricted Securities in the quotations prepared for the financial press with a code. Brief explanations of the abbreviation or code, as determined by TSX from time to time, will appear as a footnote in such publications and quotations.

(e) A class of securities may not include the word "common" in its legal designation unless such securities are Common Securities.

(f) A class of securities may not be designated as "preference" or "preferred" unless, in the opinion of TSX, there is attached thereto a genuine and non-specious right or preference. Whether a class of securities has attached thereto a genuine and non-specious right or preference is a question of fact to be determined by examining all of the relevant circumstances.

(g) TSX may, subject to such terms and conditions as it may impose:

(i) exempt a listed issuer from the designation requirements of Subsections 624(c), (d), (e) and (f);

(ii) permit or require the use by a listed issuer, in respect of any class of securities, of a designation other than set forth in Subsections 624(c), (d), (e) and (f); and

(iii) deem a class of securities to be Non-Voting, Subordinate Voting, or Restricted Voting Securities and require a listed issuer to designate such securities in a manner satisfactory to TSX notwithstanding that such securities do not fall within the applicable definition set out in Subsection 624(b).

In exercising its discretion, TSX will be guided by the public interest and the principles of disclosure underlying this Section 624.

(h) Every listed issuer shall give notice of security holders' meetings to holders of Restricted Securities and permit the holders of such securities to attend, in person or by proxy, and to speak at all security holders' meetings to the extent that a holder of Voting Securities of that listed issuer would be entitled to attend and to speak at security holders' meetings. The notice shall be sent to holders of Restricted Securities at least 21 days in advance of the meeting. Issuers applying for listing, whether by way of an original listing application or notice of a capital reorganization, shall include such rights in their charter documents.

(i) Every listed issuer whose Restricted Securities are listed on TSX shall describe the voting rights, or lack thereof, of all Residual Equity Securities of the listed issuer in all documents, other than financial statements, sent to security holders and filed with TSX. Such documents include, but are not limited to, information circulars, proxy statements and directors' circulars.

(j) Unless exempted by TSX, every listed issuer shall send concurrently to all holders of Residual Equity Securities all informational documents required by applicable law or TSX requirements to be sent to holders of Voting Securities, or voluntarily sent to holders of Voting Securities in connection with a specific meeting of security holders. Such documents would include, but not be limited to, information circulars, notices of meeting, annual reports and financial statements.

(k) Where TSX requirements contemplate security holder approval, TSX may, in its discretion, require that such approval be given at a meeting at which holders of Restricted Securities are entitled to vote with the holders of any class of securities of the listed issuer which otherwise carry greater voting rights, on a basis proportionate to their respective residual equity interests in the listed issuer. See, for example, Sections 613 and 626.

(l) TSX will not accept for listing classes of Restricted Securities that do not have take-over protective provisions ("coattails") meeting the criteria below. The actual wording of a coattail is the responsibility of the listed issuer and must be pre-cleared with TSX.

(1) If there is a published market for the Common Securities, the coattails must provide that if there is an offer to purchase Common Securities that must, by reason of applicable securities legislation or the requirements of a stock exchange on which the Common Securities are listed, be made to all or substantially all holders of Common Securities who are in a province of Canada to which the requirement applies, the holders of Restricted Securities will be given the opportunity to participate in the offer through a right of conversion, unless:

(i) an identical offer (in terms of price per security and percentage of outstanding securities to be taken up exclusive of securities owned immediately prior to the offer by the offeror, or associates or affiliates of the offeror, and in all other material respects) concurrently is made to purchase Restricted Securities, which identical offer has no condition attached other that the right not to take up and pay for securities tendered if no securities are purchased pursuant to the offer for Common Securities; or

(ii) less than 50% of the Common Securities outstanding immediately prior to the offer, other than Common Securities owned by the offeror, or associates or affiliates of the offeror, are deposited pursuant to the offer.

(2) If there is no published market for the Common Securities, the holders of at least 80% of the outstanding Common Securities will be required to enter into an agreement with a trustee for the benefit of the holders of Restricted Securities from time to time, which agreement will have the effect of preventing transactions that would deprive the holders of Restricted Securities of rights under applicable take-over bid legislation to which they would have been entitled in the event of a take-over bid if the Common Securities had been Restricted Securities.

Where there is a material difference between the equity interests of the Common Securities and Restricted Securities, or in other special circumstances, TSX may permit or require appropriate modifications to the above criteria.

The criteria are designed to ensure that the fact that Common Securities are not of the same class as Restricted Securities will not prevent the holders of Restricted Securities from participating in a take-over bid on an equal footing with the holders of Common Securities. If, in the face of these coattails, a take-over bid is structured in such a way as to defeat this objective, TSX may take disciplinary measures against any person or company or listed issuer under the jurisdiction of TSX who is involved, directly or indirectly, in the making of the bid. TSX may also seek intervention from regulators in appropriate cases.

Where a listed issuer has an outstanding class of securities that carry more than one vote per security but are not Common Securities, coattails will be considered on an individual basis. Coattails may also be required by TSX in the case of a listed issuer that has more than one outstanding class of voting securities but no securities that fall within the definition of Restricted Securities.

This Subsection 624(l) does not apply to classes of Restricted Securities that were listed on TSX prior to August 1, 1987, but if any listed issuer proposes to remove, add or change coattails attaching to such listed Restricted Securities, the proposal must be pre-cleared by TSX and must comply with this Section 624. Subsection 624(l) will apply to any new class of Restricted Securities applied for listing by a listed issuer having securities listed on TSX prior to August 1, 1987.

(m) TSX will not consent to the issuance by a listed issuer of any securities that have voting rights greater than those of the securities of any class of listed voting securities of the listed issuer, unless the issuance is by way of a distribution to all holders of the listed issuer's voting Residual Equity Securities on a pro rata basis.

For this purpose, the voting rights of different classes of securities will be compared on the basis of the relationship between the voting power and the equity for each class. For example, Class B Shares will be considered to have greater voting rights than Class A Shares if:

(i) the shares of the two classes have similar rights to participate in the earnings and assets of the company, but the Class B Shares have a greater number of votes per share; or

(ii) the two classes have the same number of votes per share, but it is proposed that Class B Shares will be issued at a price per share significantly lower than the market price per share of the Class A Shares.

This prohibition relates only to differences in voting rights attaching to securities of separate classes. It does not apply to an issuance of securities that reduces the collective voting power of the other outstanding securities of the same class without affecting the voting power of any other outstanding class, although other TSX policies may be applicable in this case. It also does not apply to a stock split of all of a listed issuer's outstanding Residual Equity Securities (or a stock dividend that has the same effect) if the stock split does not change the ratio of outstanding Restricted Securities to Common Securities.

TSX generally will exempt listed issuers from this Subsection 624(m) in the case of an issuance of multiple voting securities that would maintain (but not increase) the percentage voting position of a holder of multiple voting securities, subject to any conditions TSX may consider desirable in any particular case. One condition will be minority approval of security holders, as defined in Subsection 624(n) unless the legal right of the holder of multiple voting securities to maintain its voting percentage has been established and publicly disclosed prior to the later of November 6, 1989 and the time the listed issuer was first listed on TSX.

This Subsection 624(m) is intended to prevent transactions, which would reduce the voting power of existing security holders through the use of securities carrying multiple voting rights. This result would normally be accomplished by way of an issuance of multiple voting securities. However, it is possible to arrive at the same result by means of mechanisms that are not technically "security issuances" such as amendments to security conditions, amalgamations and plans of arrangement. TSX may object to and/or impose such conditions, which it may consider desirable on any transaction that would result in voting dilution similar to that which would be brought about by the issuance of multiple voting security, even if no security issuance is involved.

A *pro rata* distribution to security holders that creates or affects Restricted Securities must be subject to minority approval of security holders as described in Subsection 624(n).

(n) TSX will not consent to a capital reorganization or *pro rata* distribution of securities to security holders of a listed issuer, which would have the effect of creating a class of Restricted Securities or changing the ratio of outstanding Restricted Securities to Common Securities, unless the proposal receives minority approval. For this purpose, minority approval means approval given by a majority of the votes cast at a security holders' meeting called to consider the proposal, other than votes attaching to securities beneficially owned by:

(i) any person or company that beneficially owns, directly or indirectly, securities carrying more than 20% of the votes attaching to all outstanding voting securities of the listed issuer;

(ii) any associate, affiliate or insider (each as defined in the OSA) of any person or company excluded by virtue of (i);

(iii) any person or company excluded by virtue of OSC Rule 56-501; and

(iv) if (i) and (iii) are both inapplicable, all directors and officers of the listed issuer and their associates (as defined in the OSA).

TSX may require that persons or companies not specified above be excluded from a particular minority security holder vote if this is considered necessary to ensure that the objectives behind this Subsection 624(n) are not defeated.

A transaction generally will only be regarded as a "capital reorganization" for the purposes of the minority approval requirement if it involves a subdivision or conversion of one or more classes of Residual Equity Securities or if it has an effect similar to a *pro rata* distribution to holders of one or more classes of Residual Equity Securities. If a proposed capital reorganization would reduce the voting power of the existing security holders though the use of securities carrying multiple voting rights, TSX may regard the proposed reorganization as equivalent, in substance, to the type of security issuance that is prohibited by Subsection 624(m). This could be the case, for example, where the reorganization would not treat all holders of Residual Equity Securities in an identical fashion. In this case, TSX may not consent to the reorganization even with minority approval.

An issuance of Restricted Securities in the form of a stock dividend paid in the ordinary course will be exempted from the minority approval requirement. For this purpose, stock dividends generally will be regarded as being paid in the ordinary course if the aggregate of such dividends over any one-year period does not increase the number of outstanding Residual Equity Securities of the listed issuer by more than 10%.

(o) TSX may, where it determines that it is in the public interest to do so, exempt a listed issuer from compliance with this Section 624 or any requirement thereof, subject to such terms and conditions as TSX may impose. In special circumstances, TSX may also set requirements or restrictions in addition to those set out in this Section 624 having regard to the public interest and the principles underlying this Section 624.

**REDEMPTIONS OF LISTED SECURITIES**

**625.** (a) Where a listed issuer proposes to redeem, or partially redeem, listed securities, one copy of the notice of redemption must be filed with TSX's Advisory Affairs division concurrently with the sending of the notices to the security holders, but in any event no later than seven trading days prior to the redemption date. For a full redemption of a list class of securities, such securities will normally be delisted from TSX at the close of business on the redemption date.

(b) Where a listed issuer redeems or partially redeems securities which were convertible into listed securities, the listed issuer must advise TSX, as soon as possible after the redemption date, of the number of securities which were authorized for issuance for potential conversion of the redeemed securities but were not in fact issued. TSX will adjust its listing records accordingly.

**BACKDOOR LISTINGS**

**626.** (a) A ''backdoor listing'' occurs when an issuance of securities of a listed issuer results, directly or indirectly, in the acquisition of the listed issuer by an unlisted issuer and a change in effective control of the listed issuer. A transaction giving rise to a backdoor listing may take one of a number of forms, including an issuance of securities for assets, an amalgamation or a merger. Transactions will normally be regarded as backdoor listings if they would (or potentially could) result in the security holders of the listed issuer owning less than 50% of the securities or voting power of the resulting company, with an accompanying change in effective control of the listed issuer.

Any securities issued or issuable upon a concurrent private placement upon which the backdoor transaction is contingent or otherwise linked will be included in determining if the backdoor transaction results in the security holders of the listed issuer owning less than 50% of the securities or voting power of the resulting company, with an accompanying change in effective control of the listed issuer.

(b) Where TSX determines that a proposed transaction would constitute a backdoor listing, the approval procedure is similar to that of an original listing application. The listed issuer resulting from the combination must meet all the original listing requirements of TSX, unless the unlisted entity meets the original listing requirements of TSX, except for the public distribution requirements, and the entity resulting from the combination:

(i) meets the public distribution requirements for original listing;

(ii) would appear to have a substantially improved financial condition as compared to the listed issuer; and

(iii) has adequate working capital to carry on the business.

(c) The transaction must also be approved by the security holders of the listed issuer's participating securities at a meeting prior to completion of the transaction. For this purpose, holders of Restricted Securities, as defined in Section 624, must be entitled to vote with the holders of any class of securities of the listed issuer which otherwise carry greater voting rights, on a basis proportionate to their respective residual equity interests in the issuer.

TSX's approval of a backdoor listing must be obtained before the transaction is submitted to security holders for approval. If this is impracticable, the information circular sent to security holders must include a statement that the proposed transaction is subject to the acceptance of TSX. TSX will require the listed issuer to file a draft of the information circular with TSX for review before the sending of the circular to the security holders.

**TAKE-OVER BIDS AND ISSUER BIDS**

**627.** (a) Where a take-over bid or issuer bid is made for securities of a listed issuer, it is the responsibility of the target issuer to ensure that one copy of the offering circular, directors' circular and all other materials sent to the security holders in connection with the bid are filed with TSX's Advisory Affairs division either concurrently with the sending of materials to the security holders or as quickly as possible thereafter.

TSX's Advisory Affairs division must be advised as soon as possible of any amendments to the terms of the bid, in order for TSX to have sufficient time to establish appropriate trading and settlement rules, if necessary.

(b) The rules for take-over bids and issuer bids are prescribed by securities legislation and, in some cases, corporate legislation. See, for example, Part XX of the OSA.

(c) Participating Organizations of TSX who are registered owners, or holders through nominees or depositories, of securities beneficially owned by clients, and who are furnished with sufficient copies of any take-over bid circular, issuer bid circular or directors' circular or similar document in respect of such securities, must forthwith send to each beneficial owner a copy of such material if the target issuer, or other sender of the material, or beneficial owner has agreed to bear the costs of so doing.

**NORMAL COURSE ISSUER BIDS**

**628. General.**

(a) In Sections 628 and 629:

(i) **"normal course issuer bid"** means a bid by an issuer to acquire its listed securities where the purchases:

(a) do not, when aggregated with the total of all other purchases in the preceding 30 days, aggregate more than 2% of the securities of that class outstanding on the date of acceptance of the notice of normal course issuer bid by TSX, provided that this Subsection 628(a) will not apply for the duration of the normal course issuer bid to issuers who, on the date of acceptance of the notice of their normal course issuer bid by TSX, have an average trading value per day on TSX of $10,000,000 or more for the previous three months; and

(b) over a 12-month period, commencing on the date specified in the notice of the normal course issuer bid, do not exceed the greater of

(i) 10% of the public float on the date of acceptance of the notice of normal course issuer bid by TSX, or

(ii) 5% of such class of securities issued and outstanding on the date of acceptance of the notice of normal course issuer bid by TSX, excluding any securities held by or on behalf of the issuer on the date of acceptance of the notice of normal course issuer bid by TSX,

whether such purchases are made through the facilities of a stock exchange or otherwise, but excluding purchases made under a circular bid;

(i) **"principal security holder"** of an issuer means a person or company who beneficially owns or exercises control or direction over more than 10% of the issued and outstanding securities of any class of voting securities or equity securities of the issuer; and

(ii) **"public float"** means the number of securities of the class which are issued and outstanding, less the number of securities of the class beneficially owned, or over which control or direction is exercised by:

(a) every senior officer or director of the listed issuer;

(b) every principal security holder of the listed issuer; and

(c) the number of securities that are pooled, escrowed or non-transferable.

(b) For the purposes of Sections 628 and 629, a purchase shall be deemed to have taken place when the offer to buy or the offer to sell, as the case may be, is accepted.

(c) For the purposes of Sections 628 and 629,

(i) the beneficial ownership of securities of an offeror or of any person or company acting jointly or in concert with the offeror shall be determined in accordance with section 90 of the OSA; and

(ii) where any person or company is deemed by Subsection (a) of this Section to be the beneficial owner of unissued securities, the number of outstanding securities of a class in respect of an offer to acquire shall be determined in accordance with subsection 90(3) of the OSA.

(d) For the purposes of Sections 628 and 629, whether a person or company is acting jointly or in concert with an offeror shall be determined in accordance with section 91 of the OSA.

**629. Special Rules Applicable to Normal Course Issuer Bids.**

(a) The filing of a notice is a declaration by the issuer that it has a present intention to acquire securities. The notice should set out the number of securities that the issuer's board of directors has determined may be acquired rather than simply reciting the maximum number of securities that may be purchased pursuant to Section 629. A notice is not to be filed if the issuer does not have a present intention to purchase securities.

(b) TSX will not accept a notice if the issuer would not meet the criteria for continued listing on TSX, assuming all of the purchases contemplated by the notice were made.

(c) TSX requires that the issuer prepare and submit to TSX a draft of the notice containing the information prescribed by Form 13, Notice of Intention to Make a Normal Course Issuer Bid found in Appendix H. When the notice is in a form acceptable to TSX, the issuer shall file the notice in final form, duly executed by a senior officer or director of the issuer, for acceptance by TSX. The final form of the notice must be filed at least two clear trading days prior to the commencement of any purchases under the bid.

(d) A normal course issuer bid shall not extend for a period of more than one year from the date on which purchases may begin.

(e) The issuer will generally issue a press release indicating its intention to make a normal course issuer bid, subject to TSX acceptance, prior to acceptance of the executed notice by TSX. The press release shall summarize the material aspects of the contents of the notice, including the number of securities sought, the method of disposition of the securities, a statement that the issuer is relying on the high volume exemption in

Section 628(a)(i), if applicable, the reason for the bid and details of previous purchases, including the number of securities purchased and the average price paid. If a press release has not already been issued, a draft press release must be provided to TSX and the issuer shall issue a press release as soon as the notice is accepted by TSX. A copy of the final press release shall be filed with TSX.

(f) The issuer shall include a summary of the material information contained in the notice in the next annual report, information circular, quarterly report or other document mailed to security holders. The document should indicate that security holders may obtain a copy of the notice, without charge, by contacting the issuer.

(g) A normal course issuer bid may commence on the date that is two trading days after the later of:

(i) the date of acceptance by TSX of the issuer's notice in final executed Form 13; or

(ii) the date of issuance of the press release required by Subsection (e) of this Section 629.

(h) Upon acceptance of the notice, TSX will publish a summary notification of the normal course issuer bid in its Daily Record.

