The Ontario Securities Commission

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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 9, 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
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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

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

1.1.2 Notice of Request for Comments - Proposed National Instrument 81-107 Independent Review Committee for Mutual Funds

NOTICE OF REQUEST FOR COMMENTS

PROPOSED NATIONAL INSTRUMENT 81-107 INDEPENDENT REVIEW COMMITTEE FOR MUTUAL FUNDS

The Commission is publishing for comment in today's Bulletin:

- National Instrument 81-107 *Independent Review Committee for Mutual Funds* (NI 81-107) which contains commentary on NI 81-107 (the Commentary);
- Notice and Request for Comment regarding NI 81-107and the Commentary; and
- Summary of comments and responses of the Canadian Securities Administrators on Concept Proposal 81-402 *Striking a New Balance: A Framework for Regulating Mutual Funds and their Managers* (the Summary of Comments).

The documents are published in Chapter 6 of the Bulletin.

1.1.3 Notice of Request for Comments - Proposed Amendments to Rule 61-501 and Companion Policy 61-501CP - Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions

NOTICE OF REQUEST FOR COMMENTS

PROPOSED AMENDMENTS TO RULE 61-501 AND COMPANION POLICY 61-501CP - INSIDER BIDS, ISSUER BIDS, GOING PRIVATE TRANSACTIONS AND RELATED PARTY TRANSACTIONS

The Commission is publishing for comment in Chapter 6 of today's Bulletin proposed amendments to Rule 61-501 and Companion Policy 61-501CP.

A Request for Comments on proposed amendments was previously published at (2003), 26 OSCB 1822. As a result of the comments received and on further consideration, some changes have been made to the original proposals.

1.1.4 Request for Comment – Proposed National Instrument 31-101 and National Policy 31-201 - National Registration System - Requirements Under The National Registration System

REQUEST FOR COMMENT

PROPOSED *NATIONAL INSTRUMENT 31-101 – REQUIREMENTS UNDER THE NATIONAL REGISTRATION SYSTEM* AND PROPOSED *NATIONAL POLICY 31-201 – NATIONAL REGISTRATION SYSTEM*

Introduction

The Commission is publishing for comment in Chapter 6 of today's Bulletin proposed *National Instrument 31-101 – Requirements under the National Registration System. The National Registration System,* together known as the National Registration System or NRS.

1.1.5 OSC Staff Notice 31-711 - Ontario Securities Commission Rule 31-502 – Proficiency Requirements for Registrants and Ontario Securities Commission Rule 31-505 – Conditions of Registration

ONTARIO SECURITIES COMMISSION STAFF NOTICE 31-711

ONTARIO SECURITIES COMMISSION RULE 31-502 – *PROFICIENCY REQUIREMENTS FOR REGISTRANTS* AND ONTARIO SECURITIES COMMISSION RULE 31-505 – *CONDITIONS OF REGISTRATION*

Background

On November 5, 2003, amendments to Rule 31-502 - *Proficiency Requirements for Registrants* (the "Rule") came into force. The Rule amendments implemented several changes to the compliance and governance structures of dealers and advisers.

Clarification

In respect of advisers registered under the Securities Act (Ontario), the Rule introduced two new categories of compliance personnel: the Ultimately Responsible Person (the "URP") and the Chief Compliance Officer (the "CCO"). Registered advisers must designate qualified individuals and advise the Ontario Securities Commission (the "Commission") of those individuals by January 31, 2004. Staff of the Commission has received several inquiries regarding these new designations. By clarifying the intent and implementation of the Rule, this notice should reduce the number of enquiries.

Who may be an URP?

The URP must be an executive officer who is a member of the senior management of the adviser and satisfies the criteria set out in paragraph 1.3(2)(b) of the Rule. It is expected that an URP's non-compliance duties would require the officer to be in regular contact with the board of directors of the adviser. Reference should be made to paragraph 1.3(2)(f) of the Rule which requires the URP to have the right to directly access the board of directors or partnership. If this right is not truly enforceable, then the officer should not be designated as the URP by the adviser.

Who are registered partners and registered officers?

The terms "registered partner" and "registered officer" are not defined in the Rule and are not intended to exclude non-advising executive officers that would be categorized as "non-registered individuals" in National Instrument 33-109 and would have been approved as non-advising officers of the adviser by the Commission. Accordingly, non-advising executive officers may be designated as URPs if they satisfy the criteria outlined in paragraph 1.3(2)(b) of the Rule. If an URP also satisfies the compliance related proficiency requirements for a CCO, which are prescribed at subsection 3.1(2) of Commission Rule 31-502, than that individual may also be designated as the CCO for that adviser.

Who may not be an URP?

Officers holding the title of vice-president cannot be designated as the URP unless they truly serve a function which is similar to the president, chief executive officer, chief financial officer, secretary, general counsel, or general manager. An officer cannot be considered to be holding an office which is analogous to an enumerated position, if officers with that enumerated title exist within the registrant. For example, a "vice-president, finance" cannot be considered to be analogous to a chief financial officer and designated as an URP for an adviser if that adviser already has a chief financial officer.

For further information, contact:

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Capital Markets Branch
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January 9, 2004.

1.1.6 Notice of Minister Approval of Amendments to National Instrument 21-101 Marketplace Operation, National Instrument 23-101 Trading Rules and Forms 21-101F1, 21-101F2, 21-101F3, 21-101F4, 21-101F5 and 21-101F6

**NOTICE OF MINISTER APPROVAL
OF AMENDMENTS TO
NATIONAL INSTRUMENT 21-101
MARKETPLACE OPERATION
NATIONAL INSTRUMENT 23-101 TRADING RULES
and
FORMS 21-101F1, 21-101F2, 21-101F3,
21-101F4, 21-101F5 and 21-101F6**

On December 19, 2003, the Minister of Finance approved the amendments to National Instrument 21-101 Marketplace Operation and National Instrument 23-101 Trading Rules, including amendments to Forms 21-101F1, 21-101F2, 21-101F3, 21-101F4, 21-101F5 and 21-101F6 (together, the “ATS Rules”). The Commission adopted Companion Policy 21-101CP and Companion Policy 23-101CP (the “Companion Policies”) on October 28, 2003.

The amendments to the ATS Rules and the Companion Policies came into force in Ontario on January 3, 2004. The amendments to the ATS Rules and the Companion Policies are published in Chapter 5 of the Bulletin.

1.1.7 Notice of Commission Approval – Proposed Amendments to IDA Regulation 1300 Regarding Managed Accounts

**THE INVESTMENT DEALERS ASSOCIATION OF CANADA (IDA)
NOTICE OF COMMISSION APPROVAL
PROPOSED AMENDMENTS TO IDA REGULATION 1300
REGARDING MANAGED ACCOUNTS**

The Ontario Securities Commission (OSC) approved proposed amendments to IDA Regulation 1300 regarding managed accounts. In addition, the Alberta Securities Commission (ASC) approved and the British Columbia Securities Commission (BCSC) did not object to the proposed amendments. The proposed amendments revise the proficiency and supervisory requirements for managed accounts to take into account industry trends, including the fact that IDA members increasingly rely on external portfolio managers to handle managed accounts and the introduction of centrally managed model portfolio programs.

A copy and description of the proposed amendments were published on November 9, 2001, at (2001) 24 OSCB 6821. No comments were received. As a result of staff review, the IDA has made non-material changes to the proposed amendments, including changes to ensure that sub-advisers hired by IDA members are also subject to conflicts of interest requirements and changes to ensure that the revised proficiency requirements are consistent with the requirements under IDA Policy No. 6. The revised proposed amendments that were approved by the OSC and the ASC and non-objected to by the BCSC are contained in Chapter 13 of this Ontario Securities Commission Bulletin.

1.1.8 Notice of Commission Approval – Proposed Amendments to MFDA Rule 1.1.1(a) Regarding Business Structures

THE MUTUAL FUND DEALERS ASSOCIATION (MFDA)
NOTICE OF COMMISSION APPROVAL
PROPOSED AMENDMENTS TO MFDA RULE 1.1.1(a)
REGARDING BUSINESS STRUCTURES

The Ontario Securities Commission approved proposed amendments to MFDA Rule 1.1.1(a) regarding business structures. In addition, the Alberta Securities Commission, Nova Scotia Securities Commission and Saskatchewan Financial Services Commission approved and the British Columbia Securities Commission did not object to the proposed amendments. The proposed amendments will provide flexibility to banks in structuring their businesses by allowing Approved Persons who are dually employed by a MFDA member and an affiliated bank to conduct certain securities related business through the bank as permitted by the *Bank Act (Canada)* and applicable securities legislation. A copy and description of these amendments were published on July 11, 2003 at (2003) 26 OSCB 5412. A public comment was received, but did not result in any revisions to the proposed amendments. The MFDA's summary of public comment and response are contained in Chapter 13 of this Ontario Securities Commission Bulletin.

1.1.9 Notice of Ministerial Approval - Amendment and Restatement of Rule 45-501 - Exempt Distributions, Companion Policy 45-501CP - Exempt Distributions, Form 45-501F1, Form 45-501F2 and Form 45-501F3 and Rescission of Existing Rule 45-501 - Exempt Distributions, Companion Policy 45-501CP - Exempt Distributions, Form 45-501F1, Form 45-501F2 and Form 45-501F3

NOTICE OF MINISTERIAL APPROVAL
AMENDMENT AND RESTATEMENT OF RULE 45-501 -
EXEMPT DISTRIBUTIONS,
COMPANION POLICY 45-501CP -
***EXEMPT DISTRIBUTIONS*,**
FORM 45-501F1, FORM 45-501F2 AND FORM 45-501F3
AND
RESCISSION OF EXISTING RULE 45-501 -
***EXEMPT DISTRIBUTIONS*,**
COMPANION POLICY 45-501CP -
***EXEMPT DISTRIBUTIONS*,**
FORM 45-501F1, FORM 45-501F2 AND FORM 45-501F3

On December 24, 2003, the Minister of Finance approved, pursuant to subsection 143.3(3) of the *Securities Act* (Ontario), amended and restated Rule 45-501 - *Exempt Distributions*, amended and restated Companion Policy 45-501CP - *Exempt Distributions* and amended and restated Forms 45-501F1, 45-501F2 and 45-501F3 (collectively, the Materials). Also, on December 24, 2003, the Minister of Finance approved the rescission of existing Rule 45-501 - *Exempt Distributions*, existing Companion Policy 45-501CP - *Exempt Distributions* and existing Forms 45-501F1, 45-501F2 and 45-501F3.

The Materials were previously published in the Bulletin on November 7, 2003. **The Materials will come into force on January 12, 2004.**

The Materials are published in Chapter 5 of this Bulletin.

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Mazarin Inc. and Sequoia Minerals Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Tacking relief granted for the seasoning period and for the hold period of control persons of new issuer spun off from existing reporting issuer in connection with a plan of arrangement. The prospectus requirement shall not apply to the first trade in securities of the new issuer acquired under the arrangement or control distributions of securities of the new issuer provided that the conditions in section 2.8(3) of Multilateral Instrument 45-102 - Resale of Securities are satisfied, provided that in determining the period of time that a holder of securities of the new issuer has held such securities, the holder may include the period of time that the holder held securities of the existing reporting issuer prior to the arrangement.

Ontario Statutes

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

Applicable National Instruments

Multilateral Instrument 45-102 - Resale of Securities.

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

AND

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

AND

IN THE MATTER OF
MAZARIN INC. AND SEQUOIA MINERALS INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (each, a **Decision Maker**) in each of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, the Yukon Territory and Nunavut (the **Jurisdictions**) has received an application from Mazarin Inc. (**Mazarin**) and Sequoia Minerals Inc. (**Newco** and, together with Mazarin, the **Filers**) for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that:

(i) the requirements contained in the Legislation of each of the Jurisdictions, other than Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory, to file and obtain a receipt for a preliminary prospectus and a prospectus (the **Prospectus Requirement**) shall not apply to the first trade in common shares (the **Sequoia Common Shares**) of Sequoia Minerals Inc. (**Sequoia**), a corporation to be formed by the amalgamation of 9102-3648 Quebec Inc. (**9102**) and Newco, acquired pursuant to a proposed plan of arrangement (the **Arrangement**) involving Mazarin, 9102 and Newco, provided that the conditions in section 2.6(4) of Multilateral Instrument 45-102 – *Resale of Securities* of the Canadian Securities Administrators (**MI 45-102**) are satisfied and, for the purpose of determining the period of time that Sequoia has been a reporting issuer under section 2.6(4) of MI 45-102, the period of time that Mazarin was a reporting issuer in at least one of the jurisdictions listed in Appendix B of MI 45-102 immediately before the effective date of the Arrangement (as set out in the Certificate of Amendment of Mazarin issued by the Inspecteur général des institutions financiPres) (the **Effective Date**) shall be included; and

(ii) the Prospectus Requirement in each of the Jurisdictions shall not apply to control distributions of Sequoia Common Shares acquired pursuant to the Arrangement provided that the conditions in section 2.8(3) of MI 45-102 are satisfied, and

A. for the purpose of determining the period of time that Sequoia has been a reporting issuer under section 2.8(3) of MI 45-102, the period of time that Mazarin was a reporting issuer in at least one of the

jurisdictions listed in Appendix B of MI 45-102 immediately before the Effective Date shall be included; and

B. for the purpose of determining the period of time that a holder of the Sequoia Common Shares has held such shares under section 2.8(3) of MI 45-102, such holders shall be permitted to include the period of time before the Effective Date that the holder held common shares of Mazarin (the **Mazarin Common Shares**) or Class “C” shares of 9102 (the **9102 Class “C” Shares**), as the case may be, that were converted into such Sequoia Common Shares pursuant to the Arrangement.

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

AND WHEREAS the Filers have represented to the Decision Makers that:

1. In connection with the Arrangement, Mazarin, 9102 and Newco have entered into an arrangement agreement dated November 11, 2003 (the **Arrangement Agreement**).

2. The Arrangement Agreement contemplates that, by means of a number of steps, each Mazarin Common Share issued and outstanding immediately prior to the completion of the Arrangement will ultimately be replaced by one post-Arrangement common share of Mazarin (a **New Mazarin Common Share**) and one Sequoia Common Share.

3. The Arrangement Agreement provides that the completion of the Arrangement is conditional upon, among other things, (i) the approval of Mazarin’s shareholders (the **Mazarin Shareholders**) at a special meeting of shareholders (the **Meeting**), (ii) the approval of the Arrangement by the Quebec Superior Court (the **Court**), (iii) Mazarin, 9102 and Newco obtaining certain regulatory consents and approvals to the transactions contemplated by the Arrangement Agreement, including the relief sought in this Application, and (iv) all other closing conditions under the Arrangement Agreement having been satisfied.

4. Following completion of the Arrangement, the New Mazarin Common Shares and the Sequoia Common Shares are expected to be listed and posted for trading on the Toronto Stock Exchange (the **TSX**).

5. Mazarin is a corporation incorporated under the laws of Québec. The Mazarin Common Shares are listed and posted for trading on the TSX under the symbol “MAZ”.

6. Mazarin is, and has been for a period of time in excess of twelve months, a reporting issuer under the securities laws of Ontario and Québec and is not on the list of defaulting reporting issuers maintained by the OSC or the CVMQ.

7. Mazarin’s head office is located at Tour de la Cité, 2600 Boulevard Laurier, Suite 950, Sainte-Foy, Québec, Canada.

8. Mazarin is a mining company that primarily carries on exploration and production activities in the industrial minerals and chrysotile sectors.

9. The authorized share capital of Mazarin consists of an unlimited number of Mazarin Common Shares and an unlimited number of preferred shares. As at November 11, 2003, there were 44,363,081 Mazarin Common Shares issued and outstanding and up to 3,045,000 additional Mazarin Common Shares were issuable in connection with the exercise of stock options (the **Mazarin Options**). All of the holders of Mazarin Options are resident in Quebec. Mazarin has no preferred shares outstanding.

10. Based on a list of holders of Mazarin Common Shares as of October 31, 2003, Mazarin has 290 registered shareholders. As of such date, there were registered holders of Mazarin Common Shares as shown on the books of Mazarin in Ontario, Quebec, Nova Scotia, New Brunswick, British Columbia and Yukon Territory, and no registered holders in any of the other Jurisdictions.

11. 9102 is a corporation incorporated under the laws of Québec and is a direct subsidiary of Mazarin. 9102 is not currently a reporting issuer in any jurisdiction in Canada.

12. 9102’s head office is located at Tour de la Cité, 2600 Boulevard Laurier, Suite 950, Sainte-Foy, Québec, Canada.

13. Mazarin holds its entire interest in the industrial minerals sector through 9102.

14. The authorized share capital of 9102 currently consists of an unlimited number of Class “A” shares (the **9102 Class “A” Shares**), an unlimited number of Class “B” shares, (the **9102 Class “B” Shares**) and 10,344,828 9102 Class “C” Shares.

All of the 33,333,333 outstanding 9102 Class "A" Shares are held by Mazarin and all of the 10,344,828 outstanding 9102 Class "C" Shares are held by SGF Mines Inc. The 9102 Class "C" Shares are convertible into common 9102 Class "A" Shares upon 9102 obtaining a TSX listing.

15. Newco is a corporation incorporated under the laws of Québec. Newco is not currently a reporting issuer in any jurisdiction in Canada.

16. Newco's head office is located at Tour de la Cité, 2600 Boulevard Laurier, Suite 950, Sainte-Foy, Québec, Canada.

17. The authorized share capital of Newco consists of an unlimited number of Class "A" shares (**Newco Class "A" Shares**) and an unlimited number of Class "B" shares (**Newco Class "B" Shares**). Newco currently has no shares of any class outstanding and no shareholders, nor will it have any at any time prior to the Effective Date.

18. The Arrangement is proposed to be accomplished through a plan of arrangement under sections 49 and 123.107 of the *Companies Act* (Québec), as amended (the **CAQ**), and is subject to a number of conditions, including, among others, those set out in paragraph 3 above.

19. An interim order (the **Interim Order**) of the Court granted on November 11, 2003 pursuant to the CAQ sets out certain requirements relating to the approval of the Arrangement by Mazarin Shareholders. The Interim Order provides, among other things, that:

    (a) the approval of not less than 75% of Mazarin Shareholders present or voting by proxy at the Meeting; and

    (b) the final approval of the Court;

    must be obtained in order for the Arrangement to be completed.

20. A proxy circular of Mazarin containing prospectus-level disclosure in respect of Sequoia and notice of the Meeting were filed with applicable Canadian securities regulatory authorities on November 14, 2003 and mailed to Mazarin Shareholders on November 18, 2003.

21. The steps involved in the Arrangement, contemplate, among other things, the following transactions occurring in the following sequence on the Effective Date:

    (a) Mazarin will reorganize its share capital by (i) revoking its authorized class of preferred shares, and (ii) creating two new classes of shares - an unlimited number of New Mazarin Common Shares and an unlimited number of Class "B" shares (the **Mazarin Reorganization Shares**) - in addition to the existing Mazarin Common Shares;

    (b) Mazarin will exchange each Mazarin Common Share issued and outstanding on the Effective Date for one New Mazarin Common Share and one Mazarin Reorganization Share;

    (c) Newco will acquire all of the issued and outstanding Mazarin Reorganization Shares from the Mazarin Shareholders in exchange for the issuance of one Newco Class "A" Share for each Mazarin Reorganization Share;

    (d) Mazarin will sell to Newco all of its 9102 Class "A" Shares and certain other assets for consideration which will include the issuance of 10 million Newco Class "B" Shares to Mazarin;

    (e) Mazarin will redeem all of the Mazarin Reorganization Shares acquired by Newco in step (c) in consideration for the issuance to Newco of a non-interest bearing demand note (the **Mazarin Note**). Newco will redeem all of the Newco Class "B" Shares issued to Mazarin in step (d) in consideration for the issuance to Mazarin of a non-interest bearing note (the **Newco Note**) equal in amount to the Mazarin Note. The Mazarin Note and the Newco Note will be set-off against one another and cancelled; and

    (f) Newco and 9102 will amalgamate to form Sequoia. Pursuant to the amalgamation, the Newco Class "A" Shares will be converted into approximately 74.2% of the Sequoia Common Shares, and the 9102 Class "C" Shares owned by SGF Mines Inc. will be converted into approximately 25.8% of the Sequoia Common Shares.

22. Following completion of the Arrangement, Sequoia will carry on the industrial minerals business formerly carried on by Mazarin, and Mazarin will continue to carry on the chrysotile business.

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:

1. the Prospectus Requirement in each of the Jurisdictions other than Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory shall not apply to the first trade in Sequoia Common Shares acquired pursuant to the Arrangement, provided that the conditions in section 2.6(4) of MI 45-102 are satisfied and, for the purpose of determining the period of time that Sequoia has been a reporting issuer under section 2.6(4) of MI 45-102, the period of time that Mazarin was a reporting issuer in at least one of the jurisdictions listed in Appendix B of MI 45-102 immediately before the Effective Date shall be included; and

2. the Prospectus Requirement in each of the Jurisdictions shall not apply to control distributions (as defined in MI 45-102 or other Legislation) of Sequoia Common Shares acquired pursuant to the Arrangement provided that the conditions contained in section 2.8(3) of MI 45-102 are satisfied, and:

   (a) for the purpose of determining the period of time that Sequoia has been a reporting issuer under section 2.8(3) of MI 45-102, the period of time that Mazarin was a reporting issuer in at least one of the jurisdictions listed in Appendix B of MI 45-102 immediately before the Effective Date shall be included; and

   (b) for the purpose of determining the period of time that a holder of Sequoia Common Shares has held such Sequoia Common Shares under section 2.8(3) of MI 45-102, such holders shall be permitted to include the period of time before the Effective Date that the holder held the Mazarin Common Shares or the 9102 Class "C" Shares, as the case may be, that were converted into such Sequoia Common Shares pursuant to the Arrangement.

December 23, 2003.

"H. Lorne Morphy" "Suresh Thakrar"

2.1.2 Crescent Point Energy Trust - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Open-ended investment trust exempt from prospectus and registration requirements in connection with issuance of units to existing unitholders under a distribution reinvestment plan whereby distributions of income are reinvested in additional units of the trust, subject to certain conditions – first trade relief provided for additional units of trust, subject to certain conditions.

Applicable Ontario Statutory Provisions

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

Applicable Multilateral Instruments

Multilateral Instrument 45-102 Resale of Securities.

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

AND

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

AND

IN THE MATTER OF
CRESCENT POINT ENERGY TRUST

MRRS DECISION DOCUMENT

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

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

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

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

1. The Trust is an unincorporated open-ended investment trust governed by the laws of the Province of Alberta and was created pursuant to a trust indenture (the “Trust Indenture”) dated as of July 22, 2003 between Crescent Point Energy Ltd. (“Crescent Point Energy”) and Olympia Trust Company;

2. Olympia Trust Company is the trustee of the Trust (in such capacity, the “Trustee”);

3. The head and principal office of the Trust is located at 1800, 500 – 4th Avenue S.W., Calgary, Alberta T2P 2V6;

4. Pursuant to a plan of arrangement (the “Arrangement”) involving Crescent Point Energy, Tappit Resources Ltd. (“Tappit”), the Trust and certain other parties, the non-exploration assets of Crescent Point Energy and the assets of Tappit, consisting primarily of mature, long life, low decline properties, were converted into an income trust; pursuant to the Arrangement, the Trust, among other things, acquired all of the Class A Shares and Class B Shares in the capital of Crescent Point Energy and all of the common shares in the capital of Tappit in exchange for Trust Units and certain other consideration; all requisite approvals to the Arrangement were obtained and the Arrangement became effective on September 5, 2003;

5. The Trust is actively engaged through Crescent Point Resources Ltd., Crescent Point Energy Partnership and Crescent Point Resources Limited Partnership in the business of crude oil and natural gas exploitation, development, acquisition and production in the provinces of Alberta, British Columbia and Saskatchewan;

6. The Trust expects to make monthly cash distributions (“Cash Distributions”) to Unitholders (commencing October 15, 2003) of interest income earned on the principal amount of a promissory note issued by Crescent Point Resources and income earned under royalty agreements entered into by the Trust with Crescent Point Partnership and Crescent Point L.P, in each case, after expenses, if any, and any cash redemptions of Trust Units;

7. An unlimited number of Trust Units may be created and issued pursuant to the Trust Indenture; each Trust Unit entitles the holder thereof to one vote at any meeting of the holders of Trust Units and represents an equal fractional undivided beneficial interest in any distribution from the Trust (whether of net income, net realized capital gains or other amounts) and in any net assets of the Trust in the event of termination or winding-up of the Trust; all Trust Units rank among themselves equally and rateably without discrimination, preference or priority; each Trust Unit is transferable, is not subject to any conversion or pre-emptive rights and entitles the holder thereof to require the Trust to redeem any or all of the Trust Units held by such holder;

8. At the time of the Arrangement, Crescent Point Energy was a reporting issuer or the equivalent thereof in each of the provinces of British Columbia, Alberta, Manitoba and Ontario and had been so for more than 12 months;

9. The Trust is a reporting issuer or the equivalent thereof in each of the provinces of Alberta, Saskatchewan, Ontario and Québec as has been so since September 5, 2003, being the effective date of the Arrangement; the Trust is a reporting issuer in the province of British Columbia and has been so for more than 12 months;

10. The Trust is not in default of any requirements of the Legislation;

11. The Trust is not a “qualifying issuer” within the meaning of MI 45-102 *Resale of Securities* because it does not have a current AIF filed on SEDAR;

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

13. The Trust intends to establish the Premium DRIP pursuant to which eligible Unitholders may direct that Cash Distributions paid by the Trust in respect of their existing Trust Units be applied to the purchase of additional Trust Units (“DRIP Units”) and, at their option, either (i) direct that the DRIP Units be held for their account (the “Reinvestment Option”) or (ii) authorize and direct the trust company that is appointed as plan agent under the Premium DRIP (the “Plan Agent”) to pre-sell, through a designated broker (the “Plan Broker”), for the account of such Unitholders so electing, that number of Trust Units approximately equal to the number of DRIP Units issuable on such reinvestment of Cash Distributions and to settle such pre-sales with the DRIP Units issued on the applicable distribution payment date in exchange for a cash payment for the account of such Unitholders equal to 102% of the reinvested Cash Distributions (the “Premium Distribution Option”);

14. Eligible Unitholders that have elected to have their Cash Distributions reinvested in DRIP Units under either the Reinvestment Option or Premium Distribution Option (“Participants”) may also

purchase additional Trust Units under the Premium DRIP by making optional cash payments ("Optional Cash Payments") within certain established limits (the "Cash Payment Option"); the Trust shall have the right to determine from time to time whether the Cash Payment Option will be available;

15. All DRIP Units purchased under the Premium DRIP will be purchased by the Plan Agent directly from the Trust on the relevant distribution payment date at a price determined by reference to the Average Market Price (defined in the Premium DRIP as the arithmetic average of the daily volume weighted average trading prices of the Trust Units on the TSX for a defined period not exceeding 20 trading days preceding the applicable distribution payment date);

16. DRIP Units purchased under the Reinvestment Option or the Premium Distribution Option will be purchased at a 5% discount to the Average Market Price; DRIP Units purchased under the Cash Payment Option will be purchased at the Average Market Price;

17. The Plan Broker's *prima facie* return under the Premium Distribution Option will be approximately 3% of the reinvested Cash Distributions (based on pre sales of DRIP Units having a market value of approximately 105% of the reinvested Cash Distributions and a fixed cash payment to the Plan Agent, for the account of applicable Participants, of an amount equal to 102% of the reinvested Cash Distributions); the Plan Broker may, however, realize more or less than this *prima facie* amount, as the actual return will vary according to the prices the Plan Broker is able to realize on the pre-sales of DRIP Units; the Plan Broker bears the entire price risk of pre-sales in the market, as Participants who have elected the Premium Distribution Option are entitled to a cash payment equal to 102% of the reinvested Cash Distributions;

18. All activities of the Plan Broker on behalf of the Plan Agent that relate to pre-sales of DRIP Units for the account of Participants who elect the Premium Distribution Option will be in compliance with applicable Legislation and the rules and policies of the TSX (subject to any exemptive relief granted); the Plan Broker will also be a member of the Investment Dealers Association of Canada, and will be registered under the Legislation of any Jurisdiction where the first trade in DRIP Units pursuant to the Premium Distribution Option makes such registration necessary;

19. The Premium DRIP will not be available to Unitholders who are residents of the United States or other foreign jurisdictions where the issuance of DRIP Units to holders resident in such jurisdictions would not be lawful;

20. Participants who choose to participate in the Premium DRIP are free to terminate their participation under either the Reinvestment Option or the Premium Distribution Option and to change their election as between the Reinvestment Option and the Premium Distribution Option, in each such case, by providing written notice thereof to the Plan Agent; a notice of termination or change of election received on or after a distribution record date will become effective after the distribution payment date to which such record date relates;

21. Under the Cash Payment Option, a Participant may, through the Plan Agent, purchase DRIP Units up to a stipulated aggregate maximum dollar amount per year of $100,000 and subject to a minimum amount per remittance of $1,000; the aggregate number of DRIP Units that may be purchased under the Cash Payment Option by all Participants in any financial year of the Trust will be limited to a maximum of 2% of the number of Trust Units issued and outstanding at the start of the financial year;

22. No brokerage fees or service charges will be payable by Participants in connection with the purchase of DRIP Units under the Premium DRIP;

23. All Cash Distributions on Trust Units enrolled in the Premium DRIP will be automatically reinvested in DRIP Units under the Reinvestment Option or exchanged for a cash payment under the Premium Distribution Option, as applicable, in accordance with the terms of the Premium DRIP and the current election of the applicable Participant;

24. The Premium DRIP permits full investment of reinvested Cash Distributions and Optional Cash Payments because fractions of Trust Units, as well as whole Trust Units, may be credited to Participants' accounts (although, in the case of beneficial Unitholders, the crediting of fractional Trust Units may depend on the policies of a Participant's broker, investment dealer, financial institution or other nominee through which the Participant holds Trust Units);

25. The Trust reserves the right to determine for any distribution payment date how many DRIP Units will be available for purchase under the Premium DRIP;

26. If, in respect of any distribution payment date, fulfilling all of the elections under the Premium DRIP would result in the Trust exceeding either the limit on DRIP Units set by the Trust or the aggregate annual limit on DRIP Units issuable pursuant to the Cash Payment Option, then elections for the purchase of DRIP Units on the next distribution payment date will be accepted: (i) first, from Participants electing the Reinvestment Option; (ii) second, from Participants electing the

Premium Distribution Option; and (iii) third, from Participants electing the Cash Payment Option; if the Trust is not able to accept all elections in a particular category, then purchases of DRIP Units on the next distribution payment date will be pro-rated among all Participants in that category according to the number of DRIP Units sought to be purchased;

27. If the Trust determines that no DRIP Units will be available for purchase under the Premium DRIP for a particular distribution payment date, then all Participants will receive the Cash Distribution announced by the Trust for that distribution payment date;

28. The Trust reserves the right to amend, suspend or terminate the Premium DRIP at any time, provided that such action shall not have a retroactive effect which would prejudice the interests of Participants; the Trust will notify Unitholders of any such amendment, suspension or termination in accordance with the Premium DRIP and applicable securities law requirements;

29. Legislation in the Jurisdictions provides exemptions from the Registration and Prospectus Requirement for reinvestment plans; such exemptions are not available to the Trust in the Jurisdictions, except Alberta, however, because such exemptions are generally limited to plans that provide for the reinvestment of one or more of (i) dividends; (ii) interest; (iii) capital gains; or (iv) earnings or surplus; in contrast, the distributions that are paid to the Unitholders are distributions of cash which may not fall within such categories;

30. In addition, Legislation in certain of the Jurisdictions provides exemptions from the Registration and Prospectus Requirement for reinvestment plans of mutual funds; such exemptions are unavailable to the Trust since it is an open-ended investment trust and, therefore, not within the definition of “mutual fund” contained in the Legislation of the relevant Jurisdictions;

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 pursuant to the Legislation is that:

1. the Registration and Prospectus Requirement contained in the Legislation shall not apply to distributions by the Trust of DRIP Units for the account of Participants pursuant to the Premium DRIP, provided that:

(a) at the time of the trade the Trust is a reporting issuer or the equivalent in a jurisdiction listed in Appendix B of MI 45-102 and is not in default of any requirements of the Legislation;

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

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

(i) their right to withdraw from the Premium DRIP and to make an election to receive Cash Distributions instead of DRIP Units on the applicable distribution payment date (the “Withdrawal Right”); and

(ii) instructions on how to exercise the Withdrawal Right;

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

(e) the first trade of DRIP Units shall be deemed to be a distribution or a primary distribution to the public under the Legislation unless:

(i) except in Québec, the conditions in subsections (3) or (4) of Section 2.6 of MI 45-102 are satisfied; and

(ii) in Québec:

(A) the Trust is a reporting issuer in Québec and has been a reporting issuer in Québec for the 12 months preceding the trade and for purposes of determining the period of time that the Trust has been a reporting issuer in Québec, the Commission des valeurs mobilières du Québec recognizes the

period during which Crescent Point Energy has been a reporting issuer in Alberta immediately before the Arrangement;

(B) no unusual effort is made to prepare the market or to create a demand for the DRIP Units that are the subject of the trade;

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

(D) if the selling security holder of the DRIP Units is an insider or officer of the Trust, the selling security holder has no reasonable grounds to believe that the Trust is in default of Québec securities legislation.

November 21, 2003.

"Brenda Leong"

2.1.3 Suite101.com, Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – National Policy 12-201.

Multilateral Instrument 45-102 - relief under section 4.1 of Multilateral Instrument 45-102 Resale of Securities (MI 45-102) from section 2.3 and 2.4 of MI 45-102 with respect to the first trade of securities acquired under existing exemptions where the issuer does not meet all of the technical requirements of "qualifying issuer" under MI 45-102. Issuer does not have a "current AIF" as defined in MI 45-102 but files a Form 10-KSB in the United States that is equivalent to an annual information form. Issuer will not be listed on a qualified market until after a distribution of securities on an exempt private placement basis. As a condition of the relief, resale of securities acquired under the private placement will be subject to a four month restricted period from the date the securities are distributed or the date the issuer becomes listed on the American Stock Exchange, whichever is later.

Applicable Ontario Rules

Multilateral Instrument 45-102 Resale of Securities, definitions and sections 2.3, 2.4 and 4.1(1).

National Policy 12-201 – Mutual Reliance Review System for Exemptive Relief Applications.

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

AND

IN THE MATTER OF
NATIONAL POLICY 12-201
THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF
MULTILATERAL INSTRUMENT 45-102
RESALE OF SECURITIES

AND

IN THE MATTER OF
SUITE101.COM, INC.

MRRS DECISION DOCUMENT

1. **WHEREAS** the securities regulatory authority or regulator (Decision Makers) in each of Alberta, British Columbia and Ontario (Jurisdictions) has received an application from Suite101.com, Inc. (Suite101) for a decision under section 4.1 of Multilateral Instrument 45-102 *Resale of Securities* (MI 45-102) that sections 2.3 and 2.4 of MI 45-102

will not apply to the first trade of units (Units), Warrants or common shares of Suite101 acquired by residents of the Jurisdictions (Residents) under an offering by way of private placement (Offering) or to the Common Shares acquired by the Agents on exercise of certain brokers warrants (Brokers Warrants);

2. **AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Application (System), the Alberta Securities Commission (ASC) is the Principal Regulator for this application;

3. **AND WHEREAS** the Alberta Securities Commission on behalf of the Jurisdictions issued an MRRS Decision Document dated December 10, 2003 (the Original MRRS Decision) that did not provide first trade relief for Common Shares issued upon the exercise of Brokers Warrants;

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

5. **AND WHEREAS** Suite101 has represented to the Decision Makers that:

5.1 Suite101 is a corporation incorporated under the laws of the State of Delaware with its head office in Calgary, Alberta;

5.2 Suite101 is a reporting issuer under the securities legislation of the Jurisdictions and Quebec and is not in default of any of its obligations under the securities legislation of the Jurisdictions or Quebec;

5.3 Suite101's authorized capital consists of 100,000,000 shares of common stock, par value $0.001 (Common Shares) of which there are presently 49,053,355 Common Shares issued and outstanding;

5.4 Suite101 is an electronic filer under National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR);

5.5 Suite101's Common Shares are not listed on any Canadian stock exchange;

5.6 the Common Shares are traded on the Over the Counter Bulletin Board (OTCBB) market in the United States;

5.7 Suite101 has a class of equity securities registered under Section 12(g) of the 1934 Act, and accordingly is required to file with the SEC periodic and other reports and schedules under the provisions of the 1934 Act;

5.8 Suite101 is not a "qualifying issuer" as defined in MI 45-102 because it fails to meet the following requirements under that definition:

5.8.1 it does not have a "current AIF" as defined in MI 45-102; and

5.8.2 it does not have a class of equity securities listed or quoted on a "qualified market" as defined in MI 45-102;

5.9 under MI 45-102 a "current AIF" means, among other things, a current annual report filed on Form 10-K under the 1934 Act for the issuer's most recently completed financial year filed in any jurisdiction by an issuer that has securities registered under section 12 of the 1934 Act;

5.10 Suite101 filed an annual report on Form 10-KSB under the 1934 Act for its fiscal year ended December 31, 2002, which Form 10-KSB was filed on SEDAR on May 23, 2003;

5.11 a Form 10-KSB is a category of the Form 10-K and other than certain requirements relating to historical financial information, the Form 10-KSB contains the same level of disclosure as the Form 10-K;

5.12 under proposed National Instrument 51-102 Continuous Disclosure Obligations, both the Form 10-K and the Form 10-KSB would qualify as an alternative form of annual information form;

5.13 the American Stock Exchange (AMEX) is a qualified market under MI 45-102;

5.14 Suite101 intends to list its Common Shares on AMEX and has filed an application for listing on or about October 2, 2003 with AMEX;

5.15 to meet AMEX's listing requirements, and to fund corporate activities, Suite101 intends to conduct the Offering;

5.16 under the Offering Suite101 will distribute up to 6,000,000 Units at a price of $1.00 per Unit;

5.17 under the Offering one Unit is comprised of one Common Share and one half warrant where one whole warrant (Warrant) entitles the holder to purchase one Common Share at a price of $2.50 for a period of two years from the closing of the Offering;

5.18 under the Offering Units may be sold to Residents, residents of the United States and to parties who are non-resident in Canada and the United States;

5.19 under the Offering the Agents are entitled to receive a 6% commission and to receive warrants ("Brokers Warrant") to purchase up to 600,000 Common Shares at a price of US$1.50 for a period of two years from the closing of the Offering;

5.20 Units will be distributed to Residents under exemptions from the dealer registration requirement and the prospectus requirement that are available under the securities legislation of the Jurisdictions;

5.21 absent this Decision, Residents who acquire securities under the Offering will be restricted from selling their Units, Warrants or Common Shares (including Common Shares acquired on exercise of the Warrants) for 12 months under MI 45-102 because Suite101 will not be a “qualifying issuer” when the Residents acquire their Units;

5.22 absent this Decision, the brokers who acquire securities under the Offering will be restricted from selling their Common Shares acquired on exercise of the Broker Warrants for 12 months under MI 45-102 because Suite101 will not be a “qualifying issuer” when the brokers acquire their Broker Warrants.

6. **AND WHEREAS** under the System, this MRRS Decision document evidences the decision of each Decision Maker (Decision);

7. **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;

8. **THE DECISION** of the Decision Makers under MI 45-102 is that section 2.3 and 2.4 of MI 45-102 will not apply to the first trade of Units, Warrants or Common Shares (including Common Shares acquired on exercise of the Warrants) acquired by Residents under the Offering or to the first trade of Common Shares acquired on exercise of the Broker Warrants, provided that

8.1 Suite101 is and has been a reporting issuer in a jurisdiction listed in Appendix B of MI 45-102 for the four months immediately preceding the trade;

8.2 Suite101 files a notice on SEDAR advising that it has filed the Form 10-KSB as an alternative form of annual information form under MI 45-102 and identifying the SEDAR project number under which the Form 10-KSB was filed;

8.3 Suite101 files a Form 45-102F2 on or before the tenth day after the distribution date (as defined in MI 45-102) of the Units certifying that it is a qualifying issuer except for the requirement that it have a current AIF and have a class of securities listed or quoted on a qualified market;

8.4 Suite101 has a class of equity securities listed on AMEX and has not

8.4.1 been notified by AMEX that it does not meet the requirements to maintain that listing, or

8.4.2 been declared inactive, suspended or the equivalent by AMEX;

8.5 at least four months have elapsed from the distribution date of Units or from the date the Common Shares are listed for trading on AMEX, whichever is later;

8.6 certificates representing the securities issued under the Offering are issued that carry a legend stating:

"Unless permitted under securities legislation, the holder of the securities shall not trade the securities before [insert the date that is four months and a day after the distribution date] or four months and a day after the date the Common Shares are listed for trading on AMEX, whichever is later."

8.7 the trade is not a control distribution;

8.8 no unusual effort is made to prepare the market or to create a demand for the Units, Warrants or Common Shares;

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

8.10 if the selling security holder is an insider or officer of Suite101, the selling security holder has no reasonable grounds to believe that Suite101 is in default of securities legislation.

9. The Original MRRS Decision is hereby revoked.

December 18, 2003.

“Glenda A. Campbell” “Stephen R. Murison”

2.1.4 NAL Oil & Gas Trust - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Open-end investment trust exempt from prospectus and registration requirements in connection with issuance of units to existing unitholders under a distribution reinvestment plan whereby distributions of income are reinvested in additional units of the trust, subject to certain conditions – first trade relief provided for additional units of trust, subject to certain conditions.

Applicable Ontario Statutory Provisions

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

Applicable Multilateral Instruments

Multilateral Instrument 45-102 Resale of Securities, (2001) OSCB 7029.

Applicable National Instruments

National Instrument 14-101 Definitions, (2002) 25 OSCB 8461.

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

AND

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

AND

IN THE MATTER OF
NAL OIL & GAS TRUST

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador, (the "Jurisdictions") has received an application from NAL Oil & Gas Trust (the "Trust") 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 certain trades in units of the Trust issued pursuant to a distribution reinvestment plan;

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

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

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

1. The Trust is an unincorporated open-end investment trust formed under the laws of the Province of Alberta and is governed by a trust indenture dated March 8, 1996 between Computershare Trust Company of Canada (the "Trustee") and NAL Energy Inc. ("NAL"). The head office of the Trust is located at 600, 550- 6th Avenue S.W., Calgary, Alberta T2P 0S2.

2. The Trust was created to acquire a royalty from NAL and to issue trust units (the "Units") to the public. Pursuant to a royalty agreement among the Trustee, NAL and the Bank of Montreal dated May 9, 1996, NAL acquired oil and natural gas properties and sold a royalty to the Trust, entitling the Trust to 99% of the revenues from the petroleum and natural gas properties held by NAL less certain defined costs and debt repayments. The Trust also receives distributions from NAL Oil & Gas Ltd., NAL Petroleum Inc. and NAL Ventures Trust.

3. Computershare Trust Company of Canada is the trustee of the Trust and the holders of the Units are the sole beneficiaries of the Trust.

4. The Trust has been a reporting issuer or the equivalent under the Legislation since May, 1996 and, is not in default of any requirements of the Legislation. The Trust is a "qualifying issuer" within the meaning of Multilateral Instrument 45-102 *Resale of Securities*.

5. The Trust is not a "mutual fund" under the Legislation as the holders of Units are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Trust, as contemplated by the definition of "mutual fund" in the Legislation.

6. The Trust is authorized to issue a maximum of 500,000,000 Units, each of which represents an equal fractional undivided beneficial interest in the Trust. All Units share equally in all distributions from the Trust and all Units carry equal voting rights at meetings of holders of Units ("Unitholders"). As of October 31, 2003 there were 50,533,465 Units issued and outstanding.

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

8. The Trust makes and expects to continue to make monthly cash distributions to its Unitholders in an amount per Unit equal to a *pro rata* share of all amounts and income received by the Trust in each month, less: (i) expenses of the Trust; and (ii) any other amounts required to be deducted, withheld or paid by the Trust.

9. The Trust currently has in place a distribution reinvestment and optional trust unit purchase plan (the "Old DRIP") which enables eligible Unitholders who elect to participate in the Old DRIP to direct that cash distributions paid by the Trust in respect of their existing Units ("Cash Distributions") be automatically applied to the purchase of additional Units ("Additional Units") from treasury (the "Distribution Reinvestment Option").