(i) During a normal course issuer bid, an issuer may determine to amend its notice by increasing the number of securities sought while not exceeding the maximum percentages referred to in the definition of normal course issuer bid. The issuer may do so by issuing a press release and advising TSX in writing.

(j) A trustee or other purchasing agent (hereinafter referred to as a "trustee") for a pension, stock purchase, stock option, dividend reinvestment or other plan in which employees or security holders of a listed issuer may participate, is deemed to be making an offer to acquire securities on behalf of the listed issuer where the trustee is deemed to be non-independent. Trustees that are deemed to be non-independent are subject only to Subsections 629(j) and (k) and to the limits on purchases of the issuer's securities prescribed by the definition of "normal course issuer bid". Trustees that are non-independent must notify TSX before commencing purchases. A trustee is deemed to be non-independent where:

(i) the trustee (or one of the trustees) is an employee, director associate or affiliate of the issuer; or

(ii) the issuer, directly or indirectly, has control over the time, price, amount and manner of purchases or the choice of the broker through which the purchases are to be made. The issuer is not considered to have control where the purchase is made on the specific instructions of the employee or security holder who will be the beneficial owner of the securities.

TSX should be contacted where there is uncertainty as to the independence of the trustee.

(k) Within 10 days of the end of each month in which any purchases are made, whether the securities were purchased through the facilities of TSX or otherwise, the issuer shall report its purchases to TSX stating the number of securities purchased during its purchases that month, giving the average price paid and stating whether the securities have been cancelled, reserved for issuance or otherwise dealt with. Nil reports are required. The notice must be on Form 1 “Change in Outstanding and Reserved Securities” found in Appendix H. The issuer may delegate the reporting requirement to the Participating Organization appointed to make its purchases; however, the issuer bears the responsibility of ensuring timely reports are made. TSX periodically publishes a list of securities purchased pursuant to normal course issuer bids.

This paragraph also applies to purchases by non-independent trustees and to purchases by any party acting jointly or in concert with the issuer.

(l) TSX has set the following rules for issuers and Participating Organizations acting on their own behalf:

*1.* ***Price Limitations*** - It is inappropriate for an issuer making a normal course issuer bid to abnormally influence the market price of its securities. Therefore, purchases made by issuers pursuant to a normal course issuer bid shall be made at a price which is not higher than the last independent trade of a board lot of the class of securities which is the subject of the normal course issuer bid. In particular, the following are not "independent trades":

(a) trades directly or indirectly for the account of (or an account under the direction of) an insider of the issuer, or any associate or affiliate of either the issuer or an insider of the issuer;

(b) trades for the account of (or an account under the direction of) the Participating Organization making purchases for the bid; and

(c) trades solicited by the Participating Organization making purchases for the bid.

*2.* ***Prearranged Trades*** - It is important to investor confidence that all holders of identical securities be treated in a fair and even-handed manner by the issuer. Therefore, a cross or pre-arranged trade is not generally permitted.

*3.* ***Private Agreements*** - It is the view of TSX that it is in the interest of security holders that transactions pursuant to an issuer bid should be made in the open market. This philosophy is also reflected in the OSA, which provides very limited exemptions for private agreement purchases. TSX, therefore, will not normally accept a notice which indicates that purchases will be made other than by means of open market transactions.

*4.* ***Sales from Control*** - Purchases pursuant to a normal course issuer bid shall not be made from a person or company effecting a sale from control block pursuant to Part 2 of Multilateral Instrument 45-102 and Section 630 of this Manual. It is the responsibility of the Participating Organization acting as agent for the issuer to ensure that it is not bidding in the market for the normal course issuer bid at the same time as a Participating Organization is offering the same class of securities of the issuer under a sale from control.

*5.* ***Purchases During a Take-Over Bid*** - An issuer shall not make any purchases of its securities pursuant to a normal course issuer bid during a take-over bid for those securities. This restriction applies during the period from the first public announcement of the bid until the termination of the period during which securities may be deposited under such bid, including any extension thereof. This restriction does not apply to purchases made solely as a trustee pursuant to a pre-existing obligation under a pension, stock purchase, stock option, dividend reinvestment or other plan.

In addition, if the issuer is making a securities exchange take-over bid, it shall not make any purchases of the security offered in the bid pursuant to OSC Policy 62-601.

(m) The issuer shall appoint only one Participating Organization at any one time as its broker to make purchases. The issuer shall inform TSX in writing of the name of the responsible broker. The Participating Organization shall be provided with a copy of the notice and be instructed to make purchases in accordance with the provisions of Sections 628, 629, 634, 635 and 636 and the terms of such notice. TSX will look to its Participating Organizations to make purchases in accordance with such instructions. To assist TSX in its surveillance function, the issuer is required to receive the written consent of TSX where it intends to change its broker.

(n) Failure to comply with any requirement herein may result in the suspension of the bid.

(o) Reference is made to Section 423.4 and issuers are reminded that all purchases under a normal course issuer bid are subject to insider trading restrictions.

**SALES FROM CONTROL BLOCK THROUGH THE FACILITIES OF THE EXCHANGE**

**630. Responsibility of Participating Organization and Seller.**

It is the responsibility of both the selling security holder and Participating Organization (as defined in TSX Rule Book) acting on their behalf to ensure compliance with TSX requirements and applicable securities laws. In particular, Participating Organizations and selling security holders should familiarize themselves with the procedures and requirements set out in Part 2 of Multilateral Instrument 45-102.

**631. Sales Pursuant to an Order or Exemption.**

If securities are to be sold from a control block pursuant to an order made under section 74 of the OSA or an exemption contained in subsection 72(1) of the OSA or Part 2 of OSC Rule 45-501, the securities acquired by the purchaser may be subject to a hold period in accordance with the provisions of the OSA or Multilateral Instrument 45-102. Sales of securities subject to a hold period are special terms trades and will normally be permitted to take place on TSX without interference.

**632. General Rules for Control Block Sales on the Exchange.**

1. ***Filing*** **-** The seller shall file "Form 45-102 F3 – Notice of Intention to Distribute Securities and Accompanying Declaration" under subsection 2.8 of Multilateral Instrument 45-102 with TSX at least seven calendar days and no more than 14 days prior to the first trade made to carry out the distribution.

2. ***Notification of Appointment of Participating Organization*** **-** The seller must notify TSX of the name of the Participating Organization which will act on behalf of the seller. The seller shall not change the Participating Organization without prior notice to TSX.

3. ***Acknowledgement of Participating Organization*** **-** The Participating Organization acting as agent for the seller shall give notice to TSX of its intention to act on the sale from control, and such notice shall be accepted in writing by TSX, before any sales commence.

4. ***Report of Sales*** **-** The Participating Organization shall report in writing to the Advisory Affairs Division of TSX on the last day of each month the total number of securities sold by the seller during the month, and, if and when all of the securities have been sold, the Participating Organization shall so report forthwith in writing to TSX.

5. ***Issuance of Exchange Bulletin*** **-** TSX shall issue a bulletin respecting the proposed sale from control which bulletin will contain the name of the seller, the number of securities of the listed company held by the seller, the number proposed to be sold, and any other information that TSX considers appropriate. TSX may issue further bulletins from time to time regarding the sales made by the seller.

6. ***Special Conditions*** **-** TSX may, in circumstances it considers appropriate, require that special conditions be met with respect to any sales. Possible conditions include, but are not limited to, the requirement that the seller not make a sale below the price of the last sale of a board lot of the security on TSX which is made by another person or company acting independently.

7. ***Term and Renewal*** **-** The initial filing of Form 45-102 F3 is valid for a period of 60 days and a renewal of the Form 45-102 F3 must be filed with TSX every 28 days thereafter if sales are to continue.

8. ***First Sale*** **-** The first sale cannot be made until at least seven calendar days after the filing of Form 45-102 F3 and the first sale under the initial Form 45-102 F3 must be made within 14 calendar days of the filing.

**633. Restrictions on Control Block Sales on the Exchange.**

1. ***Private Agreements*** – A Participating Organization is not permitted to participate in sales from control by private agreement transactions. If Participating Organizations are to participate, transactions must be executed on TSX or the transactions must be exempt from the requirement to be conducted on TSX in accordance with Rule 4-102.

2. ***Normal Course Issuer Bids*** – If the issuer of the securities which are the subject of the sale from control block is undertaking a normal course issuer bid in accordance with Section 629 of this Manual, the normal course issuer bid and the sale from control block will be permitted on the condition that:

   (a) the Participating Organization acting for the issuer confirms in writing to TSX that it will not bid for securities on behalf of the issuer at a time when securities are being offered on behalf of the control block seller;

   (b) the Participating Organization acting for the control block seller confirms in writing to TSX that it will not offer securities on behalf of the control block seller at a time when securities are being bid for under the issuer bid; and

   (c) transactions in which the issuer is on one side and the control block seller on the other are not permitted.

3. ***Price Guarantees*** – The price at which the sales are to be made cannot be established or guaranteed prior to the seventh day after the filing of Form 45-102 F3 with TSX.

4. ***Crosses*** **-** A Participating Organization may distribute the whole of a control block sale to its own clients by means of a cross. Established crossing rules require that, prior to execution, all orders that are entered on any Canadian exchange at better prices than the price of the proposed cross must be filled in full. If the market is to be moved before execution of a cross, the responsible registered trader should be notified in advance.

## SECURITY HOLDER RIGHTS PLANS

**634. General.**

(a) Security holder rights plans (commonly referred to as ‘‘poison pills’’) fall under TSX’s jurisdiction by virtue of Section 601 which requires listed issuers to pre-clear with TSX any potential issuance of equity securities.

(b) TSX neither endorses nor prohibits the adoption of poison pills generally or in connection with any particular take-over bid. The securities commissions in Canada are responsible for reviewing the propriety or operation of take-over bid defensive tactics pursuant to National Policy 62-202, including the adoption of a poison pill after the announcement or commencement of a hostile take-over bid. In the latter example, TSX will defer its review of such a poison pill until after the appropriate securities commission has determined whether it will intervene pursuant to National Policy 62-202.

(c) TSX believes that security holders of the listed issuer should have the opportunity to decide whether the continued existence of a plan that has been adopted by the board of directors of the listed issuer in the normal course of affairs (i.e. absent a threatened or actual specific take-over bid) is in the security holders’ best interests.

**635. Filing and Listing Procedure.**

(a) A draft of the proposed security holder rights plan (the “plan”) or poison pill should be filed with TSX Advisory Affairs division along with a covering letter requesting TSX accept the plan for filing. The letter must include the following:

(i) a statement as to whether the listed issuer is aware of any specific take-over bid for the listed issuer that has been made or is contemplated, together with full details regarding any such bid;

(ii) a description of any unusual features of the plan; and

(iii) a statement as to whether the plan treats any existing security holder differently from other security holders. The usual example of this is where, at the time of the plan’s adoption a security holder (or group of related security holders) owns a percentage of securities that exceeds the triggering ownership threshold identified in the plan but such security holder is exempted form the operation of the plan.

(b) If a listed issuer adopts a plan without pre-clearance from TSX, the listed issuer must:

(i) publicly announce the adoption of its plan as subject to TSX acceptance, and

(ii) as soon as possible after the adoption of the plan, file with TSX a copy of the plan along with the covering letter described in Subsection 635(a).

(c) If TSX consents to the adoption of a plan, the rights issued to security holders will be automatically listed on TSX when those securities are issued. The rights will not appear as a separate entry on TSX trading list. There is a filing fee described in Section 811 that is payable to TSX for its review of the plan.

**636. TSX Approach.**

(a) If a plan is adopted at a time when the listed issuer is not aware of any specific take-over bid for the listed issuer that has been made or is contemplated, TSX will not generally refuse the plan for filing, provided that it is ratified by the security holders of the listed issuer at a meeting held within six months following the adoption of the poison pill. Pending such security holder ratification, the plan is allowed to be in effect so that its intent is not circumvented prior to the security holders meeting. If security holders do not ratify the plan by the required time, the plan must be immediately cancelled and any rights issued thereunder must be immediately redeemed or cancelled.

(b) In cases where a particular security holder may be exempted from the operation of a plan even though the security holder’s percentage holding exceeds the plan’s triggering ownership threshold, TSX will normally require that the plan be ratified by a vote of security holders that excludes the votes of the exempted security holder and its insiders as well as by a vote that does not exclude such security holder.

(c) If a plan can be reasonably perceived to have been proposed or adopted as a response to a specific take-over bid for a listed issuer that has been made or is contemplated, TSX will normally defer its decision on whether to consent to the plan until the OSC has had the opportunity to consider whether it will initiate proceedings by virtue of National Policy 62-202 regarding defensive tactics. If the OSC chooses not to intervene, TSX will generally not object to the adoption of a poison pill, subject to security holder ratification as described in Subsections 636(a) and (b) and subject to Sections 634, 635 and 637.

**637. Plan Amendment.**

No amendment of a plan that has been adopted by a listed issuer may be made without the prior written consent of TSX. In order to seek such consent, the listed issuer must file with TSX's Advisory Affairs division (i) a black-lined draft of the amended plan, (ii) a letter that summarizes the proposed changes to the plan, and (iii) the requisite filing fee payable to TSX (see Section 811).

**ODD LOT SELLING AND PURCHASE ARRANGEMENTS**

**638. General.**

(a) An odd lot of securities is less than a board lot. Listed issuers may reduce the number of holders of odd lots by using the procedure in Section 639.

(b) The procedure described in Section 639 is intended to facilitate odd lot sales at a reasonable cost to listed issuers. It is consistent with the objective of TSX to enhance the marketability of small holdings.

(c) The procedure described in Section 639 must be followed where a listed issuer seeks the assistance of a Participating Organization to solicit odd lots for resale on TSX, or to offer to defray the commissions payable by odd lot holders in acquiring additional securities on TSX to make up a board lot.

**639. Procedures Applicable to Odd Lot Selling and Purchase Arrangements.**

(a) Under an odd lot selling arrangement (a "Selling Arrangement") a listed issuer agrees to pay a fee per odd lot account to Participating Organizations to sell listed securities on behalf of odd lot holders. Under an odd lot purchase arrangement (a "Purchase Arrangement", together with a Selling Arrangement referred to herein as an "Arrangement") a listed issuer agrees to pay a fee per odd lot account to Participating Organizations to purchase a sufficient number of listed securities on behalf of odd lot holders to constitute a board lot.

(b) The listed issuer shall request odd lot holders wishing to take advantage of an Arrangement to either:

(1) place orders under the Arrangement with any Participating Organization of TSX; or

(2) transmit orders under the Arrangement directly to the listed issuer or an agent (such as a broker or transfer agent) designated by it.

If option (1) is selected, a Participating Organization shall be appointed as manager of the Arrangement (the "Manager") and shall be responsible for maintaining records of transactions and remitting the fees payable to other Participating Organizations. Special procedures applicable to options (1) and (2) are set out in Subsections 639(d) and (e).

(c) **Trading Odd Lots**. A Selling Arrangement may be carried out in one of two ways:

(1) the listed securities tendered by odd lot holders must be aggregated into board lots and sold promptly by a Participating Organization on TSX; or

(2) the listed securities must be sold promptly in the form of odd lots through the minimum guarantee fill system ("MGF"). In the event that odd lots are sold through the MGF the responsible Registered Trader will aggregate odd lots for resale in the normal course of his activities.

Similarly, under a Purchase Arrangement a Participating Organization must promptly acquire a sufficient number of listed securities to increase an odd lot holder's holding to a full board lot either (1) by purchases by the Participating Organization on TSX; or (2) through the MGF.

(d) **Rules Applicable to Arrangements through Participating Organizations.** The following applies to Arrangements where odd lot holders are to place orders with any Participating Organization of TSX (option (1) under Subsection 639(b)):

(i) It is anticipated that many odd lot holders will not currently have an account with a Participating Organization. In order to simplify the administration of an Arrangement being effected through Participating Organizations new account forms are not required to be completed for odd lot holders and transactions made pursuant to an Arrangement may be effected through an omnibus account. The Participating Organization must maintain proper records of orders as required by TSX Rule 2-404 "Records of Orders".

(ii) If required by the listed issuer, Participating Organizations selling odd lots on behalf of clients under a Selling Arrangement, or purchasing listed securities under a Purchase Arrangement, shall prepare a signed statement that to the best of the knowledge of the representative of the Participating Organization the listed securities of each named beneficial owner sold under a Selling Arrangement constitute all of the listed securities owned by such beneficial owner and that the number of listed securities purchased under a Purchase Arrangement for each named beneficial owner is the number of listed securities required to increase each beneficial owner's holding to the level of one board lot, as the case may be, and shall keep each such statement in its files for inspection by TSX. Participating Organizations are not required to disclose the names of their clients to the Manager of an Arrangement or the listed issuer.

(iii) In the event that odd lots are held in the name of a Participating Organization on behalf of a customer who wishes to sell his listed securities pursuant to a Selling Arrangement the Participating Organization shall either (A) sell such listed securities on behalf of the customer pursuant to the Arrangement, (B) provide the customer with deliverable listed securities in order to permit the customer to tender such securities to another Participating Organization along with a certificate stating that, to the best of the Participating Organization's knowledge, the customer held a stated number of listed securities as of the record date of the Arrangement, or (C) tender such listed securities to another Participating Organization who is willing to sell the listed securities pursuant to the Arrangement on behalf of the customer.

(iv) The Manager shall maintain records of the transactions effected by Participating Organizations pursuant to the Arrangement. Participating Organizations shall report such transactions to the Manager on a weekly basis. The Manager shall remit the amount offered by the listed issuer per odd lot account promptly after the receipt of each weekly report. The amount receivable by each Participating Organization is required to be used, in its entirety, to replace or reduce the normal brokerage commissions otherwise payable by odd lot holders.

(v) The price received or to be paid for an odd lot shall be the quoted price at which the trade is executed by the Participating Organization. If the listed securities of an odd lot holder are sold or purchased as part of more than one board lot and different prices are received or paid, the amount remitted to the customer, or paid by the customer, shall be the average price and the confirmation must disclose that an average price has been used and must list the prices at which the trades were made.