10. The Old DRIP also entitles Unitholders who have elected to participate in the Distribution Reinvestment Option to make, at their discretion, additional cash payments ("Optional Cash Payments") which are invested in Additional Units on the same basis as distributions are reinvested pursuant to the Distribution Reinvestment Option (the "Cash Payment Option").

11. At the time the Old DRIP was implemented the Trust obtained exemptive relief from the Registration and Prospectus Requirements in those Jurisdictions where such relief was necessary.

12. The Trust intends to establish a premium distribution, distribution reinvestment and optional trust unit purchase plan (the "Plan") which will retain the Distribution Reinvestment Option and Cash Payment Option but will also enable eligible Unitholders who decide to reinvest Cash Distributions to authorize and direct the trust company that is appointed as agent under the Plan (the "Plan Agent"), to pre-sell through a designated broker (the "Plan Broker"), for the account of the Unitholders who so elect, a number of Units equal to the number of Additional Units issuable on such reinvestment, and to settle such pre-sales with the Additional Units issued on the applicable distribution payment date in exchange for a premium cash payment equal to 102% of the reinvested Cash Distribution (the "Premium Distribution Option"). The Plan Broker will be entitled to retain for its own account the difference between the proceeds realized in connection with the pre-sales of such Units and the cash payment to the Plan Agent in an amount equal to 102% of the reinvested Cash Distributions.

13. The Cash Payment Option will only be available to Unitholders that have elected to have their Cash Distributions reinvested in Additional Units under the Distribution Reinvestment Option or the Premium Distribution Option (the "Participants"). In addition, the Trust shall have the right to determine from time to time whether the Cash Payment Option will be available.

14. The Plan will supersede the Old DRIP. All Unitholders who are enrolled in the Old DRIP at the time that the Plan becomes effective will, subject to any contrary elections made by such Unitholders, be automatically enrolled in the Distribution Reinvestment Option of the Plan.

15. All Additional Units purchased under the Plan will be purchased by the Plan Agent directly from the Trust on the relevant distribution payment date at a price determined by reference to the Average Market Price (as defined in the Plan), being the arithmetic average of the daily volume weighted average trading prices of the Units on the TSX for a defined period not exceeding 20 trading days preceding the applicable distribution payment date.

16. Additional Units purchased under the Distribution Reinvestment Option or the Premium Distribution Option will be purchased at a 5% discount to the Average Market Price. Additional Units purchased under the Cash Payment Option will be purchased at the Average Market Price.

17. The Plan Broker's *prima facie* return under the Premium Distribution Option will be approximately 3% of the reinvested Cash Distributions (based on pre-sales of Units having a market value of approximately 105% of the reinvested Cash Distributions and a fixed cash payment to the Plan Agent, for the account of applicable Participants, of an amount equal to 102% of the reinvested Cash Distributions). The Plan Broker may, however, realize more or less than this *prima facie* amount, as the actual return will vary according to the prices the Plan Broker is able to realize on the pre-sales of Units. The Plan Broker bears the entire risk of adverse changes in the market, as Participants who have elected the Premium Distribution Option are assured a premium cash payment equal to 102% of the reinvested Cash Distributions.

18. All activities of the Plan Broker on behalf of the Plan Agent that relate to pre-sales of Units for the account of Participants who elect the Premium Distribution Option will be in compliance with applicable Legislation and the rules and policies of the TSX (subject to any exemptive relief granted). The Plan Broker will also be a member of the Investment Dealers Association of Canada and will be registered under the Legislation of any Jurisdiction where the first trade in Additional Units pursuant to the Premium Distribution Option makes such registration necessary.

19. Unitholders who are resident in the United States will not be permitted under U.S. federal securities laws to participate in the Plan.

20. Participants may elect either the Distribution Reinvestment Option or the Premium Distribution Option in respect of their Cash Distributions. Eligible Unitholders may elect to participate in either the Distribution Reinvestment Option or the Premium Distribution Option at their sole option and are free to terminate their participation under either option, or to change their election, in accordance with the terms of the Plan.

21. Under the Distribution Reinvestment Option, Cash Distributions will be paid to the Plan Agent and applied by the Plan Agent to the purchase of Additional Units, which will be held under the Plan for the account of Participants who have elected to participate in that component of the Plan.

22. Under the Premium Distribution Option, Cash Distributions will be paid to the Plan Agent and applied by the Plan Agent to the purchase of Additional Units for the account of Participants who have elected to participate in that component of the Plan, but the Additional Units purchased thereby will be automatically transferred to the Plan Broker to settle pre-sales of Units made by the Plan Broker on behalf of the Plan Agent for the account of such Participants in exchange for a premium cash payment equal to 102% of the reinvested Cash Distributions.

23. Under the Cash Payment Option, a Participant may, through the Plan Agent, purchase Additional Units up to a specified maximum dollar amount per distribution period and subject to a minimum amount per remittance. The aggregate number of Additional Units that may be purchased under the Cash Payment Option by all Participants in any financial year of the Trust will be limited to a maximum of 2% of the number Units issued and outstanding at the start of the financial year.

24. No commissions, brokerage fees or service charges will be payable by Participants in connection with the purchase of Additional Units under the Plan.

25. Additional Units purchased and held under the Plan will be registered in the name of the Plan Agent (or its nominee) and credited to appropriate Participants' accounts, and all Cash Distributions on Units so held under the Plan will be automatically reinvested in Additional Units in accordance with the terms of the Plan and the current election of that Participant.

26. The Plan permits full investment of reinvested Cash Distributions and optional cash payments under the Cash Payment Option (if available) because fractions of Units, as well as whole Units, may be credited to Participants' accounts (although, in the case of beneficial Unitholders, the crediting of fractional Units may depend on the policies of a Participant's broker, investment dealer, financial institution or other nominee through which the Participant holds Units.

27. The Trust reserves the right to determine, for any distribution payment date, the amount of Unitholders' equity that may be issued pursuant to the Plan.

28. If, in respect of any distribution payment date, fulfilling all of the elections under the Plan would result in the Trust exceeding either the limit on Unitholders' equity set by the Trust or the aggregate annual limit on Additional Units issuable pursuant to the Cash Payment Option, then elections for the purchase of Additional Units on such distribution payment date will be accepted: (i) first, from Participants electing the Distribution Reinvestment Option; (ii) second, from Participants electing the Premium Distribution Option; and (iii) third, from Participants electing the Cash Payment Option (if available). If the Trust is not able to accept all elections in a particular category, then purchases of Additional Units on the applicable distribution payment date will be pro rated among all Participants in that category according to the number of Additional Units sought to be purchased.

29. If the Trust determines not to issue any Unitholders' equity through the Plan on a particular distribution payment date, then all Participants will receive the Cash Distribution announced by the Trust for that distribution payment date.

30. A Participant may terminate its participation in the Plan at any time by submitting a termination form to the Plan Agent, provided that a termination form received between a distribution record date and a distribution payment date will not become effective until after that distribution payment date.

31. The Trust reserves the right to amend, suspend or terminate the Plan at any time, provided that such action shall not have a retroactive effect that would prejudice the interests of the Participants. All Participants will be sent written notice of any such amendment, suspension or termination.

32. The distribution of Additional Units by the Trust under the Plan cannot be made in reliance on certain registration and prospectus exemptions contained in the Legislation as the Plan involves the reinvestment of distributable income distributed by the Trust and not the reinvestment of dividends or interest of the Trust.

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 pursuant to the Legislation is that the trades of Additional Units by the Trust to the Plan Agent for the account of Participants pursuant to the Plan shall not be subject to the Registration and Prospectus Requirements of the Legislation provided that:

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

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

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

(i) their right to withdraw from the Plan and to make an election to receive Cash Distributions instead of Additional Units, and

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

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

(e) except in Quebec, the first trade in Additional Units acquired pursuant to this Decision will be a distribution or primary distribution to the public under the Legislation unless the conditions in paragraphs 1 through 5 of subsection 2.6(3) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied; and

(f) in Québec, the first trade in Additional Units acquired pursuant to this Decision will be a distribution unless all of the following are true:

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

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

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

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

December 19, 2003.

“Mary Theresa McLeod” “Paul M. Moore”

2.1.5 Miranda Mining Corporation - MRRS Decision

Headnote

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

Applicable Ontario Statutory Provisions

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

December 17, 2003

Jeffrey Roy
2100 Scotia Plaza
40 King Street West,
Toronto, Ontario
M5H 3C2

Attention: Jeffrey Roy

Dear Mr. Roy:

Re: Miranda Mining Corporation (the "Applicant") - application to cease to be a reporting issuer under the securities legislation of Alberta and Ontario (the "Jurisdictions")

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

As the Applicant has represented to the Decision Makers that,

- the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by less than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders in total in Canada;

- no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;

- the Applicant is applying for relief to cease to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and

- the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

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

"Charlie MacCready"

2.1.6 Dynamic Mutual Funds Ltd. - MRRS Decision

Headnote

MRRS for Exemptive relief Applications - Extension of date by which to file and obtain a receipt for the renewal prospectus in order to allow for agreed upon disclosure.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 62(1), 62(2) and 62(5).

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NOVA SCOTIA, PRINCE EDWARD ISLAND, NEWFOUNDLAND AND LABRADOR, YUKON TERRITORY AND NUNAVUT

AND

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

AND

IN THE MATTER OF
Dynamic Value Fund of Canada
Dynamic Value Balanced Fund
Dynamic Dividend Value Fund
Dynamic Canadian Dividend Fund Ltd.
Dynamic American Value Fund
Dynamic European Value Fund
Dynamic Far East Value Fund
Dynamic International Value Fund
Dynamic U.S. Small Cap Value Fund
Dynamic RSP American Value Fund
Dynamic RSP European Value Fund
Dynamic RSP Far East Value Fund
Dynamic RSP International Value Fund
Dynamic Power Canadian Growth Fund
Dynamic Power American Growth Fund
Dynamic Power American Growth Fund I Ltd.
Dynamic Power Small Cap Fund
Dynamic Power Balanced Fund
Dynamic Power Bond Fund
Dynamic RSP Power American Growth Fund
Dynamic Focus+ Canadian Fund
Dynamic Focus+ American Fund
Dynamic Focus+ Global Fund
Dynamic Focus+ Balanced Fund
Dynamic Focus+ Diversified Income Trust Fund
Dynamic Focus+ Wealth Management Fund
Dynamic Focus+ Real Estate Fund
Dynamic Focus+ Resource Fund
Dynamic Focus+ Small Business Fund
Dynamic Focus+ World Equity Fund
Dynamic Focus+ World Equity Fund I
Dynamic RSP Focus+ World Equity Fund
Commonwealth Canadian Balanced Fund
Commonwealth World Balanced Fund Ltd.

Commonwealth RSP World Balanced Fund
Dynamic Fund of Funds
Dynamic Canadian Precious Metals Fund
Dynamic Canadian Technology Fund
Dynamic Global Precious Metals Fund
Dynamic Global Resource Fund
Dynamic Global Real Estate Fund
Canada Dominion Resource Fund Ltd.
Dynamic Greater China Fund
Dynamic SAMI Fund
Dynamic World Convertible Debentures Fund
Dynamic Dividend Fund
Dynamic Dividend Income Fund
Dynamic Dollar-Cost Averaging Fund
Dynamic Income Fund
Dynamic Canadian Bond Fund
Dynamic Canadian High Yield Bond Fund I
Dynamic Canadian Government Bond Fund
Dynamic Global Bond Fund
Dynamic Money Market Fund
Dynamic Canadian Value Class
Dynamic American Value Class
Dynamic International Value Class
Dynamic Power Canadian Growth Class
Dynamic Power American Growth Class
Dynamic Power Global Growth Class
Dynamic Focus+ Canadian Class
Dynamic Focus+ American Class
Dynamic Focus+ Global Financial Services Class
Dynamic Money Market Class
(collectively, the "Dynamic Funds")

Hathaway Focus+ Canadian Fund
Hathaway Focus+ American Fund
Hathaway Focus+ World Fund
Hathaway Focus+ Wealth Management Fund
Hathaway Focus+ Balanced Canadian Fund
(collectively, the "Hathaway Funds")

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the "**Decision Maker**") in each of the provinces and territories of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon Territory and Nunavut (the "**Jurisdictions**") has received an application (the "**Application**") from Dynamic Mutual Funds Ltd. ("**Dynamic**"), manager of the Dynamic Funds and Hathaway Funds (collectively, the "**Funds**"), for a decision pursuant to securities legislation of the Jurisdictions (the "**Legislation**") that the time limits pertaining to the distribution of securities under the amended and restated simplified prospectus dated February 14, 2003, amending and restating the simplified prospectus dated December 5, 2002, and the annual information form dated December 5, 2002 of the Dynamic Funds (collectively, the "**Dynamic Prospectus**") and the amended and restated simplified prospectus dated February 14, 2003, amending and restating the simplified prospectus dated December 5, 2002, and the annual information form dated December 5, 2002 of the Hathaway Funds (collectively, the "**Hathaway Prospectus**") be extended to permit the continued distribution of units of the Funds as if the lapse date of the Dynamic Prospectus and the Hathaway Prospectus is January 12, 2004;

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

AND WHEREAS the Funds have represented to the Decision Makers that:

1. Each Fund is a reporting issuer as defined in the Legislation and is not in default of any of the requirements of such Legislation.

2. Units of the Dynamic Funds are presently offered for sale on a continuous basis in each of the Jurisdictions pursuant to the Dynamic Prospectus. The earliest lapse date under the Legislation for the distribution of securities of the Dynamic Funds pursuant to the Dynamic Prospectus is December 5, 2003.

3. Units of the Hathaway Funds are presently offered for sale on a continuous basis in each of the Jurisdictions pursuant to the Hathaway Prospectus. The earliest lapse date under the Legislation for the distribution of securities of the Hathaway Funds pursuant to the Hathaway Prospectus is December 5, 2003.

4. There have been no material changes in the affairs of any Dynamic Fund since the filing of the Dynamic Prospectus other than those for which amendments have been filed. Accordingly, the Dynamic Prospectus and the amendments thereto represent current information regarding each Dynamic Fund. The requested extensions will not affect the accuracy of information in the Dynamic Prospectus and therefore will not be prejudicial to the public interest.

5. There have been no material changes in the affairs of any Hathaway Fund since the filing of the Hathaway Prospectus. The requested extensions will not affect the accuracy of information in the Hathaway Prospectus and therefore will not be prejudicial to the public interest.

6. The Dynamic Funds filed a pro forma prospectus on November 5, 2003 under SEDAR Project #586034 in each of the Jurisdictions at least thirty days prior to the earliest lapse date of the Dynamic Prospectus.

7. The Hathaway Funds filed a pro forma prospectus on November 5, 2003 under SEDAR Project #586064 in each of the Jurisdictions at least thirty days prior to the earliest lapse date of the Hathaway Prospectus.

8. Additional time is required to resolve outstanding comments on the pro forma prospectuses described above.

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

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

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

THE DECISION of the Decision Makers pursuant to the Legislation is that the time periods provided in the Legislation as they apply to a distribution of securities under the Dynamic Prospectus and Hathaway Prospectus are hereby extended to permit the continued distribution of units of the Funds pursuant to the Dynamic Prospectus and Hathaway Prospectus as if the lapse date of the Dynamic Prospectus and Hathaway Prospectus is January 12, 2004.

December 24, 2003.

"Leslie Byberg"

2.1.7 CPE, LLC d/b/a/ C.P. Eaton & Associates - 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
CPE, LLC d/b/a/ C.P. EATON & ASSOCIATES

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 CPE, LLC d/b/a/ C.P. Eaton & Associates (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 was incorporated under the laws of the State of Connecticut 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 Rowayton, Connecticut.

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 Credit Agricole Indosuez Cheuvreux North America, 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
CREDIT AGRICOLE INDOSUEZ CHEUVREUX NORTH AMERICA, 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 Credit Agricole Indosuez Cheuvreux North America, 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 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 Wells Fargo Investments 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
WELLS FARGO INVESTMENTS 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 Wells Fargo Investments 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 San Francisco, California.

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"

2.1.10 Peregrine Capital Management, Inc. - 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
PEREGRINE CAPITAL MANAGEMENT, 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 Peregrine Capital Management, 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 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 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.

October 30, 2003.

"David M. Gilkes"

2.1.11 Santander Central Hispano Investment Securities 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
SANTANDER CENTRAL HISPANO INVESTMENT SECURITIES 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 Santander Central Hispano Investment Securities 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 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.

October 30, 2003.

“David M. Gilkes”

2.1.12 Susquehanna Financial Group, LLLP - 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
SUSQUEHANNA FINANCIAL GROUP, LLLP

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 Susquehanna Financial Group, LLLP (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 Bala Cynwyd, Pennsylvania.

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 30, 2003.

"David M. Gilkes"

2.1.13 Wachovia Capital Markets, 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
WACHOVIA CAPITAL MARKETS, 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 Wachovia Capital Markets, 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 Charlotte, North Carolina.

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 30, 2003.

"David M. Gilkes"

2.1.14 State Street Research & Management Company - 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
STATE STREET RESEARCH & MANAGEMENT COMPANY

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 State Street Research & Management Company (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 adviser. The head office of the Applicant is located in Boston, Massachusetts.

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 28, 2003.

"David M. Gilkes"

2.1.15 Pinnacle Associates 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
PINNACLE ASSOCIATES 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 Pinnacle Associates 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 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.

October 28, 2003.

“David M. Gilkes”

2.1.16 Commerzbank Capital Markets 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
COMMERZBANK CAPITAL MARKETS 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 Commerzbank Capital Markets 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 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"

2.1.17 SoundView Technology Corporation - 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
SOUNDVIEW TECHNOLOGY CORPORATION

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 SoundView Technology Corporation (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 Old Greenwich, Connecticut.

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"

2.1.18 McDonald Investments 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
McDONALD INVESTMENTS 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 McDonald Investments 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 Ohio 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 Cleveland, Ohio.

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 2, 2003.

"David M. Gilkes"

2.1.19 B-Trade Services 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
B-TRADE SERVICES 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 B-Trade Services 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 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"

2.1.20 EnCana Corporation - 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
ENCANA CORPORATION

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 EnCana Corporation (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); and

   1.2 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 a reporting issuer or equivalent in each of the Jurisdictions;

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

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

   4.5 the Filer is active in capital markets outside Canada where it competes for capital with foreign issuers, routinely offering securities in the US;

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

   4.7 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;

   4.8 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;

   4.9 disclosure concerning oil and gas activities routinely provided by issuers in the US (US

Disclosure Practices) differs from the Canadian Disclosure Requirements; and

4.10 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

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

4.10.2 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;

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;

7.1.1.2 a modified report of independent 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 **Non-Conventional Oil and Gas Activities** –

7.1.4.1 the Filer may present information about its non-conventional oil and gas activities applying the FASB Standard despite any indication to the contrary in the FASB Standard;

7.1.4.2 the Filer may present information about its non-conventional oil and gas activities in a form that is consistent with US Disclosure Practices;

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

7.1.5.1 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

7.1.5.2 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 7.1.5.1(iii);

7.1.6 **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:

7.1.6.1 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,

7.1.6.2 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, identifies 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 7.1.5.1(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 so long as the information is material, and

7.1.7 for the purpose of paragraph 7.1.6.2 (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 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

7.3 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 the Canadian Disclosure Requirements will terminate in a Jurisdiction one year after the effective date in that Jurisdiction of any substantive amendment to the Canadian Disclosure Requirements unless the Decision Maker otherwise agrees in writing.

December 16, 2003.

“Glenda A. Campbell” “Stephen R. Murison”

2.1.21 Wheaton River Minerals Ltd. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from registration and prospectus requirements for distribution of securities to non-Canadian residents as part of a transaction by which issuer acquired shares of a Brazilian company – issuer is qualified to use short form prospectus – acquisition would be an indirect exempt takeover bid except that no shareholders of Brazilian company are resident in Ontario – first trade of securities subject to section 2.6(3) of Multilateral Instrument 45-102.

Applicable Ontario Statutory Provisions

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

Applicable Instruments

Multilateral Instrument 45-102 Resale of Securities – s. 2.6.

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

AND

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

AND

IN THE MATTER OF
WHEATON RIVER MINERALS LTD.

MRRS DECISION DOCUMENT

1. **WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia and Ontario (the "Jurisdictions") has received an application from Wheaton River Minerals Ltd. ("Wheaton River") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that:

   a) the registration requirement and the prospectus requirement shall not apply to the distribution of the Securities (as defined below) distributed in connection with the Acquisition (as defined below); and

   b) the first trade in the Securities will be deemed to be a distribution unless the conditions in section 2.6(3) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied;

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

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

4. **AND WHEREAS** Wheaton River has represented to the Decision Makers that:

   (a) Wheaton River is a corporation incorporated under the *Business Corporations Act* (Ontario);

   (b) Wheaton River's registered office is located at 2100 Scotia Plaza, 40 King Street West, Toronto, Ontario and its principal executive offices are located in Vancouver, British Columbia;

   (c) Wheaton River owns producing mines in Mexico, Argentina and Australia;

   (d) Wheaton River is a reporting issuer in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan;

   (e) Wheaton River's common shares ("Common Shares") are listed for trading on TSX and Amex;

   (f) Wheaton River has completed three equity offerings by way of short form prospectus within the past eight months for gross proceeds of approximately $533 million;

   (g) on October 7, 2003, a receipt was issued for Wheaton River's Short Form Prospectus for an offering of $100,012,500 in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador, and is publicly available on SEDAR;

   (h) on November 6, 2003, Wheaton River announced that it had entered into an agreement to acquire (the "Acquisition") all of the outstanding common shares (the "EBX Shares") of EBX Gold Ltda. ("EBX"); as consideration for the EBX Shares, Wheaton River will pay the vendors cash of US $25,000,000, 33,000,000 Common Shares and 21,500,000 Series B Share Purchase Warrants (the "Warrants" and,

collectively, the "Securities"); each Warrant will entitle the holder to purchase one Common Share for $3.10 at any time before August 25, 2008;

(i) EBX is the owner of the Amapari Gold Project located in the Amapa State, Brazil; Wheaton River is acquiring the EBX Shares in order to acquire the Amapari Gold Project;

(j) to the knowledge of Wheaton River,

(i) EBX is a company incorporated under the laws of Brazil;

(ii) all of the issued and outstanding EBX Shares are held by four individuals (the "Vendors"), none of whom are resident in Canada;

(k) EBX is not a reporting issuer in any province of Canada and the EBX Shares are not listed for trading on any stock exchange or other trading facility;

(l) Wheaton River and the Vendors entered into a definitive agreement dated as of December 11, 2003 setting out the terms of the Acquisition;

(m) the Acquisition will occur through a series of steps that involve recently incorporated, single purpose wholly-owned subsidiaries of Wheaton River; Wheaton River will exchange the shares of one of these subsidiaries for the EBX Shares with a company owned by the Vendors;

(n) as the final step of the Acquisition, one of the indirect subsidiaries of Wheaton River acquired by the Vendors will exercise conversion rights associated with certain securities held by that company and subscribe for the Securities;

(o) the Acquisition is, in substance, an indirect take over bid under the Legislation as Wheaton River will, indirectly, acquire all of the issued and outstanding EBX Shares in exchange for shares of one of its indirect subsidiaries, except that the offer to acquire EBX Shares is not being made to any person or company who is in British Columbia or Ontario or whose last address as shown on the books of EBX is in British Columbia or Ontario; and

(p) if the Acquisition were a take over bid under the Legislation, it would be exempt from the take over bid requirements of applicable legislation as:

(i) EBX is not a reporting issuer in either of the Jurisdictions;

(ii) there is not a published market in respect of the EBX Shares; and

(iii) there are fewer than 50 holders of EBX Shares; and

(q) following the Acquisition and the exercise of the Warrants, the Vendors will not, either individually or collectively, hold more than 20% of the voting rights attached to securities of Wheaton River;

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:

(a) the registration requirement and the prospectus requirement do not apply to the distribution of the Securities in connection with the Acquisition, provided that at the time of the distribution, there are no material facts or material changes (as defined in the Legislation) with respect to Wheaton River that have not been generally disclosed; and

(b) the first trade in the Securities will be deemed to be a distribution unless the conditions in section 2.6(3) of Multilateral Instrument 45-102 are satisfied.

December 19, 2003.

"Adrienne Salvail-Lopez"

2.1.22 NAV Energy Trust et al. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from the prospectus and registration requirements for certain trades of securities to be made in connection with a proposed plan of arrangement - relief from the continuous disclosure requirements in respect of reporting issuer – corporation deemed to be reporting issuer – relief from the requirement to have a “current” AIF filed on SEDAR.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 74, 80, 80(b)(iii), 83(1), 88(2)(b).

Ontario Rules

Rule 51-501 – AIF and MD&A.
Multilateral Instrument 45-102 Resale of Securities.

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

AND

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

AND

**IN THE MATTER OF
NAV ENERGY TRUST, NAVIGO ENERGY INC.,
NAV ACQUISITION CORP., C1 ENERGY LTD.,
NAV EXCHANGECO LTD. AND EDGE ENERGY INC.**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (collectively, the "**Decision Makers**") in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (the "**Jurisdictions**") has received an application from NAV Energy Trust (the "**Trust**"), Navigo Energy Inc. ("**Navigo**"), NAV Acquisition Corp. ("**AcquisitionCo**"), C1 Energy Ltd. ("**C1 Energy**"), NAV ExchangeCo Ltd. ("**ExchangeCo**") and Edge Energy Inc. ("**Edge**") for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") that:

A. the requirements contained in the Legislation to be registered to trade in a security (the "**Registration Requirement**") and to file a preliminary prospectus and a prospectus, and to receive receipts therefor to distribute a security (the "**Prospectus Requirement**"), in Manitoba, Ontario and Québec, shall not apply to certain trades of securities to be made in connection with a proposed plan of arrangement (the "**Arrangement**") under section 193 of the *Business Corporations Act* (Alberta) (the "**ABCA**") involving the Trust, AcquisitionCo, Navigo, C1 Energy, ExchangeCo and Edge and the security holders of Navigo;

B. the requirements contained in the Legislation with respect to AcquisitionCo (or its successor on amalgamation with Navigo ("**AmalgamationCo**")), in those Jurisdictions in which it becomes a reporting issuer or the equivalent under the Legislation, to issue a news release and file a report with the Jurisdictions upon the occurrence of a material change, file an annual report, where applicable, file interim financial statements and audited annual financial statements with the Jurisdictions and deliver such statements to security holders of AcquisitionCo and AmalgamationCo, file and deliver an information circular or make an annual filing with the Jurisdictions, where applicable, in lieu of filing an information circular, file an annual information form and provide management's discussion and analysis of financial condition and results of operations (the "**Continuous Disclosure Requirements**"), shall not apply to AcquisitionCo or AmalgamationCo;

C. C1 Energy be deemed or declared to be a reporting issuer at the effective date of the Arrangement for the purposes of the Legislation of Ontario; and

D. the requirement of C1 Energy to have a "current AIF" filed on SEDAR under Multilateral Instrument 45-102 - Resale of Securities ("**MI 45-102**") not apply;

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

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

AND WHEREAS the Trust, Navigo, AcquisitionCo, C1 Energy, ExchangeCo and Edge have represented to the Decision Makers that:

1. Navigo is a corporation incorporated and subsisting pursuant to the provisions of the ABCA;

2. the head and principal office of Navigo is located at 2500, 205 – 5th Avenue S.W., Calgary, Alberta, T2P 2V7, and its registered office is located at 1400, 350 –7th Avenue S.W., Calgary, Alberta T2P 3N9;

3. Navigo is actively engaged in the exploration for, and the acquisition, development and production of, oil and natural gas in the Provinces of Alberta and Saskatchewan;

4. the authorized capital of Navigo consists of an unlimited number of common shares ("**Common Shares**");

5. as at November 1, 2003, 35,020,481 Common Shares were issued and outstanding. Navigo has also reserved a total of 2,824,850 Common Shares for issuance pursuant to outstanding options ("**Options**") to purchase Common Shares;

6. the Common Shares are listed on the Toronto Stock Exchange (the "**TSX**");

7. Navigo is a reporting issuer in the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador and has been for more than 12 months;

8. Navigo has filed all the information that it has been required to file as a reporting issuer in each of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador and is not in default of the securities legislation in any of these jurisdictions;

9. the Trust is an open end unincorporated investment trust governed by the laws of the Province of Alberta and created pursuant to a trust indenture dated November 12, 2003 between Navigo and Computershare Trust Company of Canada, as trustee;

10. the Trust was established for the purpose of, among other things:

    (a) investing in shares of AcquisitionCo and acquiring the Common Shares and the unsecured, subordinate promissory notes issuable by AcquisitionCo (the "**Notes**") pursuant to the Arrangement;

    (b) acquiring a net profits interest pursuant to a net profits interest agreement to be entered into between AmalgamationCo and the Trust; and

    (c) acquiring or investing in other securities of AmalgamationCo and in the securities of any other entity including without limitation bodies corporate, partnerships or trusts, and borrowing funds or otherwise obtaining credit for that purpose;

11. the head and principal office of the Trust is located at 2500, 205 – 5th Avenue S.W., Calgary, Alberta, T2P 2V7;

12. the Trust was established with nominal capitalization and currently has only nominal assets and no liabilities. The only activity which will initially be carried on by the Trust will be the holding of securities of AcquisitionCo, AmalgamationCo and ExchangeCo;

13. the Trust is authorized to issue an unlimited number of trust units ("**Trust Units**") and an unlimited number of special voting rights ("**Special Voting Rights**");

14. as of the date hereof, there is one Trust Unit issued and outstanding, which is owned by Navigo, and no Special Voting Rights are outstanding;

15. the Trust has received conditional approval from the TSX for the listing on the TSX of the Trust Units to be issued in connection with the Arrangement subject to, among other things, completion of the Arrangement. The Trust Units issuable from time to time in exchange for exchangeable shares ("**Exchangeable Shares**") of AcquisitionCo will also be listed on the TSX, subject to receipt of final approval from the TSX;

16. the Trust is not a reporting issuer in any of the Jurisdictions;

17. AcquisitionCo is a wholly-owned subsidiary of the Trust and was incorporated pursuant to the ABCA on September 25, 2003. AcquisitionCo was incorporated to participate in the Arrangement by acquiring Common Shares of Navigo (other than those held by dissenting Shareholders);

18. the head and principal office of AcquisitionCo is located at 2500, 205 – 5th Avenue S.W., Calgary, Alberta, T2P 2V7 and its registered office is located at 1400, 350 – 7th Avenue S.W., Calgary, Alberta, T2P 3N9;

19. the authorized capital of AcquisitionCo currently consists of an unlimited number of common shares. Prior to the Arrangement, the articles of AcquisitionCo will be amended to create the Exchangeable Shares;

20. as of the date hereof there are one hundred (100) common shares of AcquisitionCo issued and

outstanding, which are owned by the Trust. All common shares of AmalgamationCo will be owned beneficially (directly or indirectly) by the Trust, for as long as any outstanding Exchangeable Shares are owned by any person other than the Trust or any of the Trust's subsidiaries and other affiliates;

21. AcquisitionCo is not a reporting issuer in any of the Jurisdictions;

22. C1 Energy was incorporated pursuant to the ABCA on September 25, 2003. C1 Energy has not carried on any active business since incorporation;

23. the head and principal office of C1 Energy is located at 2500, 205 – 5th Avenue S.W., Calgary, Alberta, T2P 2V7, and its registered office is located at 1400, 350 – 7th Avenue S.W., Calgary, Alberta, T2P 3N9;

24. pursuant to the Arrangement, C1 Energy will acquire, directly and indirectly, certain oil and gas assets from Navigo. Upon completion of the Arrangement, C1 Energy will be engaged in the exploration for, and acquisition, development and production of, oil and natural gas reserves, primarily in the Province of Alberta;

25. the authorized capital of C1 Energy consists of an unlimited number of C1 Energy Common Shares. Prior to the Arrangement becoming effective, the authorized capital of C1 Energy will consist of an unlimited number of C1 Energy Common Shares, an unlimited number of non-voting common shares and 1,442,000 performance shares;

26. as of the date hereof, one (1) C1 Energy Common Share is issued and outstanding;

27. C1 Energy has applied for conditional approval from the TSX for the listing on the TSX of the C1 Energy Common Shares to be issued in connection with the Arrangement subject to, among other things, completion of the Arrangement. The C1 Energy Common Shares issuable from time to time will also be listed on the TSX, subject to receipt of final approval from the TSX;

28. C1 Energy is not a reporting issuer in any of the Jurisdictions;

29. ExchangeCo was incorporated pursuant to the ABCA on September 25, 2003. ExchangeCo has not carried on any active business since incorporation;

30. the head and principal office of ExchangeCo is located at 2500, 205 – 5th Avenue S.W., Calgary, Alberta, T2P 2V7, and its registered office is located at 1400, 350 – 7th Avenue S.W., Calgary, Alberta, T2P 3N9;

31. the authorized capital of ExchangeCo consists of an unlimited number of common shares;

32. as of the date hereof, one hundred (100) common shares were issued and outstanding and owned by the Trust;

33. Edge was incorporated pursuant to the ABCA. Edge is a wholly-owned subsidiary of Navigo and is engaged in the oil and natural gas business;

34. the head and principal office of Edge is located at 2500, 205 – 5th Avenue S.W., Calgary, Alberta, T2P 2V7, and its registered office is located at 1400, 350 – 7th Avenue S.W., Calgary, Alberta, T2P 3N9;

35. the Arrangement will be effected by way of plan of arrangement (the "**Plan**") pursuant to section 193 of the ABCA. The Arrangement will require: (i) approval by not less than two-thirds of the votes cast by the shareholders (the "**Shareholders**") and the optionholders of Navigo (collectively, the "**Securityholders**") (present in person or represented by proxy), voting together as a single class, at the special meeting (the "**Meeting**") of Securityholders to be held for the purpose of approving the Arrangement, and thereafter; (ii) approval of the Court of Queen's Bench of Alberta;

36. Navigo's information circular dated November 14, 2003 (the "**Information Circular**") contains prospectus-level disclosure concerning the respective business and affairs of Navigo, C1 Energy, the Trust and AmalgamationCo and a detailed description of the Arrangement, and has been mailed to Securityholders in connection with the Meeting. The Information Circular has been prepared in conformity with the provisions of the ABCA and applicable securities laws and policies;

37. the assets that will make up the business of C1 Energy have been the subject of continuous disclosure on an ongoing basis for more than 12 months, in accordance with Navigo's responsibilities as a reporting issuer subject to the Continuous Disclosure Requirements;

38. the Arrangement provides for a transaction where, commencing at the time the Arrangement takes effect (the "**Effective Time**"), the events set out below shall be deemed to occur in the following order:

    (a) the Common Shares and Options held by dissenting Securityholders who have exercised dissent rights which remain valid immediately prior to the Effective Time shall, as of the Effective Time, be

deemed to have been transferred to Navigo and be cancelled and cease to be outstanding, and as of the Effective Time, such dissenting Securityholders shall cease to have any rights as securityholders of Navigo other than the right to be paid the fair value of their Common Shares or Options;

(b) the class A preferred shares ("**Class A Preferred Shares**"), the class D common shares ("**New Common Shares**"), the class B non-voting shares ("**Class B Non-Voting Shares**") and the class C preferred shares ("**Class C Preferred Shares**") shall be created as new classes of shares of Navigo and each Common Share, other than Common Shares held by non-resident Shareholders ("**Non Residents**"), will be exchanged pursuant to a reorganization of the capital of Navigo for one (1) Class A Preferred Share, one (1) New Common Share and one (1) Class B Non-Voting Share and the stated value of each:

(i) Class A Preferred Share shall be set at the paid up capital of each Common Share exchanged less: (A) the Class B Non-Voting Share Stated Value; and (B) $0.01;

(ii) New Common Share shall be set at $0.01; and

(iii) Class B Non-Voting Share shall initially be set at $0.45, subject to adjustment based upon the number of Common Shares outstanding immediately prior to the Effective Time (the "**Class B Non-Voting Share Stated Value**");

(c) Edge will convey certain oil and natural gas assets to C1 Energy and C1 Energy shall deliver an unsecured, subordinated promissory note issued by C1 Energy to Edge in satisfaction of the purchase price;

(d) each Class B Non-Voting Share will be transferred to C1 Energy in exchange for one (1) C1 Energy Common Share;

(e) each Class B Non-Voting Share will be exchanged pursuant to a reorganization of the capital of Navigo for one (1) Class C Preferred Share;

(f) Edge shall be dissolved, in accordance with the following:

(i) the stated capital of the common shares of Edge shall be reduced to $1.00 in aggregate;

(ii) all of the property of Edge shall be transferred to Navigo; and

(iii) Navigo shall be liable for all of the obligations of Edge;

(g) the C1 Energy Note shall be transferred by Navigo to C1 Energy in exchange for all of the Class C Preferred Shares and the issuance to Navigo of C1 Energy Common Shares;

(h) subject to the Plan, each New Common Share and each Class A Preferred Share, other than New Common Shares and Class A Preferred Shares held by Shareholders exempt from tax under Part 1 of the Tax Act ("**Tax Exempt Shareholders**") will be transferred to AcquisitionCo in accordance with the election or deemed election of the holder of such New Common Shares and Class A Preferred Shares for one (1) Trust Unit or one (1) Exchangeable Share (together with the ancillary rights associated with the Exchangeable Shares);

(i) each New Common Share and each Class A Preferred Share held by Tax Exempt Shareholders will be transferred to AcquisitionCo in exchange for one (1) Trust Unit;

(j) each Common Share held by Non Residents will be transferred to AcquisitionCo in exchange for one (1) Trust Unit and the right to receive one (1) C1 Energy Common Share;

(k) AcquisitionCo will issue one (1) Note to the Trust for each Trust Unit issued pursuant to subsections 3.1(h), (i) and (j) of the Plan;

(l) each Option (whether vested or unvested) shall cease to represent the right to acquire Common Shares and shall only entitle the holder to acquire one-third (1/3) of a Trust Unit for each Common Share which the holder was previously entitled to acquire under the Option at a price per Trust Unit equal to the existing exercise price less an amount equal to the Class B Non-Voting Share Stated Value;

(m) Navigo and AcquisitionCo shall be amalgamated and continued as one

corporation, AmalgamationCo, in accordance with the following:

(i) the stated capital of the common shares of Navigo shall be reduced to $1.00 in aggregate immediately prior to the amalgamation;

(ii) the shares of Navigo, all of which are owned by AcquisitionCo, shall be cancelled without any repayment of capital;

(iii) the articles of AmalgamationCo shall be the same as the articles of AcquisitionCo, and the name of AmalgamationCo shall be "Navigo Energy Inc.";

(iv) no securities shall be issued by AmalgamationCo in connection with the amalgamation and for greater certainty, the common shares, Notes and Exchangeable Shares of AcquisitionCo shall survive and continue to be common shares, Notes and Exchangeable Shares of AmalgamationCo without amendment;

(v) the property of each of the amalgamating corporations shall continue to be the property of AmalgamationCo;

(vi) AmalgamationCo shall continue to be liable for the obligations of each of the amalgamating corporations;

(vii) any existing cause of action, claim or liability to prosecution of either of the amalgamating corporations shall be unaffected;

(viii) any civil, criminal or administrative action or proceeding pending by or against either of the amalgamating corporations may be continued to be prosecuted by or against AmalgamationCo;

(ix) a conviction against, or ruling, order or judgment in favour of or against, either of the amalgamating corporations may be enforced by or against AmalgamationCo;

(x) the Articles of Amalgamation of AcquisitionCo shall be deemed to be the Articles of Incorporation of AmalgamationCo and the Certificate of Amalgamation of AcquisitionCo shall be deemed to be the Certificate of Incorporation of AmalgamationCo;

(xi) the by-laws of AmalgamationCo shall be the by-laws of AcquisitionCo;

(xii) the first directors of AmalgamationCo shall be the directors of AcquisitionCo;

(xiii) the first officers of AmalgamationCo shall be the officers of AcquisitionCo; and

(xiv) the registered office of AmalgamationCo shall be the registered office of AcquisitionCo;

(n) AmalgamationCo will grant a net profits interest (the "**NPI**") pursuant to a net profits interest agreement to be entered into between AmalgamationCo and the Trust to the Trust in consideration of the return of Notes in an amount equal to the fair market value of the NPI as determined by AmalgamationCo;

(o) AmalgamationCo shall deliver the C1 Energy Common Shares to the Non Residents entitled to such C1 Energy Common Shares referred to in section 3.1(j) of the Plan;

(p) each C1 Energy Non-Voting Share will be exchanged pursuant to a reorganization of capital of C1 Energy for one (1) C1 Energy Common Share; and

(q) each C1 Energy Common Share, Trust Unit and Exchangeable Share will be consolidated on the basis of one (1) C1 Energy Common Share, one (1) Trust Unit and one (1) Exchangeable Share for each three (3) outstanding C1 Energy Common Shares, Trust Units and Exchangeable Shares;

39. AmalgamationCo will become a reporting issuer under the Legislation of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador, and will be subject to the Continuous Disclosure Requirements in such Jurisdictions;

40. the Trust will become a reporting issuer under the Legislation of British Columbia, Alberta, Saskatchewan, Ontario, Québec, Nova Scotia and Newfoundland and Labrador, and will be subject to the Continuous Disclosure Requirements in such Jurisdictions;

41. C1 Energy will become a reporting issuer under the Legislation of certain of the applicable Jurisdictions (including Québec) but will not be a reporting issuer within the definitions of all of the applicable Jurisdictions at the Effective Time;

42. following the completion of the Arrangement, C1 Energy anticipates the need to carry out one or more private placements of C1 Energy Common Shares in order to fund its exploration and production activities;

43. the Exchangeable Shares provide a holder with a security having economic and voting rights which are, as nearly as practicable, equivalent to those of the Trust Units;

44. under the terms of the Exchangeable Shares and certain rights to be granted in connection with the Arrangement, holders of Exchangeable Shares will be able to exchange them at their option for Trust Units;

45. under the terms of the Exchangeable Shares and certain rights to be granted in connection with the Arrangement, the Trust, ExchangeCo or AmalgamationCo will redeem, retract or otherwise acquire Exchangeable Shares in exchange for Trust Units in certain circumstances;

46. in order to ensure that the Exchangeable Shares remain the voting and economic equivalent of the Trust Units prior to their exchange, the Arrangement provides for:

    (a) a voting and exchange trust agreement to be entered into among the Trust, AcquisitionCo, ExchangeCo and Computershare Trust Company of Canada (the "**Voting and Exchange Agreement Trustee**") which will, among other things, (i) grant to the Voting and Exchange Agreement Trustee, for the benefit of holders of Exchangeable Shares, the right to require the Trust or ExchangeCo to exchange the Exchangeable Shares for Trust Units, and (ii) trigger automatically the exchange of the Exchangeable Shares for Trust Units upon the occurrence of certain specified events;

    (b) the deposit by the Trust of a Special Voting Right with the Voting and Exchange Agreement Trustee which will effectively provide the holders of Exchangeable Shares with voting rights equivalent to those attached to the Trust Units; and

    (c) a support agreement to be entered into between the Trust, AcquisitionCo, ExchangeCo and the Voting and Exchange Agreement Trustee which will, among other things, restrict the Trust from issuing or distributing to the holders of all or substantially all of the outstanding Trust Units:

        (i) additional Trust Units or securities convertible into Trust Units;

        (ii) rights, options or warrants for the purchase of Trust Units; or

        (iii) units or securities of the Trust other than Trust Units, evidences of indebtedness of the Trust or other assets of the Trust;

    unless the same or an equivalent distribution is made to holders of Exchangeable Shares, an equivalent change is made to the Exchangeable Shares, such issuance or distribution is made in connection with a distribution reinvestment plan instituted for holders of Trust Units or a unitholder rights protection plan approved for holders of Trust Units by the board of directors of AcquisitionCo, or the approval of holders of Exchangeable Shares has been obtained;

47. the steps under the Arrangement, the terms of the Exchangeable Shares and the exercise of certain rights provided for in connection with the Arrangement and the Exchangeable Shares involve a number of trades or potential trades of securities, including Common Shares, Class A Preferred Shares, New Common Shares, Class B Non-Voting Shares, Class C Preferred Shares, common shares of Edge, C1 Energy Common Shares, C1 Energy Non-Voting Shares, C1 Energy Notes, Notes, Exchangeable Shares, Trust Units, Options, the Special Voting Right and certain rights to acquire Trust Units, Exchangeable Shares and C1 Energy Common Shares under the Arrangement, and rights to otherwise make a trade of a security that was derived from the Arrangement (collectively, the "**Trades**");

48. there are no exemptions from the Registration Requirement or the Prospectus Requirement available under the Legislation of Manitoba, Ontario and Québec for certain of the Trades;

49. the Information Circular discloses that the securities that are the subject of the Trades will be issued in reliance on exemptions, including discretionary exemptions, from the Registration Requirement and the Prospectus Requirement and discloses that application will be made to relieve AmalgamationCo from the Continuous Disclosure Requirements; and

50. the Trust will concurrently send to holders of Exchangeable Shares resident in the Jurisdictions all disclosure material it sends to holders of Trust Units pursuant to the Legislation;

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

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

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

(a) the Registration Requirement and the Prospectus Requirement contained in the Legislation of Manitoba, Ontario and Québec shall not apply to the Trades, provided that the first trade in securities acquired pursuant to the Arrangement shall be deemed to be a distribution or a primary distribution to the public;

(b) the Prospectus Requirement contained in the Legislation of Manitoba, Ontario and Québec shall not apply to the first trade in securities acquired by Shareholders under the Arrangement and the first trade of securities acquired on the exercise of all rights, automatic or otherwise, under such securities, provided that:

(i) in Manitoba and Ontario, the conditions in subsection (3) or (4), as applicable, of section 2.6 of MI 45-102 are satisfied and, for the purposes of determining the period of time that the Trust or C1 Energy has been a reporting issuer under section 2.6 of MI 45-102, the period of time that Navigo was a reporting issuer in at least one of the jurisdictions listed in Appendix B of MI 45-102 immediately before the Arrangement may be included; and

(ii) in Québec:

a. the Trust, AmalgamationCo or C1 Energy, as applicable, is and has been a reporting issuer in Québec for the 12 months immediately preceding the trade, including the period of time that Navigo was a reporting issuer in Québec immediately before the Arrangement;

b. no unusual effort is made to prepare the market or create a demand for the securities that are the subject of the trade;

c. no extraordinary commission or consideration is paid to a person or company in respect of the trade; and

d. if the selling securityholder is an insider or officer of the Trust, AmalgamationCo or C1 Energy, as applicable, the selling securityholder has no reasonable grounds to believe that the Trust, AmalgamationCo or C1 Energy, as applicable, is in default of securities legislation;

(c) the Continuous Disclosure Requirements of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (other than the requirement to file an annual information form and to file and deliver interim and annual MD&A) shall not apply to AmalgamationCo for so long as:

(i) the Trust is a reporting issuer in Québec and at least one of the jurisdictions listed in Appendix B of MI 45-102 and is an electronic filer under National Instrument 13-101;

(ii) the Trust sends to all holders of Exchangeable Shares resident

in the Jurisdictions all disclosure material furnished to holders of Trust Units under the Continuous Disclosure Requirements;

(iii) the Trust complies with the requirements of the TSX, or such other market or exchange on which the Trust Units may be quoted or listed, in respect of making public disclosure of material information on a timely basis;

(iv) AmalgamationCo is in compliance with the requirements of the Legislation to issue a press release and file a report with the Jurisdictions upon the occurrence of a material change in respect of the affairs of AmalgamationCo that is not also a material change in the affairs of the Trust;

(v) the Trust includes in all future mailings of proxy solicitation materials to holders of Exchangeable Shares a clear and concise insert explaining the reason for the mailed material being solely in relation to the Trust and not to AmalgamationCo, such insert to include a reference to the economic equivalency between the Exchangeable Shares and Trust Units and the right to direct voting at meetings of Unitholders;

(vi) the Trust remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of AmalgamationCo; and

(vii) AmalgamationCo does not issue any preferred shares or debt obligations other than debt obligations issued to its affiliates or to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions; and

(d) C1 Energy shall be deemed or declared a reporting issuer at the time of the Arrangement becoming effective for the purposes of the Legislation of Ontario.

December 17, 2003.

“Harold P. Hands” “Robert Korthals”

THE FURTHER DECISION of the Decision Makers under the legislation is that:

(e) the requirement to file an annual information form and to provide management's discussion and analysis of financial condition and results of operations shall not apply to AmalgamationCo for so long as the conditions in paragraph (c) above are complied with; and

(f) upon the completion of the Arrangement:

(i) in British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland and Labrador the requirement contained in the Legislation to have a "current AIF" filed on SEDAR in order to be a "Qualifying Issuer" under MI 45-102 shall not apply to C1 Energy provided that C1 Energy files:

a. a notice on SEDAR advising that the Information Circular has been filed as an alternate form of annual information form and identifying the SEDAR Project Number under which the Information Circular was filed and Appendix H to the Information Circular containing disclosure specific to C1 Energy; and

b. a copy of Appendix H of the Information Circular under C1 Energy's SEDAR profile; and

c. a Form 45-102F2 on or before the tenth day after the distribution day of any securities certifying that it is a Qualifying Issuer except for the

requirement to have a current AIF;

this exemption to expire 140 days after C1 Energy's financial year ended December 31, 2003; and

(ii) in Québec, C1 Energy will be exempt from the requirements of subparagraph 1(e) of decision no. 2003-C-0377 of the Commission des valeurs mobilières du Québec given that the Information Circular in connection with the Arrangement contains prospectus level disclosure including financial statements for the six months ended June 30, 2003 and the year ended December 31, 2002, for the purpose of C1 Energy qualifying for the shortened hold period. This exemption will expire on May 20, 2004.

December 17, 2003.

"Kelly Gorman"

2.1.23 Scotia Securities Inc. et al. - MRRS Decision

Headnote

MRRS Exemptive Relief Application – Variation order varying multiple prior orders of various mutual funds to permit exemption, until proposed National Instrument 81-106 is in force, from the requirement to deliver comparative annual financial statements of those mutual funds to securityholders unless requested by the securityholders.

Statutes Cited

Securities Act (Ontario), R.S.O. 1990 c. S.5, as am., s. 144.

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA, ONTARIO AND NOVA SCOTIA

AND

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

AND

IN THE MATTER OF
THE MRRS DECISION DOCUMENTS
LISTED IN SCHEDULE 'A'

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of the Provinces of Alberta, Ontario and Nova Scotia (the "Jurisdictions") has received an application from the Executive Director of the Ontario Securities Commission, Alberta Securities Commission and Nova Scotia Securities Commission for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") for a variation of the decisions listed in Schedule 'A' (the "Prior Decisions") until proposed National Instrument 81-106 – Investment Fund Continuous Disclosure comes into force, to continue the relief from the requirement to deliver comparative annual financial statements of the various mutual funds to securityholders of the mutual funds who hold units of the mutual funds in client name (the "Direct Securityholders") unless the Direct Securityholders have requested to receive them**;**

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 it has been represented by the Executive Director to the Decision Makers that:

(a) In September 2002, the Canadian Securities Administrators (the "CSA") published for first comment proposed National Instrument 81-106 ("NI 81-106") which, among other things, would permit mutual funds not to deliver annual financial statements to those securityholders who do not request them, if the Funds provide each securityholder with a request form under which the securityholder may request, at no cost to the securityholder, to receive the mutual fund's annual financial statements for that financial year.

(b) NI 81-106 would also require a mutual fund to have a toll-free telephone number for, or accept collect calls from, persons or companies that want to receive a copy of, among other things, the annual financial statements of the mutual fund.

(c) The Prior Decisions gave exemptive relief from the requirement to deliver comparative annual financial statements of the various mutual funds to the Direct Securityholders unless the Direct Securityholders requested to receive them. The relief was only given for one annual reporting period based upon the assumption that NI 81-106 would be in force by the end of 2003.

(d) NI 81-106 will be published for further comment and therefore it will not be in force by the end of 2003. The CSA expects to publish NI 81-106 for second comment by the end of 2003.

(e) As a result of NI 81-106 not being in force, the mutual funds that received prior relief under the Prior Decisions will require the relief to be extended until NI 81-106 comes into force to permit the mutual funds affected by the Prior Decisions to not have to deliver their comparative annual financial statements to the Direct Securityholders unless the Direct Securityholders requested to receive them.

(f) Extending the prior relief given in the Prior Decisions would not be prejudicial to the public interest since it would be consistent with the proposed requirements under NI 81-106.

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 are satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

AND WHEREAS the Decision Makers are satisfied that making the Decision will not adversely affect the rule-making process with respect to proposed National Instrument 81-106;

THE DECISION of the Decision Makers pursuant to the Legislation is that:

1. the Prior Decisions are hereby varied such that the mutual funds affected by the Prior Decisions shall not be required to deliver their comparative annual financial statements to the Direct Securityholders other than those Direct Securityholders who have requested to receive the financial statements until NI 81-106 comes into force provided that the same terms and conditions as in the Prior Decisions shall continue to apply;

2. this Decision shall terminate upon NI 81-106 coming into force.

December 18, 2003.

“Robert W. Davis” “Mary Theresa McLeod”

Schedule 'A'

No.	Mutual Fund Managers	Date of Decision
1.	Scotia Securities Inc.	December 5, 2002
2.	CI Mutual Funds Inc.	December 23, 2002
3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17.	AIM Funds Management Inc. Altamira Investment Services Inc. Cartier Mutual Funds Inc. Clarington Funds Inc. Co-operators Mutual Funds Limited Counsel Group of Funds Inc. Dynamic Mutual Funds Ltd. Fidelity Investments Canada Limited Franklin Templeton Investment Corp. Mackenzie Financial Corporation McLean Budden Funds Inc. National Bank Securities Inc. Phillips, Hager & North Investment Management Ltd. Putnam Investments Inc. Sceptre Investment Counsel Limited	January 16, 2003
18.	RBC Funds Inc.	January 22, 2003
19. 20. 21. 22.	Canadian Imperial Bank of Commerce CIBC Securities Inc. CIBC Asset Management Inc. Talvest Fund Management Inc.	January 27, 2003
23. 24. 25. 26.	Northwest Mutual Funds Inc. M D Funds Management Inc. M D Private Trust Company BMO Investments Inc.	March 4, 2003
27.	Ethical Funds Inc.	March 17, 2003
28.	Integra Capital Limited	April 3, 2003
29.	A G F Funds Inc.	April 17, 2003
30.	PFSL Investments Canada Ltd.	April 21, 2003

2.1.24 Open Text Corporation - MRRS Decision

Headnote

Mutual Reliance Review System for Applications – takeover bid made in Ontario by a wholly-owned subsidiary of an Ontario corporation for a German target corporation – offeror unable to determine number of Canadian holders or percentage of securities held by Canadian holders – Ontario holders hold more than 2% of the Common Shares by way of American Depositary Shares – offer made in compliance with German laws – Germany not recognized by the Commission for purposes of clause 93(1)(e) – de minimus number of shares held in Canada – bid exempt from takeover bid requirements subject to certain conditions.

Applicable Ontario Statutes

Securities Act, R.S.O. 1990, c. S.5, as amended, ss. 93(1)(e), 95-100 and 104(2)(c).

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

AND

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

AND

IN THE MATTER OF
OPEN TEXT CORPORATION

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of the provinces of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia, Newfoundland and Labrador, New Brunswick and Prince Edward Island (the “Jurisdictions”) has received an application from Open Text Corporation (the “Applicant”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the following requirements in the Legislation do not apply to trades made in connection with the proposed offer (the “Offer”) by a wholly owned subsidiary of the Applicant for the outstanding common shares (the “Common Shares”) of IXOS Software AG (the “Target”): (i) the formal take-over bid requirements, including the provisions relating to delivery of an offer and take-over bid circular and any notices of change or variation thereto, delivery of a directors’ circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up of and payment for securities tendered to a take-over bid, disclosure, financing, restrictions upon purchases of securities, identical consideration and collateral benefits (collectively, the “Take-over Bid Requirements”), (ii) the dealer registration requirements (the “Registration Requirements”), and (iii) the prospectus requirements (the “Prospectus Requirements”);

AND WHEREAS under the Mutual Reliance System for Exemptive Relief Applications (the “MRRS”), the Ontario Securities Commission (the “Commission”) is selected as the principal regulator for this application;

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

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

1. The Applicant is a corporation incorporated under the laws of Ontario, Canada and has its registered office in Waterloo, Ontario.

2. The Applicant’s common shares are listed on the Toronto Stock Exchange and quoted on the Nasdaq National Market.

3. The Applicant is a reporting issuer in the Jurisdictions and is not in default of any of the requirements of the Legislation. The Applicant is also subject to the reporting requirements of the federal securities legislation of the United States and is not in default of any of the requirements of the United States federal securities legislation.

4. The Target is incorporated under the laws of the Federal Republic of Germany.

5. As at November 3, 2003, the Target’s stated registered capital was EUR 21,530,499 represented by 21,530,499 Common Shares. As at November 3, 2003, the Target had granted outstanding stock options to employees and members of its management board exercisable to acquire, in the aggregate, 1,408,840 Common Shares. No Canadian residents hold any such stock options.

6. The Common Shares are listed on the Frankfurt Stock Exchange. The Target also has an American Depositary Share (“ADS”) program through the Bank of New York. The Target’s ADS are quoted on the Nasdaq National Market. The Common Shares are not listed for trading on any Canadian stock exchange.

7. The Target is not a reporting issuer or equivalent in any of the Jurisdictions. The Target’s securities are not listed for trading on any Canadian stock exchange.

8. As of November 12, 2003, there were 1,246,513 Target ADS outstanding, representing the right to receive an equal number of Common Shares. Common Shares deliverable upon exchange of the ADS are held on deposit by the Bank of New York, as depository under the Target's ADS.

9. On October 21, 2003, the Applicant entered into a Business Combination Agreement with the Target and a wholly-owned subsidiary of the Applicant pursuant to which, subject to the receipt of certain regulatory approvals, the Applicant made a binding commitment to commence a tender offer under the laws of Germany to purchase all of the outstanding Common Shares. Under the Offer, holders of Common Shares (including ADS) may elect to receive either 9 euros per Common Share or, in the alternative, 0.5220 of a common share in the capital of the Applicant and 0.1484 of a warrant (each warrant exercisable to purchase one common share in the capital of the Applicant).

10. The Offer is being made, and the offer document (the "Offer Document") reflecting the terms of the Offer was prepared, in compliance with the applicable securities legislation of the Federal Republic of Germany, and in particular, in compliance with the German Securities Acquisition and Takeover Act.

11. The Offer Document, which includes as an annex a prospectus prepared in accordance with German law, was approved by the applicable securities regulatory authority in Germany on November 28, 2003. The Offer Document, including the prospectus, was made available to the holders of the Common Shares on December 1, 2003 on the Internet at www.2016091ontario.de. Access to the English version of the Offer Document is restricted to individuals who confirm their status as either Canadian or U.S residents.

12. As permitted by German law, the Common Shares have been issued in the form of bearer securities. The Target does not maintain a share register and accordingly, any information in respect of the Target's shareholdings in Canada can only be determined on the basis of enquiries made to intermediaries or contacts likely or known by the Target to hold Common Shares. As a result, the Target and Applicant are unable to determine conclusively the number of Common Shares beneficially held by residents of Canada.

13. Based on information available to the Applicant as at November 18, 2003, there were 8,664,715 Common Shares held in foreign deposits in German depositary banks. Less than 0.1% of the Common Shares held in foreign deposits are held for the benefit of Canadian residents.

14. Based on information available to the Applicant as at November 12, 2003, there were nine beneficial holders of the Target's ADS resident in the provinces of Canada (seven in Ontario and two in Québec) holding an aggregate of approximately 481,503 of the Target's ADS, representing approximately 2.23% of the Common Shares. Ontario resident holders represent approximately 2.22% of the Common Shares, with the remainder being held for the benefit of Québec residents.

15. To the extent that any holder of the Common Shares (including by way of ADS) is resident in Canada, the Offer will constitute a "take-over bid" under the Legislation. The Legislation exempts a take-over bid from compliance with the formal requirements set out in the Legislation if the number of shareholders resident in a given province is fewer than 50 and their aggregate shareholding in such province is less than 2% of the outstanding shares of that class, provided that the bid is made in compliance with the laws of a jurisdiction that is recognized for such purposes.

16. The foregoing exemption is not available to the Applicant because Germany is not a recognized jurisdiction under the Legislation for such purposes and holders of Common Shares (including by way of ADS) resident in Ontario hold more than 2% of the Common Shares.

17. All of the holders of Common Shares to whom the Offer is made will be treated equally.

18. The Applicant formally launched the Offer on December 1, 2003. It will be open for acceptance under German laws until on or about January 16, 2004.

19. The Applicant issued a press release in Canada on December 2, 2003, describing the material terms of the Offer and the availability of the German language Offer Document and English convenience translation of the Offer Document to Target shareholders resident in the Jurisdictions (including those by way of ADS) on the websites of the German Financial Supervisory Authority and at www.2016091ontario.de.

20. An exemption from the Prospectus Requirements is not available in British Columbia, Québec, New Brunswick and Prince Edward Island for trades made in connection with the Offer.

21. An exemption from the Registration Requirements is not available in Québec, New Brunswick and Prince Edward Island for trades made in connection with the Offer.

22. If the requested relief is not granted, holders of the Common Shares (including holders of the Target's ADS) resident in Canada will not have the opportunity to participate in the Offer.

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

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

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

A. The Offer shall be exempt from the Take-over Bid Requirements, provided that:

(i) any material relating to the Offer that is made available to the holders of the Common Shares in Germany is made available to the holders of the Common Shares (including those by way of ADS) resident in the Jurisdictions in the same manner as those resident in Germany together with an English convenience translation of the Offer Document, and copies thereof are filed with the Decision Makers, and

(ii) the Offer and all amendments to the Offer are made in compliance with the laws of Germany;

B. The Prospectus Requirements shall not apply to trades made in connection with the Offer provided that the first trade issued by the Applicant in connection with the Offer shall be a distribution or a primary distribution to the public unless:

(i) in all Jurisdictions other than Québec, the conditions of subsection (3) of section 2.6 of Multilateral Instrument 45-102 are satisfied, and

(ii) in Québec, the Applicant is and has been a reporting issuer in Québec for the twelve months immediately preceding the alienation and is not in default of any of the requirements of the securities legislation in Québec, and

1. no unusual effort is made to prepare the market or to create a demand for the shares in the capital of the Applicant that are the subject of the alienation, and

2. no extraordinary commission or consideration is paid to a person or company in respect of the alienation; and

C. The Registration Requirements shall not apply to trades made in connection with the Offer.

December 12, 2003.

"Paul M. Moore" "Robert W. Davis"

2.1.25 Biovail Corporation - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Relief granted to certain vice presidents of a reporting issuer from the insider reporting requirements subject to certain conditions.

Statutes Cited

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

Regulations Cited

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

Rules Cited

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

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

AND

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

AND

IN THE MATTER OF
BIOVAIL CORPORATION

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Alberta, Manitoba, Newfoundland and Labrador, Nova Scotia Ontario, Quebec, and Saskatchewan (collectively, the “Jurisdictions”) has received an application from Biovail Corporation (“Biovail”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that the requirement contained in the Legislation to file insider reports shall not apply to certain individuals who are insiders of Biovail by reason of having the title Vice President;

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 Biovail has represented to the Decision Makers that:

1. Biovail is a corporation governed by the laws of Ontario with its head office located in Mississauga, Ontario;

2. Biovail is a full-service pharmaceutical company engaged in the formulation of pharmaceutical products utilizing advanced oral drug delivery technologies, clinical testing, registration, manufacturing, sale and promotion of pharmaceutical products targeting the cardiovascular (including Type II diabetes), pain management, central nervous system and niche therapeutic areas;

3. Biovail is a reporting issuer (or equivalent) in each Province of Canada and its common shares are listed on the Toronto Stock Exchange and the New York Stock Exchange;

4. Biovail is not in default of any requirements under the Legislation;

5. Currently, Biovail has seven directors (one of whom is also the Chairman and Chief Executive Officer), five Senior Vice Presidents and three Vice Presidents for a total of 15 persons who are insiders of Biovail by reason of being a director or officer (the “Insiders”);

6. None of the Insiders is exempt from the insider reporting requirements contained in the Legislation by reason of an existing exemption under National Instrument 55-101 *Exemption from Certain Insider Reporting Requirements* (“NI 55-101”) or a previous decision or order;

7. Biovail has developed a policy governing insider trading (the “Insider Trading Policy”) that applies to all of the Insiders;

8. Biovail has developed the Insider Trading Policy to ensure that its directors, officers and designated employees who are “insiders” under the Legislation are aware of their responsibilities under the Legislation and to assist them in complying with the Legislation;

9. The Insider Trading Policy also applies to other employees of Biovail who have knowledge of material undisclosed information;

10. Under the Insider Trading Policy, the Insiders and other employees with knowledge of material undisclosed information may not trade in securities of Biovail. In addition, the Insiders may not trade in securities of Biovail during “black-out” periods around the preparation of financial results or any other “black-out” period as determined by the Chairman of the Board of Directors or the Chief Legal Officer. Outside of the “black-out” periods, the Insiders are advised to contact the Chief Legal Officer to determine if they may trade in Biovail shares;

11. The Chief Legal Officer considered the job requirements and principal functions of the Insiders to determine which of them met the definition of “nominal vice president” contained in Canadian Securities Administrators Staff Notice 55-306 *Applications for Relief from the Insider Reporting Requirements by Certain Vice-Presidents* (the “Staff Notice”).

12. The Chief Legal Officer believes that Paul Maes, Vice President, Pharmaceutical Development of Biovail, meets the following criteria (the “Exempt VP Criteria”) set out in the Staff Notice:

    (a) the individual is a vice president of Biovail;

    (b) the individual is not in charge of a principal business unit, division or function of Biovail or a “major subsidiary” of Biovail (as that term is defined in NI 55-101);

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

    (d) the individual is not an insider of Biovail in any capacity other than as a vice president;

13. On an ongoing basis, the Chief Legal Officer will monitor the eligibility for the exemption under the Staff Notice of Mr. Maes and that of other employees of Biovail whose title is Vice-President and who may satisfy the Exempt VP Criteria from time to time. This will be effected by monitoring such persons’ respective job functions and responsibilities to determine if they continue to meet the Exempt VP Criteria. If Mr. Maes or any other insider no longer satisfies the Exempt VP Criteria, the Chief Legal Officer will inform such insider of the renewed obligation to file an insider report in respect of any trades in securities of Biovail; and

14. Biovail has filed with the Decision Makers in connection with this application a copy of the Insider Trading Policy.

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 requirement contained in the Legislation to file insider reports shall not apply to insiders of Biovail who satisfy the Exempt VP Criteria for so long as such insiders satisfy the Exempt VP Criteria provided that:

(a) Biovail prepares and maintains a list of all individuals who propose to rely on the exemption granted, submits the list on an annual basis to the board of directors for approval, and files the list with the Decision Makers;

(b) Biovail files with the Decision Makers a copy of its internal policies and procedures relating to monitoring and restricting the trading activities of its insiders and other persons whose trading activities are restricted by Biovail; and

(c) the relief granted will cease to be effective on the date when NI 55-101 is amended.

December 31, 2003.

“Harold P. Hands” “Suresh Thakrar”

2.1.26 Canaccord Capital Corporation - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Application to vary earlier decision to extend relief from the independent underwriter requirements contained in National Instrument 33-105 Underwriting Conflicts – earlier decision granted relief in respect of future offerings by a shareholder of the applicant, subject to certain conditions – present decision permits the applicant to participate in an offering by an issuer where the issuer is a related issuer of the applicant because of the applicant's relationship with the shareholder, subject to conditions.

Applicable Ontario Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 144.

Applicable Rules

National Instrument 33-105 Underwriting Conflicts, ss. 2.1 and 5.1.

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

AND

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

AND

IN THE MATTER OF
CANACCORD CAPITAL CORPORATION

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon (the "Jurisdictions") has received an application from Canaccord Capital Corporation (the "Filer") for a decision under the securities legislation of the Jurisdictions (the "Legislation") to vary the MRRS Decision Document dated August 19, 2003 (the "Previous Decision") which granted relief from section 2.1(2)(b) of National Instrument 33-105 *Underwriting Conflicts* ("NI 33-105") and sections 236.1, 236.2 and 237.1 of the regulation to the *Securities Act* (Québec) (collectively, the "Independent Underwriter Requirements");

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

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

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

1. its head office is located in Vancouver, British Columbia;

2. it is a wholly owned subsidiary of Canaccord Holdings Ltd. ("Canaccord Holdings");

3. the Filer is a member of the Investment Dealers Association of Canada and is registered to trade in securities under the Legislation;

4. Manufacturers Life Insurance Company ("Manulife") owns more than 20% of the outstanding voting and equity securities of Canaccord Holdings on a fully diluted basis and as a result the Filer and Manulife are "related issuers" under NI 33-105;

5. the Independent Underwriter Requirements prohibit the Filer from acting as a direct underwriter in a distribution made under a prospectus where a related issuer is the issuer or a selling securityholder in the distribution;

6. NI 33-105 provides an exemption from the Independent Underwriter Requirements where at least one registrant acting as direct underwriter acts as principal, so long as an independent underwriter underwrites not less than the lesser of (A) 20% of the dollar value of the distribution, and (B) the largest portion of the distribution underwritten by a registrant that is not an independent underwriter, or each registrant acting as direct underwriter acts as agent and is not obligated to act as principal, so long as an independent underwriter receives a portion of the total agents' fees equal to an amount not less than the less of (A) 20% of the total agents' fees for the distribution, and (B) the largest portion of the agents' fees paid or payable to a registrant that is not an independent underwriter;

7. the Previous Decision granted relief from the Independent Underwriter Requirements for future offerings in which the Filer may participate, subject to certain conditions including:

    (a) the prospectus or other disclosure document prepared in connection with the future offering complies with section 2.1(1) of NI 33-105;

(b) the prospectus or other disclosure document prepared in connection with the future offering complies with the requirements of section 2.1(3)(b) of NI 33-101;

(c) the issuer of the securities for which Manulife is the selling securityholder is not in any financial difficulty;

(d) independent underwriters will collectively underwrite a portion of the offering greater than the portion underwritten by the Filer;

(e) the only financial benefits which the Filer will receive as a result of its participating in an offering are the normal arm's length underwriting commission and reimbursement of expenses associated with a public offering in Canada; and

(f) the Filer does not participate in the decision to make the offering or in the determination of the terms of the distribution or the use of proceeds (except in the indirect circumstance where a lead underwriter enters into arrangements on behalf of underwriters that ultimately would be part of the underwriting syndicate of which the Filer becomes apart;

8. the Previous Decision grants relief only when the Filer acts as a direct underwriter in future distributions made under a prospectus where Manulife is the issuer or selling securityholder in the distribution;

9. the Filer wishes to vary the application of the Previous Decision so as to permit the Filer to participate in an offering where the issuer is a related issuer to the Filer because of the Filer's relationship with Manulife;

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 is that the Previous Decision be varied by amending recital paragraph 4, item 7 to:

"The Filer wishes to act as direct underwriter in future distributions made under a prospectus where Manulife is the issuer or a selling security holder in the distribution or where the issuer or selling security holder in the distribution is a related issuer with the Filer because of the Filer's relationship with Manulife (each a "Future Offering")";

December 19, 2003.

"Brenda Leong"

2.1.27 ENI, S.p.A. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Issuer deemed to have ceased to be a reporting issuer. Issuer has 282 beneficial security holders resident in Canada, holding 0.774% of the total issued and outstanding shares of the issuer. Issuer subject to securities legislation of the United States and Canadian security holders will continue to receive continuous disclosure required under such legislation.

Applicable Ontario Statutes

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

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

AND

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

AND

IN THE MATTER OF
ENI, S.p.A.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the Decision Maker) in each of Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Nova Scotia, Ontario and Saskatchewan (the Jurisdictions) has received an application from ENI, S.p.A. (the Issuer) for a decision pursuant to the securities legislation of the Jurisdictions (the Legislation) that the Issuer be deemed to cease to be a reporting issuer under the Legislation;

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 Issuer has represented to the Decision Makers that:

1. The Issuer is a joint stock company (*Societá per azioni* or S.p.A.) organized under the laws of the Republic of Italy.

2. The Issuer's registered and principal offices are located at Piazzale Enrico Mattei, 1, 00144, Rome, Italy.

3. The Issuer is one of the largest integrated energy companies in the world, operating in the oil and gas, electricity generation, petrochemicals, oilfield services and engineering industries.

4. The Issuer conducts business operations in approximately 70 countries worldwide.

5. The Issuer's total assets as of December 31, 2002, amounted to €65,808 million.

6. In 2002, the Issuer obtained income after taxes of €4,593 million, operating income of €8,502 million, net cash provided by operating activities of €10,578 million and net sales of €47,922 million.

7. Although the Issuer conducts business operations in Canada, such operations are relatively insignificant in comparison to the Issuer's overall global operations.

8. The Issuer is a "*reporting issuer*" or has equivalent status in each Jurisdiction and is not in default of any of the requirements of the Legislation of each Jurisdiction.

9. The Issuer has been a reporting issuer since a global public offering (the GPO) of shares of capital stock (the Shares) and American Depositary Shares (the ADSs) on November 20, 1995 (collectively, Shares and ADSs are Issuer Securities).

10. The Issuer Securities were offered by certain Canadian underwriters to investors in Canada (Canadian Offering).

11. The Canadian Offering was made on the basis of a prospectus prepared in accordance with U.S. securities laws, with certain additional Canadian disclosure included in wrap pages.

12. The Canadian Offering was made pursuant to orders of the securities regulatory authorities in each of the Canadian provinces, including the Jurisdictions, *inter alia*,

    (a) exempting the Issuer from continuous disclosure requirements, provided that the Issuer (i) complies with applicable U.S. securities laws relating to current reports and annual reports, (ii) files two copies of any material filed with the U.S. Securities and Exchange Commission (the SEC) with the Commission (a) in the case of current reports, forthwith after the earlier of the date the report is filed with the SEC and the date it is required to be filed with the SEC, and (b) in the case of

other documents, within 24 hours after they are filed with the SEC, (iii) provides any such documents to security holders whose last address as shown on the book of the Issuer is in Canada, in the manner and at the time required by U.S. securities laws and (iv) complies with the requirements of the New York Stock Exchange (the NYSE) relating to public disclosure of material information on a timely basis and forthwith issuing in Canada, and filing with Commission any press release that discloses a material change in the affairs of the Issuer; and

(b) exempting the Issuer from proxy solicitation requirements, provided that any proxies and proxy solicitation material provided to U.S. security holders are provided, at the same time and in the same manner, to security holders of the same class whose last address as shown on the books of the Issuer is in Canada.

13. Shares of the Issuer are currently listed on the Italian Stock Exchange.

14. ADSs of the Issuer are currently listed on the NYSE.

15. As of December 31, 2002, the Issuer's market capitalization was approximately €51 billion.

16. As of July 9, 2003, the Issuer's issued and outstanding capital consists of 4,002,872,176 Shares.

17. As of July 9, 2003:

(a) there are 192 beneficial holders of Issuer Securities in Ontario, representing approximately 0.581% of all Shares which are issued and outstanding;

(b) there are a total of 282 beneficial holders of Issuer Securities in Canada, representing approximately 0.774% of all Shares which are issued and outstanding; and

(c) there are fewer than 15 beneficial holders of securities of the Issuer, including debt securities, in each of the Jurisdictions other than Ontario, except for Manitoba, which has 16 beneficial holders of Issuer Securities.

18. The Issuer does not intend to offer securities, including Issuer Securities, to the public in Canada.

19. The Issuer does not intend to have Issuer Securities posted for trading on the Toronto Stock Exchange or any other Canadian exchange.

20. Following the completion of the GPO, the Issuer continues to be subject to and will continue to comply with the informational requirements of the U.S. *Securities Exchange Act of 1934*, as amended (the 1934 Act) and files reports and other information with the SEC on an ongoing basis.

21. The Issuer is not in default of any of the requirements of the 1934 Act.

22. The Issuer continues to be subject to and will continue to comply with the requirements of the NYSE relating to public disclosure of material information on a timely basis.

23. The Issuer is not in default of any of the disclosure requirements of the NYSE.

24. The Issuer has received exemptions in each of the Jurisdictions from complying with the legislative continuous disclosure requirements.

25. Rather than complying with the legislative continuous disclosure requirements, the Issuer is required only to file with the securities regulatory authorities in each of the Jurisdictions, copies of those materials filed with the SEC as required by U.S. securities law and the NYSE.

26. The Issuer's security holders resident in each of the Jurisdictions do not receive any additional benefit by the Issuer continuing to be a "*reporting issuer*" or its equivalent status in each Jurisdiction.

27. All of the Issuer's security holders resident in each of the Jurisdictions will continue to be provided with the same continuous disclosure documents that are provided to its security holders resident in the United States.

28. All of the Issuer's security holders resident in each of the Jurisdictions will continue to have immediate access to the same continuous disclosure documents through "EDGAR", the filings section of the SEC website, which are currently being provided to the securities regulatory authorities in each of the Jurisdictions.

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 Issuer is deemed to have ceased to be a reporting issuer under the Legislation, provided that the Issuer continues to provide to its security holders resident in each of the Jurisdictions with the same continuous disclosure documents that are provided to its security holders resident in the United States.

December 30, 2003.

"Theresa McLeod" "Suresh Thakrar"

2.2 Orders

2.2.1 Lake Shore Asset Management Inc. - s. 38(1) of the CFA

Headnote

Relief from the adviser registration requirement of paragraph 22(1)(b) of the Commodity Futures Act (Ontario) (CFA) granted to a non-resident adviser in connection with the proposed advisory services to be provided to a registered commodity trading manager under the CFA, subject to certain terms and conditions, pursuant to subsection 38(1) of the CFA.

Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., s. 22(1)(b) and s. 38(1).
Securities Act, R.S.O. 1990, c. S.5, as am. – Rule 35-502 – Non Resident Advisers.

IN THE MATTER OF
THE COMMODITY FUTURES ACT, RSO. 1990, c. 20

AND

IN THE MATTER OF
LAKE SHORE ASSET MANAGEMENT INC.

ORDER
(Subsection 38(1))

UPON the application of Lake Shore Asset Management Inc. (Lake Shore) to the Ontario Securities Commission (the Commission) for a ruling under subsection 38(1) of the *Commodity Futures Act*, R.S.O. 1990, c.20 (the CFA) that Lake Shore and its officers are not subject to the requirement of paragraph 22(1)(b) of the CFA;

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

AND UPON Lake Shore having represented to the Commission that:

1. Lake Shore is incorporated under the laws of Illinois and is resident in Illinois. It does not have a place of business in Ontario with partners or officers that are resident in Ontario who act as advisors on its behalf in Ontario;

2. Lake Shore is a commodity trading advisor registered with the Commodity Futures Trading Commission and a member of the National Futures Association in the United States, which permits Lake Shore to advise in respect of future and forward contracts and options on futures and forward contracts in the U.S.;

3. Lake Shore currently acts as an adviser providing discretionary portfolio management services to Ontario clients of a registered adviser under the CFA, and may in the future act as an adviser by providing such portfolio management services to clients of one or more:

   (a) registered advisers under the CFA, or

   (b) registered brokers and dealers acting as a portfolio adviser pursuant to section 44 of the Regulations to the CFA,

   (collectively the Registrants) in Ontario;

4. Lake Shore has entered into a written agreement with a Registrant which sets out the obligations and duties of Lake Shore, and a similar agreement would be entered into with any other Registrants in the future;

5. Lake Shore now provides, and will in the future only provide, discretionary portfolio management services in circumstances where:

   (a) the Registrant has agreed in a document providing rights to the client of the Registrant to be responsible for any loss that arises out of the failure of Lake Shore to:

      (i) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the client; and

      (ii) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances,

      (the standard of care), and in providing portfolio management services to the Registrant's clients this responsibility cannot be waived; and

   (b) disclosure is made to Ontario clients of the Registrant that the Registrant is responsible for any loss that arises out of the failure of Lake Shore to meet the standard of care, that there may be difficulty in enforcing legal rights against Lake Shore, and that all or substantially all of Lake Shore's assets are situated outside of Ontario;

AND WHEREAS paragraph 22(1)(b) of the CFA prohibits a person or company from acting as an adviser unless the person is registered as an adviser, or is registered as a partner or an officer of a registered adviser and is acting on behalf of a registered adviser, and the registration is in accordance with the CFA and the Regulations;

AND UPON the Commission being satisfied that to make this ruling would not be prejudicial to the public interest;

IT IS RULED, pursuant to subsection 38(1) of the CFA, that Lake Shore and its officers are not subject to the requirements of paragraph 22(1)(b) of the CFA in respect of advice provided for the benefit of clients of a Registrant, provided that:

(a) the obligations and duties of Lake Shore are set out in a written agreement with the Registrant in Ontario;

(b) the Registrant agrees in a document providing rights to the client of the Registrant to be responsible for any loss that arises out of the failure of Lake Shore to meet the standard of care in providing advice to the client of the Registrant and this responsibility is not waived;

(c) a client agreement or offering document discloses that the Registrant is responsible for any loss that arises out of the failure of Lake Shore to meet the standard of care in providing advice to the client of the Registrant and, that there may be difficulty enforcing any legal rights against Lake Shore and all or a substantial portion of Lake Shore's assets are situated outside of Ontario;

and provided that this order will terminate three years from the date hereof.

December 16, 2003.

"H. Lorne Morphy" "Suresh Thakrar"

2.2.2 Nigel Stephens Counsel Inc. - ss. 74(1) and s. 233 of Reg. 1015

Headnote

Investment Counsel and Portfolio Manager registrant (the Registrant) exempted (subject to conditions) from the dealer registration requirement, in clause 25(1)(a) of the Act, for trades in units of mutual funds, where the mutual fund is managed by the registrant, the registrant is the portfolio adviser of the mutual fund, and the trade is made to an account that is fully managed by the registrant, or an affiliate of the registrant – Portfolio manager registrant also exempt (subject to conditions) from the dealer registration requirement, in clause 25(1)(a) of the Act, for trades that consist of any act, advertisement or solicitation, directly or indirectly, in furtherance of another trade in units of such mutual funds, where the other trade is a purchase or sale that is made by or through another dealer that is registered under the Act in the appropriate category of registration.

Relief from certain conflict provisions in connection with the distribution by the Registrant of units of mutual funds which it manages – relief subject to certain conditions.

Applicable Ontario Statutory Provisions

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

Applicable Ontario Regulatory Provisions

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., ss. 233.

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

AND

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

AND

IN THE MATTER OF
NIGEL STEPHENS COUNSEL INC.

ORDER
(Subsection 74(1) of the Act and Section 233 of the Regulation)

UPON the application (the **Application**) of Nigel Stephens Counsel Inc. (the **Applicant**) for an order, pursuant to:

(a) subsection 74(1) of the Act that the requirements of section 25 of the Act to be registered as a dealer shall not apply to the Applicant or to the officers and employees of the Applicant acting on its

behalf in respect of certain activities relating to mutual funds of which the Applicant or an affiliate of the Applicant is the manager (the **Mutual Funds**); and

(b) section 233 of the Regulation that the following conflict provisions contained in sections 223 and 226 to 228 of the Regulation shall not apply to the Applicant in connection with distributing units of the Mutual Funds to the Managed Accounts (as hereinafter defined);

(i) the requirements that a registrant prepare a conflict of interest rules statement in the required form, revise the conflict statement in the event of any significant change in the information, file the statements with the Commission, and provide its customers and clients with copies of the statements (the **Conflicts Statement Requirement**);

(ii) the requirement that a registrant send or deliver to its clients a written confirmation of a securities transaction that contains certain disclosure if the security was a security of a related issuer, or in the course of a distribution, a security of a connected issuer, of the registrant (the **Trade Confirmation Requirement**);

(iii) the requirement that a registrant make certain disclosure to its client if the registrant acts as an adviser in respect of securities of a related issuer, or in the course of a distribution, securities of a connected issuer (the **Adviser Disclosure Requirement**); and

(iv) the requirement that a registrant make certain disclosure to its client and obtain the requisite specific and informed written consent of its client if a registrant acts as an adviser, exercising discretionary authority with respect to the investment portfolio or account of its client, to purchase or sell securities of a related issuer, or in the course of a distribution, securities of a connected issuer, of the registrant (the **Discretionary Management Disclosure Requirement**);

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is a corporation governed by the *Business Corporations Act* (Ontario).

2. The Applicant is registered as an adviser in the categories of investment counsel and portfolio manager and as a dealer in the category of limited market dealer in Ontario.

3. The Applicant is the manager and portfolio manager of three mutual funds: the NSC Canadian Balanced Income Fund, NSC Canadian Equity Fund and NSC Global Balanced Fund (the **Current Funds**).

4. The Current Funds are distributed in Ontario with a simplified prospectus and annual information form dated November 21, 2003.

5. The Applicant may in the future be the manager and portfolio manger of additional mutual funds (together with the Current Funds, the **Mutual Funds**).

6. Each of the Mutual Funds is or will be an open-end mutual fund trust established under the laws of the Ontario and “NSC” or “Nigel Stephens” is or will be part of the name of each Mutual Fund.

7. The Applicant carries on business primarily as an investment counsel and portfolio manager. As part of its portfolio management operations, the Applicant provides discretionary portfolio management services to investment portfolio accounts of clients (each a **Managed Account**), under which the Applicant, pursuant to a written agreement (**discretionary management agreement**) made between the Applicant and each client, makes investment decisions for the Managed Account and has full discretionary authority to trade in securities for the Managed Account without obtaining the specific consent of the client for each trade.

8. The Applicant manages most of its client’s assets on a discretionary basis utilizing segregated, custodial portfolios of securities or Mutual Funds for its clients.

9. Under the discretionary management agreements, the Applicant’s clients specifically authorize the Applicant to invest in the Mutual Funds.

10. All of the Applicant's clients receive written specific disclosure of the relationship between the Applicant and the Mutual Funds.

11. The Applicant does not and will not act as an adviser, dealer or underwriter in respect of securities of the Applicant or of a related issuer of the Applicant, or in the course of a distribution, in respect of securities of connected issuers of the Applicant other than in connection with the distribution of units of the Mutual Funds, and the Mutual Funds do not hold and will not hold securities of any related issuer of the Applicant, or in the course of a distribution, securities of a connected issuer of the Applicant, other than the securities of another Mutual Fund.

12. Incidental to its principal business of portfolio management, the Applicant wishes to distribute units of the Mutual Funds to its Managed Accounts. Except as provided for in paragraph 13 below, the Applicant will not distribute units of the Mutual Funds to persons for whom it does not have a Managed Account.

13. The Applicant also wishes to conduct marketing and wholesaling activities in respect of the Mutual Funds. "Marketing or Wholesaling Activities" means for the Applicant, a trade by the Applicant that consists of any act, advertisement or solicitation, directly or indirectly, in furtherance of another trade in securities of a Mutual Fund, where the other trade consists of:

    (i) a purchase or sale of securities of a Mutual Fund; or

    (ii) a purchase or sale of securities of a Mutual Fund of which the Applicant acts as the "principal distributor" of the Mutual Fund for the purposes of NI 81-102;

    and where the purchase or sale is, in each case, made by or through another dealer that is registered under the Act where the trade is made in a category that permits it to act as a dealer for such trade.

14. Without the relief requested, the Applicant would require registration as a mutual fund dealer in order to (a) distribute shares or units of the Mutual Funds to investors for whom the Applicant has Managed Accounts where no registration exemption is available under the Act, and (b) conduct Marketing and Wholesaling Activities in respect of the Mutual Funds.

15. Without the relief requested, the Applicant would be subject to Rule 31-506 *SRO Membership – Mutual Fund Dealers* which requires mutual fund dealers to apply for and maintain membership in the Mutual Fund Dealers Association of Canada (the **MFDA**).

16. The effect of the MFDA's membership rules is to preclude a mutual fund dealer from conducting its principal business of acting as an investment counsel and accepting discretionary portfolio management mandates.