TSX anticipates that the Manager will advise the listed issuer concerning a reasonable fee payable per odd lot account.

(e) **Rules Applicable to Arrangements through the Listed Issuer.** The following applies to Arrangements where odd lot holders are to place orders through the listed issuer or an agent designated by it (option (2) under Subsection 639(b)):

(i) The listed issuer or its agent shall send orders received pursuant to the Arrangement to one or more Participating Organizations for execution forthwith after clearance of such orders for trading. Orders received and cleared for execution shall be placed with the Participating Organization no later than 12:00 p.m. on the next business day for execution on TSX. Orders may be aggregated, but not netted, by the listed issuer or its agent.

(ii) The Participating Organization shall execute aggregated buy or sell orders as soon as possible, subject to its discretion in fulfilling its obligation to obtain the best available price for the customer and to avoid any undue impact on such price.

(iii) The price received or to be paid for an odd lot shall be the average price received on all orders placed with the Participating Organization for execution on a given day, regardless of when any of such orders are executed.

(iv) In addition to the information required by Subsection 639(i), the disclosure document shall contain a statement that the price received or to be paid for an odd lot will be the average price received on all orders placed with the Participating Organization for execution on a given day, regardless of when any of such orders are executed. An estimate of the period of time required for mailing and clearing an order must be disclosed, and that the quoted price of the stock may change during such period.

(f) **Obligations to Odd Lot Holders.** A Participating Organization must obtain the best price available for its customer (the odd lot holder) in executing trades pursuant to an Arrangement. Notwithstanding any financial arrangement with the listed issuer, Participating Organizations must satisfy their fiduciary duty to odd lot holders in accordance with this Policy and applicable law. The listed issuer shall not, directly or indirectly, influence the time, price, amount or manner of sales or purchases of odd lots.

Subject to any agreement to the contrary, Participating Organizations may acquire or sell odd lots in principal transactions in accordance with TSX Policy 4-502 “Exposure of Client Orders” and TSX Rule 4-502 “Client Principal Trading”. Participating Organizations may not be a prominent influence in the market for the listed securities at a time when a principal transaction is proposed to be executed.

(g) **Security Holders Eligible to Participate.** Only persons or companies who are holders of less than one board lot as defined in Part I of this Manual are eligible to participate in either type of Arrangement. The determination as to whether a person or company is the holder of an odd lot shall be made as of a record date established by the listed issuer. The record date must be prior to the public announcement of the Arrangement in accordance with Subsection 639(h) in order to ensure that board lots will not be broken up in order to participate in the Arrangement.

An Arrangement is required to be extended to both registered holders of odd lots and beneficial owners of odd lots registered in nominee form. TSX will approve an Arrangement directed to the holders of a specific number of listed securities or less that does not include all odd lot holders where it is satisfied that holders of more than the specified number of listed securities are not disadvantaged as a result of minimum commission rates.

The TSX recognizes an exception from the requirement that either type of Arrangement be extended to all odd lot holders in the case of participants in stock ownership plans established by a listed issuer for its employees and in the case of participants in dividend reinvestment plans. Since plans of this kind are intended to promote security ownership as an incentive to employees and security holders and provide a special advantage to its participants listed issuers may wish to exclude plan participants from an Arrangement. Accordingly, a listed issuer will be permitted to exclude from an Arrangement any participant in a bonus, profit-sharing, pension, retirement, incentive, stock purchase, stock ownership, stock option or similar plan instituted for employees of the listed issuer or its subsidiaries or any participant in a dividend reinvestment plan instituted by the listed issuer.

(h) **Duration of an Arrangement.** An Arrangement is required to remain open for at least thirty calendar days from acceptance by TSX in order to ensure adequate dissemination of information. An Arrangement may continue for a maximum period of ninety calendar days and may thereafter be renewed with the prior written consent of TSX for two additional thirty day periods following the expiry of the initial period. In order for TSX to consider the renewal of an Arrangement, a written request must be provided to the Advisory Affairs division of TSX of the proposed renewal at least seven business days prior to the expiry of the previous period. (see Subsection 639(i)(iv)).

(i) **Dissemination of Information.**

(i) The listed issuer shall file with the Advisory Affairs division of the TSX a copy of a draft press release announcing an Arrangement and a draft disclosure document which includes the information required under clause (iii) below at least seven business days before the record date. The press release shall not be issued and the disclosure document shall not be distributed to securityholders until written approval has been given by TSX.

(ii) A press release shall be issued on the first business day following the record date after written approval has been given by TSX.

(iii) Following issuance of the press release a disclosure document shall be sent by the listed issuer to each securityholder of record on the record date that holds an odd lot. Where a securityholder of record holds listed securities on behalf of other persons or companies, the listed issuer shall provide, upon the request of such holder, a sufficient number of copies for each beneficial owner of an odd lot. The disclosure document, the original of which must be signed by a duly authorized officer of the listed issuer and filed with TSX, shall include the following items of information:

i. Name of listed issuer and the nature of the Arrangement being made available to odd lot holders.

ii. A description of the class or classes of listed securities subject to the Arrangement and the holders eligible to participate.

iii. A statement that: (a) the listed issuer will pay one or more Participating Organizations a fee to sell or purchase odd lots, as the case may be, in the open market on behalf of odd lot holders; (b) for the purpose of the Arrangement, the odd lot holder is the customer of the Participating Organization agreeing to sell or purchase listed securities, as the case may be, pursuant to the Arrangement, and; (c) the Participating Organization is required to obtain the best available price for the odd lot holder.

iv. If applicable, state that the Participating Organization may purchase or sell odd lots under the Arrangement as principal in accordance with TSX requirements.

v. The duration of the Arrangement.

vi. The purpose of the Arrangement.

vii. A description of the procedure that must be followed by both registered odd lot holders and beneficial owners of odd lots held in nominee form to participate in an Arrangement.

viii. The name, address and telephone number of the department or person at the listed issuer from whom additional information may be obtained and that the odd lot holder should consider contacting his or her broker concerning the advisability of participating in the Arrangement.

(iv) See Subsection 639(e)(iv) for additional information required in the disclosure document in connection with Arrangements through the listed issuer. A request for a renewal of an Arrangement shall be accompanied by a statement of the number of listed securities previously sold or purchased, as the case may be, under the Arrangement. Upon acceptance by TSX the listed issuer shall issue a press release announcing the renewal of the Arrangement.

(j) A filing fee is required in connection with each Arrangement filed with TSX, and with each renewal thereof (see Part VIII).

(k) A listed issuer may also purchase odd lots offered in the marketplace pursuant to a normal course issuer bid implemented in accordance with Section 629.

(l) A listed issuer may have both a Normal Course Issuer Bid, and either a Selling Arrangement, or a Purchase Arrangement, or both, in effect at the same time.

**AMENDMENTS TO SECURITY PROVISIONS**

**641.** Any proposed amendment to the provisions attaching to any securities of a listed issuer must be pre-cleared with TSX prior to implementation.

**EFFECT OF AMENDMENTS ON EXISTING ARRANGEMENTS**

**642.** These amendments will be effective for all notices filed with TSX on and after **[April 1, 2004]** (the **"Effective Date"**).

The following will be unaffected by these amendments:

1. Any transaction (including a security based compensation arrangement) of which TSX has been notified of in writing prior to the Effective Date.

2. Any transactions or resolutions for which, prior to the effective date, either the listed issuer has mailed final materials to security holders or for which security holder approval has been received.

3. Subject to Section 613(a), security based compensation arrangements approved by security holders prior to the Effective Date.

**PART VII – HALTING OF TRADING, SUSPENSION AND DELISTING OF SECURITIES**

**(NOTE – comparative full text of Part VII with changes in bold)**

**A. GENERAL**

**Sec. 701.** TSX may at any time:

(a) temporarily halt trading in any listed securities; or

(b) suspend from trading ***and*** delist an ***issuer***'s securities if TSX is satisfied that:

(i) the ***issuer*** has failed to comply with any of the provisions of its Listing Agreement with ***TSX*** or with any other ***TSX*** requirement; or

(ii) such action is necessary in the public interest.

**B. HALTING OF TRADING**

**Sec. 702.** ***TSX*** may halt trading in the securities of an ***issuer*** for disclosure of material information which requires immediate public disclosure under ***TSX***'s timely disclosure policy. A halt of trading is a temporary measure which will usually not last more than one hour following the dissemination of the announcement. ***TSX*** may also temporarily halt trading where such action is deemed to be in the public interest (for example, in order to maintain a fair and orderly market).

Refer to Sections 406 to 423.8 for a description of the timely disclosure policy, including more complete information regarding trading halts.

**Sec. 703.** During the period when trading is halted, no ***TSX*** Participating Organization may execute an order in the over-the-counter market.

Trading may also be halted when the market activity indicates that significant news appears to be available to some investors but not to the public at large, and the ***issuer*** either will not, or cannot, make a clarifying statement.

If trading is halted but an announcement is not immediately forthcoming, ***TSX*** may establish a reopening time, which shall not be later than 24 hours after the time that the halt was imposed (excluding non-business days). The ***issuer*** is urged to make an announcement, but if it will not, ***TSX*** will issue a notice stating the reason for the trading halt, that an announcement was not immediately forthcoming and that trading will therefore resume at a specific time.

**Sec. 704.** Trading may also be halted due to failure by the ***issuer*** to comply with requirements of ***TSX***. In some cases, a halt may be changed to a suspension ***or delisting***.

**C. SUSPENSION AND DELISTING**

**Objective**

**Sec. 705.** The objective of ***TSX***'s policies regarding continued listing privileges is to facilitate the maintenance of an orderly and effective auction market for securities of a wide variety of ***issuers*** that are actively engaged in an ongoing business, in which there is a substantial public interest, and that comply with the requirements of ***TSX***. The policies are designed and administered in a manner consistent with that objective.

**Application of Policy**

**Sec. 706.** ***TSX*** has adopted certain quantitative and qualitative criteria (the "***delisting*** criteria"), that are outlined in the following sections, under which it will normally consider the suspension from trading ***and*** delisting of securities. However, no set of criteria can effectively anticipate the unique circumstances which may arise in any given situation. Accordingly, each situation is considered individually on the basis of relevant facts and circumstances. As such, whether or not any of the ***delisting*** criteria has become applicable to a listed ***issuer*** or security, ***TSX*** may, at any time, suspend from trading ***and*** delist securities if, in the

opinion of ***TSX***, such action is consistent with the objective cited above or further dealings in the securities on ***TSX*** may be prejudicial to the public interest.

**Process**

**Sec. 707.** ***TSX*** examines the affairs and the performance of listed ***issuers*** to ensure that they are of a standard that merits the continued listing of such companies. If, as a result of such examination, ***TSX*** determines that any of the ***delisting*** criteria outlined in Sections 708 to 717 has become applicable to a listed ***issuer*** or to its securities, ***TSX*** will notify the ***issuer*** (by telephone or telecopied letter) and the market (by ***trader note and bulletin***) that the ***issuer*** is under a ***delisting*** review.

The ***delisting*** review process will be conducted through either the "Remedial Review Process" or the "Expedited Review Process", as follows:

***Remedial Review Process***

(a) An ***issuer*** that has been notified that it is under ***delisting*** review because of the applicability of any of the ***delisting*** criteria set out in Section 709, paragraphs (b) or (c) of Section 710, Section 711 or Section 712 will normally be given up to 120 days from the date of such notification (the "***delisting*** review period") to correct the deficiencies that triggered the ***delisting*** review.

At any time prior to the end of the ***delisting*** review period, ***TSX*** will provide the ***issuer*** with an opportunity to be heard where the ***issuer*** may present submissions to satisfy ***TSX*** that all deficiencies identified in ***TSX***'s notice have been rectified. If the ***issuer*** cannot satisfy ***TSX*** at the conclusion of the hearing that the deficiencies identified have been rectified and that no other ***delisting*** criteria are then applicable to the ***issuer***, ***TSX*** will determine to ***delist*** the ***issuer***'s securities.

Upon such determination, ***TSX*** will issue a written notice to the market to confirm the date that the suspension ***and delisting*** will be effective, which date will generally be the 30th calendar day after the issuance of such notice.

***TSX*** may abridge the term of the ***delisting*** review period at any time upon written notice to the ***issuer***, particularly after the occurrence of any of the events described in Section 708, paragraph (a) of Section 710, or Sections 713 to 717 inclusive. In any such case, the ***issuer*** that is under a ***delisting*** review will be provided with an opportunity to be heard on an expedited basis where the ***issuer*** may present submissions as to why its securities should not be ***delisted***. If the ***issuer*** cannot satisfy ***TSX*** that a ***delisting*** is unwarranted, ***TSX*** will determine to suspend the ***issuer***'s securities from trading as soon as practicable after such hearing ***and the issuer's securities will be delisted on the 30th calendar day after the suspension date***. ***During the period between the suspension date and delisting date, the issuer remains subject to all TSX requirements, including compliance with the provisions of Sections 501 and 602, regardless of whether the issuer had been exempted from the requirements of Section 501 prior to suspension***; or

**Expedited Review Process**

(b) An ***issuer*** that has been notified that it is under ***delisting*** review:

(i) because of the applicability of any of the ***delisting*** criteria in Section 708, paragraph (a) of Section 710 or Sections 713 to 716 inclusive; or

(ii) because the ***issuer*** has failed to meet original listing requirements by the deadline set by ***TSX*** in connection with any of the events described in Section 717; or

(iii) because ***TSX*** believes that the expedited suspension from trading ***and delisting*** of the ***issuer***'s securities is warranted;

will be provided an opportunity to be heard, on an expedited basis, where the ***issuer*** may present submissions as to why its securities should not be suspended from trading immediately ***and delisted***. If the ***issuer*** cannot satisfy ***TSX*** that an immediate suspension is unwarranted, ***TSX*** will determine to suspend the ***issuer***'s securities from trading as soon as practicable after such hearing ***and the issuer's securities will be delisted on the 30th calendar day after the suspension date***. ***During the period between the suspension date and delisting date, the issuer remains subject to all TSX requirements, including compliance with the provisions of Sections 501 and 602, regardless of whether the issuer had been exempted from the requirements of Section 501 prior to suspension.***

**DELISTING** CRITERIA

**(1) Insolvency**

**Sec. 708.** At such time as ***TSX*** is advised or becomes aware that a listed ***issuer*** (or any of its significant subsidiaries), has become insolvent or bankrupt or has made an assignment for the benefit of creditors; or a trustee, receiver, liquidator or monitor has been appointed for the ***issuer*** or for a substantial part of its assets; or bankruptcy, reorganization, creditor arrangement or protection, insolvency, liquidation, winding up or similar proceedings are instituted by or against the ***issuer*** under the laws of any jurisdiction, the securities of the ***issuer*** may, at the discretion of ***TSX***, be immediately halted from trading on ***TSX***. TSX will ordinarily halt trading, or prevent the lifting of a trading halt, of the issuer's securities in order to allow material information to be publicly disseminated or when inadequate information in respect of the issuer is available to the market, or when adequate information in respect of the issuer is not available to the market.

***During the trading halt, or as soon as practicable after the trading halt is lifted, TSX shall notify the*** issuer ***that it is under*** delisting ***review and is subject to the Expedited Review Process (see Section 707).***

**(2) Financial Condition and/or Operating Results**

**Sec. 709.** ***TSX*** will normally consider the delisting of securities of an ***issuer*** if, in the opinion of ***TSX***, the financial condition and/or operating results of the ***issuer*** appear to be unsatisfactory or appear not to warrant continuation of the securities on the trading list.

**Sec. 710.** Specifically, securities of an ***issuer*** may be delisted if:

**All *Issuers***

(a) (i) the ***issuer's*** financial condition is such that, in the opinion of ***TSX,*** it is questionable as to whether the ***issuer*** will be able to continue as a going concern. ***TSX*** will consider, among other things, the issuer's ability to meet its obligations as they come due, as well as its working capital position, quick asset position, total assets, capitalization, cash flow and earnings as well as accountants' or auditors' disclosures in financial statements regarding the issuer's ability to continue as a going concern; or

(ii) the ***issuer*** has ceased, or has expressed an intention to cease, to be actively engaged in any ongoing business; or

(iii) the ***issuer*** has discontinued or divested a substantial portion of its operations, thereby so reducing its business as to no longer merit continued listing; or

Industrial ***Issuers***

(b) the ***issuer*** fails to have:

(i) total assets of at least $3,000,000; and

(ii) annual revenue from ongoing operations of at least $3,000,000 in the most recent year.

Criteria (b)(i) and (ii) above do not apply to a research and development ***issuer***; however, such a company may be delisted if it has failed to spend at least $1,000,000 on research and development, acceptable to ***TSX***, in the most recent year; or

Resource ***Issuers***

(c) (i) in the most recent year, the ***issuer*** has failed to carry out at least $350,000 of exploration and/or development work that is acceptable to ***TSX*** and has failed to generate revenue of at least $3,000,000 from the sale of resource-based commodities; or

(ii) the ***issuer*** does not have adequate working capital and an appropriate capital structure to carry on its business.

**(3) Market Value and Public Distribution**

**Sec. 711.** ***TSX*** will normally consider the delisting of securities of an ***issuer*** if, in the opinion of ***TSX***, it appears that the public distribution, price, or trading activity of the securities has been so reduced as to make further dealings in the securities on ***TSX*** unwarranted.

**Sec. 712.** Specifically, participating securities may be delisted if:

(a) the market value of the ***issuer***'s issued securities that are listed on ***TSX*** is less than $3,000,000 over any period of 30 consecutive trading days; or

(b) the market value of the ***issuer***'s freely-tradable, publicly held securities is less than $2,000,000 over any period of 30 consecutive trading days; or

(c) the number of freely-tradable, publicly held securities is less than 500,000; or

(d) the number of public security holders, each holding a board lot or more, is less than 150.

Non-participating securities will be subject to (b) above as well as Section 711.