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

IT IS HEREBY ORDERED pursuant to section 74(1) of the Act that the requirements in section 25 of the Act shall not apply to trades in units of Mutual Funds made by the Applicant through its officers and employees acting on its behalf (each a **Registrant Representative**), to Managed Accounts, provided that:

(i) the Applicant is, at the time of the trade, registered under the Act as an adviser in the categories of "investment counsel" and "portfolio manager" and as a dealer in the category of "limited market dealer";

(ii) the trade is made on behalf of the Applicant by a Registered Representative who is, at the time of the trade, either (i) registered under the Act to act on behalf of the Applicant as an adviser in the categories of "investment counsel" and "portfolio manager" or (ii) acting under the direction of such a person and is himself or herself registered under the Act to trade on behalf of the Applicant pursuant to its limited market dealer registration; and

(iii) this Order shall terminate one year after the coming into force, subsequent to the date of this Order, of a rule or other regulation under the Act that relates, in whole or part, to any trading by persons or companies that are registered under the Act as portfolio managers (or the equivalent), in securities of a mutual fund, to an account of a client, in respect of which the person or company has full discretionary authority to trade in securities for the account, without obtaining the specific consent of the client to the trade, but does not include any rule or regulation that is specifically identified by the Commission as not applicable for these purposes.

AND, IT IS HEREBY ORDERED pursuant to section 74(1) of the Act that the requirements in section 25 of the Act shall not apply to trades that consists of Marketing or Wholesaling Activities in respect of shares or units of Mutual Funds made by the Applicant through Registrant Representatives, provided that, in the case of each such trade, the Applicant is, at the time of the trade, registered under the Act as a dealer in the category of "limited market dealer" and the Registrant Representative that makes the trade on behalf of the Applicant is, at the

time of the trade, registered under the Act to trade on behalf of the Applicant pursuant to its limited market dealer registration.

AND, IT IS HEREBY ORDERED pursuant to section 233 of the Regulation, that:

(a) the Applicant is exempt from the Conflicts Statement Requirement;

(b) the Trade Confirmation Requirement and the Adviser Requirement does not apply to the distribution of the units of the Mutual Funds by the Applicant to the Managed Accounts; and

(c) the Applicant is exempt from the Discretionary Management Disclosure Requirement in respect of the units of the Mutual Funds provided the Applicant obtains the client's specific and informed consent to purchase or sell the units of the Mutual Funds.

November 28, 2003.

"Paul M. Moore" "Wendell S. Wigle"

2.2.3 Gerdau Ameristeel Corporation and GUSAP Partners - ss. 80(b)(iii) and 88(2), s. 15.1 of NI 44-101, s. 5.1 of OSC Rule 51-501 and s. 6.1 of OSC Rule 13-502

Headnote

Exchange offer of co-issued notes - exemptions from short form prospectus eligibility requirements, short form prospectus requirements, continuous disclosure requirements, AIF and MD & A requirements and fees, subject to conditions.

Statute Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 75, 77, 78, 79, 81(2), 80(b)(iii) and 88(2).

Rules Cited

National Instrument 44-101 Short Form Prospectus Distributions, s. 15.1.
Ontario Securities Commission Rule 13-502 Fees, ss. 2.2, 6.1.
Ontario Securities Commission Rule 51-501 AIF and MD & A, s. 2.1, 4.1, 5.1.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S.5, as amended (the "Act"),
NATIONAL INSTRUMENT 44-101 ("NI 44-101"),
ONTARIO SECURITIES COMMISSION RULE 51-501 ("RULE 51-501"), AND
ONTARIO SECURITIES COMMISSION RULE 13-502 ("RULE 13-502")

AND

IN THE MATTER OF
GERDAU AMERISTEEL CORPORATION AND GUSAP PARTNERS

EXEMPTION AND ORDER
(Section 15.1 of NI 44-101, Sections 80(b)(iii) and 88(2) of the Act, Section 5.1 of Rule 51-501, and Section 6.1 of Rule 13-502)

UPON the application of Gerdau Ameristeel Corporation (the "Corporation") and GUSAP Partners ("GUSAP") (collectively referred to as the "Applicants") to the Ontario Securities Commission (the "Commission") for an order:

(a) pursuant to section 15.1 of NI 44-101 exempting GUSAP from the qualification criteria for filing a short form prospectus under Part 2 of NI 44-101 with respect to the proposed offering of Exchange Notes (as defined below);

(b) pursuant to section 15.1 of NI 44-101 exempting GUSAP from the short form prospectus disclosure requirements

found in NI 44-101 with respect to the proposed offering of Exchange Notes;

(c) pursuant to section 6.1 of Rule 13-502 exempting GUSAP from the requirement in section 2.2 of Rule 13-502 to pay a participation fee for each of its financial years relating to its status as a reporting issuer upon the filing of the prospectus; and

(d) pursuant to sections 80(b)(iii) and 88(2) of the Act and section 5.1 of Rule 51-501 exempting GUSAP from the requirements to report material changes, to prepare, file and deliver to holders of the Exchange Notes audited annual financial statements, to prepare and file annual information forms (and management's discussion and analysis of financial condition and results of operations), to prepare, file and deliver unaudited interim financial statements, to prepare and file interim management's discussion and analysis of financial condition and results of operations and to file a report in place of an information circular as set out in sections 75, 77, 78, 79 and 81(2) of the Act and Rule 51-501;

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

AND UPON the Corporation and GUSAP having represented to the Commission that:

1. The Corporation is incorporated in Ontario and is a reporting issuer or the equivalent in each of the provinces and territories of Canada that provides for a reporting issuer regime. The Corporation is also a registrant with the Securities and Exchange Commission (the "SEC") in the United States.

2. The Corporation has been a reporting issuer in Ontario since June 10, 1986. Its common shares and debentures are listed on the Toronto Stock Exchange under the symbols "GNA" and GNA.DB", respectively.

3. As a result of its reporting issuer status, the Corporation is required to comply with all timely and continuous disclosure filing requirements under the Act.

4. To its knowledge, the Corporation is not in default of any requirement under the securities legislation of the Province of Ontario.

5. GUSAP is a partnership formed under Delaware law, between two Canadian corporations (the Corporation and its wholly-owned subsidiary, Gerdau Ameristeel MRM Special Sections Inc.). GUSAP is a financing subsidiary that was created for the purpose of borrowing and providing funds to the Corporation and its subsidiaries. In addition to the Notes, GUSAP is also a co-borrower under the Corporation's senior credit facility entered into on June 27, 2003.

6. GUSAP has no operations, revenues or cash flows other than those related to the financing of the Corporation and its subsidiaries. The assets and liabilities of GUSAP are reported on the consolidated balance sheet of the Corporation. GUSAP is not a reporting issuer in any jurisdiction in Canada and is not a registrant with the SEC.

7. On January 27, 2003, the Applicants completed the private offering of US$405,000,000 aggregate principal amount of 10 3/8% senior notes due 2011 (the "Existing Notes"). The Existing Notes were sold in the United States to qualified institutional buyers and were also sold in Ontario to one accredited investor who purchased directly from the Applicants and to one wholly-owned subsidiary of the Corporation's parent company. The two Ontario purchasers purchased the Existing Notes pursuant to prospectus and registration exemptions. The Existing Notes have not been listed and are not freely tradeable under the securities laws of Canada or the United States. The Ontario purchasers agreed that the Existing Notes could only be sold through a registered dealer or pursuant to an applicable exemption from the registration requirements of applicable securities laws and in accordance with, or pursuant to an exemption from, the prospectus requirements of such laws.

8. As a condition of that private offering, the Applicants entered into a registration rights agreement (the "Registration Rights Agreement") with the initial purchasers of the Existing Notes pursuant to which the Applicants agreed, among other things, to complete an exchange offer for the Existing Notes. The Applicants intend to fulfill their obligation under the Registration Rights Agreement by exchanging the Existing Notes for new notes with the same terms and conditions as the Existing Notes (the "Exchange Notes"). (The Existing Notes and the Exchange Notes are sometimes collectively referred to as the "Notes".)

9. The Existing Notes may be exchanged for Exchange Notes upon the terms and subject to the conditions to be set forth in a prospectus and letter of transmittal (the "Exchange Offer").

10. The Existing Notes were, and the Exchange Notes will be, issued by both of the Applicants, as co-obligors. Each Applicant is unconditionally obligated to pay interest and principal on the Notes in accordance with the indenture entered into with SouthTrust Bank as trustee, dated as of June 27, 2003. This co-obligor structure was

used rather than a more conventional guarantor structure as a result of tax considerations.

11. The Notes are unconditionally guaranteed by a number of subsidiaries of the Corporation and GUSAP (the "Guarantors").

12. The Corporation is eligible to use the southbound multi-jurisdictional disclosure system ("MJDS") with respect to the offering of its Exchange Notes. GUSAP is not eligible to use the MJDS with respect to its offering of Exchange Notes.

13. A preliminary prospectus and final prospectus (together, the "Prospectus") qualifying the Exchange Notes will be filed with the Commission and with the SEC. The filing will be made with the SEC under a hybrid combined registration statement on Form F-10 and Form F-4 and will also register the guarantees of the Guarantors.

14. The Corporation is eligible to file a short form prospectus pursuant to section 2.4 of NI 44-101 in connection with its offering of Exchange Notes.

15. GUSAP is not eligible to file a short form prospectus in connection with its offering of Exchange Notes. However, if the Corporation were the guarantor of the Exchange Notes rather than the co-issuer, GUSAP would have been eligible to file a short form prospectus in connection with its offering of Exchange Notes.

16. The Prospectus will contain full, true and plain disclosure of all material facts relating to the Exchange Notes. In addition, the Prospectus will contain detailed disclosure on the business of the Corporation and will include and incorporate by reference comprehensive financial information relating to the Corporation.

17. The Prospectus will also contain the following information:

    (a) GUSAP's jurisdiction of organization and ownership;

    (b) GUSAP's head and registered office;

    (c) a description of the intercorporate relationships among the Corporation and the Corporation's material subsidiaries (including GUSAP);

    (d) a summary description of the business of GUSAP;

    (e) the identity of each of the Guarantors;

    (f) financial information relating to GUSAP and the Guarantors contained in a note to the financial statements of the Corporation as described below;

    (g) a statement summarizing the relief obtained by GUSAP in this order; and

    (h) a certificate signed by the Chief Executive Officer and Chief Financial Officer of one of GUSAP's general partners and two of GUSAP's managers.

18. Following the effectiveness of the registration statement of which the Prospectus will form a part, financial disclosure of the type required by the U.S. Securities Act of 1933, as amended, in respect of guarantors will be provided with respect to GUSAP and the Guarantors in a note to the financial statements of the Corporation required to be filed pursuant to Sections 77 and 78 of the Act. This financial disclosure will consist of a balance sheet that includes current assets, non-current assets, current liabilities and non-current liabilities, an income statement that includes revenues, gross profits, income from continuing operations and net income, and a cash flow statement, in each case as at the date and for each of the periods for which financial statements for the Corporation are included in the Prospectus. The balance sheets, income statements and cash flow statements will each be presented with separate columns for each of the Corporation, GUSAP, the Guarantors, the non-Guarantor subsidiaries, consolidating adjustments and the total consolidated amounts.

19. The Prospectus will contain a contractual right of rescission for the benefit of the holders of the Notes.

20. GUSAP will become a reporting issuer in the province of Ontario upon the filing of the final prospectus in respect of the offering of the Exchange Notes and will be required to report material changes and to prepare, file and deliver to holders of the Exchange Notes audited annual financial statements, to prepare and file annual information forms (and management's discussion and analysis of financial condition and results of operations), to prepare, file and deliver unaudited interim financial statements, to prepare and file interim management's discussion and analysis of financial condition and results of operations and to file an annual report in place of an information circular as set out in sections 75, 77, 78, 79 and 81 of the Act and Rule 51-501.

21. GUSAP has no operations, revenues or cash flow other than in connection with the financing of the Corporation and its subsidiaries. All of GUSAP's assets and liabilities are reflected on the consolidated balance sheet of the Corporation. Separate financial information with respect to GUSAP in addition to that described in representation 18 would not be meaningful or informative for noteholders.

22. Because the Corporation is co-obligor with GUSAP in respect of the Notes, it is information with respect to the affairs and financial performance of the Corporation and its consolidated subsidiaries (including GUSAP and the Guarantors) that is meaningful to holders of the Exchange Notes. The compliance by the Corporation with its obligations as a reporting issuer and the delivery by the Corporation to holders of the Exchange Notes of the same material delivered to shareholders of the Corporation would provide holders of the Exchange Notes and the general investing public with all information required in order to make an informed decision relating to an investment in the Exchange Notes. In addition, financial information in the prospectus will be presented on a consolidated basis, incorporating GUSAP's financial results. Note disclosure to the financial information will separately identify GUSAP's results from the consolidated results of the Corporation as described in representation 18.

23. It is not intended that GUSAP will access the capital markets in Canada or elsewhere through a further public issue of securities.

24. The Corporation, GUSAP's parent, is a co-issuer of the notes offered under the Prospectus and is already a reporting issuer. As such, the Corporation has paid the participation fee required under Rule 13-502 for itself for the current financial year.

AND WHEREAS the Director and the Commission are satisfied that it would not be prejudicial to the public interest to grant the relief requested;

IT IS HEREBY ORDERED by the Director:

(a) pursuant to section 15.1 of NI 44-101 that GUSAP is exempt from the qualification criteria for a short form prospectus under Part 2 of NI 44-101 in connection with the offering of the Exchange Notes and is eligible to file a short form prospectus relating to the offering of the Exchange Notes under NI 44-101;

(b) pursuant to section 15.1 of NI 44-101 that GUSAP's short form prospectus relating to the Exchange Notes is exempt from the prospectus disclosure requirements set out in NI 44-101, provided that the disclosure set out in representation 17 is included in the prospectus;

(c) pursuant to section 6.1 of Rule 13-502, that GUSAP is exempt from the requirement in section 2.2 of Rule 13-502 to pay a participation fee for each of its financial years, for so long as:

(i) GUSAP continues to be exempt from continuous disclosure requirements;

(ii) GUSAP remains a wholly-owned subsidiary of the Corporation;

(iii) the Corporation is a reporting issuer under Ontario securities legislation;

(iv) the Corporation has paid its participation fee pursuant to section 2.2 of Rule 13-502, and in calculating its fees, has included the market value of each class or series of corporate debt of GUSAP outstanding at the relevant time; and

(v) GUSAP does not issue any further securities to the public,

provided further that upon any further issuance of securities to the public of GUSAP, a participation fee shall be immediately paid by GUSAP in respect of the financial year during which such securities are issued (such fee to be pro-rated to reflect the number of complete months remaining in such financial year) and in respect of subsequent financial years during which such securities remain outstanding;

(d) pursuant to section 5.1 of Rule 51-501 that GUSAP is exempt from the requirement to file an annual information form, provided that the Corporation files with the Commission under GUSAP's SEDAR profile its annual information form on the same day that such annual information form is filed under the Corporation's SEDAR profile in compliance with the requirements of section 2.1 of Rule 51-501;

(e) pursuant to section 5.1 of Rule 51-501 that GUSAP is exempt from the requirement to file annual management's discussion and analysis ("MD&A"), provided that the Corporation files with the Commission under GUSAP's SEDAR profile its annual MD&A on the same day that such annual MD&A is filed under the Corporation's SEDAR profile in compliance with the requirements of section 2.2 of Rule 51-501;

(f) pursuant to section 5.1 of Rule 51-501 that GUSAP is exempt from the requirement to file interim MD&A, provided that the Corporation files with the Commission under GUSAP's SEDAR profile its interim MD&A on the same day that such interim MD&A is filed under the Corporation's SEDAR profile in compliance with the requirements of section 4.1 of Rule 51-501; and

(g) pursuant to section 5.1 of Rule 51-501 that GUSAP is exempt from the requirement in Part 3 and section 4.3 of Rule 51-501 to deliver the annual and interim MD&A, respectively, to its security holders provided that GUSAP delivers the Corporation's annual and interim MD&A to GUSAP's security holders at the same time and in the same manner as if the holders of Notes were holders of the common shares of the Corporation,

provided that for (d) through (g):

(i) the Corporation remains a reporting issuer under Ontario securities legislation;

(ii) GUSAP remains a wholly-owned subsidiary of the Corporation; and

(iii) the Corporation and GUSAP remain co-obligors of the Notes.

December 2, 2003.

"Charlie MacCready"

AND IT IS FURTHER ORDERED by the Commission

(a) pursuant to section 80(b)(iii) of the Act that GUSAP is exempt from the requirement in section 75 of the Act to report material change reports, provided that the Corporation files with the Commission under GUSAP's SEDAR profile its material change reports on the same day that such material change reports are filed under the Corporation's SEDAR profile in compliance with the requirements of section 75 of the Act and that if there is a material change in respect of the business, operations, or capital of GUSAP that is not a material change in respect of the Corporation, GUSAP will comply with section 75 of the Act, notwithstanding that the change may not be a material change in respect of the Corporation;

(b) pursuant to section 80(b)(iii) of the Act that GUSAP is exempt from the requirement in section 77 of the Act to file interim financial statements with the Commission provided that the Corporation files with the Commission under GUSAP's SEDAR profile its interim financial statements on the same day that such interim financial statements are filed under the Corporation's SEDAR profile in compliance with the requirements of section 77 of the Act;

(c) pursuant to section 80(b)(iii) of the Act that GUSAP is exempt from the requirement in section 78 of the Act to file comparative financial statements with the Commission provided that the Corporation files with the Commission under GUSAP's SEDAR profile its comparative financial statements on the same day that such comparative financial statements are filed under the Corporation's SEDAR profile in compliance with the requirements of section 78 of the Act;

(d) pursuant to section 80(b)(iii) of the Act that GUSAP is exempt from the requirement in section 79 of the Act to deliver financial statements to its security holders provided that GUSAP delivers the Corporation's financial statements to GUSAP's security holders at the same time and in the same manner as if the holders of Notes were holders of the common shares of the Corporation;

(e) pursuant to section 88(2) of the Act that GUSAP is exempt from the requirement in section 81(2) of the Act to file with the Commission a report prepared and certified in accordance with the regulations provided that GUSAP files with the Commission under GUSAP's SEDAR profile the Corporation's information circular on the same day that such information circular is filed under the Corporation's profile in compliance with the requirements of section 81 of the Act;

provided that for (a) through (e):

(i) the Corporation remains a reporting issuer under Ontario securities legislation;

(ii) GUSAP remains a wholly-owned subsidiary of the Corporation;

(iii) the Corporation and GUSAP remain co-obligors of the Notes; and

(iv) in the case of all financial information filed by the Corporation, note disclosure sets out results of GUSAP and the Guarantors separately from the consolidated results of the Corporation as described in representation 18.

December 2, 2003.

"Paul M. Moore" "Mary Theresa McLeod"

2.2.4 AIM Funds Management Inc. - s. 147

Headnote

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

Statutes Cited

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

Regulations Cited

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

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

AND

**IN THE MATTER OF
AIM FUNDS MANAGEMENT INC.**

AND

**INVESCO STRUCTURED CORE U.S. EQUITY FUND,
and
INVESCO INTERNATIONAL EQUITY FUND
(the "Existing Pooled Funds")**

**ORDER
(Section 147 of the Act)**

UPON the application (the "Application") of AIM Funds Management Inc., carrying on business as AIM Trimark Investments ("AIM Trimark"), the manager of the Existing Pooled Funds and other pooled funds established and managed by AIM Trimark from time to time (collectively the "Pooled Funds") to the Ontario Securities Commission (the "Commission") for an order pursuant to section 147 of the Act exempting the Pooled Funds from filing with the Commission the interim and annual financial statements prescribed by subsections 77(2) and 78(1), respectively, of the Act.

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

AND UPON AIM Trimark having represented to the Commission that:

1. AIM Trimark is a corporation existing under the laws of Ontario with its head office in Toronto, Ontario. AIM Trimark is, or will be, the manager of the Pooled Funds. AIM Trimark is registered under the Act as an adviser in the categories of

investment counsel and portfolio manager and a limited market dealer and under the *Commodity Futures Act* (Ontario) in the category of commodity trading manager.

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

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

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

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

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

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

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

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

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

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

(b) AIM Trimark will retain the Financial Statements indefinitely;

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

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

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

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

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

December 23, 2003.

"Harold P. Hands" "Suresh Thakrar"

2.2.5 GrowthWorks WV Opportunity Fund Inc. - s. 144

Headnote

Variation order granted to labour sponsored investment fund corporation to permit it to pay certain revised specified distribution costs out of fund assets contrary to section 2.1 of National Instrument 81-105 Mutual Fund Sales Practices.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am. s. 144.

Rules Cited

National Instrument 81-105 Mutual Fund Sales Practices.

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

AND

**IN THE MATTER OF
NATIONAL INSTRUMENT 81-105
MUTUAL FUND SALES PRACTICES (NI 81-105)**

AND

**IN THE MATTER OF
GROWTHWORKS WV OPPORTUNITY FUND INC.
(FORMERLY WORKING VENTURES
OPPORTUNITY FUND INC.)**

**ORDER
(Section 144 of the Act)**

WHEREAS the Ontario Securities Commission (the Commission) issued an order dated December 22, 2000 (the Prior Order) pursuant to section 9.1 of NI 81-105 upon the application of Working Ventures II Technology Fund Inc. (the WV II Fund). The Prior Order granted relief from section 2.1 of NI 81-105 in respect of the WV II Fund paying certain distribution costs to participating dealers or their representatives;

AND WHEREAS the Commission issued a variation order dated January 13, 2003 (the Prior Variation Order) pursuant to section 144 of the Act upon the application of WV II Fund. This Prior Variation Order varied the Prior Order to provide relief from section 2.1 of NI 81-105 for the WV II Fund to pay certain revised distribution costs to participating dealers or their representatives;

AND WHEREAS WV II Fund changed its name to Working Ventures Opportunity Fund Inc. On October 30, 2003, Working Ventures Opportunity Fund Inc. changed its name to GrowthWorks WV Opportunity Fund Inc. (the Fund);

AND WHEREAS the Fund has applied to the Commission for an order, pursuant to section 144 of the Act, revoking and restating the Prior Variation and Prior Order with this order to allow the Fund to pay certain revised distribution costs directly;

AND WHEREAS the Fund has represented to the Commission that:

1. The Fund is a labour-sponsored investment fund corporation registered under the *Community Small Business Investment Funds Act* (Ontario), a prescribed labour-sponsored venture capital corporation under the *Income Tax Act* (Canada) and a mutual fund under the Act.

2. The outstanding capital of the Fund consists of Class A Shares, which are widely held, 1,000 Class B Shares held by the Canadian Federation of Labour as the sponsor of the Fund and an unlimited number of Class C Shares, issuable in series, of which 1,500,000 Class C Shares, Series 1 are held by GrowthWorks WV Canadian Fund Inc.

3. Effective November 1, 2003, the Fund is managed by GrowthWorks WV Management Ltd. (the Manager).

4. The Class A Shares of the Fund are currently qualified for sale under a prospectus dated January 20, 2003, as amended (the Current Prospectus).

5. As part of the its efforts to improve investor choice, the Fund announced on November 11, 2003 that it would be seeking shareholder approval at a special meeting of shareholders (the Special Meeting) to adopt a new share structure under which its Class A Shares would be issuable in series and to offer a second commission structure on some of the new series.

6. On December 3, 2003 under SEDAR Project #596596, the Fund filed a preliminary prospectus for the offering of new series of Class A Shares (the Preliminary Prospectus). The new series of Class A Shares offer six different investment focuses on the non-venture portion of the investment portfolio. Each investment focus is offered with a choice of two commissions structures.

7. As described in the Preliminary Prospectus, the currently issued Class A Shares will, subject to shareholder approval, be redesignated as the first series of Class A Shares named “WV Opportunity”, but will no longer be offered for sale. It is intended that new series of Class A Shares offered from time to time by the Fund will be designated by the Board of Directors of the Fund either as Commission I or Commission II.

8. Due to recent changes in Canadian Generally Accepted Accounting Principles (GAAP) affecting the accounting treatment of deferred sales commissions, the Fund is proposing the following revised sales commission structures:

   With respect to new series of Class A Shares designated as Commission I,

   (a) An up-front sales commission of 6% of the purchase price will be paid by the Manager to dealers who sell those new series of Class A Shares;

   (b) A quarterly service fee at annual rate of 0.5% per annum based on the average daily net asset value of those new series of Class A Shares held by the clients of the registered dealer will be paid by the Fund to the registered dealers (the Commission I Service Fees);

   With respect to new series of Class A Shares designated as Commission II,

   (c) An up-front sales commission of 9.3% of the purchase price (which is comprised of 6% plus an additional 3.3% in lieu of any annual service fees before the eighth anniversary of the date of the purchase) be paid by the Manager to dealers who sell those new series of Class A Shares;

   (d) No service fee will be paid prior to the eighth anniversary of the date of purchase of those new series of Class A Shares. After the eight years, the Fund will pay a quarterly service fee at an annual rate of 0.5% of the average net asset value of those Class A Shares held by the dealers' clients (the Commission II Service Fees);

   With respect to all new series of Class A Shares designated as either Commission I or II,

   (e) the Fund may enter into co-operative advertising programs with participating dealers distributing Class A Shares in compliance with NI 81-105,

   (collectively, the New Distribution Costs).

9. Payments of the New Distribution Costs are permitted under NI 81-105, except for the Commission I Service Fees and the Commission II Service Fees.

10. The Commission I Service Fees and the Commission II Service Fees will be expensed in the fiscal period when incurred;

AND WHEREAS the Commission is satisfied that to do so would not be prejudicial to the public interest;

IT IS ORDERED pursuant to section 144 of the Act, the Commission hereby revokes and restate the Prior Variation Order and the Prior Order with this order to exempt the Fund from section 2.1 of NI 81-105 to permit the Fund to pay the Commission I Service Fees and the Commission II Service Fees, provided that:

(a) the Commission I Service Fees and the Commission II Service Fees are otherwise permitted by, and paid in accordance with NI 81-105;

(b) the Fund will in its financial statements expense the Commission I Service Fees and the Commission II Service Fees in the fiscal period when incurred; and

(c) this Order shall cease to be operative with respect to the Commission on the date that a rule or regulation replacing or amending section 2.1 of NI 81-105 comes into force.

December 30, 2003.

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

2.2.6 HSBC InvestDirect Inc. - s. 144

Headnote

Section 144 – partial revocation of cease trade orders granted to permit trades solely for the purpose of establishing a tax loss.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127 and 144.
Securities Act, R.S.O. 1980, c. 466, as am., s. 123.

Policies Cited

Ontario Securities Commission Policy 57-602 Cease Trading Orders – Applications for Partial Revocation to Permit a Securityholder to Establish a Tax Loss.

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

AND

IN THE MATTER OF
HSBC INVESTDIRECT INC.

AND

ACCOUNTHOLDERS LISTED IN SCHEDULE "A"

AND

FRACMASTER LTD.

AND

THE LOEWEN GROUP INC.

AND

PALM BEACH COUNTY UTILITIES CORPORATION

ORDER
(Section 144 of the Act)

WHEREAS the securities of Fracmaster Ltd. ("Fracmaster") currently are subject to an order of the Ontario Securities Commission (the "Commission") made on June 11, 1999 (the "Fracmaster Cease Trade Order") pursuant to section 127 of the Act, ordering that trading in any securities of Fracmaster cease;

AND WHEREAS the securities of The Loewen Group Inc. ("Loewen Group") currently are subject to an order of the Commission made on September 11, 2002 (the "Loewen Group Cease Trade Order") pursuant to section 127 of the Act, ordering that trading in any securities of Loewen Group cease;

AND WHEREAS the securities of Palm Beach County Utilities Corporation ("Palm Beach") currently are subject to an order of the Commission made on August 16, 1990 (the "Palm Beach Cease Trade Order") pursuant to section 123 of the *Securities Act*, R.S.O. 1980, c. 466, as amended ordering that trading in any securities of Palm Beach cease;

AND WHEREAS HSBC InvestDirect Inc., formerly Merrill Lynch HSBC Canada Inc. ("HIDC") and the accountholders listed in Schedule "A" (the "Accountholders") (collectively, the "Applicants") made an application to the Commission pursuant to section 144 of the Act (the "Application") for an order varying the Fracmaster Cease Trade Order, Loewen Group Cease Trade Order and Palm Beach Cease Trade Order (collectively, the "Cease Trade Orders") in order to allow for the disposition by the Accountholders to HIDC of 61,500 securities of Fracmaster, 202,865 securities of Loewen Group and 1,100 securities of Palm Beach (collectively, the "2003 Securities") for the purpose of establishing a tax loss;

AND WHEREAS Ontario Securities Commission Policy 57-602 provides that the Commission is prepared to vary an outstanding cease trade order to permit the disposition of securities subject to the cease trade order for the purpose of establishing a tax loss where the Commission is satisfied that the disposition is being made, so far as the securityholder is concerned, solely for the purpose of that securityholder establishing a tax loss and provided that the securityholder provides the purchaser with a copy of the cease trade order and the variation order;

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

AND UPON the Applicants having represented to the Commission that:

1. The Accountholders acquired the 2003 Securities prior to the issuance of the Cease Trade Orders;

2. HIDC, has agreed to purchase the 2003 Securities from the Accountholders, at a purchase price of $0.01 per position, for an aggregate purchase price of $0.31;

3. HIDC will purchase and hold the 2003 Securities as principal;

4. HIDC will effect the proposed dispositions of the 2003 Securities (the "Proposed Dispositions"), on behalf of the Accountholders, solely for the purpose of enabling the Accountholders to establish a tax loss in respect of such Proposed Dispositions;

5. None of the accounts of the Accountholders are managed accounts and, accordingly, written instructions have been obtained to remove the 2003 Securities from the accounts of the Accountholders;

6. HIDC has copies of the Cease Trade Orders and will be provided with a copy of this order.

7. In December 2002, certain securities of Fracmaster, certain securities of Loewen Group and certain securities of Palm Beach (collectively, the “2002 Securities”) were transferred from the accounts of such Accountholders and moved to an HIDC internal defunct securities account, notwithstanding the Cease Trade Orders and without obtaining a variation order in respect thereof; and

8. Since the time of the transfers of the 2002 Securities, HIDC has introduced an automated process and revised its procedures to ensure real-time notification of cease trade orders to the trade desk of HIDC, which has lead to stricter compliance with orders.

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

IT IS ORDERED, pursuant to section 144 of the Act that the Cease Trade Orders be and are hereby varied in order to permit the Proposed Dispositions.

December 24, 2003.

“Cameron McInnis”

Schedule “A”

MR. ALBERT J HERFST
MR. CHRISTOPHER J BIRCHALL
MR. DONALD FRIESEN AND/OR MRS.BRENDA SCOTT
MR. ROBERT SHORT
MRS. JOAN GUNN-ALLARD AND/OR MR. ROGER ALLARD
MS. NANCY H OLDFORD
MS. JANE M WELLENS
MR. BRUCE E WEISGERBER
MR. C WAYNE DALZELL
MR. GLEN E WUTZKE
MS. SHAUNA M SILLEM
MR. PAUL H N KAN
MS. YIM CHUN SIU AND/OR MISS ELLEN SIU
MR. DAVID KENG SENG MAR
MR. HOK KEUNG FUNG
MR. RAY THORPE
MR. RAYMOND T THORPE
MR. ROB WALLACE
MR. ROGER E WHITE
MR. KAM LAM WONG AND/OR MS JANNY Z P WANG
MISS SANDY MIU SHIM CHAN
MS. SANDY K L CHEUNG
MR. ADRIAN BORG OLIVIER
MR. CHUNG KONG YIP
MR. EDWARD ALFRED ULLRICH
MR. EDWARD LEUNG
MR. EUGENE CHARTIER
MR. GREGORY E SHERMAN
MR. KEITH D TAYLOR
MR. MICHAEL WONG
MR. RICHARD ALBERT
MR. WILLIAM JOSS AND/OR MRS. SHEILA JOSS
MR. YI DONG
MRS. CAROLYN J GOBIN
MRS. EILEEN Y HO
MS. CHARLOTTE CHAO AND/OR MR. DANNY TL WONG
MS. GLORIA J HUNTER
MS. JANE LOW-BEER
MS. LILY KWOK
MS. RITA GALLE
MS. SHEILA MCKINLAY
MS. SUK HING TSE
MR. MALCOM K JONES
MR. PETER KOON YAU LEE AND/OR MRS. ALICE HANG KUEN LEE
MS. IRIS YUEN LIN CHOI
MS. XIAOLING HUANG
MISS RACHELLE S H CHEUNG
MR. CALVIN W LEUNG
MR. CHEUNG WAI TAI AND/OR MS. FUNG SEUNG LO
MR. EDDIE YUEN
MR. STEPHEN CHAN
MISS VIDA TONG
MR. ANDREW I SAMPSON
MR. CHARLES A MACKENZIE
MR. ERIC YEUNG
MR. FRANK SIK KI LEUNG
MR. HENRY B WONG
MR. JAMES L PIGOTT ITF BRYAN ARTHUR PIGOTT
MR. JOHNNY LEW

MR. KAM LING CHOI
MR. MARTIN ALEXANDRE BEAULIEU
MR. ROBERT L MCDONALD
MR. WALTER VERSECKAS
MR. YU MING LI
MR. ZORAN MILADINOVIC
MRS. A DIANE HOUGH AND/OR MR. STEPHEN J HOUGH
MRS. TINA CHENG LI LAU AND/OR MR. SOO KONG CHIA
MRS. VERONICA WARIAS
MS. AMY ON YUE LEUNG
MS. MIRIAM M L TAM
VELMONT INDUSTRIES LTD ATTN: MS. JOSEPHINE LEUNG
MR. FRANCIS YUE KIK CHEUNG AND/OR MR. CALVIN YIU MAN CHEUNG
MS. NANCY MAK
MR. DONALD HAN AND/OR MRS. HELENA HAN
MR. PAUL H N KAN
MR. KEE KUONG TANG
MISS SUSAN S H CHEUNG
MR. BILL WONG
MR. CHANG LIN SUN
MR. DAVID A HAZLEWOOD AND/OR MRS. LIS HAZLEWOOD
MR. DONALD P HUYSMANS
MR. GORDON C FORBES
MR. JOHN D HARBOTTLE
MR. KEVIN SIU CHIU NGAI
MR. KI CHEUNG WONG AND/OR MRS. SHUI PING CHEUNG
MR. LOUIS BRISSETT
MR. PETER SHIU CHEUNG SO AND/OR MR. STEPHEN SO
MR. ROBERT J O'SHAUGHNESSY
MR. YAT CHEUNG MA AND/OR MRS. YUK HAR WONG
MRS. MOU CHENG LEI
MS. DONNA KUTSCHKE
MS. MEI CHU CHANG YAN
MR. JERRY L KAVANAGH
MR. DENNIS CHAN AND/OR MRS. ELISE CHAN
MR. DONALD P HUYSMANS
MR. EDWARD FORTUNE
MR. GREG R BILODEAU
MR. YUAN TAO DI AND/OR MS. DAI HUA LI
MRS. FONITA Y F TSANG
MR. LAWRENCE GRANT SPITZ AND/OR MRS. ANDREA R SPITZ
MRS. KAREN L JANZEN
DR. KAIYO S NEDD
MRS. RUBA ABBOUD
MR. HIU FUNG SZETO
MS. MADELINE FERENZY
MR. TOMMY MA
MR. PATRICK RAMSDEN
MS. JULIA MARTIN
DR. MAN KWAN

2.2.7 Burlington Resources Inc. - pt. 8.1 of NI 51-101

Headnote

Exemption from National Instrument 51-101 – Standards of Disclosure for Oil and Gas Activities – Exemption granted on basis of unique nature of issuer's reporting issuer status and de minimus connection to Ontario.

Rules Cited

National Instrument 51-101 – Standards of Disclosure for Oil and Gas Activities.

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

AND

IN THE MATTER OF
NATIONAL INSTRUMENT 51-101 – STANDARDS OF DISCLOSURE FOR OIL AND GAS ACTIVITIES
("NI 51-101")

AND

IN THE MATTER OF
BURLINGTON RESOURCES INC.

ORDER
(Part 8.1 NI 51-101)

UPON the application of Burlington Resources Inc. ("BR") to the Director of the Ontario Securities Commission (the "Director") for an exemption from NI 51-101 under section 8.1 of NI 51-101;

AND UPON considering the application and staff's recommendation to the Director;

AND UPON BR representing to the Director that:

1. BR is a holding company engaged through its subsidiaries in the exploration for and development, production and marketing of crude oil, natural gas liquids and natural gas in the United States, Canada and internationally. It was incorporated in the State of Delaware and its head office is located in Houston, Texas. BR is subject to the United States *Securities Exchange Act* of 1934, as amended (the "Exchange Act").

2. BR's common shares are listed on the New York Stock Exchange and trade under the symbol "BR" (the "BR Shares"). As at June 30, 2003, BR had outstanding 200,710,143 BR Shares representing a market capitalization of approximately U.S. $10.9 billion (using the June 30, 2003 closing price on the New York Stock Exchange of U.S. $54.07), long-term debt of U.S. $3,867 million and an enterprise value of approximately U.S. $14.7 billion.

3. In connection with BR's acquisition of Canadian Hunter Exploration Ltd. in December 2001, BR undertook to the Minister of Industry to seek listing of the BR Shares on the Toronto Stock Exchange (the "TSX"). The undertaking was subject to obtaining securities commission and other necessary regulatory approvals, and subject to Rules 51-5A and 51-5B of the *Securities Act* (Ontario) remaining in full force and effect or if replaced, replaced with similar rules. These rules allow BR to be listed on the TSX using its U.S. financial statements and other U.S. reporting documents. BR gave this undertaking in the context of the negotiations with staff of Investment Canada upon staff's suggestion that this undertaking would assist them in determining that the proposed investment would constitute a "net benefit to Canada" given the loss of the Canadian Hunter Exploration Ltd. listing on the TSX.

4. On September 20, 2002 the BR Shares began trading on the TSX under the symbol "B" and, as a result, BR became a reporting issuer in Ontario.

5. For the period October 1, 2002 to October 1, 2003, an aggregate of 433,322,100 BR Shares have traded on the New York Stock Exchange and 582,925 BR Shares have traded on the TSX. The average daily trading for this period on the New York Stock Exchange was 1,712,736 BR Shares and on the TSX was 2,481 BR Shares for this period. The trading on the TSX represents approximately 0.14% of the total and daily trading of BR Shares during this period.

6. Since becoming a reporting issuer, BR has not issued securities in Ontario other than the grant of 7,000 stock options to Mr. Robert Harding, an outside director of BR. BR has no employees in Ontario. BR does not currently intend to issue treasury shares in Ontario other than in connection with the exercise of stock options.

7. A search of registered holders conducted on October 7, 2003 by EquiServe Trust Company, N.A., BR's transfer agent, indicated that there were 86 registered holders with addresses in Ontario holding 15,819 BR Shares or approximately 0.008% of the outstanding BR Shares. A search of beneficial holders conducted on October 21, 2003 by ADP Investor Communications indicated that 1,092 beneficial holders with addresses in Ontario holding 632,706 BR Shares or approximately 0.3% of the outstanding BR Shares.

AND WHEREAS the Director is satisfied that to do so would not be prejudicial to the public interest;

IT IS HEREBY ORDERED under Section 8.1 of NI 51-101 that BR is exempt from NI 51-101 for so long as:

1. less than 10% of the number of registered and beneficial holders of BR Shares are resident in Ontario;

2. less than 10% of the outstanding BR Shares are held by residents of Ontario; and

3. BR is subject to and complies with the disclosure requirements of the Exchange Act and the New York Stock Exchange in connection with its oil and gas activities.

January 6, 2004.

“Iva Vranic”

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 Reasons for Decision

3.1.1 Teodosio Vincent Pangia et al.

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

AND

IN THE MATTER OF
TEODOSIO VINCENT PANGIA,
AGOSTINO CAPISTA, AND
DALLAS/NORTH GROUP INC.

REASONS FOR DECISION OF THE ONTARIO SECURITIES COMMISSION

HEARING: Tuesday, December 16, 2003

PANEL:	Paul M. Moore, Q.C.	-	Vice-Chair
	Wendell S. Wigle, Q.C.	-	Commissioner
	Paul K. Bates	-	Commissioner
COUNSEL:	Yvonne Chisholm Brian Clarkin Joanne Ramirez	-	On behalf of Staff of the Ontario Securities Commission
	Linda Fuerst	-	On behalf of Teodosio Vincent Pangia, Agostino Capista, and Dallas/North Group Inc.

The following statement has been prepared for purposes of publication in the Ontario Securities Commission Bulletin and is based on the settlement agreement and the transcript of the hearing, including oral reasons delivered at the hearing, in the matter of Teodosio Vincent Pangia, Agostino Capista, and Dallas/North Group Inc. The transcript has been edited, supplemented and approved by the chair of the panel for the purpose of providing a public record of the panel's decision in the matter. This extract should be read together with the settlement agreement and the order signed by the panel.

The purpose of the hearing was to consider a settlement agreement between staff of the Commission and the respondents, Teodosio Vincent Pangia, Agostino Capista, and Dallas/North Group Inc., in a matter pursuant to sections 127 and 127.1 of the *Securities Act* (the Act). The hearing was conducted in camera until the oral decision and reasons were delivered by Vice-Chair Moore.

From the Settlement Agreement:

[1] Pangia was, at all material times, the President and a director of Dallas North and President, Chairman and Chief Executive Officer of EPA. Pangia had been registered with the Commission in 1988 and 1989 as a salesperson restricted to the sale of mutual funds, but was not registered during 1995 and 1996.

[2] Capista was the incorporator and first director of Dallas North. Until October 1995, Capista was the Secretary, Treasurer and a director of Dallas North and exercised control over it. Capista has never been registered with the Commission.

[3] At the material time, Pangia exercised control over Dallas North, a private company incorporated in Ontario on May 14, 1991. In the period March, 1995 to October, 1995, Dallas North received funds from the sale of EPA shares.

[4] Envirovision International Inc. was incorporated in Ontario on June 7, 1995 to facilitate the sale of shares of EPA. Between June, 1995 and February, 1996, Envirovision received funds from the sale of EPA shares. In turn, Envirovision disbursed funds to Pangia.

[5] EPA was originally incorporated in British Columbia on January 9, 1987, as 319980 B.C. Ltd. EPA was a reporting issuer in British Columbia and its shares had traded on the Vancouver Stock Exchange. During the period March, 1995 to February, 1996, trading of EPA shares on the VSE was halted or suspended. In addition, during the period July 26, 1995 to August 18, 1995, all trading in EPA shares was cease traded by the British Columbia Securities Commission.

[6] During the period March, 1995 to February, 1996, Pangia, Capista and/or Dallas North participated in the sale of shares of EPA to members of the public in approximately 113 transactions for proceeds of approximately $1.4 million. These funds were paid to Dallas North and Envirovision. Pangia and/or Dallas North owned or controlled the shares of EPA that were sold in these transactions. Capista exercised control over Dallas North in his capacity as an officer and director until October, 1995. The actions of Pangia, Capista and Dallas North in relation to the sale of the shares constituted trading.

[7] Further, Pangia engaged in activities which constituted trading in EPA shares in Ontario between June, 1995 and August, 1995, where such trading was a distribution of those securities, without the required filing of a preliminary prospectus and prospectus. Those distributions involved at least 26,000 shares of EPA, for which purchasers paid a total of approximately $84,500.00.

[8] Registered representatives employed by TD Evergreen, in 1995 a division of TD Evergreen Investment Services Inc. and in 1996 a division of TD Securities Inc., also participated in the sale of shares of EPA by Pangia, Capista and Dallas North. These sales of EPA shares were not recorded in the books and records of TD Evergreen.

[9] The registered representatives, Simon Kin-Ho Tam, Woody Woo-Keung Wu and April Shuk-Fan Che, were disciplined by the Investment Dealers Association of Canada in 2002.

[10] TD Evergreen has made payment to certain of the persons who purchased EPA shares, including those who purchased EPA shares during the material time. To date, these payments exceed $3 million.

[11] In addition, between October, 1995 and October, 1996, Capista participated in the sale of approximately 135,200 shares of EPA to the public for proceeds of $237,700.00.

[12] By engaging in the conduct described above:

a) Pangia, Capista and Dallas North sold shares of EPA without being registered to trade in securities as required by section 25 of the Act; and

b) Pangia traded in shares of EPA where such trading was a distribution of those securities, without filing a preliminary prospectus and a prospectus as required by section 53 of the Act.

[13] Further, the conduct described above was contrary to the public interest.