**(4) Failure To Comply With *TSX* Requirements & Policies**

**Listing Agreement**

**Sec. 713.** ***TSX*** may delist the securities of an ***issuer*** that fails to comply with its Listing Agreement or other agreements with ***TSX***, or fails to comply with ***TSX*** requirements and policies. Examples of failure to comply with the Listing Agreement include, but are not limited to, failure to obtain the prior consent of ***TSX*** to issue additional equity securities; failure to obtain the consent of ***TSX*** before undergoing a material change in the business if the ***issuer*** is subject to Section 501; and failure to comply with ***TSX***'s requirements for stock options and security based compensation arrangements.

**Disclosure Policies**

**Sec. 714.** ***TSX*** may delist the securities of an ***issuer*** that has failed to comply with ***TSX*'s** Timely Disclosure policy (see Sections 406 to 423.8 and 472 to 475) or with disclosure requirements under any securities law to which the ***issuer*** is subject. In addition, ***TSX*** may delist the securities of an ***issuer*** that is engaged in the business of mineral exploration, development or production if such ***issuer*** has failed to comply with ***TSX*'s** "Disclosure Standards for ***Issuers*** Engaged in Mineral Exploration, Development & Production" (see Appendix B).

**Payment of Fees or Charges**

**Sec. 715.** ***TSX*** may suspend from trading ***and*** delist the securities of an ***issuer*** that fails or refuses to pay, when due, any fee or charge payable by the company pursuant to Exchange requirements.

**Management**

**Sec. 716**. ***TSX*** requires that each listed ***issuer*** must meet on an ongoing basis the management requirements relevant to its category of listing that are described in Section 311 (for Industrial Issuers), Section 316 (for Mining Issuers) and Section 321 (for Oil & Gas Issuers). ***TSX*** may delist the securities of an issuer that has failed to meet such management requirements.

**Upon receipt of a Form 3 (see Section 424) from a listed issuer, or upon notice of a new insider of a listed issuer, *TSX* will conduct a review of the new director, officer, trustee or insider with a view to determining the suitability of such individual or entity as an insider of the listed issuer. Upon the request of *TSX*, listed issuers will submit a Personal Information Form (Form 4, Appendix H) for any person so requested. *TSX* may delist the securities of a listed issuer in the event *TSX* determines that such individual or entity is not suitable as an insider of the listed issuer.**

**(5) Change In Business**

**Sec. 717.** Where an ***issuer*** substantially discontinues its business (for example, through the sale of all or substantially all of its assets in one or more transactions) or changes the nature of its business (for example, through the acquisition of an interest in another business which represents the majority of the market value of the ***issuer***'s assets or which becomes the principal operating enterprise of the ***issuer***), ***TSX*** will normally require that the ***issuer*** meet original listing requirements. Failure of the ***issuer*** to meet these requirements may result in the delisting of its securities.

**REINSTATEMENT OF LISTING**

**Sec. 7*18*.** An ***issuer*** whose securities are ***delisted*** must remedy all of the conditions which resulted in the ***delisting,*** and must meet ***TSX***'s requirements for original listing in order to ***qualify for reinstatement or*** be ***re***considered for ***listing***. The ***issuer must submit a complete listing application with the required supporting documentation and TSX*** will consider each application individually on the basis of all relevant facts and circumstances.

**REVIEW OF DELISTING DECISIONS**

**Sec. 719.** ***Decisions in respect of the application of this Part VII are made by either the Listings Committee or the Advisory Affairs Committee after providing the issuer an opportunity to be heard. If an issuer wishes to contest a decision made under Part VII, the issuer may request that the matter be heard by the committee having made the original decision, with the additional participation of the Senior Vice President, TSX, and/or his/her designate. If after being heard, the issuer remains dissatisfied with the decision, the issuer may appeal the decision to a three-person panel of TSX's Board.***

***An issuer may request that the OSC review the Board's decision provided that the provisions of section 21 of the OSA (or any replacement legislation) apply.***

**VOLUNTARY DELISTING**

***Sec. 720.*** An **issuer** wishing to have all its listed securities, or any class of its securities, delisted from ***TSX*** must apply formally to ***TSX*** to do so. The application should take the form of a letter addressed to ***TSX***. The letter should outline the reasons for the request and be accompanied by a certified copy of a resolution of the company's board of directors authorizing the request.

**APPENDIX C**

**TSX RESPONSE TO PUBLIC COMMENTS**

| **Comments Received<br>Proposed Amendments to Parts V, VI and VII of TSX's Company Manual** | | |
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| **From** | **Comments** | **TSX Response** |
| **A)<br>Simon Romano and Rob Nicholls, Stikeman Elliott.** | **A)**<br>**1) Question 1.**<br><br>It is uncertain whether all TSX staff practices have in fact been codified; it is difficult for listed issuers and their advisors to structure transactions without knowing what TSX requirements are; Waivers, exemptions or other "work-around" relief granted by TSX from time to time have not been publicized, creating a tilted playing field.<br><br>**2) Question 2.**<br><br>The definition of "market price" should be based on the VWAP over a fixed period of time absent extraordinary enumerated events such as market manipulation or an intervening material change; clarify that the "market price" calculation cannot be changed following TSX conditional approval for a transaction; the standard of "the opinion of the TSX, does not accurately reflect [current market price]" provides too much uncertainty in planning transactions; the date of entering into the subscription agreement is not an appropriate date for calculating market price given that subscribers may enter into the agreement at different times; price protection procedures should be elaborated. | **A)**<br>**1) Question 1.**<br><br>One of the primary goals of TSX is to provide issuers with a revised set of rules that are entirely transparent. In drafting the proposed amendments, TSX revisited all of its current written rules and practices. The proposed amendments reflect a complete set of rules that supercede any previously existing unwritten TSX practices. TSX is currently developing a system under which written interpretations of its written rules will be published on a continuing basis as they develop. In addition, the Manual will be updated on a regular basis as additional practices develop.<br><br>**2) Question 2.**<br><br>We believe that a five day VWAP is a more accurate way of measuring the market price of an issuer's security than is current practice under Section 619 which uses the closing market price the trading day prior to the day of letter notice. We also believe, however, that regardless of the measurement used, the price must be an accurate reflection of market. If there is any indication, therefore, that there has been unusual trading before, during or following the measurement period, TSX will investigate further in order to determine whether the "market price" is an accurate indication of market. This reflects our current but unwritten practice. We believe that TSX discretion in this area is required to protect the integrity and quality of the marketplace and the proposed definition provides stakeholders with notice as to when discretion will be used. Section 602(e) has been amended to clarify that any amendment to a transaction, whether or not previously approved, must be accepted. Section 602(e) has been amended as follows:<br><br>**S. 602. (e)** The notice required by Section 602(a) should initially take the form of a letter addressed to TSX's Advisory Affairs division, requesting acceptance of the notice for filing, unless the applicable Section of Part VI requires otherwise. A press release or information circular filed with TSX does not constitute notice under Section 602. The letter should contain the essential particulars of the transaction, and should state whether: (i) any insider has a beneficial interest, directly or indirectly, in the transaction and the nature of such interest; and (ii) whether and how the transaction could materially affect control of the listed issuer. A copy of any written agreement in respect of the transaction must be provided with the notice. TSX must be provided with prompt notice of any changes to the material terms of the transaction described in the notice, regardless of whether the amendment could entail a further issuance of securities. This applies even if the transaction as previously accepted by TSX specifically provided for the possibility of amendments, unless the amendment is solely due to standard anti-dilution |

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| | | provisions in the original agreement. The listed issued may not proceed with the proposed amendment unless it is accepted by TSX.<br><br>The proposed rule does not state that it is the date upon which the "agreement which obligates the issuer to issue the securities" which is to be used to measure "market price", but "the date provided for in the binding agreement obligating the issuer to issue the securities." The definition has been amended to clarify that the date may be either the date of the binding agreement or some future date. That date may be any of the dates referred to above. The reference to "the binding agreement obligating the issuer to issue the securities" in the definition was intentionally left broad. Any agreement which obligates the issuer to issue the securities will be acceptable; in this regard TSX would accept a signed term sheet, engagement letter, letter of intent, agency or underwriting agreement, etc. Under the proposed amendments, "price protection" will no longer be required. Section 602 (a) requires that "every listed issuer shall immediately notify TSX in writing of any transaction involving the issuance or potential issuance of its securities." Price protection will no longer be necessary because it is the issuer that determines the relevant period for determining "market price". Under proposed Section 607(f), the transaction must close not later than "45 days from the date upon which the market price of the securities being issued is established". |
| | **3) Question 3.**<br><br>The proposed definition of "materially affect control" is very uncertain and ambiguous; a bright line test is preferable; transactions are planned well before TSX approval is sought, and thus, certainty is required. | **3) Question 3.**<br><br>Currently, the term "materially affect control" is not defined in TSX's Company Manual. Issuers, therefore, are not provided with any guidance as to the circumstances in which TSX would determine that a transaction would "materially affect control". We believe that the proposed definition provides issuers with some guidance as to the factors TSX will consider in making this determination. We believe that a bright line test, while desirable in the context of certain rules, would not be workable in this instance given that each transaction presents a unique set of circumstances such as those described in your letter. The proposed definition is also reflective of current case law. The proposed definition provides TSX with the discretion we believe is necessary given the wide range of possible facts and circumstances across transactions. The "pattern of voting behaviour by other holders at previous security holder meetings" is only one of many factors TSX will consider. TSX has always and will continue to encourage issuers and their advisors to contact TSX during the planning stages of a transaction to discuss TSX's views and how our rules may or may not apply. |
| | **4) Question 9.**<br><br>We support the ability of shareholders to approve a price below the stated discount. | **4) Question 9.**<br><br>Thank you for your comment. |

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| | **5) Question 10.**<br><br>The discussion about shares being issued below market in exchange for assets needs elaboration, as by definition there is no cash price involved.<br><br>**6) Question 10.**<br><br>Requiring security holder approval for an asset purchase involving a change in business would hamper the competitiveness of Canadian purchasers, since the result would produce an additional level of vendor uncertainty that would favour non-Canadians.<br><br>**7) Question 11.**<br><br>Can the terms of listed warrants be amended? Clarify which security holders will be required to approve an amendment to warrant terms. | **5) Question 10.**<br><br>Section 611(c) has been amended to remove the reference regarding shares being issued below market price in exchange for assets. The section now requires shareholder approval if the securities issued or made issuable pursuant to acquisitions exceed 25% of the issued and outstanding securities, without reference to price.<br><br>**6) Question 10**<br><br>Thank you for your comment. TSX does not propose to implement such a rule at this time.<br><br>**7) Question 11.**<br><br>Under the heading "Listed Warrants", Section 609(d) states that, "Any proposed amendment to the terms of outstanding listed warrants must be accepted by TSX prior to the amendment becoming effective. Once warrants have been listed, TSX will not permit amendments to any of the essential terms of the warrants, such as the exercise price (except for anti-dilution purposes) or the expiry date." It is proposed that amendments may be made to the exercise price and term of unlisted warrants only subject to the requirements of Section 608 under the heading "Unlisted Warrants". TSX proposes the following amendment to Section 608 (b):<br><br>(b) A listed issuer may apply to TSX to amend the warrant exercise price and the term of the warrant provided that:<br><br>(i) disclosure of such amendments is made by way of press release ten (10) business days prior to the effective date of the change; and<br><br>(ii) the application is accompanied by a filing fee (see Part VIII)<br><br>Security holder approval will be required for:<br><br>(ii) amendments to warrants held, directly or indirectly, by insiders; or<br><br>(iii) amendments to warrants resulting in an exercise price which is less than the market price of the securities determined on the date of the amending agreement. |

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| | | Security holder approval must exclude the votes attached to the securities held by insiders whose warrants are proposed to be amended. |
| | **8) Question 13.**<br><br>Clarify whether security based compensation arrangements that involve secondary market purchases, phantom plans or SARs not involving the issuance of securities will require shareholder approval. Clarify whether the revised term "security compensation arrangements" is intended to apply to cash – settled only compensation schemes given the broad definition of "security" under the Securities Act (Ontario). | **8) Question 13.**<br><br>The definition of "security" will be clarified as described in paragraph 13 below. We have removed the reference to "other rights" in Sections 613(d)(vii) and (viii) and have amended Section 613(b) as follows:<br><br>For the purposes of this Section 613, security based compensation arrangements include:<br><br>(i) stock option plans for the benefit of employees, insiders, service providers or any one of such groups;<br><br>(ii) individual stock options granted to employees, service providers or insiders, if not granted pursuant to a plan previously approved by the issuer's security holders;<br><br>(iii) stock purchase plans where the issuer provides financial assistance or where the issuer matches the whole or a portion of the securities being purchased;<br><br>(iv) stock appreciation rights involvingissuances of securities;<br><br>(v) any other compensation or incentive mechanism involving the issuance or potential issuances of securities of the listed issuer; and<br><br>(vi) security purchases by an employee, insider or service provider which is financially assisted by the listed issuer by any means whatsoever.<br><br>For greater certainty, arrangements which do not involve the issuance from treasury or potential issuance from treasury of securities of the issuer are not security based compensation arrangements for the purposes of this Section 613<br><br>For the purposes of Section 613, a "service provider" is a person engaged by the issuer to provide services for an initial, renewable or extended period of twelve months or more. |
| | **9) Question 15.**<br><br>The inability to seek advance "blanket" shareholder approval will detrimentally affect small issuers; it is not clear whether the ability to effect more than one 24.9% private placement in six | **9) Question 15.**<br><br>Following extensive consideration and consultation with stakeholders, TSX reached the conclusion that its current practice of permitting issuers to seek "blanket" security holder approval for the issuance, subject to certain restrictions, of up to 100% of its outstanding securities within a 12 month period |

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| | month period will offset the inability to obtain "blanket" shareholder approval. | without obtaining further security holder approval is not appropriate. "Blanket" approval creates uncertainty and compromises market quality. "Blanket" approval provides issuers with the ability to issue a significant number of securities in a short period of time and to create significant dilution to security holders up to 12 months following the passing of the "blanket" resolution. TSX believes that this is a significant length of time given that the financial circumstances of the issuer, market environment and shareholder base of the issuer may have changed substantially in the interim. For example, in the intervening period between the adoption of the "blanket" resolution and the financing, the market price of the issuer's securities may have declined to a point that had not been anticipated by the shareholders who voted in favour of the "blanket" approval up to 12 months earlier, thereby creating a result that was not intended by shareholders. The proposed change to TSX's 25% rule from a "six month" test to a "per transaction test" was not intended to "offset" the inability of issuers to seek and obtain "blanket" approval. Overall, we believe that the requirement in Section 604(c) that a resolution approved by security holders must relate to a specific transaction and not an unspecified future transaction will contribute to improved transparency in the marketplace. |
| | **10) Question 16/17.**<br><br>Under Section 604(e)(iv), "reasonableness" should be expressly determined by the board upon the recommendation of a committee consisting of "one or more" independent directors. | **10) Question 16/17.**<br><br>Section 604(e)(iv) will be amended to read "based on the determination of the committee referred to in (ii) above, that the transaction is reasonable for the listed issuer in the circumstances" |
| | **11) Question 18.**<br><br>In our experience, issuers subject to financially related expedited suspension reviews are not always given an opportunity to remedy their deficiencies. | **11) Question 18.**<br><br>Section 707 of TSX's Company Manual currently provides for the process applicable to "expedited review". Issuers subject to expedited review are provided an opportunity to be heard on an expedited basis. Such issuer's securities will be suspended from trading immediately after such hearing if the issuer cannot satisfy TSX that an immediate suspension is unwarranted. |
| | **12) Question 19.**<br><br>Officers, directors and new insiders of TSX Exempt issuers should not be reviewed. Review of new insiders would be a restriction on transferability [of securities] and likely would become a tool used by incumbent management against would-be acquirers. With respect to directors, this would preclude contested director elections on the floor of a meeting, which seems inappropriate. | **12) Question 19.**<br><br>TSX currently reviews the officers, directors and, if in conjunction with a transaction requiring the prior approval of TSX, new insiders of all non-exempt TSX listed issuers. In so doing, TSX has not encountered the concerns raised with respect to transferability and contested director elections. TSX, therefore, does not anticipate that these concerns will be of a practical consequence to our exempt issuers. In addition, we believe that the proposed amendment will foster market quality. |

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| | **13) Section 601.**<br><br>Clarify definition of "associate" as it is a downwards only test; Clarify terms "direct or indirect" in the definition of insider; Definition of "OSA" should include regulations but not policies, as they have no force of law; the proposed definitions of "related party" and "securities" are very unhelpful as the OSC definitions are extremely difficult and in the latter case too expansive a definition for these purposes. | **13) Section 601.**<br><br>We believe that the definition of "associate" in the OSA is clear and accurately reflects the meaning intended by TSX. An indirect issuance to an insider includes, for example, an issuance to an entity of which the insider is a controlling shareholder or to a trust of which the insider is a beneficiary. Notwithstanding that OSC "policies" do not have force of law, for the purposes of the proposed amendments, the definition of OSA will include "policies" except where otherwise provided. The definition of "security" and "securities" will be amended to read as follows: "has the meaning as found in the OSA and references to 'security' or 'securities' hereunder shall be restricted to securities listed on TSX unless otherwise provided." We believe that the definition of "related party" as provided is necessary in order to account for all possible transaction structures. |
| | **14) Section 602.**<br><br>Pre-notification to the TSX of securities (not just shares or convertibles) is a change that is not appropriate. It is a change that would give the TSX inappropriate decision-making authority and uncertain discretion over borrowing transactions, debt issues, partnership agreements and many other normal business activities totally beyond the legitimate purview of the TSX. | **14) Section 602.**<br><br>The definition of "security" and "securities" will be amended as provided in paragraph 13) above. It is not the intention of TSX to expand its jurisdiction beyond its current scope. |
| | **15) Section 602(d).**<br><br>This Section should permit a general "Subject to regulatory approval" statement, consistent with existing well-established practice. | **15) Section 602(d).**<br><br>The Section continues to make specific reference to TSX approval or acceptance. Such approval or acceptance is not a regulatory approval and should be referenced separately if both are required. |
| | **16) Section 602(e).**<br><br>"Indirect beneficial interest" creates substantial uncertainty; written agreements should only be required "if available" as an agreement may not exist at the time TSX approval is sought. | **16) Section 602(e).**<br><br>Section 602(e) (i) will be amended to read: "any insider has an interest, directly or indirectly, in the transaction and the nature of such interest". We believe that the term "any agreement" takes into account the fact that an agreement may not necessarily exist at the time TSX approval is sought. |
| | **17) Section 603.**<br><br>The inclusion of "the listed issuer's corporate governance practices" and "the listed issuer's disclosure practices" as principles the TSX will apply in exercising its discretion and their linkage with rules which govern, principally, private placement transactions is not entirely obvious. | **17) Section 603.**<br><br>The inclusion of these factors in TSX's discretionary decision process was not intended to "punish" or "reward" listed issuers or shareholders. These factors will be considered, if relevant, along with any other relevant enumerated or non-enumerated factors by TSX within the context of its discretionary abilities in order to ensure market quality and promote transparency. We would submit that the practical implications of clauses (iii) and (iv) of proposed Section 603 would not decrease significantly the level of certainty for |

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| | | issuers proposing to carry out transactions as they are part of current TSX practice. While an issuer's corporate governance and disclosure practices are not relevant to all transactions being proposed by all issuers, these are factors that have been and will be considered in some circumstances when reviewing transactions. In particular, when reviewing an application that may be requesting relief from certain requirements in Parts V and VI of the Company Manual, these factors are important in establishing whether the particular issuer has developed a consistent pattern of non-compliance with TSX requirements. It is not our intent to review an issuer's corporate governance record and disclosure practices for every arm's length transaction but rather only in extraordinary circumstances. |
| | **18) Section 604(a).**<br><br>Given the broad definition of "security", this Section and others have become very uncertain as they now refer to security holders. | **18) Section 604(a).**<br><br>It is not the intention of TSX to alter its current practices with respect to which security holders may or may not vote when security holder approval is required under TSX's Company Manual. We believe that the revised definition of "security" and "securities" as provided for in paragraph 13) above will address this concern. |
| | **19) Section 605.**<br><br>This Section should refer to listed securities only. | **19) Section 605.**<br><br>We believe that the revised definition of "security" and "securities" as provided for in paragraph 13) above will address this concern. |
| | **20) Section 606(b).**<br><br>Many of the facts contained in Section 606(b) would not be known at the time of the preliminary prospectus. | **20) Section 606(b).**<br><br>We agree. In cases in which certain facts under 606(b) are not known at the time of filing of the preliminary prospectus, TSX, as is current practice, will take this into account in the conditional approval letter and/or defer acceptance of notice until such time as all relevant facts required to issue a conditional approval letter are known, which is usually closer to the time of filing the final prospectus. |
| | **21) Sections 607(f)(iv) and 607(g).**<br><br>Sections 607(f)(iv) and 607(g) strangely treat warrant exercises, even those at a premium, as being at a discount; a flow through share issued at a premium will questionably still be considered to be issued at a discount, even if the premium is as high as 15% to 20% to market. | **21) Sections 607(f)(iv) and 607(g).**<br><br>Given that warrants are generally exercised when they are "in-the-money", TSX treats all warrants as "discounted" securities, notwithstanding that the warrant exercise price may be at a premium to market at the time of issuance of the warrant. Warrants, therefore, are economically dilutive to shareholders at the time of exercise. In the case of flow-through shares, TSX believes that it is the benefit of the "flow-through" characteristic of the shares to the purchaser which qualifies the share as a "discounted" security, not the degree of the premium. In any event, whether the applicable premium is sufficient to compensate the issuer for such benefit to the point where the shares may be considered to be issued at or above market price requires individual tax and/or subjective analysis. TSX, therefore, believes that it is neither in a position nor would it be appropriate for TSX to make such a determination. |

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| | **22) Section 607(f)(ii).**<br><br>This Section should conform to current practice by explicitly providing 135 days where shareholder approval is required. | **22) Section 607(f)(ii).**<br><br>The following will be added immediately following the phrase "not later than 45 days" in Section 607(f)(i): "(or, in circumstances where security holder approval is required pursuant to Section 607(g), 135 days)". |
| | **23) General.**<br><br>The TSX current practice to restrict the ability to issue flow through shares at a discount with warrants to arm's length and/or non-arm's length transactions is not addressed in the proposals. | **23) General.**<br><br>The proposed amendments supersede any previous written or unwritten TSX rules and practices as they relate to Parts V, VI and VII of TSX's Company Manual. Please refer to paragraph 1) above.<br><br>For greater clarification, TSX will generally not restrict the number of sweetners (ie. tax credits, warrants, discounts etc.) made available to non-arm's or arm's length parties. |
| | **24) General.**<br><br>The TSX current practices allowing offshore transactions to be treated as non-private placements is not referred to. | **24) General.**<br><br>We do not believe that one set of requirements can be established for such practice. If these occur in the future, they will be reviewed based on size, price and insider participation. |
| | **25) Section 611.**<br><br>Clarify Section 611(a) so that it includes assets, shares and other property; Determining whether a property acquisition is below market price for the purpose of Section 611(c) seems likely to be almost always impossible; Section 611(c) fails to codify TSX practice with respect to acquisitions of publicly held targets which would exceed the 25% limit | **25) Section 611.**<br><br>The following will be added immediately following the phrase "as full or partial consideration for property" in Section 611(a): "(which may include shares or assets)". Section 611(c) has been amended to remove the reference regarding shares being issued below market price in exchange for assets. The section now requires shareholder approval if the securities issued or made issuable pursuant to acquisitions exceed 25% of the issued and outstanding securities, without reference to price. TSX believes the last sentence of Section 611(c) sufficiently codifies TSX's practice with respect to publicly held target. The Section states that "TSX will consider granting relief from this Section 611(c) where the assets acquired are not closely held", |
| | **26) Section 613.**<br><br>The re-worked rule leaves a number of questions unanswered. For example, despite the TSX's stated intention of codifying unwritten rules, the proposed new rules do not address the current TSX practice of permitting minor amendments to share compensation arrangements without shareholder approval (for example, the extension of stock options which expire during a black out period and lengthening expiry dates following employment termination). Will this practice continue and if so, why are such practices not codified? | **26) Section 613.**<br><br>The re-worked rule requires that security based compensation arrangements be approved by the listed issuer's security holders. Issuers seeking to make amendments to share compensation arrangements, other than with respect to exercise price or expiry dates, they must look to the arrangement itself in order to determine whether or not the amendment will be permitted without security holder approval. For example, a stock option plan may provide that the board of directors has the discretion to accelerate vesting provisions of a previously granted stock option. Section 613(d) has been clarified to state that:<br><br>Should a security based compensation arrangement not provide for the procedure for amending the arrangement, disinterested security holder approval will be required for |

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| | | such amendments.<br><br>Therefore, if amendments are not provided for in the arrangement as approved by security holders, any proposed amendments to individual grants or arrangements, such amendments must be approved by disinterested security holder whether minor or material. |
| | **27) Section 613(g).**<br><br>Section 613(g) is too limiting. Merging companies should be able to move their outstanding options to the surviving public entity without additional financial limits. Canadian companies will be at a disadvantage to non-Canadian acquirors in international M&A activity. The disparity in the percentage limit between listed issuers (25%) and non-listed issuers (2%) seems to make little sense in the case of non-listed issuers whose shares are listed on other exchanges. | **27) Section 613(g).**<br><br>Proposed Section 613(g) has been deleted in its entirety. Section 611(c) (shareholder approval requirement for acquisitions) has been amended to specifically include the issuance of options in connection with an acquisition. Options and other securities related to an acquisition will be reviewed under the acquisition shareholder approval requirements. |
| | **28) Section 629.**<br><br>Are pre bid integration provisions appropriate? | **28) Section 629.**<br><br>We have re-visited the issue of exchange take-over bids. We propose to remove the ability for bidders to use TSX facilities and will amend Sections 628 through 632 accordingly. |
| | **29) Sections 629-632.**<br><br>Clarify that Sections 629 through 632 apply only to stock exchange take-over bids. Query whether Section 629(k) should apply to all bids. | **29) Sections 629-632.**<br><br>Please see our response in paragraph 28 above. |
| | **30) Section 632.(now 629)**<br><br>Delete the valuation/appraisal disclosure requirements in item 7 [Form 15] of Section 632 which causes trouble for certain companies by requiring disclosure of confidential asset appraisals. This can adversely affect the selling price of assets. | **30) Section 629.**<br><br>Valuation/appraisal information is relevant for the purposes of ensuring a level playing field if the issuer wishes to purchase securities under a normal course issuer bid. Failing to disclose valuation/appraisal information to the market place while the issuer is purchasing its own securities may be reasonable perceived as having material information which has not been publicly disclosed, whether or not such information is actually material. |
| | **31) Section 632(i).(now 629(j))**<br><br>Separate the latter part of Section 632(i) dealing with trustees from the first part which deals with amendments to NCIBs. Amend the latter part of Section 632(i) which deals with trustees to allow brokers to act in such a capacity as trustees are increasingly expensive and particular about acting for market based | **31) Section 629(j).**<br><br>The text following the first two sentences of Section 632(i) will be separated into a new Section 632(j) and the following sections will be renumbered accordingly. Brokers are currently and will continue to be permitted to act as a purchasing agent under the circumstances described in that Section, including with respect to market based purchase plans. |

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| | purchase plans.<br><br>**32) <u>Section 632(k)(1)(c).(now 629(l)(1)(c)</u>**<br><br>Delete restriction on "solicited" purchases. Restriction is unrealistic and should be deleted given that it is occurring within the context of an NCIB.<br><br>**33) <u>Section 632(k).(now 629(l))</u>**<br><br>Last paragraph is out of place as it is not related to NCIB's. In any event OSC Policy 62-601 does not apply to the offeror itself which is at odds with the provision. If it applies to an offeror, exemptions such as those contained in section 93(3) of the OSA should apply.<br><br>**34) <u>Section 635(c).(now 634(c))</u>**<br><br>Address the fact that the OSC usually does not decide whether to initiate proceedings right away. In the meantime, the TSX should presumably allow the plan to be operative.<br><br>**35) <u>Sections 637-639.(now 630-632)</u>**<br><br>Sections 637-639 purport to apply to a selling security holder that is not a participating organization. This cannot be correct, as they are not subject to TSX requirements. If true, it would preclude off-market private agreement sales, which are apparently allowed under Section 640. It should be expressly limited to sales through the facilities of the TSX.<br><br>**36) <u>Current Section 637.3.</u>**<br><br>It is not clear whether Section 637.3 of the current TSX Company Manual is intended to survive. If so, it should only apply to material changes, not material | **32) <u>Section 629(l)(1)(c).</u>**<br><br>TSX believes this restriction is required in order to maintain market quality and integrity.<br><br>**33) <u>Section 629 (l).</u>**<br><br>We disagree. This paragraph relates directly to NCIB's made by an offeror or the target during the course of a take-over bid.<br><br>**34) <u>Section 634(c).</u>**<br><br>As stated in Section 634(c), in circumstances where a security holder rights plan can be reasonably perceived to have been proposed or adopted as a response to a specific take-over bid for a listed issuer TSX will defer its decision on whether to consent to the plan until the OSC has had the opportunity to consider whether it will initiate proceedings by virtue of National Policy 62-202. The securities commissions in Canada are responsible for reviewing the propriety or operation of plans, not TSX. TSX simply accepts notice of the plan and consents to the listing of the rights on TSX which are issuable pursuant to the plan. Therefore, it is not within TSX's jurisdiction to "allow the plan to be operative" as described. In such circumstances, TSX will defer any decision until TSX is advised that 1) the OSC will not initiate proceedings; 2) the OSC will initiate proceedings; or 3) the bid has been withdrawn.<br><br>**35) <u>Section 630-632.</u>**<br><br>For greater clarification Section 630-632 apply only to sales from control through the facilities of the TSX. We believe that the requirements appearance under the heading "Sales from Control Block Through The Facilities of the Exchange" is sufficient.<br><br>**36) <u>Current Section 637.3</u>.**<br><br>Section 637.3 of the current TSX Company Manual has been added to proposed Sections 612 and 613. |

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| | facts (like the former VSE's policy in options and consistent with the Supreme Court of Canada's *Pezim* decision) and should be amended to permit grants to new employees, as well as grants to persons who are not aware of the potential material change. In addition, if so, it should only apply to options since otherwise it would appear that while one could issue options in connection with a major acquisition, one could not issue shares as consideration for the acquisition. | |
| | **37) <u>General.</u>**<br><br>It needs to be made very clear (Section 408) that material transactions do not need to be disclosed under TSX material information disclosure requirements until they have been definitively agreed to. The recent *Donnini* decision, among others, seems to suggest that a company discussing a potential material transaction should disclose it (as a material fact) before an agreement is reached and the material change threshold would apply. With respect to material information disclosure, TSX (and TSX Venture) rules should be adjusted to expressly reflect the fact that it would almost always be premature and inappropriate to announce (i) a potential financing transaction or (ii) a potential merger, acquisition or disposition, until a binding definitive agreement has been reached. In the latter case particularly, the potential damages to employee and customer/supplier relations (and thus shareholders), the "damaged goods" perception of a failed deal, are too great (witness Nestle's recent negative reaction to speculation that it was seeking to Hershey). In both cases, the potential to make the transaction unachievable because of speculative price changes are very dangerous to a successful financing. Until a binding definitive agreement has been reached, disclosure should not be required in any way, including via confidential reports. Issuers must be able to legitimately take the position that nothing material has occurred until that time. | **37) <u>General.</u>**<br><br>This comment relates to TSX's policy on timely disclosure which is not within the scope of the Request for Comments. |

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| | **38) General.**<br><br>Like the OSC, the TSX should provide cost – benefit analyses of all proposed rule changes wherever practicable. | **38) General.**<br><br>Prior to drafting the proposed amendments, TSX canvassed issuers, their advisors (including legal counsel), investors and other shareholders to discuss Parts V, VI and VII of TSX's Company Manual and our proposed amendments as well as to solicit recommendations. TSX believes that it is not feasible to provide a cost-benefit analysis in connection with the proposed amendments. |
| | **39-45) September 3, 2002 – TSX Reorganization and IPO; Other.** | **39-45) September 3, 2002 – TSX Reorganization and IPO; Other.**<br><br>These matters are not within the scope of the Request for Comments. |
| **B. Bernard Pinsky on behalf of Clark, Wilson Corporate Finance / Securities Department** | **B.**<br>**1) Question 1.**<br><br>Additional factors where TSX might use its discretion should include where the public interest and shareholder interest will not be harmed, or where non-compliance with a TSX policy may be temporary. | **B.**<br>**1) Question 1.**<br><br>The enumerated list provided was not intended to be exhaustive and other factors such as public interest and shareholder interest will be considered in the context of providing a quality marketplace. |
| | **2) Question 8.**<br><br>TSX should not continue to set standards for discounts on market price where the transaction is at arm's length. TSX will be reviewing directors and rejecting certain directors. Those who are acceptable should make their own decisions as to running their business. | **2) Question 8.**<br><br>In canvassing stakeholders in connection with TSX's review of its Parts V, VI and VII of TSX's Company Manual, we found that many issuers were in support of maintaining the current limits on discounts as the limits provide issuers with an important advantage when negotiating transactions. In addition, TSX believes that limits on discounts helps preserve the quality of the marketplace provided by TSX and provides certainty for investors. |
| | **3) Question 11.**<br><br>TSX should not continue to impose standards in respect of warrants, such as expiry date and number of warrants issuable per security, where the transaction is at arm's length. | **3) Question 11.**<br><br>Thank you for your comment. The proposed amendments remove such restrictions in both arm's length and non-arm's length transactions. |
| | **4) Question 12.**<br><br>The 10% is too low a threshold when reviewing transactions involving insiders. We believe that 15% is more appropriate. | **4) Question 12.**<br><br>TSX believes that a threshold of 10% is appropriate in order to maintain market quality. We believe that the ability of non-arm's length parties to influence management and the board demands a strict limitation on the insiders' ability to issue securities to themselves without approval of security holders. The threshold can be exceeded where disinterested security approval is obtained. |
| | **5) Question 13.**<br><br>In certain circumstances, for example to | **5) Question 13.**<br><br>TSX understands that it is important for our issuers to keep |

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| | keep a key senior management employee, there needs to be additional flexibility for issuers to grant security based compensation to existing as well as new employees. | key senior management employees, especially in difficult market conditions. TSX also believes, however, that while issuers require flexibility in order to create competitive compensation arrangements, TSX must protect market quality by ensuring that arrangements involving further dilution to security holders through the issuance of listed securities to insiders are approved by security holders. Proposed Subsection 613(c) does provide increased flexibility for issuers to provide security based compensation arrangements as an inducement to employment without security holder approval in certain circumstances. |
| | **6) Question 16.**<br><br>TSX applications and an application to the OSC should be considered together so that there are not two separate applications (causing potential delays) for a waiver under the financial hardship exemption. | **6) Question 16.**<br><br>We agree that the requirements of the OSC under the financial hardship exemption of OSC Rule 61-501 and Section 604(e) are similar. The OSC and TSX, however, operate independently and the requirements to which the exemption applies are distinct. TSX, however, will have no objection to receiving an application on a joint basis with the OSC if the requirements of Section 604(e) are addressed specifically in the application and the requirements of TSX from which relief is sought is made clear. |
| | **7) Question 17.**<br><br>We believe that no additional conditions should be imposed on the availability of the financial hardship exemption. | **7) Question 17.**<br><br>Please see our response in Section A. above, (comments of Simon Romano and Rob Nicholls) paragraph 10. |
| **C)<br>Macleod Dixon** | **C)**<br>**1) Question 2.**<br><br>VWAP is a number that requires access to trade-by-trade pricing information. This information is particularly difficult to attain and, at the present time, is not available off of the TSX's website. Is the TSX going to make this information more readily available to issuers? Otherwise, how will an issuer proposing to initiate a private placement access the requisite information, especially on short notice? | **C)**<br>**1) Question 2.**<br><br>Historical daily value and volume trading information is currently available on TSXedge.com, a password protected website available to listed issuers. Each listed issuer is provided with two subscriptions to TSXedge.com, without additional cost. VWAP may easily be calculated based on the information available on TSXedge.com. |
| | **2) Section 601 – Definition of "Market Price".**<br><br>The discount parameters relate to the market price "as at the date provided for in the agreement which obligates the issuer to issue the securities". The "agreement" being referred to in the definition of market price needs to be specified.<br><br>Moreover, if subscription agreements are being referred to in the definition, as | **2) Section 601 – Definition of "Market Price".**<br><br>The reference to the "agreement" in the definition was intentionally broadly defined. Any agreement which obligates the issuer to issue the securities will be acceptable; in this regard TSX would accept a signed term sheet, engagement letter, letter of intent, agency or underwriting agreement etc. In addition, the definition has been clarified to specifically contemplate the use of the date of the binding agreement or some future date.<br><br>We would not expect a different reference price to be used if subscription agreements were signed at various times. More |