From the Transcript:

Vice-Chair Moore:

[14] We approve the settlement as being in the public interest. We are no longer in camera. The agreement is in the public interest because the sanctions are appropriate in this particular case.

[15] We note that there were no allegations of misleading the public and no allegations that suggest to us deliberate, dishonest conduct, in the sense of egregiousness. But there was flagrant disregard of the cease-trade order from the British Columbia Securities Commission, and that is a very serious matter.

[16] We note that there were no prior disciplinary actions, according to counsel, against the respondents. But we also note that TD Evergreen paid $3 million to clean up client accounts. And the agreed statement of facts strongly suggests to us that the public may well have been misled as to who they were dealing with.

[17] So the facts reveal a serious situation. They suggest that sanctions that would be appropriate in this case are those towards the severe side. We notice that the sanctions recommended in the agreement - the joint recommendation - are as extreme as one can go, with respect to a permanent ban on trading and a permanent cease-trade order with no carve-outs. We also note that there is a permanent ban on acting as a director or officer of any issuer. That would include not only a public company, but private companies. There is a reprimand.

[18] We also note that the respondents are represented by counsel. It is difficult for this Commission, and I think inappropriate for this Commission, to try to second-guess respondents by coming to the view that agreed sanctions are tougher than they should be. A settlement and agreed statement of facts often only disclose the material facts that are necessary in order for the Commission to form the opinion that the settlement is not contrary to the public interest. Where respondents are represented by counsel we should not, usually, be concerned whether sanctions may be tougher than absolutely necessary. We suspect that if the full facts of this matter were known by us, we would feel totally comfortable with the toughness of the sanctions. I am not saying we are uncomfortable; we are totally comfortable that the permanency of the bans in the sanction order is justified.

[19] So we do approve this settlement as being not contrary to the public interest. It does meet our mandate of removing from the public marketplace those persons whose conduct has wreaked harm on the public and can be anticipated to wreak harm in the future if something is not done. The sanctions are prophylactic in that regard.

[20] Would Mr. Pangia and Mr. Capista please stand? You are hereby reprimanded. You have breached the *Securities Act* of Ontario. This is a serious matter. We appreciate the fact that you recognize the seriousness of this.

[21] These sanctions being imposed on you are serious sanctions, and do show that we do not treat these matters lightly. You may sit down.

[22] If there is nothing further, then this hearing is terminated.

Approved by the chair of the panel on January 6th, 2004.

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
AC Energy Inc.	30 Dec 03	09 Jan 04		
ePhone Telecom, Inc.	19 Dec 03	31 Dec 03	31 Dec 03	
Saturn (Solutions) Inc.	30 Dec 03	09 Jan 04		

4.2.1 Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Extending Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Atlas Cold Storage Income Trust	02 Dec 03	15 Dec 03	15 Dec 03		
** Richtree Inc.	23 Dec 03	05 Jan 04	05 Jan 04		
Saturn (Solutions) Inc.	21 Oct 03	03 Nov 03	03 Nov 03		30 Dec 03

**** Correction on hearing date**

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Chapter 5

Rules and Policies

5.1.1 OSC Rule 45-501 Exempt Distributions

ONTARIO SECURITIES COMMISSION RULE 45-501
EXEMPT DISTRIBUTIONS

PART 1 DEFINITIONS

1.1 Definitions - In this Rule

"accredited investor" means

(a) a bank listed in Schedule I or II of the Bank Act (Canada), or an authorized foreign bank listed in Schedule III of that Act;

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

(c) a loan corporation or trust corporation registered under the Loan and Trust Corporations Act or under the Trust and Loan Companies Act (Canada), or under comparable legislation in any other jurisdiction;

(d) a co-operative credit society, credit union central, federation of caisses populaires, credit union or league, or regional caisse populaire, or an association under the Cooperative Credit Associations Act (Canada), in each case, located in Canada;

(e) a company licensed to do business as an insurance company in any jurisdiction;

(f) a subsidiary entity of any person or company referred to in paragraph (a), (b), (c), (d) or (e), where the person or company owns all of the voting shares of the subsidiary entity;

(g) a person or company registered under the Act or securities legislation in another jurisdiction as an adviser or dealer, other than a limited market dealer;

(h) the government of Canada or of any jurisdiction, or any crown corporation, instrumentality or agency of a Canadian federal, provincial or territorial government;

(i) any Canadian municipality or any Canadian provincial or territorial capital city;

(j) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any instrumentality or agency thereof;

(k) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a provincial pension commission or similar regulatory authority;

(l) a registered charity under the Income Tax Act (Canada);

(m) an individual who beneficially owns, or who together with a spouse beneficially own, financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $1,000,000;

(n) an individual whose net income before taxes exceeded $200,000 in each of the two most recent years or whose net income before taxes combined with that of a spouse exceeded $300,000 in each of those years and who, in either case, has a reasonable expectation of exceeding the same net income level in the current year;

(o) an individual who has been granted registration under the Act or securities legislation in another jurisdiction as a representative of a person or company referred to in paragraph (g), whether or not the individual's registration is still in effect;

(p) a promoter of the issuer or an affiliated entity of a promoter of the issuer;

(q) a spouse, parent, brother, sister, grandparent or child of an officer, director or promoter of the issuer;

(r) a person or company that, in relation to the issuer, is an affiliated entity or a person or company referred to in clause (c) of the definition of distribution in subsection 1(1) of the Act;

(s) an issuer that is acquiring securities of its own issue;

(t) a company, limited liability company, limited partnership, limited liability partnership, trust or estate, other than a mutual fund or non-redeemable investment fund, that had net assets of at least $5,000,000 as reflected in its most recently prepared financial statements;

(u) a person or company that is recognized by the Commission as an accredited investor;

(v) a mutual fund or non-redeemable investment fund that, in Ontario, distributes its securities only to persons or companies that are accredited investors;

(w) a mutual fund or non-redeemable investment fund that, in Ontario, distributes its securities under a prospectus for which a receipt has been granted by the Director or, if it has ceased distribution of its securities, has previously distributed its securities in this manner;

(x) a fully managed account if it is acquiring a security that is not a security of a mutual fund or non-redeemable investment fund;

(y) an account that is fully managed by a trust corporation registered under the Loan and Trust Corporations Act or under the Trust and Loan Companies Act (Canada), or under comparable legislation in any other jurisdiction;

(z) an entity organized outside of Canada that is analogous to any of the entities referred to in paragraphs (a) through (g) and paragraph (k) in form and function; and

(aa) a person or company in respect of which all of the owners of interests, direct or indirect, legal or beneficial, are persons or companies that are accredited investors;

“business assets” means assets owned by a person or company which have been used in connection with a business carried on by that person or company;

“closely-held issuer” means an issuer, other than a mutual fund or non-redeemable investment fund, whose

(a) shares are subject to restrictions on transfer requiring the approval of either the board of directors or the shareholders of the issuer (or the equivalent in a non-corporate issuer) contained in constating documents of the issuer or one or more agreements among the issuer and holders of its shares; and

(b) outstanding securities are beneficially owned, directly or indirectly, by not more than 35 persons or companies, exclusive of

(i) persons or companies that are, or at the time they last acquired securities of the issuer were, accredited investors;

(ii) current or former directors or officers of the issuer or of an affiliated entity of the issuer; and

(iii) current or former employees of the issuer or of an affiliated entity of the issuer, or current or former consultants as defined in MI 45-105, who in each case beneficially own only securities of the issuer that were issued as compensation by, or under an incentive plan of, the issuer or an affiliated entity of the issuer;

provided that:

(A) two or more persons who are the joint registered holders of one or more securities of the issuer shall be counted as one beneficial owner of those securities; and

(B) a corporation, partnership, trust or other entity shall be counted as one beneficial owner of securities of the issuer unless the entity has been created or is being used primarily for the purpose of acquiring or holding securities of the issuer, in which event each beneficial owner of an equity interest in the entity or each beneficiary of the entity, as the case may be, shall be counted as a separate beneficial owner of those securities of the issuer;

"convertible security" means a security of an issuer that is convertible into, or carries the right of the holder to purchase, or of the issuer to cause the purchase of, a security of the same issuer;

"entity" means a company, syndicate, partnership, trust or unincorporated organization;

"exchangeable security" means a security of an issuer that is exchangeable for, or carries the right of the holder to purchase, or the right of the issuer to cause the purchase of, a security of another issuer;

"exchange issuer" means an issuer that distributes securities of a reporting issuer held by it in accordance with the terms of an exchangeable security of its own issue;

"financial assets" means cash, securities, or any contract of insurance or deposit or evidence thereof that is not a security for the purposes of the Act;

"fully managed account" means an investment portfolio account of a client established in writing with a portfolio adviser who makes investment decisions for the account and has full discretion to trade in securities of the account without requiring the client's express consent to a transaction;

"government incentive security" means

(a) a security, or unit or interest in a partnership that invests in a security, that is issued by a company and for which the company has agreed to renounce in favour of the holder of the security, unit or interest, amounts that will constitute Canadian exploration expense, as defined in subsection 66.1(6) of the ITA, or Canadian development expense, as defined in subsection 66.2(5) of the ITA, or Canadian oil and gas property expense, as defined in subsection 66.4(5) of the ITA; or

(b) a unit or interest in a partnership or joint venture that is issued in order to fund Canadian exploration expense as defined in subsection 66.1(6) of the ITA or Canadian development expense as defined in subsection 66.2(5) of the ITA or Canadian oil and gas property expense as defined in subsection 66.4(5) of the ITA;

"multiple convertible security" means a security of an issuer that is convertible into or exchangeable for, or carries the right of the holder to purchase, or of the issuer or exchange issuer to cause the purchase of, a convertible security, an exchangeable security or another multiple convertible security;

"MI 45-102" means Multilateral Instrument 45-102 *Resale of Securities*;

"MI 45-105" means Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors, and Consultants*;

"portfolio adviser" means

(a) a portfolio manager; or

(b) a broker or investment dealer exempted from registration as an adviser under subsection 148(1) of the Regulation if that broker or investment dealer is not exempt from the by-laws or regulations of the Toronto Stock Exchange or the Investment Dealers' Association of Canada referred to in that subsection;

"Previous Rule" means Rule 45-501 *Exempt Distributions* as it read when it was published on January 8, 1999 at (1999) 22 OSCB 56;

"related liabilities" means liabilities incurred or assumed for the purpose of financing the acquisition or ownership of financial assets and liabilities that are secured by financial assets;

"spouse", in relation to an individual, means another individual to whom that individual is married, or another individual of the opposite sex or the same sex with whom that individual is living in a conjugal relationship outside marriage;

"Type 1 trade" means a trade in a security under an exemption from the prospectus requirement in clause 72(1)(a), (b), (c), (d), (l), (m), (p) or (q) of the Act, or section 2.3, 2.12, 2.13, 2.14 or 2.16 of this Rule, or section 2.4, 2.5 or 2.11 of the Previous Rule;

"Type 2 trade" means a trade in a security under an exemption from the prospectus requirement in clause 72(1)(f) (other than a trade to an associated consultant or investor consultant as defined in Rule 45-503 *Trades to Employees, Executives and Consultants* or a trade to an associated consultant or investor relations person as defined in MI 45-105), (h), (i), (j), (k) or (n) of the Act, or section 2.5, 2.8 or 2.15 of this Rule; and

"underlying security" means a security issued or transferred, or to be issued or transferred, in accordance with the terms of a convertible security, an exchangeable security or a multiple convertible security.

1.2 Interpretation

(1) In this Rule a person or company is considered to be an affiliated entity of another person or company if one is a subsidiary entity of the other, or if both are subsidiary entities of the same person or company, or if each of them is controlled by the same person or company.

(2) In this Rule a person or company is considered to be controlled by a person or company if

(a) in the case of a person or company,

(i) voting securities of the first-mentioned person or company carrying more than 50 percent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company, and

(ii) the votes carried by the securities are entitled, if exercised, to elect a majority of the directors of the first-mentioned person or company;

(b) in the case of a partnership that does not have directors, other than a limited partnership, the second-mentioned person or company holds more than 50 percent of the interests in the partnership; or

(c) in the case of a limited partnership, the general partner is the second-mentioned person or company.

(3) In this Rule a person or company is considered to be a subsidiary entity of another person or company if

(a) it is controlled by,

(i) that other, or

(ii) that other and one or more persons or companies each of which is controlled by that other, or

(iii) two or more persons or companies, each of which is controlled by that other; or

(b) it is a subsidiary entity of a person or company that is the other's subsidiary entity.

PART 2 EXEMPTIONS FROM THE REGISTRATION AND PROSPECTUS REQUIREMENTS OF THE ACT

2.1 Exemption for a Trade in a Security of a Closely-Held Issuer

(1) Sections 25 and 53 of the Act do not apply to a trade in a security of an issuer if

(a) in the case of a trade by the issuer, following the trade, the issuer will be a closely-held issuer; or in the case of a trade by a selling security holder, the selling security holder has, upon reasonable inquiry, no grounds to believe that following the trade the issuer will not be a closely-held issuer;

(b) in the case of a trade by the closely-held issuer, following the trade the aggregate proceeds received by the closely-held issuer, and any other issuer engaged in common enterprise with the closely-held issuer, in connection with trades made in reliance upon this exemption will not exceed $3,000,000; and

(c) no selling or promotional expenses are paid or incurred in connection with the trade, except for services performed by a dealer registered under the Act.

(2) If a trade is made under subsection 2.1(1), the seller shall provide an information statement substantially similar to Form 45-501F3 to the purchaser of the security at least four days prior to the date of the trade unless, following the trade, the issuer will have not more than five beneficial holders of its securities.

2.2 Exemption for a Trade in a Variable Insurance Contract

(1) Sections 25 and 53 of the Act do not apply to a trade by a company licensed under the Insurance Act in a variable insurance contract that is

(a) a contract of group insurance;

(b) a whole life insurance contract providing for the payment at maturity of an amount not less than three quarters of the premiums paid up to age 75 for a benefit payable at maturity;

(c) an arrangement for the investment of policy dividends and policy proceeds in a separate and distinct fund to which contributions are made only from policy dividends and policy proceeds; or

(d) a variable life annuity.

(2) For the purposes of subsection (1), “contract”, “group insurance”, “life insurance” and “policy” have the respective meanings ascribed to them by sections 1 and 171 of the Insurance Act.

2.3 Exemption for a Trade to an Accredited Investor - Sections 25 and 53 of the Act do not apply to a trade in a security if the purchaser is an accredited investor and purchases as principal.

2.4 Exemption for a Trade by a Control Person in a Security Acquired under a Formal Take-Over Bid

(1) Section 53 of the Act does not apply to a trade that is a control person distribution in a security that was acquired under a formal bid as defined in Part XX of the Act, if

(a) the offeree issuer had been a reporting issuer for at least 12 months at the date of the bid;

(b) subject to subsection (2), the intention to make the trade was disclosed in the take-over bid circular for the take-over bid;

(c) the trade is made within the period commencing on the date of the expiry of the bid and ending 20 days after that date;

(d) a notice of intention and a declaration prepared in accordance with Form 45-102F3 are filed by the seller before the trade;

(e) an insider report prepared in accordance with Form 55-102F2 or Form 55-102F6, as applicable, is filed by the seller within three days after the completion of the trade; and

(f) no unusual effort is made to prepare the market or to create a demand for the securities and no extraordinary commission is paid for the trade.

(2) Paragraph (1)(b) does not apply to a trade to another person or company that has made a competing formal bid for securities of the same issuer for a per security price not greater than the per security consideration offered by that other person or company in its take-over bid.

2.5 Exemption for a Trade in Connection with a Securities Exchange Issuer Bid - Sections 25 and 53 of the Act do not apply to a trade in a security that is exchanged by or for the account of the offeror with a securityholder of the offeror in connection with an issuer bid as defined in Part XX of the Act if, at the time of the trade, the issuer whose securities are being issued or transferred is a reporting issuer not in default under the Act or the regulations.

2.6 Exemption for a Trade upon Exercise of Conversion Rights in a Convertible Security - Sections 25 and 53 of the Act do not apply to a trade by an issuer in an underlying security of its own issue to a holder of a convertible security or multiple convertible security of the issuer on the exercise by the issuer of its right under the convertible security or multiple convertible security to cause the holder to convert into or purchase the underlying security or on the automatic

conversion of the convertible security or multiple convertible security, if no commission or other remuneration is paid or given to others for the trade except for administrative or professional services or for services performed by a registered dealer.

2.7 Exemption for a Trade upon Exercise of Exchange Rights in an Exchangeable Security - Sections 25 and 53 of the Act do not apply to a trade by an exchange issuer in an underlying security to a holder of an exchangeable security or multiple convertible security of the exchange issuer on the exercise by the exchange issuer of its right under the exchangeable security or multiple convertible security to cause the holder to exchange for or purchase the underlying security or on the automatic exchange of the exchangeable security or multiple convertible security, if the exchange issuer delivers to the Commission a written notice stating the date, amount, nature and conditions of the proposed trade, including the net proceeds to be derived by the exchange issuer if the underlying securities are fully taken up and either

(a) the Commission has not informed the exchange issuer in writing within 10 days after the delivery of the notice that it objects to the proposed trade, or

(b) the exchange issuer has delivered to the Commission information relating to the underlying security that is satisfactory to and accepted by the Commission.

2.8 Exemption for a Trade on an Amalgamation, Reorganization, Arrangement or Specified Statutory Procedure – Sections 25 and 53 do not apply to a trade in a security of an issuer in connection with

(a) an amalgamation, merger, reorganization, arrangement or other statutory procedure;

(b) a statutory procedure under which one issuer takes title to the assets of another issuer that in turn loses its existence by operation of law or under which one issuer merges with one or more issuers, whether or not the securities are issued by the merged issuer; or

(c) a court-approved reorganization under bankruptcy or insolvency legislation.

2.9 Exemption for a Trade in a Security under the Execution Act - Sections 25 and 53 of the Act do not apply to a trade in a security by a sheriff under the Execution Act, if

(a) there is no published market as defined in Part XX of the Act in respect of the security;

(b) the aggregate acquisition cost to the purchaser is not more than $25,000; and

(c) each written notice to the public soliciting offers for the security or giving notice of the intended auction of the security is accompanied by a statement substantially as follows:

“These securities are speculative. No representations are made concerning the securities, or the issuer of the securities. No prospectus is available and the protections, rights and remedies arising out of the prospectus provisions of the Securities Act, including statutory rights of rescission and damages, will not be available to the purchaser of these securities.”

2.10 Exemption for a Trade in Debt of Conseil Scolaire de L’île de Montréal - Sections 25 and 53 of the Act do not apply to a trade if the security being traded is a bond, debenture or other evidence of indebtedness of the Conseil Scolaire de L’île de Montréal.

2.11 Exemption for a Trade to a Registered Retirement Savings Plan or a Registered Retirement Income Fund - Sections 25 and 53 of the Act do not apply to a trade in a security by an individual or an associate of an individual to a RRSP or a RRIF established by or for that individual or under which that individual is a beneficiary.

2.12 Exemption for Certain Trades in a Security of a Mutual Fund or Non-Redeemable Investment Fund

(1) Sections 25 and 53 of the Act do not apply to a trade in a security of a mutual fund or non-redeemable investment fund that is not a reporting issuer if

(a) the purchaser purchases as principal;

(b) either (i) the security has an aggregate acquisition cost to the purchaser of not less than $150,000 or (ii) the security is issued by a mutual fund or non-redeemable investment fund in which the purchaser

then owns securities having either an aggregate acquisition cost or an aggregate net asset value of not less than $150,000; and

(c) the mutual fund or non-redeemable investment fund is managed by a portfolio adviser or by a portfolio manager resident in a jurisdiction and registered or exempt from registration under securities legislation of that jurisdiction or a trust corporation registered or authorized to carry on business under the Loan and Trust Corporations Act or under the Trust and Loan Companies Act (Canada), or under comparable legislation in any other jurisdiction

(2) Sections 25 and 53 of the Act do not apply to a trade in a security of a mutual fund or non-redeemable investment fund that is not a reporting issuer if

(a) the purchaser purchases as principal;

(b) the security has an aggregate acquisition cost to the purchaser of not less than $150,000; and

(c) the mutual fund or non-redeemable investment fund is managed by a person or company, not ordinarily resident in Ontario, to whom the adviser registration requirement does not apply pursuant to Part 7 of Rule 35-502 *Non-Resident Advisers*.

2.13 Exemption for a Trade by a Promoter or Issuer in a Government Incentive Security

(1) Sections 25 and 53 of the Act do not apply to a trade by an issuer or by a promoter of an issuer in a security of the issuer that is a government incentive security, if

(a) in the aggregate in all jurisdictions, not more than 75 prospective purchasers are solicited resulting in sales to not more than 50 purchasers;

(b) before entering into an agreement of purchase and sale, the prospective purchaser has been supplied with an offering memorandum that includes information

(i) identifying every officer and director of the issuer,

(ii) identifying every promoter of the issuer,

(iii) giving the particulars of the professional qualifications and associations during the five years before the date of the offering memorandum of each officer, director and promoter of the issuer that are relevant to the offering,

(iv) indicating each of the directors that will be devoting his or her full time to the affairs of the issuer, and

(v) describing the right of action referred to in section 130.1 of the Act that is applicable in respect of the offering memorandum;

(c) the prospective purchaser has access to substantially the same information concerning the issuer that a prospectus filed under the Act would provide and

(i) because of net worth and investment experience or because of consultation with or advice from a person or company that is not a promoter of the issuer and that is an adviser or dealer registered under the Act, is able to evaluate the prospective investment on the basis of information about the investment presented to the prospective purchaser by the issuer or selling securityholder, or

(ii) is a senior officer or director of the issuer or of an affiliated entity of the issuer or a spouse or child of any director or senior officer of the issuer or of an affiliated entity of the issuer,

(d) the offer and sale of the security is not accompanied by an advertisement and no selling or promotional expenses have been paid or incurred for the offer and sale, except for professional services or for services performed by a dealer registered under the Act; and

(e) the promoter, if any, has not acted as a promoter of any other issue of securities under this exemption within the calendar year.

(2) For the purpose of determining the number of purchasers or prospective purchasers under paragraph (1)(a), a corporation, partnership, trust or other entity shall be counted as one purchaser or prospective purchaser unless the entity has been created or is being used primarily for the purpose of purchasing a security of the issuer, in which event each beneficial owner of an equity interest in the entity or each beneficiary of the entity, as the case may be, shall be counted as a separate purchaser or prospective purchaser.

2.14 Exemption for a Trade in a Security Distributed under Section 2.13 - Sections 25 and 53 of the Act do not apply to a trade in a security that was previously distributed under the exemption in section 2.13, if each of the parties to the trade is one of the not more than 50 purchasers.

2.15 Exemption for a Trade in a Security from an Offeree outside Ontario - Sections 25 and 53 of the Act do not apply to a trade in a security to a person or company pursuant to an offer to acquire made by that person or company that would have been a take-over bid or issuer bid if the offer to acquire was made to a security holder in Ontario.

2.16 Exemption for a Trade in a Security as Consideration for the Purchase of Business Assets with a Prescribed Fair Value - Sections 25 and 53 of the Act do not apply to a trade by an issuer in a security of its own issue as consideration for the purchase of business assets from a person or company, if the fair value of the business assets so purchased is not less than $100,000.

PART 3 REMOVAL OF CERTAIN EXEMPTIONS FROM THE REGISTRATION AND PROSPECTUS REQUIREMENTS

3.1 Removal of Certain Exemptions Generally - The exemptions from the registration requirement in paragraphs 3, 4, 5, 18 and 21 of subsection 35(1) and paragraph 10 of subsection 35(2) of the Act and the exemptions from the prospectus requirement in clauses (a), (c), (d), (l) and (p) of subsection 72(1) and clause (a) of subsection 73(1) as it relates to paragraph 10 of subsection 35(2) of the Act are not available for a trade in a security.

3.2 Removal of Exemptions for Bonds, Debentures and Other Evidences of Indebtedness - The exemption from the registration requirement in subparagraph 1(c) of subsection 35(2) and the corresponding exemption from the prospectus requirement referred to in clause 73(1)(a) of the Act are not available for a trade in a bond, debenture or other evidence of indebtedness that is subordinate in right of payment to deposits held by the issuer or guarantor of the bond, debenture or other evidence of indebtedness.

3.3 Removal of Exemptions for Securities of a Private Mutual Fund with a Promoter or Manager - The exemption from the registration requirement in paragraph 3 of subsection 35(2) and the corresponding exemption from the prospectus requirement referred to in clause 73(1)(a) of the Act are not available for trades in a security of a private mutual fund if it is administered by a trust company and there is a promoter or manager of the mutual fund other than the trust company.

3.4 Removal of Registration Exemptions for Market Intermediaries

(1) The exemptions from the registration requirement in sections 2.1, 2.2, 2.3, 2.5, 2.6, 2.7, 2.8, 2.9, 2.12, 2.13, 2.14, 2.15 and 2.16 are not available to a market intermediary.

(2) A limited market dealer may act as a market intermediary in respect of a trade referred to in subsection (1).

PART 4 OFFERING MEMORANDUM

4.1 Application of Statutory Right of Action - The right of action referred to in section 130.1 of the Act shall apply in respect of an offering memorandum delivered to a prospective purchaser in connection with a trade made in reliance upon an exemption from the prospectus requirement in section 2.1, 2.3, 2.12 or 2.13.

4.2 Description of Statutory Right of Action in Offering Memorandum - If the seller delivers an offering memorandum to a prospective purchaser in connection with a trade made in reliance upon an exemption from the prospectus requirement in section 2.1, 2.3, 2.12 or 2.13, the right of action referred to in section 130.1 of the Act shall be described in the offering memorandum.

4.3 Delivery of Offering Memorandum to Commission - If an offering memorandum is provided to a purchaser of securities in respect of a trade made in reliance upon an exemption from the prospectus requirement in section 2.1, 2.3, 2.12 or 2.13, the seller shall deliver to the Commission a copy of the offering memorandum or any amendment to a previously filed offering memorandum on or before 10 days of the date of the trade.

PART 5 DEALER REGISTRATION

5.1 Removal of Exemption unless Dealer Registered for Trade Described in the Exemption - An exemption from the registration requirement or from the prospectus requirement in the Act or the regulations that refers to a registered dealer is not available for a trade in a security unless the dealer is registered in a category that permits it to act as a dealer for the trade described in the exempting provision.

PART 6 RESTRICTIONS ON RESALE OF SECURITIES DISTRIBUTED UNDER CERTAIN EXEMPTIONS

6.1 Resale of a Security Distributed to a Promoter Under Certain Exemptions - If a security of an issuer is distributed to a promoter of the issuer under an exemption from the prospectus requirement in section 2.1, 2.3, 2.12, 2.13, 2.14, 2.15 or 2.16, the first trade in that security by that promoter is a distribution unless the conditions in subsection (2) or (3) of section 2.8 of MI 45-102 are satisfied.

6.2 Resale of a Security Distributed under Section 2.1 or 2.15 - If a security is distributed under the exemption from the prospectus requirement in section 2.1 or 2.15, the first trade in that security, other than a trade referred to in section 6.1, is subject to section 2.6 of MI 45-102.

6.3 Resale of a Security Distributed under Section 2.3, 2.12, 2.13, 2.14 or 2.16 - If a security is distributed under an exemption from the prospectus requirement in section 2.3, 2.12, 2.13, 2.14 or 2.16, the first trade in that security, other than a trade referred to in section 6.1, is subject to section 2.5 of MI 45-102.

6.4 Resale of a Security Distributed under Clause 72(1)(h) of the Act - If a security is distributed under the exemption from the prospectus requirement in clause 72(1)(h) of the Act, the first trade in that security, other than a trade to which section 6.5 applies, is subject to section 2.6 of MI 45-102.

6.5 Resale of an Underlying Security of a Multiple Convertible Security, Convertible Security or Exchangeable Security Distributed under Certain Exemptions - If an underlying security is distributed under an exemption from the prospectus requirement on conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired in a Type 1 trade, the first trade in that underlying security is subject to section 2.5 of MI 45-102.

6.6 Resale of a Security Distributed under Section 2.6 or 2.7 - If an underlying security is distributed under an exemption from the prospectus requirement in section 2.6 or 2.7 on a forced conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired

(a) in a Type 2 trade;

(b) under an exemption from the prospectus requirement in section 2.2, 3.1, 3.2, 3.3, 5.1 or 8.1 of Rule 45-503 *Trades to Employees, Executives and Consultants,* other than a trade by an associated consultant or investor consultant as defined in Rule 45-503 *Trades to Employees, Executives and Consultants;* or

(c) under an exemption from the prospectus requirement in Part 2 of MI 45-105;

the first trade in that underlying security is subject to section 2.6 of MI 45-102.

6.7 Resale of a Security Distributed under Section 2.5 or 2.8 - If a security is distributed under an exemption from the prospectus requirement in section 2.5 or 2.8, the first trade in that security is subject to section 2.6 of MI 45-102.

6.8 Resale of a Security Distributed under Section 2.11 - If a security is distributed under the exemption from the prospectus requirement in section 2.11, the first trade in that security is subject to section 2.5 or 2.6 of MI 45-102, whichever section would have been applicable to a first trade in that security by the person or company making the exempt distribution under section 2.11.

PART 7 FILING REQUIREMENTS

7.1 Form 45-501F1 - Every report that is required to be filed under subsection 72(3) of the Act or subsection 7.5(1) shall be filed in duplicate and prepared in accordance with Form 45-501F1.

7.2 Form 45-501F2

[deleted]

7.3 [deleted]

7.4 [deleted]

7.5 Exempt Trade Reports

(1) Subject to subsections (7) and (8), if a trade is made in reliance upon an exemption from the prospectus requirement in section 2.3, 2.13, 2.14 or 2.16, other than

(a) a trade to a person or company referred to in paragraphs (p) through (s) of the definition of "accredited investor" in section 1.1, or

(b) a trade to an entity referred to in paragraph (aa) of the definition of "accredited investor" in section 1.1, if all of the owners of interests referred to in that paragraph are persons or companies referred to in paragraphs (p) through (s) of that definition

the seller shall, within 10 days of the trade, file a report in accordance with section 7.1.

(2) **[deleted]**

(3) If a trade is made in reliance upon the conditions in subsection (2) or (3) of section 2.8 of MI 45-102 being satisfied, the seller shall comply with the requirements of subsections (4) to (7) of that section.

(4) **[deleted]**

(5) **[deleted]**

(6) **[deleted]**

(7) A report is not required under subsection (1) where, by a trade under section 2.3, a person or company referred to in paragraph (a), (b), (c) or (d) of section 1.1 acquires from a customer an evidence of indebtedness of the customer or an equity investment in the customer acquired concurrently with an evidence of indebtedness.

(8) Despite subsection (1), a report in respect of a trade in a security of a mutual fund or non-redeemable investment fund made in reliance upon the exemption from the prospectus requirement in section 2.3 may be filed not later than 30 days after the financial year end of the mutual fund or non-redeemable investment fund.

7.6 Fees for Accredited Investor Application

[deleted]

7.7 Report of a Trade Made under Section 2.12 - If a trade is made in reliance upon an exemption from the prospectus requirement in section 2.12, the issuer shall, not later than thirty days after the financial year end of the issuer in which the trade occurred, file a report, in duplicate, prepared in accordance with Form 45-501F1.

PART 8 TRANSITIONAL PROVISIONS

8.1 Accredited Investor Definition Includes Exempt Purchaser - The definition of "accredited investor" in section 1.1 includes, prior to November 30, 2002, a person or company that is recognized by the Commission as an exempt purchaser.

8.2 Resale of a Security Distributed under Section 2.4, 2.5 or 2.11 of the Previous Rule - If a security was distributed under an exemption from the prospectus requirement in section 2.4, 2.5 or 2.11 of the Previous Rule, the first trade in that security is subject to section 2.5 of MI 45-102.

8.3 Resale of an Underlying Security of a Multiple Convertible Security, Convertible Security or Exchangeable Security Distributed under Certain Exemptions in the Previous Rule - If an underlying security was distributed on conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired in a distribution under an exemption from the prospectus requirement in section 2.4, 2.5 or 2.11 of the Previous Rule, the first trade in that underlying security is subject to Section 2.5 of MI 45-102.

8.4 Resale of a Security Distributed to a Promoter under Section 2.3 or 2.15 of the Previous Rule - If a security was distributed to a promoter under an exemption from the prospectus requirement in section 2.3 or 2.15 of the Previous Rule, the first trade in that security is a distribution unless the conditions in subsection (2) or (3) of section 2.8 of MI 45-102 are satisfied.

8.5 Resale of a Security Distributed under Section 2.9 or 2.10 of the Previous Rule - If an underlying security was distributed under an exemption from the prospectus requirement in section 2.9 or 2.10 of the Previous Rule on a forced conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired by the holder in a Type 2 trade, the first trade in that underlying security is subject to section 2.6 of MI 45-102.

8.6 Resale of a Security Distributed under Section 2.7, 2.8 or 2.17 or Subsection 2.18(1) of the Previous Rule - If a security was distributed under an exemption from the prospectus requirement in section 2.7, 2.8 or 2.17 of the Previous Rule, or in subsection 2.18(1) of the Previous Rule after the issuer had ceased to be a private issuer for purposes of the Securities Act (British Columbia), the first trade in that security is subject to section 2.6 of MI 45-102.

PART 9 EXEMPTION

9.1 Exemption - The Director may grant an exemption to Part 7 of this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption in response to an application.

PART 10 EFFECTIVE DATE

10.1 Effective Date - This instrument shall come into force on January 12, 2004.

FORM 45-501F1

Securities Act (Ontario)

Report under Subsection 72(3) of the Act or Subsection 7.5(1) of Rule 45-501

(To be used for reports of trades made in reliance upon
clause 72(1)(b) or (q) of the Act, or Section 2.3, 2.12, 2.13, 2.14 or 2.16 of Rule 45-501)

1. **Full name and address of the seller.**

2. **Full name and address of the issuer of the securities traded.**

3. **Description of the securities traded.**

4. **Date of the trade(s).**

5. **Particulars of the trade(s).**

Name of Purchaser and Municipality and Jurisdiction of Residence	Amount or Number of Securities Purchased	Purchaser Price per unit	Total Purchase Price (Canadian $)	Exemption Relied Upon

6. **The seller has prepared and certified a statement containing the full legal name and the full residential address of each purchaser identified in section 5 and a certified true copy of the list will be provided to the Commission upon request.**

7. **State the name and address of any person acting as agent in connection with trade(s) and the compensation paid or to be paid to such agent.**

8. **Has the seller paid a participation fee for the current financial year in accordance with Rule 13-502?**

9. **State the name (or title) and the telephone number of the person who may be contacted with respect to any questions regarding the contents of this report.**

10. **Certificate of seller or agent of seller.**

The undersigned seller hereby certifies, or the undersigned agent of the seller hereby certifies to the best of the agent's information and belief, that the statements made in this report are true and correct.

DATED at

this day of , 20___.

(Name of seller or agent - please print)

(Signature)

(Official capacity - please print)

(Please print name of individual whose signature appears above, if different from name of seller or agent printed above)

Notice - Collection and Use of Personal Information

The personal information prescribed by this form is collected on behalf of and used by the Ontario Securities Commission for purposes of administration and enforcement provisions of the securities legislation in Ontario. All of the information prescribed by this form, except for the information contained in the statement required to be prepared and certified by the seller under section 6 of this form, is made available to the public under the securities legislation of Ontario. If you have any questions about the collection and use of this information, contact the Ontario Securities Commission at the address below:

Ontario Securities Commission
Suite 1903, Box 55,
20 Queen Street West
Toronto, Ontario M5H 3S8
Attention: Administrative Assistant to the Director of Corporate Finance
Telephone: (416) 593-8200
Facsimile: (416) 593-8177

Instructions:

6. In answer to section 7 give the name of the person or company who has been or will be paid remuneration directly related to the trade(s), such as commissions, discounts or other fees or payments of a similar nature. It is not necessary to include payments for services incidental to the trade such as clerical, printing, legal or accounting services.

7. If the space provided for any answer is insufficient, additional sheets may be used and must be cross-referred to the relevant item and properly identified and signed by the person whose signature appears on the report. Note that issuers may file one Form 45-501F1 for a specific transaction that includes the required information for multiple purchasers.

8. If the seller has not paid a participation fee for the current financial year, or if this form is filed late, a fee may be payable under Rule 13-502. Otherwise, no fee is payable to the Commission in connection with the filing of this form. Cheques must be made payable to the Ontario Securities Commission.

9. Please print or type and file two signed copies with:

Ontario Securities Commission
Suite 1900, Box 55,
20 Queen Street West
Toronto, Ontario M5H 3S8

FORM 45-501F2

Securities Act (Ontario)
Report under subsection 7.5(2) of Rule 45-501

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FORM 45-501F3
FORM OF INFORMATION STATEMENT

Introduction

Ontario securities laws have been relaxed to make it easier for small businesses to raise start-up capital from the public. Some potential investors may view this change in securities laws as an opportunity to “get in on the ground floor” of emerging businesses and to “hit it big” as these small businesses grow into large ones.

Statistically, most small businesses fail within a few years. Small business investments are among the most risky that investors can make. This information statement suggests matters for you to consider in deciding whether to make a small business investment.

Risks and Investment Strategy

A basic principle of investing in a small business is: **NEVER MAKE A SMALL BUSINESS INVESTMENT THAT YOU CANNOT AFFORD TO LOSE IN ITS ENTIRETY**. Never use funds that might be needed for other purposes, such as a post-secondary education, retirement, loan repayment or medical expenses, and never borrow money to make such an investment. Instead use funds that you already have set aside and that otherwise would be used for a consumer purchase, such as a vacation.

Never believe that the investment is not risky. Among other risk factors, small business investments generally are highly illiquid. In particular, until the company goes public there are significant restrictions on the resale of its securities. Even after a small business goes public there may be very little liquidity in its shares. This lack of liquidity means that, if the company takes a turn for the worse or if you suddenly need the funds you have invested in the company, you may not be able to sell your securities.

Also, it is important to realize that, just because the proposed offering of securities is permitted under Ontario securities law does not mean that the particular investment will be successful. Neither the Ontario Securities Commission nor any other government agency evaluates or endorses the merits of investments.

Analyzing the Investment

Although there is no magic formula for making successful investment decisions, certain factors are often considered particularly important by professional venture investors. Some questions to consider are as follows:

1. How long has the company been in business?

2. Is management putting itself in a position where it will be accountable to investors? For example, is management taking salaries or other benefits that are too large in light of the company's stage of development? Will outside investors have any voting power to elect representatives to the board of directors?

3. How much experience does management have in the industry and in operating a small business? How successful were the managers in previous businesses?

4. Do you know enough about the industry to be able to evaluate the company and make a wise investment?

5. Does the company have a realistic business plan? Does it have the resources to successfully market its product or service?

6. How reliable is the financial information, if any, that has been provided to you? Is the information audited?

7. Is the company subject to any lawsuits?

8. What are the restrictions on the resale of the securities?

There are many other questions to be answered, but you should be able to answer these before you consider investing. If you have not been provided with the information you need to answer these and any other questions you may have about the proposed investment, make sure that you obtain the information you need from people authorized to speak on the company’s behalf (*e.g.*, management or the directors) before you advance any funds or sign any commitment to advance funds to the company. It is generally a good idea to meet with management of the company face-to-face.

Making Money on Your Investment

There are two classic methods for making money on an investment in a small business: (1) through resale of the securities in the public securities markets following a public offering; and (2) by receiving cash or marketable securities in a merger or other acquisition of the company.

If the company is the type that is not likely to go public or be acquired within a reasonable time (*i.e.*, a family-owned or closely-held corporation), it may not be a good investment for you irrespective of its prospects for success because of the lack of opportunity to cash in on the investment. Management of a successful private company may receive a return indefinitely through salaries and bonuses but it is unlikely that there will be profits sufficient to pay dividends commensurate with the risk of the investment.

Conclusion

When successful, small businesses enhance the economy and provide jobs for its citizens. They also provide investment opportunities. However, an opportunity to invest must be considered in light of the inherently risky nature of small business investments.

In considering a small business investment, you should proceed with caution and make an informed investment decision based on your circumstances and expectations. Above all, never invest more than you can afford to lose.

COMPANION POLICY 45-501CP
TO ONTARIO SECURITIES COMMISSION RULE 45-501
EXEMPT DISTRIBUTIONS

PART 1 PURPOSE AND DEFINITIONS

1.1 **Purpose** - This policy statement sets forth the views of the Commission as to the manner in which certain provisions of the Act and the rules relating to the exemptions from the prospectus and registration requirements are to be interpreted and applied.

1.2 **Definitions** - In this Policy, "private placement exemptions" means the prospectus and registration exemptions available for

(a) sales of securities of closely-held issuers under section 2.1 of Rule 45-501; and

(b) sales of securities to accredited investors under section 2.3 of Rule 45-501.

PART 2 EXEMPTIONS FROM THE REGISTRATION AND PROSPECTUS REQUIREMENTS OF THE ACT

2.1 **Interaction of Private Placement Exemptions** - The Commission recognizes that a seller of securities may, in connection with any distribution of securities, rely concurrently on more than one private placement exemption. The Commission notes that where the seller is paying or incurring selling or promotional expenses in connection with the distribution, other than for the services of a dealer registered under the Act, the seller may not be able to rely on the exemption in section 2.1. The Commission takes the view that expenses incurred in connection with the preparation and delivery of an offering memorandum do not constitute selling or promotional expenses in this context.

2.2 **Accredited Investor Exemption**

(1) Paragraph (m) of the "accredited investor" definition in section 1.1 of Rule 45-501 refers to an individual who beneficially owns, or who together with a spouse beneficially own, financial assets having an aggregate net realizable value that, before taxes but net of any related liabilities, exceeds $1,000,000. As a general matter, it should not be difficult to determine whether financial assets are beneficially owned by an individual, an individual's spouse, or both, in any particular instance. However, financial assets held in a trust or in other types of investment vehicles for the benefit of an individual may raise questions as to whether the individual beneficially owns the financial assets in the circumstances. The Commission is of the view that the following factors are indicative of beneficial ownership of financial assets:

(a) physical or a constructive possession of evidence of ownership of the financial asset;

(b) entitlement to receipt of any income generated by the financial asset;

(c) risk of loss of the value of the financial asset; and

(d) the ability to dispose of the financial asset or otherwise deal with it as the individual sees fit.

By way of example, securities held in a self-directed RRSP for the sole benefit of an individual would be beneficially owned by that individual. In general, financial assets in a spousal RRSP would also be included for purposes of the threshold test because paragraph (m) takes into account financial assets owned beneficially by a spouse. However, financial assets held in a group RRSP under which the individual would not have the ability to acquire the financial assets and deal with them directly would not meet this beneficial ownership requirement.

(2) The Commission notes that paragraphs (m) and (n) of the "accredited investor" definition are designed to treat spouses as an investing unit such that either spouse may qualify as an accredited investor if both spouses, taken together, beneficially own the requisite amount of financial assets or earn the requisite net income. As well, it is the Commission's view that the financial asset test and the net income test prescribed in paragraphs (m) and (n), respectively, are to be applied only at the time of the trade such that there is no obligation on the seller to monitor the purchaser's continuing qualification as an accredited investor after the completion of the trade. Furthermore, the Commission considers that the references to "years" and "current year" in paragraph (n) mean calendar years or current calendar year, as applicable. Finally, the Commission notes that the monetary thresholds in paragraphs (m) and (n) are intended to create "bright-line" standards. Investors who do not satisfy the monetary thresholds in paragraphs (m) and (n) do not qualify as accredited investors under those paragraphs.

(3) Paragraph (q) of the “accredited investor” definition refers to certain family members of an officer or director of the issuer. The Commission notes that officers and directors of an issuer or its affiliated entities are, in effect, treated as accredited investors under Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors, and Consultants*.

(4) Paragraph (t) of the “accredited investor” definition establishes a net asset threshold of at least $5,000,000 for certain types of entity, as reflected in the entity’s “most recently prepared financial statements”. The Commission takes the view that these financial statements must be prepared in accordance with applicable generally accepted accounting principles.

2.3 Closely-Held Issuer Exemption

(1) The definition of “closely-held issuer” contains two principal criteria.

Paragraph (a) of the definition requires restrictions on the transfer of its shares to be contained in the issuer’s constating documents or in one or more agreements among the issuer and its shareholders. Accordingly, to qualify to use the exemption, the issuer must include share transfer restrictions either in its articles or by-laws, or in one or more agreements with all of its shareholders.