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| | a practical matter, one has to distribute them with the pricing information completed but the subscription agreement are not normally signed until fairly late in the process. In such a situation how can one be sure of being in compliance with the rules regarding pricing? The matter is made even more complicated if one considers that subscription agreements are often signed at different times. | particularly we would accept the date referenced in the first agreement for the basis of the market price calculation. Also, please see our response in Section A. above (comments of Simon Romano and Rob Nicholls) paragraph 10. |
| **D)**<br>**Noelle Wood on behalf of Market Regulation Services Inc.** | **D)**<br>**1) <u>Section 601 – Definition of "Market Price".</u>**<br><br>The TSX does not currently calculate or publish daily an official VWAP for securities traded on the TSX. VWAP is not defined in the Company Manual other than as part of the "market price" definition. Although Participating Organizations are providing clients with a VWAP when requested, the formula for calculating VWAP varies from firm to firm. RS would suggest that the definition of VWAP be clarified to indicate whether or not it would contain internal crosses or any trades with non-standard settlement terms; RS would also suggest that the definition be broad enough to allow the TSX the ability to exclude certain types of trades as determined by the TSX. | **D)**<br>**1) <u>Section 601 – Definition of "Market Price".</u>**<br><br>In the proposed amendments "VWAP" is defined as the volume weighted average trading price of the listed securities calculated by dividing the total value by the total volume of securities traded for the relevant period. We have amended the definition to provide a discretionary exclusion of internal crosses and other special terms trades from the calculation.<br><br>Please also see our response in Section C. above, (comments of Macleod Dixon) paragraph 1. |
| **E)**<br>**Ogilvy Renault** | **E)**<br>**1) <u>Question 1.</u>**<br><br>Additional factors that may be considered by the TSX include:<br><br>● whether the transaction is designed to improve the financial position of the listed issuer if the issuer is in financial difficulty; and<br><br>● the liquidity of the market for the securities of the listed issuer and the size of the transaction.<br><br>**2) <u>Question 5.</u>**<br><br>It is not clear from the proposed rules [Subsection 607(e)] in what circumstances private placements that do not exceed the 25% dilutive | **E)**<br>**1) <u>Question 1.</u>**<br><br>While the list of factors is obviously not intended to be exhaustive, the factors included are factors which have frequently been cited in seeking exemptive relief. Since financial hardship is specifically dealt with in Subsection 604(e), we have not specifically cited it as an additional factor. We have amended the list of factors to include the liquidity of the market for the relevant securities and the relative size of the transaction for the listed issuer.<br><br>**2) <u>Question 5.</u>**<br><br>While we consider the securities issuable pursuant to warrants and convertible securities as being issued at a price per security less than the market price, provided that the exercise or conversion price did not fall below market price or |

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| | threshold but that involve the issuance of convertible securities or warrants will require shareholder approval where the underlying securities will be considered to be issued below market pursuant to proposed section 607(f)(iii) or section 607(f)(iv) | the market price less the applicable discount, respectively, we would not require shareholder approval, unless the 25% dilutive threshold was exceeded. |
| | **3) Question 9.**<br><br>Security holders who are to be issued anti-dilution rights should be excluded from the shareholder approval vote where such anti-dilution rights may result in securities being issued at a price lower than the market price less the applicable discount. We assume that the TSX will use its discretion in such circumstances to require that the holders of such anti-dilution rights will also be excluded from voting on subsequent private placements where securities are to be issued at prices below stated discounts and where the holders of such anti-dilution rights are among the purchases of such privately placed securities. Alternatively, consider revising proposed section 604(b) to provide that insiders as well as other interested security holders will not be eligible to vote in respect of such transactions. | **3) Question 9.**<br><br>Section 607(e) has been amended to exclude any insider, their associates or affiliated companies benefiting from special anti-dilution rights from the shareholder approval for such special rights. TSX believes that special anti-dilution provisions negotiated on an arm's length basis require security holder approval, but does not necessarily require the exclusion of all votes held parties entitled to receive such rights, provided that the parties are not insiders of the issuer.<br><br>With respect to subsequent private placements, TSX will review the participation by the holder of the special anti-dilution rights, the terms of the then proposed private placement and the position of the holder to assess whether or not they will be excluded from any require shareholder approval, in accordance with TSX published rules. |
| | **4) Questions 10 and 12**<br><br>Transactions involving insiders and other related parties are already addressed in, and TSX listed issuers are subject to OSC Rule 61-501 – Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions. Some proposed TSX rules appear to be intended to address substantially similar concerns to those addressed by Rule 61-501, yet in some instances the TSX requirements are more onerous than those of Rule 61-501. In our view, securities legislation is the more appropriate source for conflict of interest regulation. Alternatively, if the TSX considers it important to address such issues in its requirements, TSX rules should be consistent with Rule 61-501. | **4) Questions 10 and 12**<br><br>TSX has historically set a higher standard for its listed issuers for any related party transaction. We believe that it is important for public shareholders to have the opportunity to vote on any significant transaction with a related party ie. constituting 10% or more dilution. Specifically, we do not believe that a general exemption from a security holder approval is appropriate for transactions by our listed issuers which constitute less than 25% of their market capitalization.<br><br>Comparatively, NASDAQ requires security holder approval for any arrangement (including a private placement) under which the amount of securities which may be issued exceeds the lesser of 1% or 25,000 voting securities. In addition, the security holder approval which NASDAQ requires is a simple majority of the votes cast, while TSX approval would exclude the participating related parties from the vote. As a result of significant differences in market capitalization and security holder distribution, we believe that 10% is the appropriate threshold to require disinterested security holder approval, despite the requirements contained in OSC Rule 61-501. |

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| **F)**<br>**Bennett Jones LLP** | **F)**<br>**1) <u>Questions 1.</u>**<br><br>The inclusion of factors (iii) and (iv) may erode the perceived transparency or consistency of exercises of discretion. Factors (iii) and (iv) are ambiguous relative to factors (i) and (ii). It would be of assistance to listed issuers for TSX to define the circumstances under which factors (iii) and (iv) would be relevant.<br><br>We suggest that TSX consider for inclusion as an additional factor in proposed section 603, as applicable, specifically authorized transaction by a court or regulator, or alternatively, regulated by corporate, securities or other legislation designed to provide investor protection.<br><br>We note that provincial securities legislation sets forth certain factors to be considered in determining whether securities regulatory authorities will exercise their discretion not to issue a receipt for a prospectus. All or some of these factors equally may be appropriate in determining whether TSX should exercise discretion in respect of a given transaction.<br><br>**2) <u>Question 2.</u>**<br><br>We believe the proposed definition to be appropriate. We suggest, however, that TSX consider a longer period of time to determine market price as a five day trading price may, for junior or infrequently trading issuer, not give an accurate sense of market price.<br><br>**3) <u>Question 3.</u>**<br><br>We agree with the proposed inclusion of a *de facto* element to the definition of control, but are of the opinion that in determining whether the ability to affect control exists in fact, reference should only be made to the ability of the shareholder to affect materially the control of the issuer. The ability to influence the outcome of a vote of securities holders should not be enough. The test should require an | **F)**<br>**1) <u>Question 1.</u>**<br><br>Please see our response in Section A, Paragraph 17.<br><br>Section 603 will be amended to include an additional factor: "(v) an order of a court or similar administrative regulatory body that has considered the security holders' interests." Short of a specific order, approval or authorization, TSX does not consider it appropriate to defer to corporate, securities or other legislation designed to provide investor protection. As the senior equity market in Canada, TSX expects its issuers to meet a higher standard than those prescribed and applicable to private companies, unlisted reporting issuers or even reporting issuers listed on TSX Venture Exchange.<br><br>**2) <u>Question 2.</u>**<br><br>We agree that a five day trading price may not be appropriate for an infrequently trading issuer. Upon review of the trading information of the listed issuer, TSX is flexible with respect to the use of a longer period to calculate market price. We do not believe that it is necessary to amend the definition of market price in order to accommodate such issuers. The five day volume weighted average was intended as a benchmark for issuers with an average amount of trading. TSX will give consideration to the use of a shorter period for heavily traded issuers and a longer period for infrequently traded issuers.<br><br>**3) <u>Questions 3.</u>**<br><br>We agree that an objective assessment of the security holder's ability to consistently influence significant transaction or decisions would be preferable, however, we believe that there are factors which must be considered that are particular to each transaction and each issuer which may lead to a different determination depending on the fact pattern. |

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| | objective assessment of the security holder's ability to, either alone or with others, consistently influence significant transactions or decisions or elect or dictate the composition of the board of directors of the issuer.<br><br>**4) Question 5.**<br><br>We agree with the proposal that TSX no longer review transactions involving the issuance of shares priced at or above market, subject to TSX's discretion to impose restrictions on transactions involving insiders or materially affect control. We agree that such transactions are economically neutral to current security holders.<br><br>**5) Question 6.**<br><br>We agree with the proposal that TSX review private placements on a case-by-case basis, rather than over an arbitrary six month period.<br><br>**6) Question 9.**<br><br>We agree that security holders should be able to approve a price per security which is below the stated discounts even though, we expect the circumstances under which such approval might be sought would be rare.<br><br>**7) Question 10.**<br><br>The broad restrictions on issuance of securities that may materially affect the control of the issuer or that involve insiders sufficiently protect security holders. We feel it reasonable that the issuance of securities as payment of purchase price of assets not be subjected to independent restrictions. Provided that an issuer's intent to effect such a change is publicly disseminated, security holders may exercise their right not to participate in the future course of the issuer by disposing of their securities on the market or voting their securities at the issuer's next annual meeting in a manner that indicates their disapproval of the the board of director's business plan. | **4) Question 5.**<br><br>Thank you for your comment.<br><br>**5) Question 6.**<br><br>Thank you for your comment.<br><br>**6) Question 9.**<br><br>Thank you for your comment.<br><br>**7) Question 10.**<br><br>We agree. Thank you for your comment. |

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| | **8) Question 11.**<br><br>We agree with the proposal that TSX no longer impose standards in respect of the issuance of warrant, other than requiring that warrants be priced at market. In this sense, the proposed Amendments will provide listed issuers with further flexibility in raising capital.<br><br>It is our understanding that security holder approval will be required under the proposed section 608 in respect of amendments to the terms of warrants held by insiders. While we generally agree with this position, requiring security holder approval appears unnecessary in the event the terms of all warrants, including both those held by insiders and those held by non-insiders are to be amended in the same respect. | **8) Question 11.**<br><br>Thank you for your comment.<br><br>TSX is concerned that a proposed amendment to a warrant held by insiders may be the catalyst for the proposal to amend all warrants of a particular series held by insiders and non-insiders, alike. Accordingly, TSX has required in the Amendments that the insider portion of the warrants receive disinterested shareholder approval prior to the amendment. |
| | **9) Question 12.**<br><br>We are of the view that 10% is an appropriate threshold when reviewing transactions involving insiders. There may be instances, however, where insiders should be entitled to receive greater than 10% of the issuer's capital over a six month period, particularly when such participation would only permit such insiders' to maintain their current *pro rata* interest in the issuer in connection with a large private placement. *Pro rata* participation by insiders does not alter the status quo and therefore should not independently engage a requirement for security holder approval. | **9) Question 12.**<br><br>We agree that *pro rata* participation by insiders does not alter the status quo with respect to the insiders' position, however it does alter other security holders position with respect to dilution. If other security holders are not given the opportunity to participate on a *pro rata* basis, some limit should be placed on the insiders participation. Otherwise, to permit insiders to maintain their position on a *pro rata* basis gives them a benefit other security holders do not enjoy and forces such holders to bear the additional dilution for the benefit of the insiders.<br><br>In exceptional or extraordinary circumstances, such as those contemplated under 604(e) (financial hardship) TSX will exempt the listed issuer from the requirements of security holder approval. |
| | **10) Question 13.**<br><br>We are of the view that it is appropriate to require that security based compensation arrangement have minimum exercise prices and a maximum terms. We request that TSX consider permitting "rolling 10%" maximums for security based compensation arrangements in addition to fixed reserve plans. Permitting such plans would greatly facilitate the administration of option plans and simplify the investor's ability to calculate an issuer's maximum fully diluted share capital at a given time. | **10) Question 13.**<br><br>Thank you for your comment. TSX has maintained a minimum exercise price for stock options, however the maximum term of the ten years has been removed. Other than with respect to exercise price, TSX believes that once an arrangement has been approved by security holders, TSX should not be imposing other restrictions.<br><br>By way of clarification, the current Amendments contemplate "rolling maximums" for security based compensation arrangement. As may be noted, there is no requirement for a fixed maximum as currently exists. With respect to Subsection 613(d) in the Amendments, the enumerated items are only required as they apply. Accordingly, for item 613(d)(ii), if the total number of securities issuable under the |

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| | | arrangements, other than a percentage, does not exist, disclosure of same is not required. TSX has clarified the Section to include the phrase "as applicable" where appropriate. |
| | **11) Question 15.**<br><br>There does not appear to be a pressing necessity for TSX to continue to accept blanket approval.<br><br>We would also like to comment on the proposed security holder approval requirements in respect of "backdoor listings", as described in section 626. The proposed amendments will require that backdoor listings be approved by security holders at a meeting prior to the completion of the transaction. It is our experience that TSX has permitted the satisfaction of such approval through the written evidence that holders of more than 50% of the voting securities of the listed issuer are familiar with the terms of the transaction and are in favour of it. In this regard, proposed section 604(d) appears to alter current practice in respect of a backdoor listing and eliminate the potential for obtaining written approval in satisfaction of the security holder approval requirement, even where securities of listed issuer are broadly distributed under the transaction, no new insider of the listed issuer is created and the transaction does not materially affect control of the listed issuer. We note that under such circumstances a backdoor listing is akin to a large private placement, for which the proposed amendments would not require security holder approval. | **11) Question 15.**<br><br>TSX has permitted the use of security holder consents as evidence of security holder approval in very limited circumstances. Under the Amendments, TSX is proposing to eliminate the limited acceptance of security holder consents. In order for a transaction to be a "backdoor listing" under the current rules and Subsection 626(a) of the Amendments, the transaction must result in a change in effective control of the listed issuer. TSX agrees with your view that acquisitions that result in significant dilution, broad distribution and no material affect on control (ie. transactions that do not constitute backdoor listings) do not necessarily need to go before security holders at a meeting for their approval. However, TSX is of the opinion that backdoor listings should be approved by security holders at a meeting, not only to permit them to have an opportunity to voice any concerns they may have, but also to ensure that proper disclosure of the transaction is publicly available. |
| | **12) Question 16 and 17.**<br><br>We believe that it is reasonable to permit issuers to seek a waiver of security holder approval requirements on the basis of financial hardship. | **12) Question 16 and 17.**<br><br>Thank you for your comment. |
| | **13) Question 19.**<br><br>We are of the view that it is appropriate for TSX to review the new officers, directors and insiders of non-exempt issuers. However, we are of the view that evaluating director and officer suitability should remain a shareholder | **13) Question 19.**<br><br>Please see our response in Section A, Paragraph 12.<br><br>TSX currently only reviews the information provided in the personal information form, verifies such information and reviews publicly available information on the individual. By limiting our review to the information provided in the personal |

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| | and director function, respectively, for exempt issuers. We view it reasonable to continue affording those issuers that have achieved exempt status on TSX a greater degree of autonomy and self-regulation in the selection of board nominees and the appointment of senior management.<br><br>Should TSX resolve to review the suitability of directors, officers and insiders for all listed issuer, we propose in the interest of transparency that TSX more clearly define the factors that such reviews will evaluate and potentially limit the review information to that ultimately request in the director or officer's personal information form. | information form, TSX could not verify or ensure that all relevant information is provided. |
| **G)**<br>**John M. Tuzyk, Blake, Cassels & Graydon LLP** | **1) <u>Disinterested Approval</u>**<br><br>Disenfranchising holders of 10% or more of an issuer's shares from voting in respect of approvals of all security-based compensation arrangements, simply because one of the shareholder's directors or officers, or one of their associates (such as a relative who lives at home), may be entitled to receive a benefit under the arrangement, is a drastic step. Why should a majority shareholder be disenfranchised from voting on a plan for employees if the daughter of an officer of the majority shareholder works as any type of employee of the listed issuer.<br><br>More detailed requirements relating to the circumstances in which shares can or cannot be voted should be set out. The amendments currently contemplate that the insiders are not eligible to vote "their" securities in respect of such approval. The word "their" does not clearly answer in many cases whether the votes of a shareholder, or group of shareholders, can be voted, having regard to the way the shares may be controlled, directed or beneficially-owned and the relationship of the eligible party to that structure.<br><br>Assuming the holders of non-restricted shares can vote on a compensation arrangement, it is not clear why their shares should not carry their normal entitlements. If they are entitled to vote. | **1) <u>Disinterested Approval</u>**<br><br>Section 613(a) has been amended to permit associates, non-controlling directors and senior officers of an insider to vote in respect of security based compensation arrangements. TSX agrees with your comment that such parties should not be disenfranchise from voting on security based compensation arrangements.<br><br>The Commenter has correctly identified that securities may be held through numerous structures directly and indirectly. Given the broad range of ownership structures, through which securities may be held, however, TSX believes that attempting to identify all possible structural scenarios would be impossible. Given these circumstances, TSX believes the broadly worded provision is adequate to capture the intent of the requirement and would encourage issuers to contact TSX directly in order to discuss particular scenarios on a case-by-case basis.<br><br>We believe that security based compensation is important to all security holders. We have however raised this issue in the re-published request for comments. |