Paragraph (b) of the definition requires the issuer to have 35 or fewer securityholders, exclusive of

- accredited investors,
- current or former directors or officers of the issuer, and
- current or former employees or consultants of the issuer who do not own securities of the issuer other than securities *“issued as compensation by, or under an incentive plan of, the issuer”*.

The Commission confirms that

- current and former directors and officers are excluded regardless of the manner in which they acquired their securities of the issuer, and
- securities issued as an incentive on a “one-off” basis, i.e. not under an incentive plan, are securities issued as compensation by the issuer.

The Commission also notes that the definition does not require the 35 securityholder limit to be included in the articles, by-laws or agreements.

(2) The exemption in section 2.1 relating to securities of closely-held issuers is available to

- a closely-held issuer itself in respect of an issue of its own securities, and
- any holder of a closely-held issuer’s securities in respect of a resale of the securities.

A closely-held issuer may issue its own securities in reliance upon the exemption in section 2.1 so long as it is able to meet the criteria for the availability of the exemption in paragraphs (a), (b) and (c) of subsection 2.1(1). In particular, under paragraph (b), a closely-held issuer may no longer use the closely-held issuer exemption once it has received aggregate proceeds of $3,000,000 from trades made in reliance upon the exemption.

A holder of securities of a closely-held issuer may rely upon the exemption in section 2.1 in connection with any resale of the securities if paragraphs (a) and (c) of subsection 2.1(1) are satisfied. Paragraph 2.1(1)(b) does not apply to resales of securities in reliance upon this exemption.

Paragraph (a) of subsection 2.1(1) requires the issuer to continue to be a closely-held issuer after the resale. However, it is noted that the issuer does not cease to be a closely-held issuer solely because it has raised $3,000,000 in aggregate proceeds using the exemption. This is a separate requirement under paragraph (b) of subsection 2.1(1) which, as noted above, does not have to be satisfied to effect an exempt resale.

Paragraph (c) of subsection 2.1(1) requires that *“no selling or promotional expenses are paid or incurred in connection with the trade, except for services performed by a dealer registered under the Act”*. The Commission notes that paragraph (c) is not intended to prohibit legitimate selling or promotional expenses,

such as printing, mailing and other administrative or *de mimimis* expenses incurred in connection with the trade.

(3) The Commission notes that a closely-held issuer will generally be in a position to facilitate the use of the exemption in section 2.1 for the resale of its securities by limiting the number of its security holders through, among other things, use of the share transfer restrictions in its constating documents or in an agreement with its shareholders. Once the issuer no longer meets the closely-held issuer definition, a resale of securities distributed under the exemption in section 2.1 may only be made in reliance upon another exemption or by complying with the applicable provision of Multilateral Instrument 45-102 *Resale of Securities* (“MI 45-102”).

(4) The Commission notes that the limitation on the use of the closely-held issuer exemption in paragraph (b) of subsection 2.1(1), which refers to aggregate proceeds of $3,000,000, is based on the aggregate of all proceeds received by the issuer at any time from trades made in reliance upon the closely-held issuer exemption since it was introduced in November 2001. Proceeds received by the issuer from trades made in reliance upon other exemptions, including exemptions available prior to the date when the closely-held issuer exemption first became available, are not relevant. In particular, the proceeds realized by the issuer from trades to accredited investors need not be included in determining whether the $3,000,000 threshold would be exceeded in respect of any proposed trade under section 2.1. However, if the issuer has not filed a report on Form 45-501F1 in respect of a trade with an accredited investor where such a filing is required, it will be presumed that the trade was made in reliance upon section 2.1, in which case the proceeds of that trade must be counted for purposes of the aggregate proceeds limit.

(5) The Commission notes that the term “common enterprise” in paragraph (b) of subsection 2.1(1) is intended to operate as an anti-avoidance mechanism to the extent that multiple business entities are organized for the purposes of financing what is essentially a single business enterprise in order to benefit from continued or excessive use of the closely-held issuer exemption. The Commission takes the view that commonality of ownership combined with commonality of business plans will be particularly indicative of a “common enterprise”.

(6) The Commission considers that the reference to “the date of the trade” for purposes of the information statement delivery requirement in subsection 2.1(2) means the settlement date or closing date of the trade, as applicable.

(7) The Commission notes that there are steps that an issuer may take to ensure that it qualifies under both the closely-held issuer exemption in Ontario and the private company exemption, which used to exist in Ontario and remains in a similar form in other Canadian jurisdictions. The closely-held issuer exemption broadens the scope of potential investors to include members of the public. Issuers that wish to utilize the full scope of the closely-held issuer exemption would not prohibit invitation to the public in their constating documents. However, such issuers may be precluded from using the private company exemption under securities legislation in other Canadian jurisdictions. Accordingly, issuers that find themselves in this position may wish to consider various alternatives including the following:

1. An issuer that plans to use the closely-held issuer exemption in Ontario and to rely concurrently on the private company exemption in other Canadian jurisdictions may wish to maintain or include in its constating documents a provision prohibiting the issuer from offering its securities to the public. The issuer will thus be able to utilize the private company exemption in other Canadian jurisdictions and will be able to rely on the closely-held issuer exemption in Ontario, albeit only for offerings to investors who are not members of “the public”.

2. An issuer that wishes to utilize the full scope of the closely-held issuer exemption in Ontario, i.e., by offering its securities without regard to the concept of “the public”, may be precluded from using the private company exemption in other Canadian jurisdictions, and as such, may wish to consider pursuing other exemptions in those jurisdictions.

2.4 “Transitional” Pooled Fund Exemption

(1) Prior to the implementation of Rule 45-501 on November 30, 2001, the Commission granted numerous rulings under subsection 74(1) of the Act providing exemptive relief from the prospectus and registration requirements to pooled fund issuers in respect of, among other things, the sale of additional pooled fund interests to investors that previously purchased pooled fund interests under an exemption. In general, these rulings contained a “sunset” provision stating that the ruling would terminate following the adoption of a rule regarding trades in securities of pooled funds.

Rule 45-501 contains a "transitional" exemption in section 2.12 that exempts the sale of securities of a private pooled fund to an investor acquiring at least $150,000 of such securities and, if the fund's adviser is registered under the Act, the sale of additional securities of the same fund to such an investor. The Commission considers that this transitional pooled fund exemption, together with the accredited investor exemption in section 2.3 of Rule 45-501 which exempts sales of securities to certain types of accredited investors, provide adequate transitional relief from the prospectus and registration requirements for trades in pooled fund interests to investors. OSC Rule 81-501 *Mutual Fund Reinvestment Plans* also continues to apply to securities of pooled funds that are issued to investors under reinvestment plans whereby distributions of income, capital or capital gains to investors are reinvested in additional securities of that pooled fund. Accordingly, the Commission takes the view that the rulings described above expire upon implementation of Rule 45-501. The Commission considers that section 2.12 is a "transitional" exemption that maintains the status quo for pooled funds until such time as the Commission determines the appropriate regulatory regime for pooled funds.

(2) The Commission notes that the term "pooled fund" is not a defined term under Ontario securities law. The term "pooled fund" is usually considered to include non-redeemable investment funds and mutual funds that are not reporting issuers. Non-redeemable investment funds and mutual funds are defined terms. As defined in Rule 14-501 *Definitions*, a "non-redeemable investment fund" means an issuer:

(a) whose primary purpose is to invest money provided by its securityholders;

(b) that does not invest for the purpose of exercising effective control, seeking to exercise effective control, or being actively involved in the management of the issuers in which it invests, other than other mutual funds or non-redeemable investment funds; and

(c) that is not a mutual fund.

As defined in the Act, a "mutual fund" includes an issuer of securities that entitle the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets, including a separate fund or trust account, of the issuer of the securities.

(3) The Commission notes that section 2.12 of the Rule provides, in subsection 2.12(1), automatic top-up relief for funds managed by a portfolio adviser or a trust corporation but, in subsection 2.12(2), does not provide the same relief with respect to funds managed by a person or company relying on Part 7 of Rule 35-502 *Non-Resident Advisers*. The provision was drafted intentionally this way because the top-up relief referred to in subsection 2.12(1) had become standard relief granted by the Commission. Applications for top-up relief will be considered for exempt advisers on a case-by-case basis.

(4) The Commission notes that certain hedge funds may be eligible to rely on the exemption provided by section 2.12 while others may not be eligible. Section 2.12 applies, subject to certain conditions, to:

(a) mutual funds that are not reporting issuers; and

(b) non-redeemable investment funds that are not reporting issuers.

As noted in subsection (2) above, the term "mutual fund" is defined in the Act and a definition of non-redeemable investment fund appears in Rule 14-501 *Definitions*. Trades in hedge funds that are structured as mutual funds or non-redeemable investment funds and otherwise meet the requirements of section 2.12 may be made in reliance on the exemption in section 2.12.

(5) The Commission notes that the reference to "managed by a portfolio adviser" in paragraph 2.12(1)(c) refers to the functions that are carried out by a manager of a pooled fund and are distinguishable from the narrower portfolio management functions that are carried out by a portfolio manager or sub-adviser to a pooled fund. The exemption in section 2.12 will not be available for a pooled fund unless the manager of the pooled fund itself is registered as a portfolio adviser.

(6) The Commission notes that section 2.12 provides a prospectus and registration exemption for a trade involving an aggregate acquisition cost to the purchaser of at least $150,000. The Commission takes the view that, so long as the aggregate acquisition cost is $150,000, the exemption in section 2.12 is available despite the fact that the acquisition has taken place, in whole or in part, by way of the assumption of a liability by the purchaser.

(7) The Commission takes the view that, for the purpose of the $150,000 threshold in section 2.12, an individual may combine amounts purchased on his/her own account with amounts purchased by the individual's RRSP.

(8) The Commission notes that a pooled fund may not use the closely-held issuer exemption if it is a mutual fund or a non-redeemable investment fund.

2.5 Trades on an Amalgamation, Arrangement or Specified Statutory Procedure - Clause 72(1)(i) of the Act and section 2.8 of Rule 45-501 provide exemptions for trades in securities in connection with an amalgamation or arrangement or other statutory procedure. The Commission is of the view that the references to statute in these provisions refer to any statute of a jurisdiction or foreign jurisdiction under which the entities involved have been incorporated or created and exist or under which the transaction is taking place.

2.6 Three-Cornered Amalgamations - Certain corporate statutes permit a so-called "three-cornered merger or amalgamation" under which two companies will amalgamate or merge and security holders of the amalgamating or merging entities will receive securities of a third party affiliate of one amalgamating or merging entity. Section 2.8 of Rule 45-501 exempts these trades as the exemption applies to any trade made in connection with an amalgamation or merger.

2.7 Interpretation - The Commission takes the view that the exemptions contained in clauses (b) and (c) of section 2.8 of the Rule do not qualify or restrict the scope of the exemption in clause (a) of that section. The exemptions described in clauses (a), (b) and (c) of section 2.8 are not intended to be mutually exclusive. In some cases, more than one exemption may apply to a trade. For example, the Commission takes the view that a trade in connection with an arrangement under the *Companies' Creditors Arrangement Act* may be made in reliance on the exemptions contained in clause (a) and clause (c). Similarly, a trade in connection with a reorganization may, depending on the circumstances, be exempt both under subclause 72(1)(f)(ii) of the Act and section 2.8 of the Rule.

2.8 Exchangeable Shares – A transaction involving a procedure described in section 2.8 of Rule 45-501 (a section 2.8 transaction) may include an exchangeable share structure to achieve certain tax-planning objectives. For example, in a transaction whereby a non-Canadian company seeks to acquire a Canadian company under a plan of arrangement, an exchangeable share structure may be used to allow the Canadian shareholders of the company to be acquired to receive, in substance, shares of the non-Canadian company while avoiding the adverse tax consequences associated with exchanging shares of a Canadian company for shares of a non-Canadian company. Instead of receiving shares of the non-Canadian company directly, the Canadian shareholders receive shares of a Canadian company which, through various contractual arrangements, have economic terms and voting rights that are essentially identical to the shares of the non-Canadian company, and permit the holder to exchange such shares, at a time of the holder's choosing, for shares of the non-Canadian company.

Historically, the use of an exchangeable share structure in connection with a section 2.8 transaction has raised a question as to whether the exemptions contained in section 2.8 will be available for all trades necessary to complete the transaction. For example, in the case of the acquisition under a plan of arrangement noted above, the use of an exchangeable share structure may result in a delay of several months or even years between the date of the arrangement and the date the shares of the non-Canadian company are distributed to the former shareholders of the acquired company. As a result of this delay, some filers have questioned whether the distribution of the non-Canadian company's shares upon the exercise of the exchangeable shares may still be viewed as being "in connection with" the section 2.8 transaction, and have made application for exemptive relief to address this uncertainty.

The Commission is of the view that the exemption contained in section 2.8 is available for all trades which are necessary to complete an exchangeable share transaction involving a procedure described in section 2.8, even where such trades may occur several months or years after the transaction. In the case of the acquisition noted above, the Commission notes that the investment decision of the shareholders of the acquired company at the time of the arrangement ultimately represented a decision to exchange their shares for shares of the non-Canadian company. The distribution of such shares upon the exercise of the exchangeable shares does not represent a new investment decision but merely represents the completion of that original investment decision. Accordingly, the Commission does not believe that exemptive relief is warranted in these circumstances.

Similarly, the Commission is of the view that the exemptions in clauses 35(1)16 and 35(1)17, paragraphs 72(1)(j) and 72(1)(k), and section 2.15 of Rule 45-501, are available for all trades necessary to complete a takeover bid or an issuer bid that involves an exchangeable share structure (as described above), even where such trades may occur several months or years after the bid.

2.9 Other Exemptions - There are various other exemptions from the prospectus and registration requirements that are available to sellers of securities in prescribed circumstances, including Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors, and Consultants* which exempts sales of securities of an issuer to its employees

and executives, among others. The Commission notes, in particular, that certain exemptions previously contained in Rule 45-501 as it read when it was originally adopted in December 1998 are now contained in MI 45-102. Market participants engaged in the purchase and sale of securities under exemptions from the prospectus and registration requirements should read MI 45-102 together with Rule 45-501 to ensure that they have duly considered all regulatory requirements applicable to exempt distributions of securities in Ontario.

2.10 Applications for Accredited Investor Recognition - Paragraph (u) of the “accredited investor” definition in section 1.1 of Rule 45-501 contemplates that a person or company may apply to be recognized by the Commission as an accredited investor. The Commission will consider applications for accredited investor recognition submitted by or on behalf of investors that do not meet any of the other criteria for accredited investor status but that nevertheless have the requisite sophistication or financial resources. The Commission has not adopted any specific criteria for granting accredited investor recognition to applicants as the Commission believes that the “accredited investor” definition generally covers all of the types of investors that do not require the protection of the prospectus and registration requirements under the Act. Accordingly, the Commission expects that applications for accredited investor recognition will be utilized on a very limited basis. If the Commission considers it appropriate in the circumstances, it may grant accredited investor recognition to an investor on terms and conditions, including a requirement that the investor apply annually for renewal of accredited investor recognition.

2.11 Exemption for a Trade in a Security from an Offeree outside Ontario - The exemption from the prospectus and registration requirements in section 2.15 of the Rule has been adopted to extend the prospectus and registration exemptions contained in clause 72(1)(k) and paragraph 35(1)17 of the Act. These exemptions are only available for a trade in securities to a person or company making a “take-over bid” or “issuer bid” as defined in subsection 89(1) of the Act. Both of these definitions require that an offer be made to a person or company who is *in Ontario* or to any security holder of the issuer whose last address as shown on the books of the issuer is *in Ontario*. Therefore, if none of the sellers/offerees is *in Ontario*, these exemptions will not be available. Accordingly, section 2.15 provides for an exemption where there is technically no “take-over bid” or “issuer bid” in Ontario solely because there is no seller in Ontario.

2.12 Exemption for a Trade in a Security as Consideration for the Purchase of Business Assets with a Prescribed Fair Value - The exemption from the prospectus and registration requirements in section 2.16 of the Rule has been adopted to facilitate commercial transactions involving the purchase of “business assets” having a minimum fair value of $100,000 where the purchaser is issuing its own securities as consideration for the purchase. With the introduction of the exemption in section 2.16, an issuer seeking to purchase business assets using its own securities as consideration will have a prospectus exemption even though the seller acquiring the securities is not an accredited investor.

PART 3 CERTIFICATION OF FACTUAL MATTERS

3.1 Seller’s Due Diligence - It is the seller’s responsibility to ensure that its trades in securities are made in compliance with applicable securities laws. In the case of a seller’s reliance upon exemptions from the prospectus and registration requirements, the Commission expects that the seller will exercise reasonable diligence for the purposes of determining the availability of the exemption used in any particular circumstances. The Commission will normally be satisfied that a seller has exercised reasonable diligence in relying upon a particular exemption if the seller has obtained statutory declarations or written certifications from the purchasers, unless the seller has knowledge that any facts set out in the declarations or certifications are incorrect. In circumstances where a seller has recently obtained a statutory declaration or a written certification from a purchaser with whom a further trade is being made on an exempt basis, the seller may continue to rely upon the recently obtained statutory declaration or certification unless the seller has reason to believe that the statutory declaration or certification is no longer valid in the circumstances.

PART 4 OFFERING MEMORANDA

4.1 Use of Offering Memoranda in Connection with Private Placements

(1) Part 4 of Rule 45-501 provides for the application of the statutory right of action referred to in section 130.1 of the Act if an offering memorandum is delivered to a prospective investor in connection with a trade made in reliance upon a prospectus exemption in section 2.1, 2.3, 2.12 or 2.13 of Rule 45-501. In this case, the statutory right of action must be described in the offering memorandum and a copy of the offering memorandum must be delivered to the Commission. With the exception of the government incentive security exemption in section 2.13, there is no obligation to prepare an offering memorandum for use in connection with a trade made in reliance upon the above-noted prospectus exemptions. However, business practice may dictate the preparation of offering material that is delivered voluntarily to purchasers in connection with exempt trades under section 2.1, 2.3, or 2.12. This offering material may constitute an “offering memorandum” as defined in Ontario securities law. The statutory right of rescission or damages applies when the offering

memorandum is provided mandatorily in connection with an exempt trade made under section 2.13, or voluntarily in connection with exempt trades made under section 2.1, 2.3 or 2.12, including an exempt trade made under section 2.3 to a government or financial institution that is an accredited investor. However, a document delivered in connection with a sale of securities made otherwise than in reliance upon the above-noted exemptions does not give rise to the statutory right of action or subject the seller to the requirements of Part 4.

(2) With the exception of an offering memorandum that is provided in respect of a trade in government incentive securities made under the exemption in section 2.13, Ontario securities law generally does not prescribe what an offering memorandum should contain.

(3) The Commission cautions against the practice of providing preliminary offering material to certain prospective investors before furnishing a “final” offering memorandum unless the material contains a description of the statutory right of action available to purchasers in situations when the statutory right of action applies and a description is required. The only material prepared in connection with the private placement for delivery to investors, other than a “term sheet” (representing a skeletal outline of the features of an issue without dealing extensively with the business and affairs of the issuer), should consist of an offering memorandum describing the statutory right of action and complying in all other respects with Ontario securities law.

(4) The Commission notes that, subject to *Freedom of Information and Protection of Privacy Act* requests, it is the Commission’s policy that offering material delivered to the Commission under section 4.3 of the Rule will not be made available to the public.

PART 5 RESTRICTIONS ON RESALE OF SECURITIES

5.1 Incorporation of Multilateral Instrument 45-102 Resale of Securities - Parts 6 and 8 of the Rule imposes resale restrictions on the first trades in securities distributed under certain exemptions from the prospectus requirements. Different types of resale restrictions are imposed depending upon the nature of the prospectus exemption under which the securities were distributed. In each case, the applicable resale restrictions are incorporated by reference to a specific section of MI 45-102. Sellers of securities are reminded that these resale restrictions need not apply if the seller is able to rely upon another prospectus exemption in the Act or in a Commission rule in respect of the resale of the securities in question.

PART 6 COMMISSION REVIEW

6.1 Review of Offering Material - Although sellers of securities who rely upon the private placement exemptions are required to deliver to the Commission copies of offering material that they use in connection with the exempt trades if the offering material constitutes an “offering memorandum” as defined in Ontario securities law, the offering material is not generally reviewed or commented upon by Commission staff.

6.2 Other Regulatory Approvals - Given the self-policing nature of exempt distributions and the fact that offering memoranda are not routinely reviewed by Commission staff, the decision relating to the appropriate disclosure in an offering memorandum rests with the issuer, the selling securityholder and their advisors. If Commission staff becomes aware of an offering memorandum that fails to disclose material information relating to the securities that are the subject of the transaction, staff may seek to intervene to effect remedial action.

5.1.2 Amendments to National Instrument 21-101 Marketplace Operation and National Instrument 23-101 Trading Rules

AMENDMENTS TO NATIONAL INSTRUMENT 21-101 MARKETPLACE OPERATION

PART 1 AMENDMENTS

1.1 Amendments

(1) This Instrument amends National Instrument 21-101 Marketplace Operation.

(2) Section 1.1 is amended by repealing the definition of "market integrator".

(3) Part 6 is amended by adding the following section:

6.13 Access Requirements – An ATS shall

(a) establish written standards for granting access to trading on it;

(b) not unreasonably prohibit, condition or limit access by a person or company to services offered by it; and

(c) keep records of

(i) each grant of access, including, for each subscriber, the reasons for granting access to an applicant, and

(ii) each denial or limitation of access, including the reasons for denying or limiting access to an applicant.

(4) Part 7 is repealed and the following substituted:

Part 7 — Information Transparency Requirements for Marketplaces Dealing in Exchange-Traded Securities and Foreign Exchange-Traded Securities

7.1 Pre-Trade Information Transparency - Exchange-Traded Securities

(1) A marketplace that displays orders of exchange-traded securities to a person or company shall provide accurate and timely information regarding orders for the exchange-traded securities displayed on the marketplace to an information processor as required by the information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider.

(2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace.

7.2 Post-Trade Information Transparency – Exchange-Traded Securities – A marketplace shall provide accurate and timely information regarding orders for exchange-traded securities executed on the marketplace to an information processor as required by the information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider.

7.3 Pre-Trade Information Transparency – Foreign Exchange-Traded Securities

(1) A marketplace that displays orders of foreign exchange-traded securities to a person or company shall provide accurate and timely information regarding orders for the foreign exchange-traded securities displayed on the marketplace to an information vendor.

(2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace.

7.4 Post-trade Information Transparency – Foreign Exchange-Traded Securities - A marketplace shall provide accurate and timely information regarding orders for foreign exchange-traded securities executed on the marketplace to an information vendor.

7.5 Exemption for Options - This Part does not apply to exchange-traded securities that are options, or foreign exchange-traded securities that are options, until January 1, 2007.

(5) Part 8 is repealed and the following substituted:

Part 8 — Information Transparency Requirements for Marketplaces Dealing in Unlisted Debt Securities, Inter-Dealer Bond Brokers and Dealers

8.1 Pre-Trade and Post-Trade Information Transparency Requirements - Government Debt Securities

(1) A marketplace that displays orders of government debt securities to a person or company shall provide to an information processor accurate and timely information regarding orders for government debt securities displayed on the marketplace as required by the information processor.

(2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace.

(3) A marketplace shall provide to an information processor accurate and timely information regarding details of trades of government debt securities executed on the marketplace as required by the information processor.

(4) An inter-dealer bond broker shall provide to an information processor accurate and timely information regarding orders for government debt securities executed through the inter-dealer bond broker as required by the information processor.

(5) An inter-dealer bond broker shall provide to an information processor accurate and timely information regarding details of trades of government debt securities executed through the inter-dealer bond broker as required by the information processor.

8.2 Pre-Trade and Post-Trade Information Transparency Requirements - Corporate Debt Securities

(1) A marketplace that displays orders of corporate debt securities to a person or company shall provide to an information processor accurate and timely information regarding orders for corporate debt securities displayed on the marketplace as required by the information processor.

(2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace.

(3) A marketplace shall provide to an information processor accurate and timely information regarding details of trades of corporate debt securities executed on the marketplace as required by the information processor.

(4) An inter-dealer bond broker shall provide to an information processor accurate and timely information regarding details of trades of corporate debt securities executed through the inter-dealer bond broker as required by the information processor.

(5) A dealer executing trades of corporate debt securities outside of a marketplace shall provide to an information processor accurate and timely information regarding details of trades of corporate debt securities traded by or through the dealer as required by the information processor.

8.3 Consolidated Feed — Unlisted Debt Securities - An information processor shall produce a consolidated feed in real-time showing the information provided to the information processor under sections 8.1 and 8.2.

8.4 Compliance with Requirements of an Information Processor - A marketplace, inter-dealer bond broker or dealer that is subject to this Part shall comply with the reasonable requirements of the information processor to which it is required to provide information under this Part.

8.5 Exemption for Government Debt Securities - Section 8.1 does not apply until January 1, 2007.

(6) Part 9 is repealed.

(7) Part 10 is amended by repealing sections 10.1 and 10.2 and substituting the following:

10.1 Disclosure of Transaction Fees by Marketplaces - A marketplace shall make its schedule of transaction fees publicly available.

(8) Part 11 is amended

(a) by repealing subparagraphs 11.2(1)(c)(xii), (xvi) and (xviii);

(b) in subparagraph 11.2(1)(c)(xvii) by striking out “,”and substituting “; and”;

(c) in subparagraph 11.2(1)(d)(viii) by striking out “the market integrator or any other marketplace” and substituting “an information vendor or a marketplace”; and

(d) in paragraph 11.3(1)(b) by adding “or 6.13” after “section 5.1”.

(9) Forms 21-101F1, 21-101F2, 21-101F3, 21-101F4, 21-101F5 and 21-101F6 are amended by striking out the following

□ THE FILER CONSENTS TO HAVING THE INFORMATION ON THIS FORM AND ATTACHED EXHIBITS PUBLICLY AVAILABLE.

PART 2 EFFECTIVE DATE

2.1 Effective Date – This Instrument comes into force on January 3, 2004.

AMENDMENTS TO COMPANION POLICY 21-101CP - TO NATIONAL INSTRUMENT 21-101 MARKETPLACE OPERATION

PART 1 AMENDMENTS

1.1 Amendments

(1) This Amendment amends Companion Policy 21-101CP.

(2) Subsection 2.1(1) is repealed and the following substituted:

(1) The Instrument uses the term "marketplace" to encompass the different types of trading systems that match trades. A marketplace is an exchange, a quotation and trade reporting system or an ATS. Paragraphs (c) and (d) of the definition of "marketplace" describe marketplaces that the Canadian securities regulatory authorities consider to be ATSs. A dealer that internalizes its orders of exchange-traded securities and does not execute and print the trades on an exchange or quotation and trade reporting system in accordance with the rules of the exchange or the quotation and trade reporting system (including an exemption from those rules) is considered to be a marketplace pursuant to paragraph (d) of the definition of "marketplace" and an ATS.

(3) Subsection 3.4(7) is repealed and the following is substituted:

(7) Any marketplace that is required to provide notice under section 6.7 of the Instrument will determine the calculation based on publicly available information.

(4) Subsection 5.1(3) is amended

(a) by striking out the reference to section 8.3; and

(b) by adding a reference to sections 7.3 and 8.2.

(5) Subsection 6.1(2) is repealed and the following substituted:

(2) The forms filed by a marketplace under the Instrument will be kept confidential. The Canadian securities regulatory authorities are of the view that the forms contain intimate financial, commercial and technical information and that the interests of the filers in non-disclosure outweigh the desirability of adhering to the principle that the forms be available for public inspection.

(6) Section 7.1 is amended by adding the following after "standards for access.":

In addition, the reference to "a person or company" in subsection (b) includes a system or facility that is operated by a person or company.

(7) Part 8 is amended

(a) by striking out the title and substituting **"REQUIREMENTS ONLY APPLICABLE TO ATSs"**; and

(b) by adding the following:

8.2 Access Requirements – Section 6.13 of the Instrument sets out access requirements that apply to an ATS. The Canadian securities regulatory authorities note that the requirements regarding access do not prevent an ATS from setting reasonable standards for access. In addition, the reference to "a person or company" in subsection (b) includes a system or facility that is operated by a person or company.

(8) Part 9 is amended

(a) by striking out the title and substituting **"PART 9 - INFORMATION TRANSPARENCY REQUIREMENTS FOR EXCHANGE-TRADED SECURITIES";** and

(b) by repealing sections 9.1 and 9.2 and substituting the following:

9.1 Information Transparency Requirements for Exchange-Traded Securities

(1) Subsection 7.1(1) of the Instrument requires a marketplace that displays orders of exchange-traded securities to any person or company to provide information to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider. Section 7.2 requires the marketplace to provide information regarding trades of exchange-traded securities to an information processor or, if there is no information processor, an information vendor that meets the standards set by a regulation services provider. Some marketplaces, such as exchanges, may be regulation services providers and will establish standards for the information vendors they use to display order and trade information to ensure that the information displayed by the information vendors is timely, accurate and promotes market integrity. If the marketplace has entered into a contract with a regulation services provider under NI 23-101, the marketplace must provide information to the regulation services provider and an information vendor that meets the standards set by that regulation services provider.

(2) Each regulation services provider will define the process, the business content of the reporting and regulatory data feeds, including the core data elements, the message catalogue and the service level standards. The regulation services provider will also define the service level standards for delivery and receipt of market data to and from information vendors and marketplaces under sections 7.1 and 7.2 of the Instrument.

(3) A regulation services provider will identify through a certification process which information vendors meet the standards required by the regulation services provider under section 7.1 and 7.2 of the Instrument.

(4) It is expected that if there are multiple regulation service providers, the standards of the various regulation service providers must be consistent. In order to maintain market integrity for securities trading in different marketplaces, the Canadian securities regulatory authorities will, through their oversight of the regulation service providers, review and monitor the standards established by all regulation service providers so that business content, service level standards, and other relevant standards are substantially similar for all regulation service providers.

(5) Section 7.5 of the Instrument states that the pre-trade and post-trade transparency requirements in Part 7 do not apply to exchange-traded securities and foreign exchange-traded securities that are options until January 1, 2007. The Canadian securities regulatory authorities are of the view that additional study is necessary to determine the appropriate transparency standards for options.

(9) Part 10 is amended

(a) by repealing sections 10.1 and 10.2 and substituting the following:

10.1 Information Transparency Requirements for Unlisted Debt Securities

(1) The requirement to provide transparency of information regarding orders and trades of government debt securities in section 8.1 of the Instrument does not apply until January 1, 2007. The Canadian securities regulatory authorities will continue to review the transparency requirements, to determine if the transparency requirements summarized in subsections (2) and (3) below should be amended. One of the issues we will consider is to what extent systems displaying executable prices compete with inter-dealer bond brokers and therefore should be subject to the same level of transparency as the inter-dealer bond brokers.

(2) The requirements of the information processor for government debt securities are as follows:

(a) Marketplaces trading government debt securities and inter-dealer bond brokers are required to provide in real time quotation information displayed on the marketplace for all bids and offers with respect to unlisted debt securities designated by the information processor, including details as to type, issuer, coupon and maturity of security, best bid price, best ask price and total disclosed volume at such prices; and

(b) Marketplaces trading government debt securities and inter-dealer bond brokers are required to provide in real time details of trades of all government debt securities

designated by the information processor, including details as to the type, issuer, series, coupon and maturity, price and time of the trade and the volume traded.

(3) The requirements of the information processor for corporate debt securities are as follows:

(a) Marketplaces trading corporate debt securities, inter-dealer bond brokers and dealers trading corporate debt securities outside of a marketplace are required to provide details of trades of all designated corporate debt securities, including details as to the type, issuer, class, series, coupon and maturity, price and time of the trade and, subject to the caps set out below, the volume traded, within one hour of the trade. If the total par value of a trade of an investment grade corporate debt security is greater than $2 million, the trade details provided to the information processor shall report the trade as "$2 million+". If the total par value of a trade of a non-investment grade corporate debt security is greater than $200,000, the trade details provided to the information processor shall report the trade as "$200,000+".

(b) Although subsection 8.2(1) of the Instrument requires marketplaces to provide information regarding orders of corporate debt securities, the information processor has not required this information to be provided.

(4) The marketplace upon which the trade is executed will not be shown, unless the marketplace determines that it wants its name to be shown.

(5) The information processor will use transparent criteria and a transparent process to select the designated government debt securities and designated corporate debt securities. The information processor will make the criteria and the process publicly available.

(6) An "investment grade corporate debt security" is a corporate debt security that is rated by one of the listed rating organizations at or above one of the following rating categories or a rating category that preceded or replaces a category listed below:

Rating Organization	**Long Term Debt**	**Short Term Debt**
Fitch, Inc.	BBB	F3
Dominion Bond Rating Service Limited	BBB	R-2
Moody's Investors Service, Inc.	Baa	Prime-3
Standard & Poors Corporation	BBB	A-3

(7) A "non-investment grade corporate debt security" is a corporate debt security that is not an investment grade corporate debt security.

(8) The information processor will publish the list of designated government debt securities and designated corporate debt securities. The information processor will give reasonable notice of any change to the list.

(9) The information processor may request changes to the transparency requirements by filing an amendment to Form 21-101F5 with the Canadian securities regulatory authorities pursuant to subsection 14.2(1) of the Instrument. The Canadian securities regulatory authorities will review the amendment to Form 21-101F5 to determine whether the proposed changes are contrary to the public interest, to ensure fairness and to ensure that there is an appropriate balance between the standards of transparency and market quality (defined in terms of market liquidity and efficiency) in each area of the market. The proposed changes to the transparency requirements will also be subject to consultation with market participants.; and

(b) in section 10.3 by striking out the reference to section 8.6 and substituting a reference to section 8.3.

(10) Part 11 is amended

(a) by repealing sections 11.1, 11.2, 11.3 and 11.4; and

(b) by adding the following section:

11.5 Market Integration – Although the Canadian securities regulatory authorities have removed the concept of a market integrator, we continue to be of the view that market integration is important to our marketplaces. We expect to achieve market integration by focusing on compliance with fair access and best execution requirements. We will continue to monitor developments to ensure that the lack of a market integrator does not unduly affect the market.

(11) Section 12.1 is repealed and the following substituted:

12.1 Disclosure of Transaction Fees by Marketplaces – Section 10.1 of the Instrument requires that each marketplace make its schedule of transaction fees publicly available. It is not the intention of the Canadian securities regulatory authorities that a commission fee charged by a dealer for dealer services be disclosed. Each marketplace is required to publicly post a schedule of all trading fees that are applicable to outside marketplace participants that are accessing an order and executing a trade displayed through an information processor or information vendor. The requirement to disclose transaction fees does not require a combined price calculation by each marketplace.

(12) Section 16.2 is amended by adding the following subsection:

(3) The forms filed by an information processor under the Instrument will be kept confidential. The Canadian securities regulatory authorities are of the view that they contain intimate financial, commercial and technical information and that the interests of the filers in non-disclosure outweigh the desirability of adhering to the principle that all forms be available for public inspection.

PART 2 EFFECTIVE DATE

2.1 Effective Date - This Amendment comes into force on January 3, 2004.

AMENDMENTS TO NATIONAL INSTRUMENT 23-101 TRADING RULES

PART 1 AMENDMENTS

1.1 Amendments

(1) This Instrument amends National Instrument 23-101 Trading Rules.

(2) Section 2.1 is amended by striking out "the rules, policies and other similar instruments" and substituting "similar requirements".

(3) Part 8 is amended

(a) in paragraph 8.4(c) by adding "in its capacity as a regulation services provider" after "directions made by the regulation services provider"; and

(b) by repealing section 8.5.

(4) Subsection 9.3(2) is repealed.

(5) Section 10.3 is repealed.

(6) Part 11 is amended

(a) in paragraph 11.2(1)(p) by striking out "and" ;

(b) in paragraph 11.2(1)(q) by striking out "." and substituting "; and";

(c) in subsection 11.2(1) by adding "(r) an insider marker.";

(d) in subsection 11.2(5) by adding "a securities regulatory authority or" before "a regulation services provider";

(e) in subsection 11.2(5) by adding "the securities regulatory authority or" before each reference to "the regulation services provider";

(f) in subsection 11.2(6) by striking out "After December 31, 2003, the" and substituting "The";

(g) in subsection 11.2(6) by adding "a securities regulatory authority or" before "a regulation services provider"; and

(h) in subsection 11.2(6) by adding "by the earlier of January 1, 2007 and the date on which a self-regulatory entity or a regulation services provider implements a rule, policy or other similar instrument to which the dealer or inter-dealer bond broker is subject that requires the maintenance of the record and the transmission of the record in electronic form" at the end.

PART 2 EFFECTIVE DATE

2.1 Effective Date – This Instrument comes into force on January 3, 2004.

AMENDMENTS TO COMPANION POLICY 23-101CP – TO NATIONAL INSTRUMENT 23-101 TRADING RULES

PART 1 AMENDMENTS TO COMPANION POLICY 23-101CP TRADING RULES

1.1 Amendments

(1) This Amendment amends Companion Policy 23-101CP.

(2) Section 2.1 is amended

(a) by striking out, in the first sentence, “rules, policies and other similar instruments” and substituting “similar requirements”; and

(b) by striking out, in the second sentence, “rules, policies and other similar instruments” and substituting “requirements”.

(3) Section 7.3 is amended by adding the following after the sentence ending with “set by the regulation services provider.”

However, section 9.3 of the Instrument provides inter-dealer bond brokers with an exemption from sections 9.1 and 9.2 of the Instrument if the inter-dealer bond broker complies with the requirements of IDA Policy No. 5 Code of Conduct for IDA Member Firms Trading in Domestic Debt Markets, as amended, as if that policy was drafted to apply to the inter-dealer bond broker.

(4) Part 8 is amended

(a) in section 8.2 by striking out “information services provider” in the first sentence and substituting “regulation services provider;

(b) in section 8.2 by adding “the securities regulatory authority or” before each reference to “the regulation services provider” in the first and second sentences; and

(c) by adding the following section:

8.3 Electronic Audit Trail – Subsection 11.2(6) of the Instrument requires dealers and inter-dealer bond brokers to transmit certain information to a securities regulatory authority or a regulation services provider in electronic form by the earlier of January 1, 2007 and the date on which a self-regulatory entity or a regulation services provider implements a rule requiring the record and the transmission of the record in electronic form. The Canadian securities regulatory authorities and the self-regulatory entities are working with the industry to develop standards for these requirements.

PART 2 EFFECTIVE DATE

2.1 Effective Date – This Amendment comes into force on January 3, 2004.

Chapter 6

Request for Comments

6.1.1 Request for Comment - Proposed National Instrument 81-107 Independent Review Committee for Mutual Funds

REQUEST FOR COMMENT
PROPOSED NATIONAL INSTRUMENT 81-107
INDEPENDENT REVIEW COMMITTEE FOR MUTUAL FUNDS

Prepared by the Canadian Securities Administrators

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Introduction

We, the members of the Canadian Securities Administrators (the CSA), are publishing proposed National Instrument 81-107 *Independent Review Committee for Mutual Funds* (the Proposed Rule) for public comment. We will take your comments on the Proposed Rule until April 9, 2004. You can provide your comments by following the procedure we set out under the heading *How to provide comments on the Proposed Rule* below.

This Request for Comment (the Notice) and the Proposed Rule follow on our Concept Proposal 81-402 *Striking a New Balance: A Framework for Regulating Mutual Funds and their Managers* (the Concept Proposal). The Proposed Rule builds on certain concepts introduced in the Concept Proposal and brings us one step closer towards implementing a mandatory fund governance regime that will bring some independence to the management of mutual funds.

The Proposed Rule is intended to regulate all publicly offered mutual funds in Canada. This includes: mutual funds investing in equities, bonds, income securities or money market instruments; balanced funds; index funds; mortgage funds; and funds of funds. It also includes commodity pools, which are presently regulated by Multilateral Instrument 81-104 Commodity Pools. It would not apply to pooled funds sold on the exempt market or the following types of investment funds: hedge funds, closed-end funds, quasi closed-end funds, scholarship plans, labour-sponsored venture capital corporations, and mutual funds that are listed and posted for trading on a stock exchange or quoted on an over-the-counter market.

We expect the Proposed Rule to be implemented as a rule in each of Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia and Ontario, as Commission regulation in Quebec and Saskatchewan, and as a policy in the remaining jurisdictions represented by the CSA. The commentary contained in the Proposed Rule will be adopted as a policy in each of the jurisdictions represented by the CSA.

Additional information on the Proposed Rule, required for publication in Ontario, can be found in Appendix A of the form of notice published in the OSC Bulletin or on its website at www.osc.gov.on.ca.

The BCSC has specific issues they would like you to comment on. You can find them in Appendix A of the form of notice published in British Columbia.

Purpose

Content of the Proposed Rule: fund governance

The Proposed Rule would introduce a mandatory fund governance regime focused on conflicts of interest. Under the Proposed Rule, each mutual fund manager would be required to establish an independent review committee (IRC) for its funds[1].The IRC would be charged with reviewing all matters involving a conflict of interest between the fund manager's own commercial and business interests and its fiduciary

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[1] We have replaced the term "governance agency" with "independent review committee" because it is more descriptive and less prone to confusion.

duty to manage its mutual funds in the best interests of those funds. These conflicts will include transactions with entities that are related to the manager, trades between mutual funds, certain changes which currently require an investor vote (referred to as fundamental changes), and situations when a reasonable person would question whether the manager is in a conflict of interest situation.

Where there is a conflict of interest, the fund manager must refer the matter to the IRC and obtain its recommendation. The manager would be allowed to proceed even where the IRC does not agree, but must disclose the IRC's position and the reason for not following the IRC's recommendations to the fund's unitholders.

The existing self-dealing and conflict of interest prohibitions in the Securities Act and National Instrument 81-102 Mutual Funds (NI 81-102) would be repealed, and the discretion of the IRC would effectively replace the prohibitions. The requirement for a securityholder vote on certain changes would be replaced by consideration of the matter by the IRC.

What the Proposed Rule does not contain

Registration for fund managers

The Proposed Rule focuses on two of the three areas of reform described in the Concept Proposal: fund governance and product regulation. It does not elaborate on the registration regime for mutual fund managers. While we believe that a registration regime for mutual fund managers is an important part of a complete regulatory approach to mutual funds, we recognize that a poorly designed system of registration would have no benefits. A number of policy initiatives with a registration component are currently underway. These include the USL project, the OSC Fair Dealing Model, the BCSC Model, and the CSA's Registration Passport System. We propose to delay our work in this area until these other initiatives have evolved further.

A broad oversight role for the IRC and significant relaxation of product regulation

Our current proposal to introduce fund governance, while eliminating the self-dealing and conflict of interest provisions, is much narrower than what we described in the Concept Proposal. The Concept Proposal set out a very robust system of fund governance in which a group of independent people would oversee all of the fund manager's activities. Among other things, this group would have been asked to oversee performance, monitor fees, and act as audit committee. Given the level of oversight that would have been provided by this group, we proposed to relax much of the product regulation in NI 81-102.

Our decision to narrow the role of the IRC in the Proposed Rule came largely in response to public comment. The respondents to the Concept Proposal asked us not to cast the role of the IRC too broadly. They were concerned that by asking the IRC to oversee management, we would effectively dilute the manager's role. A number of the letters asked us to focus the attention of the IRC on areas where it could add value—while there were divergent views on the appropriateness of each of the proposed responsibilities, everyone agreed that the IRC should concentrate on approving related-party transactions.

Rationales for fund governance

Mutual fund managers owe a fiduciary duty to the mutual funds they manage and, by extension, to the investors in those funds as a whole. The fiduciary duty includes both a duty of loyalty and a duty of competence. This fiduciary duty arises at common law and civil law[2] and is reinforced by the standard of care provisions in the Securities Acts of British Columbia, Alberta, Saskatchewan, Ontario, Quebec,[3] Nova Scotia and Newfoundland.

Conflicts of interest faced by fund managers present a real challenge to their ability to meet their duty of loyalty because the interests of fund managers are not always perfectly aligned with the interests of investors. Regulating these conflicts of interest is a priority for mutual fund regulators, both in Canada and internationally.