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| | I am not certain why their normal rights would not apply as they are not receiving any different treatment under, or as a result of, the plan than other shareholders.<br><br>**2) <u>Definition of Security-based Compensation Arrangements</u>**<br><br>Subsection 613(b) should be clarified to confirm that it is only security-based compensation arrangements which involve the issuance of shares from treasury to which the requirements applies and for which security holder approval is required.<br><br>**3) <u>Disclosure</u>**<br><br>Consider including the periods of time following termination as a director, an employee or service provider that entitlements continue in subsection 613(d) (ix) (now 613(d)(xi)).<br><br>**4) <u>Transitional Arrangements</u>**<br><br>The new requirements provide no guidance as to the transitional arrangements which would apply to amendments to existing plans.<br><br>**<u>5)</u> <u>Acquired Plan</u>**<br><br>The codification of the unwritten arrangements relating to the adoption of security-based compensation arrangements of another issuer acquired or merged with the listed issuer is welcomed. | **2) <u>Definition of Security-based Compensation Arrangements</u>**<br><br>Section 613(b) has been amended to include the following statement:<br><br>"For greater certainty, arrangements which do not involve the issuance from treasury or potential issuance from treasury of securities of the issuer are not security based compensation arrangements for the purposes of this Section 613."<br><br>**3) <u>Disclosure</u>**<br><br>Subsection 613(d) (xi) will be amended to read as follows:<br><br>"the causes of ~~termination~~ <u>cessation</u> of entitlement under <u>each</u> ~~the~~ arrangement ~~and the circumstances~~, <u>including the effect of an employee's termination for or without cause</u>"<br><br>**4) <u>Transitional Arrangements</u>**<br><br>Transitional provisions are included in the revised request for comments.<br><br>**<u>5)</u> <u>Acquired Plan</u>**<br><br>Thank you for your comment. |
| **H) Fairvest** | **1) <u>Issue 1.</u>**<br><br>Once approved, a plan need not be re-submitted to shareholders. This would result in "evergreen plans". | **1) <u>Issue 1.</u>**<br><br>TSX did not intend to have plans operate in perpetuity without being subject to shareholder scrutiny. Accordingly, the first sentence of proposed section 613(a) shall be amended as follows:<br><br>**"613.** (a) <u>When instituted and every three years thereafter,</u> ~~Subject to 613(c) and 613(g),~~ all security based compensation arrangements must be approved by<u>:</u> ~~the listed issuer's security holders~~<br><br>(i) <u>a majority of the issuer's directors and by all its unrelated directors; and</u><br><br>(ii) <u>subject to Subsections 613(b), (c) (g) and</u> |

| Comments Received<br>Proposed Amendments to Parts V, VI and VII of TSX's Company Manual | | |
|---|---|---|
| **From** | **Comments** | **TSX Response** |
| | | (i), by the listed issuer's security holders.<br>…" |
| | **2) Issue 2.**<br><br>Re-pricing of options should not be left to the discretion of the board and other insiders. | **2) Issue 2.**<br><br>TSX agrees that the re-pricing of options to insiders is a fundamental governance issue and should not be left in the hands of those benefiting from such a change. Accordingly, the following will be added to proposed new Section 613 (h):<br><br>"Notwithstanding that a security based compensation arrangement has been approved by the issuer's security holders:<br><br>(i) the exercise price for any stock options granted under a security based compensation arrangement must not be lower than the market price of he securities at the time the option is granted; and<br><br>(ii) security holder approval (excluding the votes of securities held directly or indirectly by insiders benefiting from the amendment) is required for (x) a reduction in the exercise price or purchase price or (y) an extension of the term, under a security based compensation arrangement benefiting an insider of the issuer." |
| **I) Canadian Coalition For Good Governance, Barclays Global Investors, Capital International, Inc., Phillips, Hager & North, McLean Budden, Bimcor Inc., Shareholder Association for Research and Education, AMI Partners Inc., Investment Management Corporation** | | The issues raised by these parties are identical to those raised by Fairvest above and we refer you to our responses in Paragraph H above in that regard.<br><br>Teachers has raised two issues identical to those raised by Fairvest above and we refer you to our responses in Paragraph H above in that regard. |
| **J) Ontario Teachers'** | **1) Issue 1.**<br><br>Current drafting of proposed section | **1) Issue 1.**<br><br>Individual option grants under a plan approved by security |

| Comments Received<br>Proposed Amendments to Parts V, VI and VII of TSX's Company Manual | | |
|---|---|---|
| **From** | **Comments** | **TSX Response** |
| **Pension Plan ("Teachers")** | 613 implies that individual option grants, even if under an approved plan, will require security holder approval. | holders do not require additional security holder approval. Accordingly, proposed section 613(b) will be amended as follows:<br><br>For the purposes of this Section 613, security based compensation arrangements include:<br><br>(i) stock option plans for the benefit of employees, insiders, service providers or any one of such groups;<br><br>(ii) individual stock options granted to employees, service providers or insiders, if not granted pursuant to a plan previously approved by the issuer's security holders;<br><br>(iii) stock purchase plans where the issuer provides financial assistance or where the issuer matches the whole or a portion of the securities being purchased;<br><br>(iv) stock appreciation rights involving issuances of securities;<br>(v) any other compensation or incentive mechanism involving the issuance orpotential issuances of securities of the listed issuer; and<br><br>(vi) security purchases by an employee, insider or service provider which is financially assisted by the listed issuer by any means whatsoever.<br><br>For greater certainty, arrangements which do not involve the issuance from treasury or potential issuance from treasury of securities of the issuer are not security based compensation arrangements for the purposes of this Section 613<br><br>For the purposes of Section 613, a "service provider" is a person engaged by the issuer to provide services for an initial, renewable or extended period of twelve months or more. |

### 13.1.2 IDA Discipline Penalties Imposed on James Moon and Benjamin Gelfand – Violations of Regulations 1300.1(c) and 1300.1(a)

*Contact*:
Elsa Renzella
Enforcement Counsel
(416) 943-5877

**BULLETIN # 3232**
December 19, 2003

**DISCIPLINE**

**DISCIPLINE PENALTIES IMPOSED ON JAMES MOON AND BENJAMIN GELFAND – VIOLATIONS OF REGULATIONS 1300.1(C) AND 1300.1(A)**

**Person Disciplined**

The Ontario District Council of the Investment Dealers Association ("the Association") has imposed discipline penalties on James Moon and Benjamin Gelfand, at the material times Registered Representatives at the Toronto office of TD Evergreen ("Evergreen") a division of TD Securities Inc. (now TD Waterhouse Investment Advice, a division of TD Waterhouse Canada Inc.), a Member of the Association.

**By-laws, Regulations, Policies Violated**

On December 11, 2003, the Ontario District Council considered, reviewed and accepted a Settlement Agreement negotiated between Messrs Moon and Gelfand and Association Staff. The facts as contained in the Settlement Agreement have been agreed to by both Messrs Moon and Gelfand for the purposes of the Association's proceeding only and of any other proceeding commenced by a securities regulatory authority.

Pursuant to the Settlement Agreement, Mr. Moon acknowledged that:

- During the period from September 1999 to December 2000, he engaged in a short-term trading strategy in a client account that was not appropriate or keeping with the client's personal circumstances and investment objectives contrary to Association Regulation 1300.1(c).
- Sometime during the month of May 2000, he completed a new Application Form for a client account which did not reflect the client's true investment objectives or risk tolerances, contrary to Regulation 1300.1(a).
- Between January 29 and February 28, 2000, he executed eleven trades in a client's account using timing discretion, contrary to Regulation 1300.4.

Pursuant to the Settlement Agreement, Mr. Gelfand acknowledged that:

- During the period from March 2000 to December 2000, he, as joint investment advisor with Mr. Moon, he was jointly responsible for the unsuitable short-term trading strategy in a client account contrary to Association Regulation 1300.1(c).
- Sometime during the month of May 2000, he completed a new Application Form for a client account which did not reflect the client's true investment objectives or risk tolerances, contrary to Regulation 1300.1(a).

**Penalty Assessed**

The discipline penalties assessed against Mr. Moon pursuant to the settlement agreement are:

- A fine in the amount of $25,000; and
- Re-write of the Conduct and Practices examination within one (1) year of the effective date of the Settlement Agreement.

In addition, under the settlement agreement Mr. Moon is required to pay $15,000.00 towards the Association's costs of this matter.

The discipline penalties assessed against Mr. Gelfand pursuant to the settlement agreement are:

- A fine in the amount of $15,000; and

- Re-write of the Conduct and Practices examination within one (1) year of the effective date of the Settlement Agreement.

In addition, under the settlement agreement Mr. Gelfand is required to pay $15,000.00 towards the Association's costs of this matter.

**Summary of Facts**

The following is a summary of the facts set out in the settlement agreement:

On June 18, 1998, C.C. opened a margin account at Evergreen and transferred approximately $950,000 in cash and assets from a managed account held at another Member firm. At the time of opening the account at Evergreen, C.C. was a retired 64-year-old widow. The funds held in the Evergreen account were her primary source of income. According to the client's June 1998 account Application Form at Evergreen, her investment objectives were listed as 30% income and 70% long-term capital gains. Her risk tolerance was categorized as low to medium and her investment knowledge was categorized as average.

Mr. Moon became C.C.'s investment advisor sometime in January 1999, when her initial advisor left Evergreen. Mr. Gelfand did not become a joint investment advisor for C.C. until sometime in April 2000.

In accordance with Evergreen policies, on January 25, 1999, the Application Form was updated to reflect Mr. Moon as the new investment advisor. C.C.'s investment objectives were changed to 40% income and 60% long-term capital gains. Her risk tolerance remained the same and her investment knowledge was noted as none.

Prior to Mr. Moon becoming C.C.'s investment advisor, a significant portion of C.C.'s Evergreen account consisted of fixed income securities and mutual fund investments that were held in the Canadian side of the account.

In September 1999, Mr. Moon began executing short-term equity trades in the U.S. side of the account. The short-term trading continued for the next 16 months. Starting in April 2000, when Mr. Gelfand was also responsible for CC's account as one of her investment advisors, he permitted such short-term trades to continue whether or not he placed these trades. These short-term trades related to seven securities: Entrust Technologies Inc., Nanogen Inc., Viatel Inc., Lucent Technologies Inc., Kopin Corp., Adept Technology Inc., and At Home Corp. These securities were the subject of repeated buy-sell transactions. Margin was also used in the account to execute many of these short-term trades.

The short-term trading strategy and use of margin by Messrs Moon and Gelfand was unsuitable given the client's personal circumstances, risk tolerance and true investment objectives.

From January 29, 2000 to February 28, 2000, Mr. Moon also executed 11 trades in the U.S. side of the client's account including some of the short-term trades using timing discretion.

Following various inquiries from Evergreen's Compliance Department regarding the suitability of the short-term trading in C.C.'s account, Mr. Moon indicated that the account was going to be updated. In May 2000 an updated Application Form was mailed to C.C. for her signature. The new Application Form revised the investment objectives to 33% income, 33% long-term capital gains, and 34% speculative trading. C.C.'s risk level was now noted as medium and her investment knowledge was upgraded to average. Although the client signed the updated form, there was no material change in her circumstances to justify the Application Form update. Her investment objectives did not change since the time she opened her account at Evergreen. The updated Application Form did not accurately reflect the true investment objectives of the client.

Mr. Moon is currently employed as a Registered Representative at Standard Securities Capital Corporation. Mr. Gelfand is currently employed as a Registered Representative at First Associates Investments Inc.

Kenneth A. Nason
*Association Secretary*

### 13.1.3 Discipline Pursuant to IDA By-Law 20 - James Moon & Benjamin Gelfand - Settlement Agreement

**IN THE MATTER OF**
**DISCIPLINE PURSUANT TO BY-LAW 20**
**OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA**

**RE: JAMES MOON & BENJAMIN GELFAND**

**SETTLEMENT AGREEMENT**

**I. Introduction**

1. The staff ("Staff") of the Investment Dealers Association of Canada (the "Association") has conducted an investigation (the "Investigation") into the conduct of James Moon (“Moon”) and Benjamin Gelfand (“Gelfand”), (collectively the "Respondents").

2. The Investigation discloses matters for which the District Council of the Association (the "District Council") may penalize the Respondents by imposing discipline penalties.

**II. Joint Settlement Recommendation**

3. Staff and the Respondents consent and agree to the settlement of these matters by way of this Settlement Agreement in accordance with By-law 20.25.

4. This Settlement Agreement is subject to its acceptance, or the imposition of a lesser penalty or less onerous terms, or the imposition, with the consent of the Respondents, of a penalty or terms more onerous, by the District Council in accordance with By-law 20.26.

5. Staff and the Respondents jointly recommend that the District Council accept this Settlement Agreement.

6. If at any time prior to the acceptance of this Settlement Agreement, or the imposition of a lesser penalty or less onerous terms, or the imposition, with the consent of the Respondents, of a penalty or terms more onerous, by the District Council, there are new facts or issues of substantial concern in the view of Staff regarding the facts or issues set out in Section III of this Settlement Agreement, Staff will be entitled to withdraw this Settlement Agreement from consideration by the District Council.

**III. Statement of Facts**

**(i) Acknowledgment**

7. Staff and the Respondents agree for the purposes of this proceeding only and of any other proceeding commenced by a securities regulatory authority with the facts set out in this Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

**(ii) Background**

8. At all material times, the Respondents, Moon and Gelfand, were Registered Representatives at TD Evergreen (“Evergreen”) a division of TD Securities Inc. (now TD Waterhouse Investment Advice, a division of TD Waterhouse Canada Inc.), a Member firm of the Association.

9. In or about March 2000, Moon and Gelfand agreed to jointly serve, in their capacities as Registered Representatives, the Evergreen clients that they had previously served individually.

**(iii) Account of C.C.**

General Profile

10. On June 18, 1998, C.C. opened a margin account at Evergreen and transferred approximately $950,000 in cash and assets from a managed account held at Connor Clark & Company Ltd., formerly a Member firm.

11. At the time of opening the account at Evergreen, C.C. was a retired 64-year-old widow. The funds held in the Evergreen account were her primary source of income. She also held an RRSP account at Royal Trust worth approximately $200,000.

12. In terms of investment objectives, C.C. wanted to generate sufficient income to fund her retirement needs but also viewed safety of principal as being important. In terms of income needs, she requested $48,000 per year after tax from her Evergreen account indexed for inflation and to leave an after-tax estate upon her death in the amount of $100,000 also indexed to inflation. At all material times, while either Moon or Moon and Gelfand were acting as her advisors, C.C. was receiving $4,000 per month to satisfy this request.

13. According to C.C.'s June 1998 account Application Form at Evergreen, her investment objectives were listed as 30% income and 70% long-term capital gains. Her risk tolerance was categorized as low to medium and her investment knowledge was categorized as average.

14. Moon became C.C.'s investment advisor sometime in January 1999, when her initial advisor left Evergreen.

15. In accordance with Evergreen policies, on January 25, 1999, the Application Form was updated to reflect Moon as the new investment advisor. C.C.'s investment objectives were changed to 40% income and 60% long-term capital gains. Her risk tolerance remained the same and her investment knowledge was noted as none.

16. Gelfand did not become a joint investment advisor for C.C. until sometime in April 2000.

C.C.'s Account Activity

17. Prior to Moon becoming C.C.'s investment advisor, a significant portion of C.C.'s Evergreen account consisted of fixed income securities and mutual fund investments that were held in the Canadian side of the account. As of December 31, 1998, the Canadian side of C.C.'s account was valued at approximately $813,700, while the U.S. side of the account only consisted of approximately $89,0000US in cash and cash equivalents.

18. In September 1999, Moon began executing short-term equity trades in the U.S. side of the account. The short-term trading continued for the next 16 months. Starting in April 2000, Gelfand was also responsible for CC's account as one of her investment advisors and permitted such short-term trades to continue whether or not he placed these trades. These short-term trades related to seven securities: Entrust Technologies Inc., Nanogen Inc., Viatel Inc., Lucent Technologies Inc., Kopin Corp., Adept Techology Inc., and At Home Corp. These securities were the subject of repeated buy-sell transactions as detailed in Appendix A to this Settlement Agreement.

19. Margin was also used in the account to execute many of the short-term trades. During the period from April 2000 to June 2000, the U.S. side of C.C.'s account was leveraged between 46% and 54%. However, due to the Canadian holdings in the same account, the account was never in an under margined position.

20. The short-term trading strategy and use of margin by the Respondents was unsuitable given the client's personal circumstances, risk tolerance and true investment objectives.

Account Application Form Update

21. Following various inquiries from Evergreen's Compliance Department regarding the suitability of the short-term trading in C.C.'s account, Moon indicated as early as January 2000 that the account was going to be updated.

22. It was not until May 2000 when the Respondents mailed an updated Application Form to C.C. for her signature. The new Application Form revised the investment objectives to 33% income, 33% long-term capital gains, and 34% speculative trading. C.C.'s risk level was now noted as medium and her investment knowledge was upgraded to average. CC signed the updated Application Form on May 17, 2000.

23. There was no material change in C.C.'s circumstances to justify the Application Form update. Her investment objectives did not change since the time she opened her account at Evergreen. The updated Application Form did not accurately reflect the true investment objectives of the client.

Trading Involving Timing Discretion

24 From January 29, 2000 to February 28, 2000, Moon executed 11 trades in the U.S. side of her account including some of the short-term trades using timing discretion.

## IV. CONTRAVENTION

25. During the period from September 1999 to December 2000, the Respondent, Moon, engaged in a short-term trading strategy in the account of C.C. that was not appropriate or keeping with the client's personal circumstances and investment objectives contrary to Association Regulation 1300.1(c).

26. During the period from March 2000 to December 2000, the Respondent, Gelfand, was jointly responsible for the short-term trading strategy in the account of C.C. that was not appropriate or keeping with the client's personal circumstances and investment objectives, contrary to Association Regulation 1300.1(c).