As a paper by the Organization for Economic Co-operation and Development (OECD) illustrates, there are at least two approaches to regulating conflicts in the mutual fund context:

> One approach to possible conflicts of interest would be for CIS [collective investment scheme or mutual fund] regulators to impose highly restrictive rules and wide-ranging prohibitions… Most analysts believe that this approach would be excessively rigid. Instead most countries have created well-defined but flexible governance frameworks consisting of two parts: 1) accepted standards of conduct that combine official rules and industry best practice; and 2) well-defined legal and regulatory environments for CIS in which certain designated parties are charged with scrutinizing the activity of the CIS for conformity with those standards.[4]

While most jurisdictions have opted for an approach based on independent oversight of the mutual fund manager, Canadian legislators and regulators previously chose to respond to potential conflicts of interest by simply prohibiting certain relationships or transactions via restrictive rules.[5]

Although our prohibition-based approach to regulating conflicts of interest may be a straightforward way to avoid abuses, we recognize its shortcomings. We know the current approach is too restrictive on the one hand—because it prohibits transactions that are innocuous or even beneficial to investors—and not inclusive enough on the other—because it only deals with certain specific transactions.

Under the Proposed Rule, conflicts of interest would be regulated through a governance regime rather than restrictive rules and wide-ranging prohibitions. Improved mutual fund governance represents a structural solution to the inherent conflicts and it avoids the criticisms of our current regime while offering the following benefits:

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[2] The Background Legal Paper we published with the Concept Proposal entitled *Trust Law Implications of Proposed Regulatory Reform of Mutual Fund Governance Structures* prepared by David Stevens of Goodman and Carr LLP discusses these fiduciary duties and conflicts of interest.

[3] The standards in Quebec apply to "registered" persons, not specifically to mutual fund managers. The other provinces impose specific standards on managers of mutual funds.

[4] Governance Systems for Collective Investment Schemes in OECD Countries by John K. Thompson and Sang-Mok Choi of the Directorate for the Financial, Fiscal and Enterprise Affairs, Financial Affairs Division Occasional Paper, No.1, April 2001 at 10.

[5] The regulators have broad discretion to grant relief from those prohibitions, however, in practice, this discretion generally has been exercised only in narrow circumstances.

- Flexibility and timely decisions. Certain related-party transactions that are currently prohibited may be permitted provided an IRC judges the manager's business interests to be fair and reasonable. The IRC will be familiar with the operations of the fund manager and will, ideally, make responsive and timely recommendations.

- Better investor protection in the area of business conflicts. An independent body will vet a manager's actions taken in *all* conflict situations, not just related-party transactions. These business conflicts are not currently regulated. Every mutual fund complex, large or small, faces these conflicts and could benefit from this review.

- Increased focus on the mutual fund manager's fiduciary obligation to its funds. The mandatory fund governance regime reinforces the fund manager's obligation to act in the best interests of the fund.

- More consistent industry standards. The proposed approach will bring consistency to the industry by requiring all fund managers to formally account for their actions and will impose a single standard across the country.

Ours is a made-in-Canada approach, yet it is consistent with the approach taken by major international regulators. We expect the adoption of independent review committees will enhance the Canadian mutual fund industry's reputation as a well-regulated and governed industry. This may afford Canadian mutual funds easier access to international markets where foreign mutual funds are allowed entry.

Why we opted for a more focused approach

The Proposed Rule will bring independent review to the area where every respondent to the Concept Proposal agreed it mattered most, without placing an undue burden on mutual fund managers who have no experience working with an independent board. It will ensure every manager has a minimum level of fund governance in place and we believe this is a good starting point. The Proposed Rule is designed to strike an appropriate balance between improving investor protection and enhancing market efficiency.

The Proposed Rule will focus on conflicts: an area that we find most troubling and an area that we know from considering exemptive relief applications is not easily regulated by prescriptive rules. We believe that an independent review, conducted by a body who is close enough to the fund to understand its workings, and the needs and interests of its unitholders, will be a more effective way to regulate conduct where this is a conflict of interest.

Fundamental changes to the mutual fund

Under the Proposed Rule, certain changes which currently require an investor vote in NI 81-102 (referred to as fundamental changes) would now be referable to the IRC. We believe these changes involve business conflicts which can be reviewed by the IRC. Advance notice of the change would replace the ability of an investor to vote. We recognize, however, that some of the changes currently requiring an investor vote, such as changes to the mutual fund's fees or its investment objectives, are viewed by many investors as changes to the essence of the 'commercial bargain' between investors and the mutual fund. We are not proposing to replace investor meetings with an IRC review in those circumstances.

Inter-fund trading

The Proposed Rule would also permit purchases and sales of securities between mutual funds in the same group (referred to as inter-fund trades). In addition to review by the IRC, inter-fund trades will be subject to specific conditions that address concerns relating to pricing and transparency in the capital markets.

Our long-term vision for fund governance

Although we have significantly refined the role of the IRC in the Proposed Rule, we strongly encourage mutual fund managers and the IRCs to consider whether a broader mandate would be appropriate. Although the Proposed Rule would not regulate this, we hope that fund managers will turn to their funds' IRCs for advice on a variety of matters and will think creatively about how these groups can add value to their fund complexes. We expect that fund governance will evolve with time. Industry practices will certainly develop to supplement the regulatory regime.

Product regulation: the next phase

As we said in the Concept Proposal, we believe it is important to consider a renewed framework for regulating mutual funds. We believe the proposed regime offers us a flexible platform for future regulatory reform.

As a next phase of our work, we will continue to review mutual fund product regulation as a whole. We have already begun consultations with industry, and will continue those consultations with a view to publishing a revised product regulation system for comment.

Form of the Proposed Rule: plain language

The style and format of the Proposed Rule represent a departure from our norm. It is written in plain language without defined terms or complex drafting. Rules and relevant commentary appear side-by-side for ease of reference. The style and format of the Proposed Rule is designed to make it easy to navigate, read, and understand. We see the Proposed Rule as a case study in plain language rulemaking and we intend to build on this approach as we move forward with other initiatives.

Rationales for the use of plain language

We believe securities regulation should be comprehensible to all market participants—from sophisticated securities professionals to investors. The CSA has stated its commitment to clear and simple regulatory requirements in its strategic plan.[6]

Our long-term vision for a consolidated rulebook

Our long-term goal is to create a single rulebook that will set out all of the legal requirements that apply to publicly offered mutual funds and their managers. We hope to bring all existing and future mutual fund regulation together in one place. Like the Proposed Rule, the consolidated rulebook would be written in

[6] See the Canadian Securities Administrators' Strategic Plan for 2002-2005, dated April 2002.

plain language and would contain both the rules and the commentary that explains the application of the rules.

Background to the Proposed Rule

The Concept Proposal

The modern fund governance debate in Canada has been going on since the mid-1990s. The CSA received reports on the subject from Glorianne Stromberg and Stephen Erlichman in January 1995 and June 2000, respectively.[7] On March 1, 2002, the CSA released a Concept Proposal that set out our vision for the future of mutual fund regulation in Canada. Fund governance figured as one of the pillars of this proposed regime.

Recent regulatory developments

As we developed the Proposed Rule, we took into account these recent regulatory developments:

Regulatory exemption decisions

During the summer of 2002, members of the CSA began granting exemptions from the prohibitions and restrictions in securities regulation that regulate conflicts between the fund manager's business interests and the best interests of their mutual funds. Some of the exemptions contained the condition that the transactions in question be reviewed by an independent governance committee charged with ensuring they are made in the best interests of the mutual funds. See *In the Matter of Mackenzie Financial Corporation* July 26, 2002 and *In the Matter of Altamira Management Inc. et al* April 7, 2003. The Mackenzie decision and the decisions that followed it indicate that both regulators and the industry accept the role of independent fund governance in the context of related-party transactions.

Uniform securities legislation

In January 2003, we published our Concept Proposal *Blueprint for Uniform Securities Laws for Canada*[8] outlining our proposals for harmonizing securities laws across Canada. Chapter XII Investment Funds sets out our proposals for reforming mutual fund regulation. We intend to draft the uniform securities legislation to complement the Proposed Rule. For example, draft uniform securities legislation would give each securities regulatory authority in Canada the authority to enact the Proposed Rule as a binding rule with the force of law. When drafting the Proposed Rule, we assumed that uniform securities legislation had been enacted in each province and territory. If it is not in force across Canada when we

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7 *Regulatory Strategies for the Mid-90s – Recommendations for Regulating Investment Funds in Canada* prepared by Glorianne Stromberg for the Canadian Securities Administrators, January 1995.

Making it Mutual: Aligning the Interests of Investors and Managers – Recommendations for a Mutual Fund Governance Regime for Canada prepared by Stephen I. Erlichman, Senior Partner, Fasken Martineau DuMoulin LLP for the Canadian Securities Administrators, June 2000.

8 *Blueprint for Uniform Securities Laws for Canada,* a Concept Proposal of the Canadian Securities Administrators, January 30, 2003.

finalize the Proposed Rule, we will modify it, as necessary, to exempt industry participants from having to comply with relevant existing securities legislation, to the extent that we have authority to do this.

Ontario five year review

On May 29, 2003, the Five Year Review Committee created by the Minister of Finance in Ontario released its final report on its securities law review.[9] In that report, the committee recommended that the OSC and CSA introduce a requirement for all publicly offered mutual funds to establish and maintain an independent governance body.

The committee went on to recommend that this body have the right to either terminate the mutual fund manager or tell investors about the manager's actions and give them the right to redeem their units at no cost, when, in the reasonable opinion of the independent directors, there is cause. According to the committee, such cause could be shown in situations where the manager has placed its interests ahead of those of unitholders of a mutual fund through self-dealing, conflict of interest transactions or other breaches of its fiduciary obligations.

The committee recommended that the governance body's responsibilities should include: overseeing policies related to conflict of interest issues; monitoring fees, expenses and their allocation; receiving reports from the manager concerning compliance with investment goals and strategies; reviewing auditor appointments; meeting with the fund's auditor; and approving material contracts.

BCSC initiatives

The British Columbia Securities Commission (BCSC) released its *New Proposals for Mutual Fund Regulation: a New Way to Regulate*[10] in November 2002 as part of its initiative to rethink securities regulation in British Columbia. In this report, the BCSC recommended a code of conduct approach to mutual fund regulation that would see our existing rules replaced with general principles and guidance. Its approach to governance is permissive rather than mandatory—each manager would be asked to ensure that it has a suitable governance structure. The question of whether or not the fund manager should act as its own IRC or whether the IRC should be independent would be left to the discretion of the fund manager. Under the BCSC approach, all governance practices would be disclosed and compared to published industry practice guidelines. The *New Proposals* paper and the comment letters submitted in response to it are posted on the BCSC website at www.bcsc.bc.ca.

Staff of the BCSC helped develop the Proposed Rule and contributed their ideas about how our current regulation could be made more principles-based and consistent with the objectives behind the BCSC proposals. When combined with the commitment the CSA has to reviewing mutual fund product regulation that we discussed under the heading Product regulation: the next phase, the BCSC is satisfied the combination of that initiative and the Proposed Rule meets these objectives and will, therefore, not be pursuing a BC-only initiative to reform all aspects of mutual fund regulation in British Columbia at this time.

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9 *The Five Year Review Committee Final Report: Reviewing the Securities Act (Ontario),* prepared by the Five Year Review Committee for the Minister of Finance, March 21, 2003.

10 *New Proposals for Mutual Fund Regulation: A New Way to Regulate,* prepared by the British Columbia Securities Commission, November 14, 2002.

Summary of the Proposed Rule

Application

The Proposed Rule applies only to specific publicly offered conventional mutual funds and regulates those mutual funds and their managers. It also includes commodity pools, which are presently regulated by Multilateral Instrument 81-104 Commodity Pools. It would not apply to pooled funds sold on the exempt market or the following types of investment funds: hedge funds, closed-end funds, quasi closed-end funds, scholarship plans, labour-sponsored venture capital corporations, and mutual funds that are listed and posted for trading on a stock exchange or quoted on an over-the-counter market.

Conflicts of Interest

Where conflicts of interest arise in the fund manager's management of the mutual fund, either from the manager's own commercial and business interests, or when a reasonable person would question whether the manager is in a conflict of interest situation, the fund manager must refer the matter to the IRC for review.

In addition to the review by the IRC, mutual funds that engage in interfund trades are subject to conditions that address concerns relating to pricing and transparency in the capital markets.

Independent Review Committee

Each mutual fund must have an IRC. The Proposed Rule does not mandate a specific legal structure for an IRC, provided the fund manager complies with the requirements for the IRC in the Proposed Rule.

All of the members of the IRC must be independent from the fund manager, the mutual fund and entities related to the fund manager, with the exception of the board of directors of a related trust company.

The role of the IRC is to consider all conflict of interest matters referred to it by the fund manager and decide if the action proposed by the manager is a fair and reasonable result for the mutual fund. The IRC must then make recommendations to the manager. The Proposed Rule permits the manager and the IRC to decide how they will deal with each potential conflict situation in light of the particular circumstances that apply to the manager and the fund.

The Proposed Rule describes the standard of care for members of the IRC, the IRC's authority, appointments to the IRC, and minimum expectations regarding the proceedings of the IRC and disclosure to securityholders about the IRC.

Changes to the Mutual Fund

The fund manager must refer all changes relating to the mutual fund to the IRC. Following the recommendation of the IRC, the fund manager must send advance notice of the change to all securityholders of the mutual fund and allow them to redeem and transfer free of charge to another mutual fund managed by the manager.

Exemptions

Exemptions from the Proposed Rule may be granted by the regulator or securities regulatory authority in each of the jurisdictions.

Transition

The Proposed Rule provides for a transitional period.

Feedback on the Concept Proposal

This part of the discussion paper summarizes the feedback we received in response to the Concept Proposal.

Comment letters

We received 57 comment letters in response to our request for comments on the Concept Proposal. These included letters from:

- Industry trade associations representing mutual fund managers, investment managers, pension managers, life insurance companies and accountants in Canada and abroad. IFIC, the trade association for the mutual fund industry, provided comments on behalf of its members and many respondents expressed support for the position taken in that letter before providing further comments
- 30 mutual fund managers from across the country, including 6 bank-owned managers, a number of small managers, and the managers of 3 owner-operated funds
- The governance agencies for 3 mutual fund groups
- 7 investment management firms
- Lawyers with 5 law firms, 1 lawyer, 1 law student, 1 accounting firm and 1 economist and
- 2 investors and 1 investor advocate.

All comment letters have been posted on the websites of members of the CSA to ensure transparency of the policy-making process. See, for example, the Ontario Securities Commission website at www.osc.gov.on.ca.

We thank all respondents for participating in our work to improve mutual fund regulation.

List of respondents

Association of Canadian Pension Management
Acuity Funds Ltd.
AGF Management Limited
AIM Funds Management Inc.
Association for Investment Management and Research
Association of Labour Sponsored Investment Funds
Altamira Financial Services
Assante Asset Management Ltd.
Barclays Global Investors Canada Limited
Borden Ladner Gervais LLP
BMO Investments Inc.
Certified General Accountants Association of Manitoba
Capital International Asset Management (Canada) Inc.
Canadian Imperial Bank of Commerce
ClaringtonFunds
Canadian Life and Health Insurance Association Inc.
The Board of Governors of The Cundill Funds
Cyril Fleming and Mary Carmel Fleming
Dynamic Mutual Funds Ltd.
The Board of Governors of Dynamic Mutual Funds
Fasken Martineau DuMoulin LLP
Fidelity Investments Canada Limited
Fogler, Rubinoff LLP as counsel to Friedberg Mercantile Group
Fonds des professionnels inc.
Frank Russell Canada Limited
Franklin Templeton Investments Corp.
Guardian Group of Funds
Howson Tattersall Investment Counsel Limited
HSBC Investments Funds (Canada) Inc.
Investment Counsel Association of Canada
Investment Company Institute
The Investment Funds Institute of Canada
Investors Group Inc.
James C. Baillie at Schulich Investment Forum (April 2002)
Ken Kivenko
Lawrence P. Schwartz
Leith Wheeler Investment Counsel Ltd.
Lighthouse Private Client Corporation
Mawer Investment Management
McCarthy Tetrault LLP
McLean Budden Limited
MD Management Limited
Mulvihill Capital Management Inc.
National Bank Securities Inc.
Northwater Capital Management Inc.
PFSL Investments Canada Ltd.
Phillips, Hager & North Investment Management Ltd.
PricewaterhouseCoopers LLP
Robert Druzeta
RBC Funds Inc.
The Board of Governors of the Royal Mutual Funds
William J. Braithwaite, Jennifer Northcote, Simon A. Romano, Kathleen G. Ward and Alix d'Anglejan-Chatillon
Stikeman Elliott
Synergy Asset Management Inc.
TD Asset Management Inc.
Tradex Management Inc.
Westcap Mgt. Ltd.
Zenith Management and Research Corporation

Continuing Consultations

In-person meetings

We met with representatives from several fund companies who sent us comment letters. We also met with representatives of Ontario Teachers Group Inc., and two individuals, Robert W. Luba, in his capacity as a member of the AIM Funds Advisory Board, and Paul Bates.

Advisory Committee on Investment Funds

Following the release of the Concept Proposal the Ontario Securities Commission convened an *ad hoc* Advisory Committee on Investment Funds (the advisory committee) to help us work through the technical legal issues presented by our proposals and some of the issues raised by respondents on the Concept Proposal. The members of the advisory committee helped us to identify the issues in difficult areas, gave us feedback on our ideas and worked with us to develop solutions and refine our proposals.

The advisory committee members are all senior lawyers who specialize in investment management issues. They freely made a substantial commitment of their time to debate the issues with us. They are:

- Linda Currie, Osler Hoskin & Harcourt
- Marlene Davidge, Torys LLP
- Stephen Erlichman, Fasken Martineau DuMoulin LLP
- John Hall, Borden Ladner Gervais
- Karen Malatest, Torys LLP
- Lynn McGrade, Borden Ladner Gervais
- David Rounthwaite, McCarthy Tetrault LLP
- David Stevens, Goodman and Carr LLP
- David Valentine, Blake Cassels & Graydon

We greatly appreciate the enthusiastic participation of these very busy individuals. Their insights were invaluable to us.

IFIC Board of Directors Fund Governance Committee

We continued to meet regularly with members of IFIC's Board of Directors Fund Governance Committee (the IFIC committee). They provided valuable insights into the comments we received and acted as a sounding board for our ideas as we revised our proposals. We are grateful for their continued participation in our policy-making process.

These members are:

- Steve Baker, HSBC Asset Management (Canada) Limited
- Michael Banham, Clarica Investco Inc.
- Peggy Dowdall-Logie, RBC Funds Inc.
- Don Ferris, Mawer Investment Management
- David Goodman, Dynamic Mutual Funds Ltd.
- Martin Guest, Fidelity Investments Canada Limited
- Stephen Griggs, Legg Mason Canada Inc.
- Thomas Hockin, IFIC
- Chris Hodgson, Altamira Investment Services Inc.
- Darcy Lake, BMO Investments Inc.
- John Mountain, IFIC
- Mark Pratt, RBC Funds Inc.
- Brenda Vince, RBC Asset Management
- W. Terrence Wright, Investors Group Inc.

Summary of the comments

The comments on our Concept Proposal and our responses to those comments appear as an Appendix to this Notice. We received comments from a broad cross-section of the Canadian mutual fund industry. The sheer number of comments[11] is a testament to the fact that the industry does not speak with one voice. As we read the letters, we were reminded of the industry's diversity. No two letters were the same and we heard divergent views on almost every issue raised in the Concept Proposal.

Notwithstanding the differences of opinion on the concepts we proposed, the industry does appear to share a common starting point. This starting point is a general agreement that some regulatory change is necessary. Some believe our proposed framework holds great promise and they strongly support our proposals. Others remain unconvinced that our approach is the best way to get to the desired end—they feel we have not made the case for the sweeping regulatory reforms contemplated in the Concept

[11] We estimate we received over 750 pages of information.

Proposal. All in all, there is widespread agreement that change is necessary but there is no consensus on how we should effect this change.

Overarching themes

A number of overarching themes emerged from the comments. These themes coloured many of the comments on specific proposals:

The industry supports our ultimate goal

The industry strongly supports our overall aim of enhancing investor protection while bringing improvements to the workings of the industry. Although all saw investor protection as a laudable end, many respondents reminded us that it must be pursued in tandem with the goal of more functional regulation.

Costs are an issue for both the industry and investors

The industry is sensitive to costs. Many respondents fear the imposition of excessive costs may make the mutual fund industry, or parts of it, less than competitive. The industry agrees that the imposition of fund governance costs must be offset by improvements to the product regulation.

The industry prefers a flexible approach to regulation

Industry participants want the flexibility to make decisions that suit their particular circumstances. The industry would generally prefer the regulator to outline general principles and it would like to develop its own best practices.

Mutual fund managers wish to maintain control

Many managers expressed the concern that their business arrangements could be interfered with by IRCs or investors. They would prefer to not to hand any part of their business over to an independent group because they remain ultimately responsible to their mutual funds.

Large fund managers have different interests than smaller fund managers

Respondents asked us to tailor our approach to small managers so that we do not create unjustified barriers to entry into the mutual fund business.

The five-pillared framework

On the whole, the five-pillared framework for mutual fund regulation outlined in the Concept Proposal received favourable comment. We received strong support for our treatment of mutual fund regulation as a total package, rather than simply introducing new regulation on top of old in a piecemeal fashion. The comment letters underscored the importance of our re-evaluating the existing regulation concurrently with, or even prior to, the introduction of fund governance and mutual fund manager registration. Many respondents characterized the reduction in mutual fund regulation as a *quid pro quo.*

Fund governance

General

Although there was widespread agreement that good governance for mutual funds is a positive thing, our proposal to introduce IRCs to oversee all actions of mutual fund managers was met with strongly divergent reactions. Certain industry participants believe fund governance needs to be mandated, while others remain unconvinced. Not surprisingly, those managers who have voluntarily adopted some form of governance tend to support our proposals. In contrast, managers with no such experience tend to fear the costs will outweigh the benefits.

A flexible approach

Respondents commented favourably on our flexible approach to fund governance. They liked the idea that each mutual fund manager could decide how best to incorporate an IRC into its legal structure. They also liked the concept of broad governance principles.

Majority independent members

Our suggestion that a majority of the IRC members be independent of the mutual fund manager received some positive feedback but other views were also heard on this point. Many believe mandated independence is a non-negotiable item. These respondents suggested that principles of good governance would lead us towards 100 percent independence. It was recommended that if management representatives are allowed to sit as part of the IRC, the management representatives should not vote. Other respondents took the opposing view based on the assumption that management participation in the IRC would assist it to execute its roles and responsibilities.

The role of the IRC

Respondents believe the role of the IRC needs to be defined more precisely. They caution that the role should not overlap with that of the fund manager and should not be overly broad. A number of respondents would prefer to see the IRC's role restricted to making independent assessments of circumstances where the fund manager's interests conflict with those of investors. We should not inadvertently let the fund manager off the hook by shifting some of its duties over to the IRC. We were also told it would be a mistake to equate the role of the IRC with that of a corporate board. Mutual fund investors are not owners of the fund in the same way that shareholders own corporations.

The IRC's responsibilities

Many respondents commented on the minimum responsibilities proposed for the IRC. They believe the responsibilities should not be too extensive. In particular, many of these respondents believe the IRC should not approve the mutual fund manager's policies and procedures, approve benchmarks and monitor performance, or approve financial statements. However, most respondents support the idea of having the IRC approve transactions between the fund manager and entities related to it and other conflict of interest matters. The IRC should not be charged with ensuring the fund manager complies with securities regulation, monitor performance or interfere with the basic commercial bargain (this would include reviewing fees, investment objectives, change of manager).

The IRC's standard of care and liability

We received a number of emphatic comments from respondents who believe a standard of care should not be imposed on IRC members for fear that the threat of personal liability will make it difficult to recruit members at a reasonable cost. We were told that unless liability is limited in some way, IRC members may demand high salaries and the costs of obtaining insurance may be prohibitive. Although the proposed standard of care for governance agency members attracted much comment, very few comments came from people who were opposed to the standard of care as a matter of principle. Instead, the comments were motivated by cost concerns (high salaries, costly insurance and the need for expert opinion), fears of micro-management or an overly cautious approach, and the feeling that potential members might be deterred from acting.

Others agreed that personal liability should attach to the actions of IRC members. A duty of care will ensure the members do a good job, we were told. We were also told that not imposing liability would be a step backwards—without liability, the governance agency would have no credibility. A cap on liability was recommended to us because it will make it easier to recruit qualified members and obtain adequate insurance for them.

Compensation of members

A number of respondents asked us to consider the possibility that an IRC could abuse the power to set its own compensation. Many of these respondents suggested the mutual fund manager should be entrusted with setting compensation.

Appointment of members

Rather than having the IRC members fill vacancies, a number of respondents suggested the IRC should ratify the manager's choices. Most respondents agreed that involvement by the fund manager would not seriously jeopardize the independence of members. Almost every respondent emphasized that investor meetings are not practical. Limited terms were also suggested as a way of ensuring that a rogue IRC does not become self-perpetuating. Respondents highlighted a number of concerns with the suggestion that investors who do not approve of the appointments be able to exit the funds without paying deferred sales charges.

Dispute resolution

Respondents strongly supported our position that an IRC should not be given the power to terminate the management contract on its own. A number of respondents went on to suggest that the governance agency should not be allowed to indirectly terminate the management contract by way of an investor meeting either. This was seen as something that would undermine the investor's choice to engage the manager and was understood by some as another form of expropriation. Respondents generally disliked the fact that our approach to dispute resolution turns on investor meetings. In their view, such meetings are inappropriate mechanisms for resolving disputes. Not only are they costly and labour intensive, but they are also poorly attended. Alternative approaches to dispute resolution were suggested: IRC members could resign en masse or be given recourse to the regulators. We could set a regulatory mechanism or require independent arbitration for dispute resolution. Or we could simply rely on disclosure and the threat of negative publicity.

Recruitment

At various points in the Concept Proposal, we queried whether our proposals would make it difficult to recruit qualified people to serve on IRCs. A handful of respondents with governance experience informed us there is a sufficient pool of qualified individuals in Canada. One respondent went on to say that fund managers should have no trouble filling the seats on their IRCs, so long as they are willing to look beyond the traditional pool of talent. Nearly twenty respondents, none of whom have prior experience in this area, voiced the concern that it would be difficult to recruit qualified, independent members at a reasonable cost. These respondents warned that there is a limited talent pool and that qualified people will not be willing to serve because of fears around personal liability.

Replacing conflict of interest prohibitions with IRC oversight

We stated our intention in the Concept Proposal to replace the related-party prohibitions with IRC oversight. With the exception of two smaller fund managers, the respondents supported the proposed relaxation of any rules that become redundant or unnecessary due to the introduction of fund governance. Some respondents would go even further and have us eliminate the restrictions on related-party transactions as soon as possible, regardless of whether or not fund governance is introduced.

Fundamental changes

Our decision to re-examine whether investor meetings need to be called when fundamental changes are proposed met with much support. We were told that investor meetings should be avoided at all costs because mutual fund investors are generally not interested in actively participating in the investment management of their holdings. Investor meetings are poorly attended and investors generally accept the status quo or vote with their feet. These meetings are expensive to organize and they are a complex administrative exercise.

We were strongly encouraged to use the IRC as a "proxy" for investors when it comes to approving fundamental changes. Most of the respondents on this point agreed this would significantly reduce costs. The decision to change auditors, in particular, was widely thought to be one the governance agency should make.

Enhanced regulatory presence

Although we did not set out any specific proposals under this pillar, we did pose the question: how can we better carry out our role as regulator? Many of the letters we received underscored the need to begin by reducing the unnecessary administrative costs inherent in our regulatory system, preferably by creating a national securities regulator and/or a uniform body of regulation. Although these initiatives fall outside the ambit of this particular project, the industry feels they are crucial to its success. As the letter from IFIC stated, “the Concept Proposal initiatives will be of no benefit to Canadian mutual fund investors if they are simply added as layers to the pre-existing inefficiencies of our current regulatory regime”.[12] IFIC also warned that the industry would not support any proposal that is not implemented and adopted in a standardized and uniform manner across Canada.

[12] Letter of IFIC to the CSA (June 4, 2002) 2.

Alternatives considered

The Concept Proposal outlined the alternatives we considered in developing the approach we described in that document. It also set out the pros and cons to each alternative. The primary alternatives we considered, but ultimately rejected in favour of the approach set out in the Proposed Rule, include:

- Maintaining the status quo. We described in the Concept Proposal why this alternative is not an option.

- Voluntary governance in the sense used by the British Columbia Securities Commission in their *New Proposals* paper. Given our proposal to focus fund governance on monitoring conflicts and our wish to set consistent industry-wide standards, we have not adopted this option.

- A two-tiered system that would make special accommodation for small managers or for managers with limited conflicts. This system could involve one of the following:

    - no independent oversight requirements if the manager followed a prescriptive regime

    - no independent oversight requirements if the manager were under a specified size or

    - no independent oversight requirements if the manager only experienced a limited number of conflicts.

Again, given our proposal to focus fund governance on all conflicts situations and our belief in the need for consistent industry-wide standards, we have not adopted any of these alternatives.

Summary of cost-benefit analysis

When designing the cost-benefit analysis (CBA) for this initiative, the Office of the Chief Economist at the Ontario Securities Commission (OSC) considered the very different nature of the Canadian fund industry from the markets in the U.S. and elsewhere. Unlike the U.S. Securities and Exchange Commission, Canadian regulators do not require fund governance. Furthermore, the U.S. fund governance regime (out of which most of the research on the topic originates) is quite dissimilar to the Proposed Rule. This left us with limited research that we could apply to the Canadian context.

Where voluntary fund governance boards exist in Canada, they do not operate consistently. In a detailed survey of each of these governance boards, staff of the OSC Investment Funds Branch found a wide spectrum of oversight, ranging from full U.S.-style governance to only a light advisory role. The IRC approach, as proposed, falls somewhere in between. None of the factors surveyed showed enough consistency to be tested statistically. In other words, we have a statistically useful sample of governance as a whole, but we were unable to test the impact of individual fund governance factors on fund effectiveness.

A search of the available studies on governance identified a well-established body of research in three areas: public company board effectiveness, audit committee effectiveness, and mutual fund board

effectiveness. Many of these studies provided evidence of a relationship between the intensity of the governance committee oversight and fund performance. We learned that the more frequently a governance committee meets, the greater the feedback provided to the fund manager and the fewer the conflicts between the incentives of the manager and the benefits to the investors. As a result, investor performance improves. We also believe this may result in higher returns for the fund.

This was also the common thread found by staff of the Investment Funds Branch during their interviews with fund managers. That is, one of the most useful roles of a governance board was to act as a sounding board on “grey areas” where interests of investors and managers may conflict.

The Office of the Chief Economist proposes to construct a model of the most critical factors in determining fund performance (for example, assets under management, dividend yield, etc) using a control variable to test whether or not the number of board meetings held each year has an impact on fund performance. This is consistent with the methodology found in other studies on the subject.

An independent consultant retained by the OSC has already estimated the cost savings to the fund managers from relaxing the restrictions on related party transactions. Canada has a concentrated mutual fund market in terms of the majority of assets controlled by a small number of fund manufacturers, despite the thousands of funds available to the investing public. As well, In addition, many of the largest fund managers are owned by the largest financial institutions. With fewer restrictions on related party transactions, the consultant has concluded there will be more participants in any given issue and liquidity should improve significantly. In addition, firms unrelated to intermediaries will see more competition on new issues. However, both the individual firms currently restricted by the related-party rules and the market overall should benefit, on a net basis, from improved liquidity, lower commission costs and a reduced cost of capital. This is contingent on effective oversight by IRCs.

The Office of the Chief Economist also proposes to estimate the net benefits to a mutual fund of needing to take fewer matters to a vote of its unitholders. Through survey data, we will collect information on the number of votes held, by type, on average and the costs associated with the voting procedure. Excluding the areas where votes will still be required—changes to fees and the fundamental investment objectives—we should be able to calculate the cost savings in a fairly straightforward way. The impact on unitholders from reduced participation in the decision-making process will be more difficult and possibly impractical to approximate. We may be able to reasonably assume that the more direct representation of unitholders’ interests by having the IRC involved in matters that formerly required a unitholder vote, should generate significantly greater unitholder benefits than those lost because of less direct unitholder involvement.

Data for the cost estimates was easier to obtain. As in every CBA completed by the Office of the Chief Economist, the estimated top end for costs represents the far extreme in potential expenses. For example, for sample costs of setting up and operating an IRC, we used surveys of salaries and administrative expenses for corporate boards of firms with revenue over $1 billion are used. In comparison, average revenue in the Canadian fund industry was $64 million last year. In addition, it is assumed that all members of an existing board would sit on all committees, and funds with existing boards will incur the same set-up costs for an IRC as any other funds. The low end estimates are, in general, representative of the costs sustained by the current mutual fund governance boards, including incomplete insurance coverage. Given the limited level of responsibility expected of the IRCs relative to corporate boards, the low end estimates are probably more representative of the ultimate costs. However, the objective is to ensure that the highest potential cost estimate will be is well below the lowest likely benefit.

Most of the benefits and some of the cost savings will be estimated in the next phase of the project. Based on comments received and updated information, the extreme high end of the cost estimate has been revised to $166 million. This represents a high end quote, assuming, for example, that fund companies with existing governance committees will still incur all of the costs associated with setting up and operating an IRC. The low end cost savings from relaxing restrictions on related party transactions and interfund trading at $85 million will offset part of the high end cost estimate for setting up IRCs. Both figures are annual and include unamortized initial outlays. Fund managers that do not have a related party status with one of the large financial institutions are expected to sustain a net loss from these changes, not including other benefits from IRC participation. A separate analysis will be carried out for smaller fund firms in order to assess whether the cost burden is proportionate to the net benefits that could accrue to this segment of the industry.

The proposed methodology for the cost-benefit analysis on the introduction of independent review committees for mutual funds and the analysis of the benefits of relaxing the existing related-party prohibitions are available on the website of the Ontario Securities Commission at www.osc.gov.on.ca and the Commission des valeurs mobilières du Québec at www.cvmq.com.

Related Amendments

Our current regulation of conflicts of interest focuses on the conflicts inherent in a fund manager who contracts for investments or services with related parties. It relies on prohibitions (with the possibility of exemptive relief). This regulation is not uniform among the provinces, is difficult to understand and apply and is repetitive in places.[13]

We intend to replace the current conflicts of interest regime with our proposals in the Proposed Rule. We will amend existing securities legislation and certain provisions of National Instrument 81-102 Mutual Funds where they overlap with the Proposed Rule. Concurrently, we propose to amend disclosure provisions in National Instrument 81-101 Mutual Fund Prospectus Disclosure and draft National Instrument 81-106 Investment Fund Continuous Disclosure. We intend to publish for comment the consequential amendments at a future date.

[13] The securities legislation of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia, Newfoundland and Labrador and New Brunswick are largely similar. The securities legislation of Quebec also contains certain provisions aimed at conflict situations. National Instrument 81-102 Mutual Funds regulates, on a national basis, principal trading between funds and related parties and mutual funds acquiring securities that have been underwritten by dealers related to fund managers. NI 81-102 overlaps with securities legislation to a degree.

How to provide comments on the Proposed Rule

The importance of public comment

We want your input on the Proposed Rule. We need to continue our open dialogue with industry participants if we are to achieve our regulatory objectives while balancing the interests of all stakeholders. We have raised specific issues for you to comment on in shadowboxes throughout the Proposed Rule. We also welcome your comments on other aspects of the Proposed Rule, including our general approach and anything that might be missing from it.

Due date

Your comments are due by April 9, 2004.

Where to send your comments

Comments can be sent to the Canadian Securities Administrators care of:

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
19th floor, Box 55
Toronto, ON, M5H 3S8
Telephone: 416-593-8145
Fax: 416-593-2318
e-mail: jstevenson@osc.gov.on.ca

and

Denise Brousseau, Secretary
Commission des valeurs mobilières du Québec
800 Victoria Square, Stock Exchange Tower
P.O. Box 246, 22nd Floor
Montreal, Québec H4Z 1G3
Telephone: 514-940-2150
Fax: 514-864-6381
e-mail: consultation-en-cours@cvmq.com

How to format your comments

Send your letters by electronic mail or send us two copies of your letter along with a diskette containing the document in either Word or WordPerfect format.

All comments are public

Please note that we cannot keep your submissions confidential because legislation in certain provinces requires us to publish a summary of written comments received during the comment period. All comments will also be posted to the OSC web-site at www.osc.gov.on.ca to improve the transparency of the policy-making process.

Proposed Rule

The text of the Proposed Rule follows, except in British Columbia.

Questions

If you have any questions about our proposals, please contact the following CSA staff members for clarification:

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Appendix A

Authority for the Proposed Rule

Paragraph 143(1)5 of the *Securities Act* (Ontario) (the "Act") authorizes the Ontario Securities Commission (the "Commission" or the "OSC") to make rules "prescribing requirements in respect of notification by a registrant or other person or company in respect of a proposed change in beneficial ownership of, or control or direction over, securities of the registrant and authorizing the Commission to make an order that a proposed change may not be effected before a decision by the Commission as to whether it will exercise its powers under paragraph 1 of subsection 127(1) as a result of the proposed change."

Paragraph 143(1)8 of the Act authorizes the OSC to make rules "providing for exemptions from the registration requirements under this Act or for the removal of exemptions from those requirements".

Paragraph 143(1)10 of the Act authorizes the Commission to make rules "prescribing requirements in respect of the books, records and other documents required by subsection 19(1) to be kept by market participants, including the form in which and the period for which the books, records and other documents are to be kept."

Paragraph 143(1)22 of the Act authorizes the Commission to make rules "prescribing requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to the requirements under this Act, including requirements in respect of, i. an annual report, ii. an annual information form, and iii. supplemental analysis of financial statements.

Paragraph 143(1)30 of the Act authorizes the OSC to make rules "prescribing time periods under 107 of the Act or varying or providing for exemptions from any requirement of Part XXI (Insider Trading and Self-Dealing)".

Paragraph 143(1)31 of the Act authorizes the Commission to make rules "regulating mutual funds or non-redeemable investment funds and the distribution and trading of the securities of the funds".

Paragraph 143(1)31(i) of the Act authorizes the OSC to make rules "varying Part XV (Prospectus – Distribution) or XVIII (Continuous Disclosure) by prescribing additional disclosure requirements in respect of the funds and requiring or permitting the use of particular forms or types of additional offering or other documents in connection with the funds".

Paragraph 143(1)31(ii) of the Act authorizes the Commission to make rules "prescribing permitted investment policy and investment practices for the funds and prohibiting or restricting certain investments or investment practices for the funds".

Paragraph 143(1)31(v) of the Act authorizes the OSC to make rules "prescribing matters affecting any of the funds that require the approval of security holders of the fund, the Commission or the Director, including, in the case of security holders, the level of approval".

Paragraph 143(1)31(xii) of the Act authorizes the Commission to make rules "prescribing requirements in respect of, or in relation to, promoters, advisers or persons and companies who administer or participate in the administration of the affairs of mutual funds or non-redeemable investment funds."

Appendix B

Concept Proposal 81-402
Striking a New Balance: A Framework for Regulating Mutual Funds and their Managers

Summary of Comments and Response of the Canadian Securities Administrators

Prepared by
Staff of the Canadian Securities Administrators

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Appendix A. List of respondents

Background

On March 1, 2002, the Canadian Securities Administrators (the CSA) released Concept Proposal 81-402 *Striking a New Balance: A Framework for Regulating Mutual Funds and their Managers* (the Concept Proposal) for public comment. The Concept Proposal outlined our renewed vision for mutual fund regulation in Canada and detailed our proposals to improve mutual fund governance and introduce a registration requirement for mutual fund managers.

The comment period for the Concept Proposal ended on June 7, 2002, however we did consider a number of late submissions. We received 57 comment letters in total.[1]

A list of respondents is set out in **Appendix 1**. All comment letters have been posted on the website of the Ontario Securities Commission (the OSC) (www.osc.gov.on.ca). We are pleased at the healthy response to our request for comments, and we wish to thank all of those who took the time to comment.

How to read this document

This document summarizes the public comments we received on the Concept Proposal and describes how these comments influenced the next iteration of our proposals for regulatory reform, Proposed National Instrument 81-107 Mutual Fund Governance (the Proposed Rule) and its Notice.

Although we use the phrase “governance agency” throughout this document so as to be consistent with the Concept Proposal, we are now referring to this body as the “independent review committee”.

Summary of comments and responses

Our vision for mutual fund regulation

The five-pillared framework

Public comments

On the whole, the proposed five-pillared framework for mutual fund regulation received favourable comment. We received strong support for our treatment of mutual fund regulation as a total package, rather than simply introducing new regulation on top of old in a piecemeal fashion. The comment letters underscored the importance of our re-evaluating the existing regulation concurrently with the introduction of fund governance and mutual fund manager registration.

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1 The parties represented add up to more than 57 because one investment manager is also counted as a mutual fund manager and one letter was written by a law firm on behalf of a mutual fund manager.

Most of the respondents wholeheartedly agreed with our critical assessment of the existing regulation. The letters echoed our sentiment that the current prohibition-based approach to regulating conflicts of interest is too restrictive on the one hand—because it prohibits innocuous or beneficial transactions—and not inclusive enough on the other—because it fails to address certain conflict-driven problems. One letter stressed that many innovative products are delayed or fail to come to market at all due to the current regulatory restrictions. The existing rules were widely described as being complex, restrictive and outdated.

Although our overarching goal of providing more flexible regulation was universally lauded, not everyone agreed that our proposed framework would get us to that end. We received some very positive comments on our proposal to replace the prohibition-based approach to conflicts with an approach that relies upon the discretion of independent governance agency members, but we also received comments that went in other directions. A small group of respondents would not have us regulate conflicts at all because they believe the interests of fund managers and investors are almost completely aligned. They reminded us of the safeguards built into mutual fund investing and pointed out that there is little evidence of any problems. Another small group suggested the current regulatory framework is fine as it is and one or two of that group even stated a preference for the certainty offered by its bright line tests. Still another group of respondents informed us we have not made the case for the kind of regulatory changes proposed, particularly given their potential cost to investors and the industry.[2] A number of the letters called for more detail on our proposals, particularly in the area of product regulation.

CSA response

We are confident that our five-pillared framework for mutual fund regulation is a sound blueprint for change. We believe each pillar has an important role to play in ensuring our regulation of mutual funds and their managers meets the needs of our industry and is consistent with international standards. At the same time, we understand that we cannot bring all five pillars into place overnight.

We agree with the respondents who urged us to re-evaluate the existing conflicts of interest rules concurrently with the introduction of fund governance. The fund governance regime set out in the Proposed Rule is designed to replace the conflicts of interest prohibitions in the existing regulation.

Although we continue to believe mutual fund managers should be registered, we do not elaborate on this pillar in the Proposed Rule because we wish to await the outcome of other policy initiatives that may change the way we approach registration issues.

[2] The comments on the costs of our proposals are summarized at the end of this paper along with the comments on the cost-benefit analysis.

I. Mutual fund governance

The governance agency concept: A flexible approach to implementation

Public comments

Our proposal to allow each mutual fund manager some flexibility in the design of its own governance agency, so long as it abides by our ten governance principles, met with almost unanimous approval. According to respondents, an approach that gives fund managers some flexibility is preferable to our mandating a single legal structure for all governance agencies because it will allow managers to design cost effective, yet functional, governance agencies. Interestingly, the only dissenting voice belonged to an existing governance agency. This governance agency championed the view that a single legal model is preferable because it is consistent with corporate practice and easier for the investing public to grasp.

A few respondents raised questions about the legal implications of such a flexible approach. We were asked to clarify how the requirements of trust law, corporate law and securities regulation would come together to create a consistent approach for all governance agencies, regardless of the legal form they take. We were also asked to clarify how the duties of care belonging to the governance agency, mutual fund manager and trustee would fit together. One respondent expressed some concern about the fact that the governance agencies for mutual fund trusts, unlike those for mutual fund corporations, will not be built on an already established body of law and practice. This fact might lead to some uncertainty, they told us.

CSA response

We continue to believe a flexible approach is tenable. Although we appreciate the simplicity of an approach that requires all mutual funds to be organized as corporations governed by a board of directors or trusts with individual trustees, we believe the benefits would not outweigh the costs. With a flexible approach, the consistency comes from substance, rather than form.