27. Sometime during the month of May 2000, the Respondents, Moon and Gelfand, completed a new Application Form for the account of C.C., which did not reflect the client's true investment objectives or risk tolerances, contrary to Regulation 1300.1(a).

28. From January 29 to February 28, 2000, the Respondent, Moon, executed eleven trades in C.C.'s U.S. account using timing discretion, contrary to Regulation 1300.4.

**V. ADMISSION OF CONTRAVENTIONS AND FUTURE COMPLIANCE**

29. The Respondents admits the contravention of the Statutes or Regulations thereto, By-laws, Regulations, Rulings or Policies of the Association noted in Section IV of this Settlement Agreement. In the future, the Respondents shall comply with these and all By-laws, Regulations, Rulings and Policies of the Association.

**VI. DISCIPLINE PENALTIES**

**Re: Moon**

30 The Respondent, Moon, accepts the imposition of discipline penalties against him by the Association pursuant to this Settlement Agreement as follows:

(a) that he pay a fine in the amount of $25,000; and

(b) that he re-write the Conduct and Practices examination within one (1) year of the effective date of this Settlement Agreement .

**Re: Gelfand**

31. The Respondent, Gelfand, accepts the imposition of discipline penalties against him by the Association pursuant to this Settlement Agreement as follows:

(a) that he pay a fine in the amount of $15,000; and

(b) that he re-write the Conduct and Practices examination within one (1) year of the effective date of this Settlement Agreement.

**VII. ASSOCIATION COSTS**

32. The Respondents shall each pay the Association's costs of this proceeding in the amount of $15,000, payable to the Association immediately upon the acceptance of the Settlement Agreement.

**VIII. EFFECTIVE DATE**

33. This Settlement Agreement shall become effective and binding upon the Respondents and Staff in accordance with its terms as of the date of:

(a) its acceptance; or

(b) the imposition of a lesser penalty or less onerous terms; or

(c) the imposition, with the consent of the Respondent, of a penalty or terms more onerous,

by the District Council.

**IX. WAIVER**

34. If this Settlement Agreement becomes effective and binding, the Respondents hereby waive their right to a hearing under the Association By-laws in respect of the matters described herein and further waives any right of appeal or review which may be available under such By-laws or any applicable legislation.

**X. STAFF COMMITMENT**

35. If this Settlement Agreement becomes effective and binding, Staff will not proceed with disciplinary proceedings under Association By-laws in relation to the facts set out in Section III of the Settlement Agreement.

**XI. PUBLIC NOTICE OF DISCIPLINE PENALTY**

36. If this Settlement Agreement becomes effective and binding:

(a) the Respondents shall be deemed to have been penalized by the District Council for the purpose of giving written notice to the public thereof by publication in an Association Bulletin and by delivery of the notice to the media, the securities regulators and such other persons, organizations or corporations, as required by Association By-laws and any applicable Securities Commission requirements; and

(b) the Settlement Agreement and the Association Bulletin shall remain on file and shall be disclosed to members of the public upon request.

XII. EFFECT OF REJECTION OF SETTLEMENT AGREEMENT

37. If the District Council rejects this Settlement Agreement:

(a) the provisions of By-laws 20.10 to 20.24, inclusive, shall apply, provided that no member of the District council rejecting this Settlement Agreement shall participate in any hearing conducted by the District council with respect to the same matters which are the subject of the Settlement Agreement; and

(b) the negotiations relating thereto shall be without prejudice and may not be used as evidence or referred to in any hearing.

**AGREED** to by the Respondents at the City of Toronto, in the Province of Ontario, this "8th" day of "December", 2003.

"Illegable"
Witness

"James Moon"
James Moon

"Illegable"
Witness

"Benjamin Gelfand"
Benjamin Gelfand

**AGREED** to by Staff at the City of Toronto, in the Province of Ontario, this "9th" day of "December", 2003.

"Bert Noguera"
Witness

"Elsa Renzella"
Elsa Renzella
Enforcement Counsel on behalf of Staff of the Investment Dealers Association of Canada

**ACCEPTED** by the Ontario District Council of the Investment Dealers Association of Canada, at the City of "Toronto", in the Province of Ontario, this "11th" day of "December", 2003.

Investment Dealers Association of Canada
(Ontario District Council)

Per: "Alvin B. Rosenberg"
Per: "T.H. McNabney"
Per: "F. Michael Walsh"

**Appendix "A"**

| Settlement Date | Shares Purchased (Sold) | Price/Share | Proceeds (Cost) US$ (Including Commissions) |
|---|---|---|---|
| **ENTRUST TECHNOLOGIES INC.** | | | |
| 12-Oct-99 | 1000 | $18.875 | ($18,960.00) |
| 15-Oct-99 | (1000) | $20.562 | $20,446.81 |
| 03-Nov-99 | 1500 | $23.375 | ($35,157.50) |
| 05-Nov-99 | (1500) | $25.500 | $38,158.72 |
| 19-Nov-99 | 500 | $43.375 | ($21,787.50) |
| 10-Dec-99 | (500) | $54.500 | $26,787.15 |
| 23-Dec-99 | 500 | $53.750 | ($26,960.00) |
| 27-Dec-99 | 500 | $52.125 | ($26,152.50) |
| 27-Dec-99 | (500) | $57.000 | $28,414.05 |
| 03-Jan-00 | (500) | $62.500 | $30,898.95 |
| 07-Jan-00 | 500 | $54.875 | ($27,532.50) |
| 19-Jan-00 | (500) | $58.000 | $28,649.03 |
| 20-Jan-00 | 1500 | $63.000 | ($94,590.00) |
| 21-Jan-00 | 600 | $58.625 | |
| 21-Jan-00 | 900 | $58.750 | ($88,135.00) |
| 10-Feb-00 | (1000) | $57.000 | $56,913.10 |
| 10-Feb-00 | (900) | $61.750 | |
| 10-Feb-00 | (100) | $61.875 | $61,640.43 |
| 11-Feb-00 | (1000) | $61.500 | $61,399.95 |
| 10-Mar-00 | 250 | $120.500 | ($30,210.00) |
| 04-Apr-00 | 1000 | $77.500 | ($77,585.00) |
| 04-Apr-00 | (1000) | $79.500 | $79,347.35 |
| 05-Apr-00 | 1000 | $78.562 | ($78,647.50) |
| 06-Apr-00 | 500 | $76.000 | ($38,085.00) |
| 06-Apr-00 | 500 | $75.375 | ($37,772.50) |
| 13-Apr-00 | (500) | $79.875 | $39,586.16 |
| 14-Apr-00 | 500 | $65.437 | ($32,808.75) |
| 05-Jul-00 | (500) | $74.312 | $36,805.01 |
| 07-Jul-00 | (1000) | $79.062 | $78,190.91 |
| Oct. 5, 2000 | 750 | $29.625 | ($22,303.75) |
| Nov. 1, 2000 | (750) | $28.875 | $21,545.52 |
| Jan. 24, 2001 | (750) | $19.062 | $14,211.40 |
| **Net position** | **0** | | **($33,692.96)** |
| **NANOGEN INC.** | | | |
| 30-Dec-99 | 500 | $24.250 | ($12,210.00) |
| 13-Jan-00 | 500 | $29.375 | ($14,787.50) |
| 27-Jan-00 | (1000) | $37.375 | $37,048.75 |
| 18-Jan-00 | 250 | $29.625 | ($7,496.25) |
| 06-Mar-00 | (250) | $91.375 | $22,282.98 |
| 10-Mar-00 | 250 | $75.250 | ($18,897.50) |
| 21-Mar-00 | 1000 | $49.000 | ($49,150.00) |
| 23-Mar-00 | 500 | $42.625 | ($21,412.50) |
| 28-Mar-00 | (500) | $48.500 | $23,817.43 |
| 04-Apr-00 | 1000 | $28.375 | ($28,465.00) |
| 05-Apr-00 | (1000) | $30.125 | $29,873.99 |
| 23-Aug-00 | (500) | $18.750 | $9,289.68 |
| **Net position** | **750** | | **($30,105.92)** |
| **VIATEL INC.** | | | |
| 13-Sep-99 | 1000 | $27.000 | ($27,120.00) |
| 13-Sep-99 | (1000) | $28.812 | $28,641.53 |
| 22-Sep-99 | 1000 | $23.625 | ($23,730.00) |
| 24-Sep-99 | (1000) | $24.500 | $24,414.18 |
| 26-May-00 | 500 | $21.750 | ($10,960.00) |
| 06-Jun-00 | (100) | $26.125 | |
| 06-Jun-00 | (400) | $26.187 | $12,802.37 |

| | | | |
|---|---|---|---|
| 10-Jul | 1000 | $27.750 | ($27,855.00) |
| 21-Jul-00 | 1000 | $19.000 | ($19,105.00) |
| 22-Nov-00 | (100) | $5.343 | |
| 22-Nov-00 | (100) | $5.375 | |
| 22-Nov-00 | (300) | $5.343 | |
| 22-Nov-00 | (400) | $5.343 | |
| 22-Nov-00 | (100) | $5.375 | $5,264.81 |
| 22-Nov-00 | (400) | $5.718 | |
| 22-Nov-00 | (500) | $5.718 | |
| 22-Nov-00 | (100) | $5.718 | $5,633.56 |
| 22-Nov-00 | **0** | | **($32,013.55)** |
| | | | |
| **LUCENT TECHNOLOGIES INC.** | | | |
| 29-Feb-00 | 1000 | $54.937 | ($55,035.50) |
| 01-Mar-00 | (1000) | $57.750 | $57,448.06 |
| 02-Mar-00 | 1000 | $57.000 | ($57,085.00) |
| 02-Mar-00 | (1000) | $58.500 | $58,398.05 |
| 06-Mar-00 | 2000 | $71.000 | ($142,085.00) |
| 06-Mar-00 | 2000 | $71.937 | ($143,960.00) |
| | | | marked as of March 1, 2000 |
| 09-Mar-00 | (2000) | $72.062 | $143,931.19 |
| 10-Mar-00 | 1000 | $69.000 | ($69,085.00) |
| 25-Jul-00 | (1000) | $51.750 | $51,663.27 |
| 06-Nov-00 | (2000) | $22.937 | $45,788.47 |
| **Net Position** | **0** | | **($110,021.46)** |
| | | | |
| **KOPIN CORP.** | | | |
| 12-Sep-00 | 1000 | $24.625 | ($24,722.18) |
| 19-Sep-00 | (1000) | $27.750 | $27,551.55 |
| 20-Sep-00 | 1000 | $24.625 | ($24,723.00) |
| 01-Nov-00 | (500) | $12.812 | $6,321.03 |
| 29-Jan-01 | (500) | $15.937 | $7,883.48 |
| **Net Position** | **0** | | **($7,689.12)** |
| | | | |
| **ADEPT TECHNOLOGY INC.** | | | |
| 13-Oct-00 | 500 | $30.000 | ($15,085.00) |
| 17-Oct-00 | (500) | $33.687 | $16,593.18 |
| 16-Nov-00 | 500 | $25.250 | ($12,710.00) |
| 17-Nov-00 | (500) | $31.187 | $15,493.23 |
| 01-Dec-00 | 500 | $22.750 | ($11,460.00) |
| 14-Dec-00 | (500) | $25.062 | $12,380.83 |
| **Net Position** | **0** | | **$5,212.24** |
| | | | |
| **AT HOME CORP.** | | | |
| 17-Feb-00 | 1000 | $33.500 | ($33,590.00) |
| 22-Feb-00 | (1000) | $35.937 | $35,726.30 |
| 25-Feb-00 | 1000 | $33.437 | ($33,522.50) |
| 03-Apr-00 | (1000) | $38.008 | $37,527.43 |
| **Net Position** | **0** | | **$6,141.23** |
| | | | |
| **Total Profit/Loss** | | | **($202,169.54)** |

**Schedule # 1**

**SUMMARY OF SELECTED SECURITIES TRADED IN MS C.'S TD EVERGREEN ACCOUNT**

| Description | Net Profit (Loss) | See Schedule # |
|---|---|---|
| ADEPT TECHNOLOGY INC | $5,212.240 | 2 |
| AT HOME CORP | 6,141.23 | 3 |
| ENTRUST TECH INC | (33,692.96) | 4 |
| KOPIN CORP | (7,689.12) | 5 |
| LUCENT TECHNOLOGIES | (110,021.46) | 6 |
| NANOGEN INC | (23,205.92) | 7 |
| VIATEL INC | (32,013.55) | 8 |
| **TOTAL REALIZED AND UNREALIZED LOSSES** | **($195,269.54)** | **US** |

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# Chapter 25

# Other Information

## 25.1 Exemptions

### 25.1.1 Loblaw Companies Limited - s. 6.1 of OSC Rule 13-502

**Headnote**

A wholly-owned subsidiary of an issuer is exempt from the requirement to pay participation fees, subject to certain conditions.

**Statutes Cited**

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

**Rules Cited**

Ontario Securities Commission Rule 13-502 Fees (2003), 26 O.S.C.B. 890, ss. 2.2 and 6.1.

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

**AND**

**ONTARIO SECURITIES COMMISSION**
**RULE 13-502 FEES**
**(the "Fee Rule")**

**AND**

**IN THE MATTER OF**
**LOBLAW COMPANIES LIMITED**
**AND PROVIGO INC.**

**EXEMPTION**
**(Section 6.1 of the Fee Rule)**

**UPON** the Director having received an application (the "Application") from Loblaw Companies Limited (the "Applicant" or "Loblaw"), on its own behalf and on behalf of Provigo Inc. ("Provigo") seeking a decision pursuant to section 6.1 of the Fee Rule exempting Provigo from the requirement in section 2.2 of the Fee Rule to pay a participation fee;

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

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

1. Provigo was continued on June 1, 1982 under the *Companies Act* (Quebec). Its head office is located at 400 Avenue Ste. Croix, St. Laurent, Quebec H4N 3L4. Provigo is engaged, through its subsidiaries, in food retailing in the province of Quebec.

2. Provigo is authorized to issue an unlimited number of common shares ("Common Shares") and an unlimited number of preference shares, issuable in series. As of October 7, 2003, Provigo had 108,300,457 Common Shares outstanding, 100% of which are held, directly or indirectly, by Loblaw. There are no preference shares of Provigo outstanding.

3. Provigo is a reporting issuer in the provinces of Ontario, Quebec and British Columbia.

4. Provigo currently has two debt issues outstanding: $125,000,000 principal amount of 8.70% Debenture Series 1996 due May 23, 2006 and $100,000,000 principal amount of 6.35% Debenture Series 1997 due December 1, 2004 (the "Debentures"). The Debentures are the only securities of Provigo held by the public. The Debentures are not listed or posted for trading on any exchange or market.

5. Provigo is not in default of any of the requirements under the *Securities Act* (the "Act") or rules promulgated thereunder (the "Rules"), except in respect of the requirements from which Provigo is presently seeking an exemption.

6. Loblaw was incorporated on January 18, 1956 and continued under the Canada Business Corporations Act by certificate of continuance dated May 7, 1980. Its principal executive office is located at 22 St. Clair Avenue East, Suite 1500, Toronto, Ontario, M4T 2S8. Loblaw, through its subsidiaries, is engaged in food retailing across Canada.

7. Loblaw is a reporting issuer in all the provinces and territories of Canada and is not on the list of defaulting issuers in any of those jurisdictions. Loblaw's common shares are listed and posted for trading on the Toronto Stock Exchange.

8. On September 22, 1999, the Commission issued an order (the "Prior Order") exempting Provigo from the continuous disclosure requirements of filing annual audited financial statements and interim financial statements and from the requirement to file an annual report on Form 28, subject to certain conditions.

9. The exemption in the Prior Order was subject to several conditions, including:

   (a) Loblaw fully and unconditionally guarantee the Debentures;

   (b) Loblaw maintain its 100% direct or indirect ownership of Provigo;

   (c) Provigo not issue any securities to the public in addition to the Debentures; and

   (d) Provigo file with the Commission abridged interim and annual financial information containing certain prescribed line items.

10. On December 23, 1999, the Commission issued a "no-action" letter (the "No-Action Letter") to Provigo which stated that, based on Privigo's representation that the only outstanding shares of Provigo are the Common Shares, all of which are held directly or indirectly by Loblaw, the Commission would not initiate any regulatory action by reason of Provigo not filing an AIF or MD&A, provided that Loblaw continues to hold, directly or indirectly, all of the Common Shares.

11. Loblaw has fully and unconditionally guaranteed the Debentures pursuant to an Agreement of Guarantee between Loblaw and CIBC Mellon Trust Company, the trustee for the Debentures, dated September 22, 1999.

12. Provigo and Loblaw do not intend for Provigo to issue any securities to the public in addition to the Debentures.

13. Provigo's financial results and condition are consolidated with that of Loblaw in its audited financial statements and therefore the value of the Debentures is included in the calculation of Loblaw's annual participation fee payable under the Fee Rule.

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

**IT IS THE DECISION** of the Director, pursuant to section 6.1 of the Fee Rule, that Provigo is exempt from the requirement in section 2.2 of the Fee Rule to pay a participation fee for each of its financial years ending after the date of this order, for so long as:

   (a) the Prior Order remains in full force and effect, without variation,

   (b) the representation given by Privigo in connection with the Prior Order that the only outstanding shares of Provigo are the Common Shares, all of which are held directly or indirectly by Loblaw, is true and correct and Loblaw continues to hold directly or indirectly all of the Common Shares, such that Provigo is able to rely upon the No-Action Letter,

   (c) all of the equity securities of Provigo continue to be held beneficially, directly or indirectly, by Loblaw,

   (d) Loblaw is a reporting issuer in Ontario,

   (e) Loblaw has paid its participation fee pursuant to section 2.2 of the Fee Rule, and in calculating such fee has included the market value of each of the Debentures outstanding at the relevant time, and

   (f) Provigo does not issue any further securities to the public,

provided further that upon any further issuance of securities to the public of Provigo, a participation fee shall be immediately paid by Provigo in respect of the financial year during which such securities are issued (such fee to be pro rated to reflect the number of entire months remaining in such financial year) and in respect of subsequent financial years during which such securities remain outstanding.

December 17, 2003.

"Erez Blumberger"

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