The board of directors of the fund manager as governance agency

Public comments

Our argument that the governance agency for a mutual fund trust should not be the board of directors, or a committee of the board of directors, of the fund manager, or the shareholder(s) of the fund manager, met with more support than not. A large majority of the respondents acknowledged that where a fund manager’s board actively governs the manager with a view to a profit, that board cannot provide truly independent fund governance. On the other hand, we also heard from a few respondents who believe the manager’s board of directors is well suited to carry out governance work because it has an interest in ensuring excellence in this area.

We received a more divided response to our proposal to allow the board of directors of the manager of "owner-operated" mutual funds to act as the governance agency. A number of respondents, including a couple of managers of owner-operated funds, agreed with our assertion that the interests of the fund manager and investors in an owner-operated structure are aligned. A slightly larger group of respondents, including some of the larger conventional fund managers and bank-owned managers, strongly disagreed. They reminded us that not all investors in owner-operated mutual funds are shareholders of the manager and, even when they are, these investors often own the manager indirectly and lack the tools to ensure their interests are served. The same level of protection should be provided by all funds, we were told.

CSA response

The governance agency is specifically designed to address conflicts between the interests of the fund manager and investors; therefore we believe the board of the fund manager cannot fulfil this role due to its inherent conflict. The arguments against the board of directors of the manager of "owner-operated" funds acting as a governance agency were persuasive.

Accordingly, the proposed regime requires all members of the governance agency to be independent of the manager and members of the board of directors of the fund manager will not be allowed to act as the governance agency.

The board of directors of a registered trust company as governance agency

Public comments

Our suggestion that the board of directors of a registered trust company could act as a governance agency was met with varying reactions. One mutual fund manager has had good experience with this structure. Other respondents, however, were skeptical about this approach. They pointed out that the board of directors of a registered trust company is just as conflicted as the board of directors of the fund manager because the directors owe a legal obligation to someone other than the mutual fund investors. We were also warned that where the trust company is owned by the shareholders of the fund manager, persons nominated as external directors may not be as independent as one would hope.

CSA response

Although we understand the arguments against allowing the board of directors of a related trust company to act as the governance agency, we believe this approach can be workable so long as the board is sufficiently independent.

Governance principle 1. Number of governance agencies to be established

Public comments

Although most of the respondents on this point agreed there would be a practical limit to the number of mutual funds that one governance agency can oversee effectively, they felt this determination should be left to the discretion of the mutual fund manager and the governance agency.

We were informed that mutual fund managers tend to manage their funds in a common manner. For this reason, many respondents felt that one governance agency could oversee all of the funds in a fund complex, provided its role, responsibility and liability is sufficiently circumscribed. Some respondents pointed out that one governance agency will be in an ideal position to analyze inter-fund conflicts across a fund complex.

CSA response

After reviewing the comment letters, we do not believe we need to specify the maximum number of funds that may be overseen by one governance agency. We believe this is an area that may be governed by industry practice standards.

Governance principle 2. Size of governance agency

Public comments

Few letters commented on our proposal to allow no fewer than three individuals to serve on a governance agency. One respondent simply stated that five or more members would be preferable while another told us that three to eight members is ideal.

CSA response

For practical reasons, we believe a governance agency should have at least three members. We leave it to the discretion of the mutual fund manager and the governance agency to determine how many additional members are required for each governance agency to function optimally. Again, this is an area that may be governed by industry practice standards.

Governance principle 3. Independence of members

Public comments

The proposed definition of independence was acceptable to most respondents,[3] however some felt the definition should be narrowed while others felt it should be broadened. We heard arguments for and against various parties being allowed to participate as independent members of a governance agency.

A couple of respondents expressed concern that the words "or could reasonably be perceived to" in the definition of independence includes a subjective element and thus gives rise to uncertainty.

Our suggestion that a majority of the governance agency members be independent of the mutual fund manager received some positive feedback but a myriad of other views were also heard on this point. One person said that all members should be independent. This person would make management representatives ex-officio members without voting rights. Many more respondents took the opposing view based on the assumption that management participation in the governance agency would assist it to execute its roles and responsibilities. Two comment letters suggested that two-thirds independence would strike a better balance of power than a simple majority. A number of smaller mutual fund managers argued that independent governance is not necessary for small managers because they have fewer potential conflicts. We were also asked to leave the question of independence to the mutual fund manager to decide. Some respondents forwarded the view that truly independent people do not have the requisite knowledge of the industry and the fund manager's business to pass judgment on management.

We received little feedback on our suggestion that the governance agency chair be independent.

CSA Response

Independence is central to the role of the governance agency and we believe that all members must be independent of the fund manager if the governance agency is to resolve conflicts of interest.

Governance principle 4. The governance agency's role

Public Comments

We were told that the governance agency's role should be clarified. The meaning of the words "best interests of the fund and its investors" must be better explained. The role must not be cast too broadly and should not overlap with or detract from the role of the mutual fund manager. The governance agency should not "supervise" because the supervisory role belongs to management at corporate law. Likewise, it should not act as a "board of directors" of a mutual fund. The governance agency should not oversee the strategic direction of the fund or micro-manage the day-to-day management of the mutual funds.

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3 A member is independent of the fund manager if he or she is free from any interest and any business or other relationship which could, or could reasonably be perceived to, materially influence the member's oversight of the mutual fund manager's management of the mutual fund

Some commenters felt that the governance agency should act as the representative of unitholders. It should focus on areas where it can add value to the unitholders it represents.

CSA response

We agree with these comments and have significantly narrowed the role of the governance agency. Its role in the Proposed Rule is to ensure that the fund manager's actions achieve a fair and reasonable result for the mutual fund, and that, where the manager's interests are potentially different from, or conflict with, the interests of the mutual fund, this conflict does not inappropriately influence the manager's actions.

Governance principle 5. The governance agency's minimum responsibilities

Public Comments

Some respondents liked the fact that we would only set a minimum mandate and allow each governance agency the flexibility to decide what other responsibilities are appropriate to it. Others were worried that this flexibility would leave governance agency members free to expand their mandate and micromanage the fund. They also suggested that this could result in a lack of rigor, fragmentation in the market, and investor confusion. A number of respondents asked us for a fuller explanation of the responsibilities and one asked us to supplement the description of responsibilities with a list of matters that are not the responsibility of the governance agency.

We saw a number of overarching themes in the comments on each of the specific responsibilities. We were told that the governance agency should not:

- duplicate the efforts of any other party, including the fund manager, the portfolio adviser, internal audit or internal compliance.

- interfere with management or engage in micro-management.

- be asked to do things that it is not well-positioned or equipped to do.

We also received the following comments on each of the specific responsibilities:

a. Meet with and receive information from management

Although our suggestion that the governance agency meet regularly with management was not controversial, a small group of respondents expressed a preference for ad hoc meetings rather than meetings on prescribed dates. One respondent asked us to clarify that the governance agency can meet with management outside of its regularly scheduled meetings to bring matters to the attention of the manager, while another asked us not to grant unlimited access to the manager. Although we were reminded that the manager should have a positive obligation to co-operate and provide whatever information the governance agency may reasonably request, we also heard concerns that the governance agency would overwhelm the fund manager with requests for studies, research, and arcane data.

b. Oversee development and compliance with policies and procedures

The overwhelming majority of respondents on this point told us the governance agency should not be asked to approve policies because they do not have the know-how to do this and because it could lead to micro-management, duplication of work, and unnecessary expense. We were reminded that boards of directors are not asked to approve policies because this job belongs to management and management's professional advisors. We were asked, "why not have the governance agency consider and review policies, rather than approve them?"

Some believe the governance agency should consider and review policies and procedures dealing with all material aspects of the operation of a mutual fund and its distribution, while others believe it should only be concerned with policies around conflict issues. It was suggested to us that the governance agency should review policies and procedures on the following:

- All material compliance matters
- Sales communications and incentive plans
- Changes to portfolio management teams
- Fund mergers
- New fund launches
- Procurement and outsourcing services
- Manager performance review/compensation
- Ethics management
- ISO 9000 certification

We heard conflicting views on whether or not the governance agency should review policies on the use of derivatives.

c. ***Determine actions where non-compliance with policies and procedures or securities regulation***

We were asked to provide further guidance on what would constitute a material non-compliance. The suggestion that the governance agency report non-compliance with policies to the regulator was not popular. Reporting to investors and asking the manager to remedy the non-compliance were presented to us as possible alternatives.

d. Approve benchmarks and monitor performance

Although it was agreed that investors are very interested in the performance of their funds, our suggestion that the governance agency consider and approve the fund manager's choice of benchmarks against which the fund performance is measured and monitor fund performance against these benchmarks was met with

significant resistance. Lack of expertise, fear of micro-management, cost and duplication of efforts were the reasons cited. Several respondents suggested an alternative approach where the governance agency is only required to ensure the manager has a procedure in place for monitoring performance against benchmarks that are set out in the prospectus.

e. Monitor adherence to investment objectives

Our suggestion that the governance agency monitor adherence to investment objectives and strategies met with divided reaction. Those who opposed our suggestion argued that governance agencies do not have the expertise or experience to monitor investment objectives and will require the help of costly consultants. They suggested this is unnecessary given the fact that this is already monitored internally by investment management firms. A number of respondents posited that we could get to the same result by having the governance agency receive and review reports prepared by the manager on its adherence to the funds' investment objectives.

f. Establish a charter

A number of mutual fund managers warned that a governance agency should not be able to establish its own charter without the input of the manager or regulatory guidance because there would be little to prevent members from increasing their number and expanding their mandate. We were also told this approach would lead to a wide disparity among the mandates of various governance agencies.

g. Act as the audit committee

We received mixed reaction to our proposal that the independent members of the governance agency act as the audit committee for the mutual funds. Some respondents (including two existing governance agencies) believe the members of the governance agency could be effective in their audit committee role if they are qualified and properly prepared. Other respondents believe a traditional audit function is inappropriate for a governance agency. One letter pointed out that the financial statements for mutual funds are transparent and the numeric/quantitative disclosure that must be set out is already prescribed.

We heard divergent views on whether or not the governance agency should review and approve financial statements. The majority of respondents agreed that governance agency members should be able to receive and review (but not approve) financial statements to the extent such review is necessary for them to fulfill their role and responsibilities. We were told that governance agency members should be entitled (but not required) to communicate directly with internal and external auditors of the funds to the extent such communication is necessary to fulfill their role and responsibilities. All of the respondents agreed that the governance agency should approve changes to auditors as the representative of investors, as investor votes in this area are costly and ineffective.

h. Approve related-party transactions

The large majority of respondents supported the idea that the governance agency would approve policies on related-party transactions and monitor compliance with those policies. In fact, a number of them asked us to make it clear that this is the major purpose of the governance agency. One asked us to clarify the extent to which the regulator still intends to be involved in the area of related-party transactions once the prohibitions are loosened in favour of governance agency oversight. A few smaller fund managers asked

us to recognize that they do not engage in related-party transactions. We were reminded that for exchange-traded funds and index funds, there would be no value added by requiring a governance agency to oversee portfolio transactions due to the lack of investment discretion.

i. Evaluate the manager's performance

One letter contained the suggestion that the governance agency should also be responsible for evaluating the performance of the manager in various categories.

j. Monitor compliance with a compliance plan

The governance agency should also be responsible for monitoring the manager's compliance with the mutual fund's compliance plan, according to one respondent.

k. Oversee investment management

A letter from an accounting firm suggested the governance agency should also monitor fund performance, ensure that published investment performance information is accurate and timely, and receive periodic reports on the manager's business.

l. Review services provided and fees charged by the fund manager

An existing governance agency recommended that the governance agency be asked to review whether the unitholders are receiving adequate value for the management fees paid. A smaller mutual fund manager told us we should allow market forces to take care of this.

m. Review disclosure documents

There are those that believe the governance agency should review and approve mutual fund disclosure documents because this function is tied to its investor advocacy role. Others believe mutual fund disclosure does not need to be approved by the governance agency but even they believe the governance agency can add value by reviewing and commenting on them.

CSA Response

The narrowed role for the governance agency brings with it a reduction in the number of responsibilities the governance agency will be required to carry out. For now, we will not ask the governance agency to do anything more than oversee conflicts of interest, including certain changes which currently require an investor vote in NI 81-102 (referred to as fundamental changes) we consider more akin to "business conflicts". As we explain in the Notice, this involves more than just approving related-party transactions. The governance agency will be required to set a mandate for itself after considering the kinds of conflicts that typically affect the fund manager.

Although we have narrowed the role of the governance agency, we strongly encourage the fund manager and the governance agency to consider whether the governance agency could have a broader mandate.

Governance principle 6. Standard of care for members

Public comment

Although the proposed standard of care for governance agency members attracted much comment, very few were opposed to the standard of care as a matter of principle. Instead, the comments were motivated by cost concerns (high salaries, costly insurance and the need for expert opinion), fears of micro-management or an overly cautious approach, and the feeling that potential members might be deterred from acting.

We were informed that insurance may not be available for governance agency members at a reasonable cost because insurance companies cannot accommodate exposure to unlimited liability. Two possible solutions to this problem were presented:

1. A cap on potential liability of governance agency members. A group of respondents agreed $1 million is an appropriate cap because that is the general statutory limit of liability for any breach of securities act provisions. A smaller group of respondents argued against such a cap because a cap on liability is not in the public interest and because governance agency members should have no more protection from liability than a board of directors. Others argued that the absence of such a limit in the corporate context is not adequate justification for not imposing such a limit here because the responsibilities of agency members will be very different from those of corporate directors.

2. A legislated business judgement rule. A significant number of respondents asked us to ensure that the defences available to corporate boards are also available to governance agencies so potential members can properly assess their personal exposure.

CSA response

We do not believe potential governance agency members will be deterred from acting due to liability concerns if their roles and responsibilities are spelled out clearly. Likewise, we believe the concerns around micro-management and an overly cautious approach disappear once the roles and responsibilities are narrowed and clarified. We do, however, appreciate the concerns around obtaining insurance at a reasonable cost. We are monitoring the draft uniform securities legislation which may give us the regulatory authority to limit the liability of governance agency members that may arise at common law.

Governance principle 7. Appointment of members

Public comments

Although some respondents cited the theoretical problems with the fund manager appointing the first members of the governance agency, this approach was generally thought to be the most practical one. Investor meetings are costly and ineffective, according to the letters, and fund managers, who owe a fiduciary duty to investors, are in a better position than investors to choose governance agency members. A number of respondents argued that appointments by the manager need not have a negative impact on

the governance agency, provided the members are qualified, subject to legal liability, and a majority of them meet the definition of independent.

Our suggestion that the remaining governance agency members fill any vacancies received mixed reaction. A minority of respondents agreed the governance agency members can and should fill any vacancies. The majority of respondents would prefer the fund manager to be involved in the process. They argued that the existing members should simply ratify the manager's appointment of the new members because the manager is in the best position to identify qualified candidates, and this is consistent with corporate practice.

Some respondents voiced the opinion that the regulator need not develop guidelines on the qualifications of governance agency members while others told us this is important for us to do.

Our question "should investors who do not like the elected/appointed governance agency members be allowed to exit without penalty?" was met with an overwhelmingly negative response. According to commenters, excusing investors from paying deferred sales charges for this reason would defeat the contract between fund manager and investor and would leave it open to opportunistic investors to disrupt the manager's financing arrangements.

CSA response

We maintain our position that the fund manager should appoint the first members of the governance agency and that the remaining members should fill any vacancies thereafter with the assistance of the fund manager as necessary. Members of the governance agency will be appointed for specified terms.

We do not intend to develop guidelines on the qualifications of governance agency members. We believe this is something that can be left to industry best practices.

We agree that investors who do not like the governance agency should not be allowed to exit the fund and have their deferred sales charges waived. We think it highly unlikely that an investor would leave a fund solely because they do not like a given governance agency member.

Governance principle 8. Compensation of members

Public comments

The governance agency should not set its own compensation, we were told. In the absence of constraints, governance agency members will set very high salaries for themselves. All of the respondents agreed that the problems would be eased if the manager were involved in setting compensation. Some would have compensation set by the governance agency, or a committee thereof, and approved by the manager while others would give the manager sole responsibility for this job. The latter group argued that the manager is well equipped to set compensation and has an incentive to keep costs down so as not to detract from fund performance and fees generated. This is consistent with corporate practice. Our proposal to give the fund manager the ability to call an investor meeting if it considers the compensation to be unreasonable had both supporters and detractors.

The suggestion that we set regulatory limits on compensation was generally unpopular, though not uniformly so. We were asked not to prescribe dollar value limits on compensation because it is difficult to do with any precision and because market forces will quickly set appropriate benchmarks.

We were asked to clarify that governance agency members must be paid exclusively out of fund assets. Do not provide any flexibility for the fund manager to pay, the letters implored. It was suggested that if fund managers were to pay salaries, the independence of governance agency members would be lost.

CSA response

The governance agency will set its own compensation based on the fund manager's recommendation. The level of compensation must be fair and reasonable in the circumstances. We agree the governance agency should be paid exclusively out of fund assets.

Governance principle 9. Dispute resolution

Public comments

Respondents generally disliked the fact that our approach to dispute resolution turned on investor meetings. While one respondent agreed with the merit of giving the governance agency the right to call investor meetings, the remaining respondents went to great lengths to convince us that such meetings are inappropriate mechanisms for resolving disputes. Not only are they costly and labour intensive, they are poorly attended. We were warned that complicated issues could arise when different funds in the same family, or different classes of units within the same fund, vote differently on matters such as the election of agency members or a change of fund manager resulting from a change of control.

The vast majority of respondents strongly supported our decision not to give the governance agency the power to terminate the manager on its own, though one investor advocate did imply this was a mistake. The response to our suggestion that the governance agency be given the ability to ask investors to terminate the manager was mixed, but generally unfavourable. The investor chooses a fund manager just as much as he or she chooses a fund, we were told, and firing the manager would leave funds without management and result in the removal of the back office systems. Many said that the right to redeem is the only appropriate mechanism for terminating the fund manager.

Our proposal for informing investors of any unresolved disputes between the governance agency and fund manager was problematic for some. One letter noted that other reporting issuers are not required to file a press release describing a dispute and amend the prospectus in the event of an unresolved dispute and the writer queried why the CSA would impose more onerous disclosure rules on the mutual fund industry.

Several alternative approaches to dispute resolution were suggested, including recourse to the regulators, arbitration, disclosure, and the ability of governance agency members to resign en masse.

Our proposal to give fund managers the option of calling an investor meeting to have them terminate the appointment of governance agency members and elect new members made sense to some respondents, in theory. However, many respondents recognized that it is as impractical to ask investors to replace the members of the governance agency as it is to hold investor elections for governance agency members in the first place. One popular alternative was to empower the governance agency to deal with non-

performing individuals, without a special meeting. Some respondents suggested that performance assessments of the governance agency and its members and limited terms for governance agency members would assist with this issue.

CSA Response

The narrowed role for the governance agency changes the nature of the relationship between it and the fund manager so that it is not overseeing the manager's actions as contemplated in the Concept Proposal. Under the proposed regime, where there is a conflict of interest, the fund manager must refer the matter to the governance agency and obtain its recommendation. The manager would be allowed to proceed even where the governance agency does not agree, but must disclose the governance agency's position and the reason for not following its recommendations to the fund's unitholders. The manager ultimately makes the decision to act and is liable for its decisions. Given the shift in the relationship, we believe dispute resolution is not as prominent an issue as it once was.

We will not mandate any particular dispute resolution mechanism but will leave it to each governance agency and fund manager to take the most appropriate course of action for the particular circumstances. We will require disclosure when the manager decides not to follow the recommendations of the governance agency. We believe, more than ever, that the governance agency should not have the power to terminate the management contract.

Governance principle 10. Reporting to investors

Public comments

Only one respondent explicitly agreed with our statement that the concept of reporting to investors is important. The remainder tended to disagree with our assertion that investors need to be connected to their governance agencies. You cannot force people to get involved, they told us. The reality is that most people don't read the prospectus. Mandating additional disclosure will not help investors take more of an active interest in their investments. Some respondents doubt that the governance agency's assessment of its own performance in the annual report will add value because it is doubtful that they will be able to make an objective assessment on this matter. The costs associated with giving notice to investors was thought to heavily outweigh any potential benefit.

CSA response

Although we continue to believe it is important to inform investors about the governance agencies for their funds, we have significantly reduced the amount of disclosure that will be necessary. We will allow any governance matters to be wrapped in with other periodic (continuous disclosure) reports that must go out to investors.

Recruitment and training issues

Public comments

At various points in the Concept Proposal, we queried whether our proposals would make it difficult to recruit qualified people to serve on governance agencies. A handful of respondents with governance experience informed us there is a sufficient pool of qualified individuals in Canada. One respondent went on to say that fund managers should have no trouble filling the seats on their governance agencies, so long as they are willing to look beyond the traditional pool of talent. Nearly twenty respondents, none of whom have prior experience in this area, voiced the concern that it would be difficult to recruit qualified, independent members at a reasonable cost. These respondents warned that there is a limited talent pool and that qualified people will not be willing to serve because of fears around personal liability. Some respondents felt they could not comment on this issue without more information on the roles and responsibilities and liabilities of a governance agency.

One respondent suggested we increase the pool of candidates by specifying that there is no prohibition against members sitting on governance agencies of multiple fund complexes. Another respondent raised concerns about confidentiality if members are permitted to sit on governance agencies of multiple fund families. The letter went on to suggest that confidentiality agreements be executed in those circumstances. Yet another respondent suggested that the manager should have the right to restrict agency members from sitting on the governance agencies of other funds.

Although everyone agreed that training is important, almost every respondent felt this was not something that should be mandated by the regulator. We were told the CSA should not mandate examinations or courses as prerequisites to sitting on a governance agency. Instead, the respondents would leave it to each mutual fund manager to address. Some felt that the industry trade association should provide training.

The letters informed us that the training requirements could be very extensive—it could include training on all aspects of the mutual fund business and operations as well as training on the regulatory environment and fund accounting. We were warned that this could be a lengthy, costly and, perhaps, impossible task.

CSA Response

We believe it will not be difficult to recruit qualified people to serve on governance agencies at a reasonable cost. Governance agency members are not required to have any specialized knowledge and will not be called upon to exercise any specialized skills. Instead, they are there to exercise their judgement in conflict of interest situations. Recruiters can easily look beyond the traditional talent pool. The narrowing of the governance agency's roles and responsibilities directly impacts on the liability issue and this should temper the concerns of many respondents.

It is not our intention to mandate examinations or courses as prerequisites to sitting on a governance agency. This is an issue that is best left to the industry and each individual fund manager to work out.

Transition period

Public comments

The importance of an adequate transition period as we move to mandatory fund governance was underscored in the comment letters. We were told fund managers would need between 4 months and 5 years following the enactment of the rule to have fully functioning governance agencies. Most said two or three years would be ideal. One or two respondents urged us to bring the regulation into force as quickly as possible. A few small managers told us that implementation should be staggered according to size, with larger firms being required to establish their governance agencies first.

CSA response

We agree that an adequate transition period is essential. We have addressed this issue in the Proposed Rule.

General thoughts on fund governance

Public comments

The answer to our question, "will the governance agency have real power and real teeth?" was a resounding yes. In fact, some respondents fear the proposal will give the governance agency too much power. One respondent asked whether it makes sense to grant the governance agency such sweeping powers since the evils this regime is intended to address are not widespread.

The question, "will the governance agency add value for investors?" received a more varied response. At the positive end of the spectrum we had some letters that clearly recognized the value of a governance agency designed to function as a proxy for investors in conflict of interest situations. The respondents in the middle were not convinced of the tangible value that fund governance will bring to investors but they appreciated the optics of independent oversight. At the other end of the spectrum were those respondents who believe fund governance will not add value for investors. These respondents tended to focus on the costs of the proposed regime.[4]

II. Registration of fund managers

The necessity of a registration regime for managers

Public comments

The comments were evenly divided between those who believe mutual fund managers should be registered so that they may be held to minimum standards and those who believe registration is not necessary. Those opposed to manager registration told us it is not warranted because fund managers are

4 See the comments on the cost benefit analysis.

"market participants" who are subject to the oversight of most regulators and are already subject to a standard of care.

CSA response

We believe that minimum standards for mutual fund managers are an important part of a complete regulatory approach to mutual funds and their managers. At the same time, we recognize that a poorly designed system of registration is worse than no registration system at all. A number of policy initiatives with a registration component are currently underway. These include the USA project, the OSC Fair Dealing Model, the BCSC Model, and the CSA's Registration Passport System. We see the value in delaying our work in this area until these other initiatives have evolved further.

Because we do not propose a registration regime for mutual fund managers in the Proposed Rule, we do not respond to the comments on this pillar in the remainder of this paper.

Exemptions from registration

Public comments

The banks argued that bank-owned mutual fund managers should be exempted from any registration requirements because certain regulatory bodies, such as OSFI and the stock exchanges, already impose compliance rules on them and also because other entities within the mutual fund group are regulated through equivalent regulatory frameworks.

It was suggested to us that fund managers already registered as investment counsel/portfolio managers should be exempt from future fund manager registration requirements because adding another layer of registration would be duplicative.

Condition of registration 1. Senior management positions

Public comments

Our proposal that each mutual fund manager be required to have a chief executive officer, a chief financial officer, a senior administrative officer and a senior compliance officer met with some resistance. We were informed that this will create a barrier to entry for smaller fund groups because they may find it difficult to justify filling four full-time senior management positions. A number of respondents told us that we should permit one person to fill multiple roles, like the IDA and MFDA do, or even allow for part-time positions.

Condition of registration 2. Criminal record checks

Public comments

The one letter that spoke to this point agreed that police and disciplinary checks should be conducted on senior officers and directors of the fund manager by the principal regulator.

Condition of registration 3. Minimum proficiency

Public comments

We received moderate support for our proposal that each of the senior officers and directors of the fund manager should be required to have at least three years of direct experience working in, or providing service to, the investment fund/securities industry. Some respondents asked, however, why we would require a higher standard of proficiency for fund managers than we do for companies registered as advisers or SRO members. A minimum level of experience should not be required, we were told, because it could be difficult to obtain in practice. Instead, we were asked to recognize that various types of experience may be appropriate and even valuable.

Our suggestion that the chief financial officer must have suitable financial and accounting training, as well as the expertise to enable such officer to fulfil the functions of such office, was uncontroversial. One mutual fund manager wrote that a CFA designation should be required of the person ultimately responsible for investment decisions.

In the Concept Proposal, we stated that senior officers would successfully complete: the Partners', Directors' and Senior Officers' Qualifying Examination (Canadian Securities Institute), the Officers', Partners' and Directors' Course (IFIC) or an acceptable equivalent. Some respondents agreed this would be appropriate while others did not believe that individuals should be required to pass any of the existing partners, directors, and officers exams since none of them relate specifically to the matters with which mutual fund managers must concern themselves.

The bulk of respondents do not believe the governance agency should be given the responsibility of determining the suitability of officers and their relative proficiency. They said that this is a role that is best left with the regulators who already have experience in this area and have access to records on many registrants.

Condition of registration 4. Filing the manager’s financial statements

Public comments

It was agreed that mutual fund managers should file their annual audited financial statements with the principal regulator.

Condition of registration 5. Minimum capital

Public comments

Of all of our proposals under this pillar, the proposal to impose a minimum capital requirement was the most controversial. Ten respondents, including four banks, told us a minimum capital requirement is justified. Twice that number did not accept the reasons we offered for a minimum capital requirement. Critics told us that minimum regulatory capital is a concept borrowed from the regulation of financial

institutions where protection of deposits is a primary concern. In contrast, mutual fund assets are lodged with a third party custodian, so minimum regulatory capital is not needed to ensure an investor is able to get his or her redemption proceeds if the manager becomes financially troubled. We were reminded that capital requirements have been rejected in other international jurisdictions, such as the United States.

Respondents told us that a capital requirement will increase the cost of doing business for fund managers. We were warned that minimum capital will act as a barrier to entry into the industry for smaller, niche mutual fund managers and that it will force the closing or consolidation of smaller firms. We were also informed that a capital requirement will amount to a form of indirect taxation on large firms that will effectively punish them for each substantial new mandate they win.

Each of the formulae for calculating minimum capital we presented were criticized as being inappropriate. Many respondents felt the levels of capital recommended were excessive and they asked us to justify why we proposed capital requirements significantly in excess of the current requirements for ICPM's and mutual fund dealers. We received a number of thoughtful letters explaining why it is inappropriate to calculate minimum capital on the basis of assets under management. These letters explained that a larger manager is not necessarily riskier than a small one. In fact, the probability of the fund manager collapsing and not meeting its liabilities decreases as assets increase. We were also informed that a minimum capital requirement that is fixed as a percentage of assets under management would create difficulty for managers experiencing rapid growth in assets under management in a short period of time. Respondents stated a preference for a flexible risk-based calculation over one that is tied to assets under management. Some suggested we adopt the current adviser capital requirements in Ontario.

A number of comment letters contained the recommendation that we look to private insurance or a contingency fund rather than a regulatory capital requirement.

Condition of registration 6. Insurance

Public comments

One respondent agreed that fund managers should have minimum insurance coverage, provided it is readily available at reasonable rates. Other industry participants suggested that insurance is not necessary, so long as the manager is independent of the custodian. One mutual fund manager posited it may be more sensible to "self insure" some risks, depending on their nature and the terms and costs of available coverage. These are decisions that are best left with the fund manager, we were told, they should not be second-guessed by a regulator.

Condition of registration 7. Implementation of internal controls, systems, and procedures

Public comments

The respondents to this part of our proposals tended to think internal control procedures should not be regulated. "Good business practice and prudence would dictate that fund managers address these matters," one fund manager told us. "We are concerned that once this process becomes bureaucratized, it will become "one size fits all", so that all fund companies, regardless of their size, business mix or

complexity, will be forced into one mold." It was also called to our attention that these functions are often carried out by the trustee rather than the fund manager. If this is the case, it may not be appropriate to impose these obligations on the fund manager.

We received various comments about the appropriate components of the list of internal controls.

We heard from a number of respondents that auditors should not be given the burden of reviewing internal controls. This was thought to be costly and duplicative.

Condition of registration 8. Controls for monitoring service providers

Public comments

It was taken as a given that a fund manager would have adequate resources, systems and procedures and personnel in place to monitor the services provided by third parties but respondents would prefer that this not be mandated.

Some felt it would not be unreasonable to require third-party service providers to have Section 5900 engagements conducted. One respondent recommended that Section 5900 reports be received by auditors who present them to the governance agency or its audit committee. Others told us it would not be appropriate to require third party providers to obtain a Section 5900 report from an accounting firm as a condition of providing services to a manager or a fund due to their expense. A number of smaller mutual fund managers doubted that they could insist on a detailed review by their auditors or a Section 5900 report. To insist on such an audit by third parties may reduce selection of available suppliers, they told us.

General thoughts on manager registration

Public comments

Industry participants impressed upon us the importance of a well-designed registration system. A poorly designed system that lacks the flexibility to permit different business models will be a barrier to entry, we were warned. We were asked to make the system as streamlined as possible with an annual registration process in one Canadian jurisdiction to govern registrants who desire to conduct business across Canada.

III. Product regulation

Replacing conflict of interest prohibitions with governance agency oversight

Public comments

We stated our intention in the Concept Proposal to replace the related-party prohibitions with governance agency oversight.[5] With the exception of two smaller fund managers, the respondents supported the proposed relaxation of any rules that become redundant or unnecessary due to the introduction of fund governance. Some respondents would go even further and have us eliminate the restrictions on related-party transactions as soon as possible, regardless of whether or not fund governance is introduced. One law firm asked us to conduct an empirical study of the current related-party rules, to identify issues, abuses (if any), and to assess the negative impact (if any) of such rules on public mutual funds in Canada. The related-party rules should not be liberalized without such empirical work first being conducted, they explained.

CSA response

We believe that the existing related-party prohibitions may be replaced with governance agency oversight. The Notice to the Proposed Rule outlines which prohibitions will be affected and explains exactly how the new approach to related-party transactions will operate.

Streamlining the investment restrictions and practices

Public comments

Our proposed plan to streamline the investment restrictions and practices was generally well liked. Some respondents would have us immediately address all of the provisions from which we routinely grant exemptive relief, such as the fund-on-fund restrictions. We were told that the 10% concentration restrictions and restrictions concerning illiquid assets should be simplified or eliminated altogether. Some respondents supported the idea of replacing some of the investment restrictions, such as the securities lending and repurchase transaction rules, with governance agency oversight. At the same time, we were told that certain aspects of regulation are most appropriately addressed through prescriptive restrictions and not all such regulation can be replaced through guidelines or governance agency oversight. Respondents said that the Concept Proposal does not provide enough detail on the proposed changes to the product regulation.

CSA response

Given the level of oversight that would have been provided by the governance agency contemplated in the Concept Proposal, we proposed to relax much of the product regulation in NI 81-102. However, in

[5] See the comments above under Governance Principle 5(h).

response to public comment, the regime being proposed now is much narrower than what we described in the Concept Proposal.

A number of respondents asked us to focus the attention of the governance agency on areas where it could add value, with everyone agreeing that the governance agency should concentrate on approving related-party transactions. Accordingly, we have focussed our changes to the product regulation regime on conflicts of interest.

We believe the proposed regime offers us a flexible platform for future regulatory reform. As we said in the Concept Proposal, we believe it is important to consider a renewed framework for regulating mutual funds and their managers. Consultations with industry are continuing with a view to publishing a revised product regulation system for comment.

IV. Investor rights

Fundamental changes

Public comments

Our decision to re-examine whether investor meetings need to be called when certain changes (which are currently referred to as fundamental changes) are proposed met with strong support. We were told very clearly that investor meetings should be avoided at all costs because mutual fund investors are generally not interested in actively participating in the investment management of their holdings. Investor meetings are poorly attended and investors generally accept the status quo or redeem their units. To make matters worse, these meetings are expensive to organize and they are a complex administrative exercise. That being said, it was suggested investors should retain the right to approve changes where a new, non-related mutual fund company assumes the contract to manage the mutual funds and where there is a change in investment objectives.

We were strongly encouraged to use the governance agency as a "proxy" for investors when it comes to approving fundamental changes. Most of the respondents on this point agreed this would significantly reduce costs. The decision to change auditors, in particular, was widely thought to be one the governance agency should make.

Our suggestion that we would consider whether minority rights should be provided to investors who do not agree with a fundamental change to their mutual fund was met with strong opposition. The reasons given were identical to those we received in response to our suggestion that investors who do not like their governance agency be allowed to exit their funds without paying deferred sales charges.

CSA response

Under the proposed regime, certain changes which currently require an investor vote under NI 81-102 (referred to as fundamental changes) will be referable to the governance agency. We recognize, however, the perception that some of the changes currently requiring investor meetings, such as changes to the mutual fund's fees or its investment objectives, are viewed by many investors as changes to the essence of

the ‘commercial bargain’ between investors and the mutual fund. We are not proposing to replace investor meetings with governance agency oversight in those circumstances.

V. Enhanced regulatory presence

Although we did not set out any specific proposals under this pillar, we did pose the question, How can we better carry out our role as regulator? We received the following comments in response:

Create a national regulator or increase harmonization

Public comments

We received some comments on the need to create a national or pan-Canadian regulator. A harmonized Securities Act and mutual fund rules were also a top priority for the industry. The IFIC letter warned that the industry does not support any proposal that is not implemented and adopted in a standardized and uniform manner across Canada. Other letters called for the co-ordination of the many projects and proposals that are ongoing.

CSA response

Mutual Fund rules are already largely harmonized across Canada. The CSA project to create uniform securities legislation (the USL project) will harmonize other areas affecting mutual funds across the country. The creation of a national regulator is outside the scope of this project.

Increase regulatory compliance reviews and crack down on violators

Public comments

Be more proactive and perform more audits, one letter urged. Respondents asked us to “develop teeth” and discipline malfeasants.

CSA response

The renewed framework for regulating mutual funds and their managers that we set out in the Concept Proposal would include an increased regulatory presence. Although this initiative falls outside the ambit of the Proposed Rule, some jurisdictions have begun developing a new protocol for reviewing prospectus and continuous disclosure documents filed by mutual funds, as well as beginning on-site inspections of fund managers and registered advisers.

Improve disclosure

Public comments

We were asked to reduce the contents of the prospectus and ensure these documents are available on the internet. One fund manager told us a standard two page point of sale document would be very beneficial to the investing public. It would improve general awareness and ensure that adequate disclosure is actually communicated and understood by investors.

CSA response

The Joint Forum of Financial Market Regulators has published a Consultation Paper that discusses its proposals to harmonize and improve the point of sale disclosure regimes for mutual funds and segregated funds. This paper includes proposals to deliver a one or two page disclosure document at the point of sale and to adopt an access-equals-delivery approach to disclosure documents that are posted online.

The cost-benefit analysis

Public comments

The cost analysis undertaken by our Chief Economist was the subject of much scrutiny and comment. The most important comment received was that the costs have not been clearly and accurately considered. Many believe the costs have been understated and they informed us that the analysis does not take into account the costs of:

- the additional regulatory burden
- the registration regime, including any capital requirements
- initial disruption to the manager when setting up a governance agency
- insurance for the unlimited liability of members in the current, unfavourable insurance market
- educating members
- transportation to and from meetings
- remuneration of governance agency members given their extensive responsibilities and unlimited liability
- preparing and running meetings, including dedicated administrative staff
- increased time demands on management and staff
- internal reports

- implementing recommendations by the governance agency
- dealing with litigation (frivolous and not)
- increased use of external consultants due to liability concerns
- reporting requirements to investors including preparation, translation, printing and mailing these materials

Some respondents felt it was misleading to express the costs in terms of total assets under management because it obscures the fact that small firms will pay significantly more of the cost, as a proportion of assets under management, than large firms. Also, when assets under management decline during market downturns, the costs will rise as a percent of assets under management, we were told.

The vast majority of respondents informed us the costs of our proposals may not, or will not, outweigh the benefits. We were told the industry is less resilient than it once was and is, as a result, less able to absorb new costs. We were also told that investors, who will ultimately bear the costs of our proposals, may not be willing to pay. The fear is that an overly costly regime could make mutual funds less attractive to the people who benefit from investing in them.

A number of smaller mutual fund managers strongly disagreed with the conclusion that .178% of assets under management for small managers is not an insurmountable obstacle. They tell us that even if the 16 bps estimate is accurate, it may undermine the viability of small mutual fund managers. Smaller fund managers informed us they would be forced to: (i) pass on some or all of the additional costs to the funds which would put their funds at a disadvantage; or (ii) incur the expenses themselves, which could have a significant adverse impact on their operations. One manager told us they would consider winding down their mutual funds if fund governance is mandated.

A number of respondents also noted how difficult it is to assess our proposals without a full analysis of the benefits of the five-pillared approach to mutual fund regulation. While some were optimistic that a significant benefit will accrue if the governance agency is empowered to deal with conflicts of interest, one smaller manager noted that the benefits would mostly accrue to large, not small, players.

CSA response

The cost-benefit analysis will be revised. The Notice to the Proposed Rule provides a summary of the proposed methodology for the cost-benefit analysis. This paper and the analysis by an independent consultant of the benefits of relaxing the existing related-party prohibitions are available in their entirety on the website of the Ontario Securities Commission at www.osc.gov.on.ca and the Commission des valeurs mobilières du Québec at www.cvmq.com.

Alternatives to our proposals: Public Comments

The Concept Proposal outlined the alternatives we considered in developing the approach we described in that document. It also set out the pros and cons to each alternative. Given our proposal to focus fund governance on all conflicts situations and our belief in the need for consistent industry-wide standards, we

have not adopted any of these alternatives. Because of this, we do not respond to the comments on this subject in the remainder of the paper.

Voluntary governance

Public comments

We were asked to consider a voluntary approach to governance coupled with best practice guidelines and disclosure. Proponents of this approach believe governance need not be mandated yet because they believe the industry is already moving towards voluntary governance. They point out that this is a more cost-effective approach that will allow each manager to decide what is best for it. Critics of the voluntary approach tell us it lacks teeth and will result in an uneven playing field for fund managers and confusion for investors. The assumption that investors read and understand the prospectus was questioned by some.

Governance in lieu of registration

Public comments

It was argued that both fund governance and manager registration have their merits and should be mandated. Registration is needed, said one respondent, to protect the integrity of the industry and investor confidence.

Enhanced duties for auditors or the regulator

Public comments

There were those who believe investors and the industry would be better served by increased audits or regulatory oversight than by fund governance because auditors and the regulator have the requisite knowledge and sophistication to address conflicts of interest. However, some respondents did not share their faith in auditors or the regulators: “One only has to look to the Enron debacle to see how ineffective auditors can be. As for regulators, there are serious time/money constraints and cost/benefit issues with enhanced regulation.” We were told that auditors are not well positioned to address conflicts of interest.

An incremental approach to change

Public comments

We were advised to take an incremental approach to change rather than making sweeping changes. Respondents believe this is a safer and more cost-effective approach.

A two-tiered approach to governance

Public comments

Some respondents asked us to consider a voluntary approach to governance which ties the benefits of a simplified regulatory framework (relief from the prescriptive rules) to the adoption of governance. This approach would give small fund managers the option of abiding by the existing prescriptive regime or adopting a fund governance agency if it is viable from a cost perspective for them to do so.

Shared governance agencies

Public comments

It was suggested that smaller mutual fund companies could effectively "co-op" the independent governance agency function, such that a group of independent individuals could serve as the independent membership component for the governance agencies for various fund groups.

A governance agency with fewer independent members

Public comments

We were asked to relieve smaller fund managers from the requirement for majority independent membership. Under this proposal, a fund group with less than $500 million in assets under management would be permitted to have a governance agency with only one independent member. The governance agency could not take, or refrain from taking, any action that was inconsistent with the views of the independent governance agency member. We also heard the suggestion that we allow small managers to use a pre-existing internal governance structure even if it is not independent.

An enhanced role for the trustee

Public comments

According to the letters, another alternative is to expand the role of the Trustee so that it reviews conflicts of interest.

Manager registration instead of governance

Public comments

One respondent suggested that registration can accomplish much of what we seek to do with governance. This respondent went on to recommend that mutual fund managers that are subsidiaries of a financial group or those mutual fund managers that meet a minimum capital requirement should be exempt from the requirement to have a governance agency, provided they are registered.

Enhanced disclosure instead of governance

Public comments

Some respondents asked whether some or all of the objectives of the Concept Proposal could not be achieved through improved disclosure.

Deregulation without governance or registration

Public comments

A number of respondents suggested a reduction in prescriptive regulation may be appropriate even in the absence of fund governance. We were asked to look at whether there are aspects of the current regulatory regime which are simply unnecessary across the industry or in respect of certain industry sectors.

Require managers to register as IC/PM

Public comments

One respondent asked, instead of creating a whole new category of registrant, why not require fund managers to be registered as Investment Counsel/Portfolio Manager? This is a reasonable standard and it would be extremely simple to implement, they argued.

An SRO instead of manager registration

Public comments

We were asked to consider the industry oversight, or SRO, model instead of manager registration. Some respondents suggested that mutual fund managers have the necessary experience to exercise competent oversight over the process of manager registration. Other respondents, however, told us they do not support having another SRO-type association regulate the mutual fund industry.

How our proposed framework relates to the regulation of other investment products:

Our proposal to regulate like products in a like manner was generally well received. Many respondents stressed how important it is to create a level playing field. Some industry participants feel the mutual fund industry in Canada is heavily regulated compared to other industries and they tell us this is unjustified. They fear that other investment vehicles may gain an even greater competitive advantage if they are not subject to the costs of fund governance.

A small group of respondents took the position that fund governance should be mandatory for all investment products. According to them, a governance agency should be required whenever there is the

potential for investor abuse brought on by conflicts of interest. A slightly larger group took the position that fund governance should only be required for those funds that are sold to less sophisticated, retail investors. We were advised to leave the exempt market alone.

We believe our proposals do not create different regulatory schemes for substantially similar investment products. Since we do not propose to regulate all investment funds in the Proposed Rule, we do not respond to the comments on this subject in the remainder of the paper. As we said in the Concept Proposal, as we move forward with our renewed framework for the regulation of mutual funds, we will be working towards meeting the challenge of determining which aspects of mutual fund regulation, if any, should also be applied to other investment vehicles.

Labour Sponsored Investment Funds

Public comments

The majority of respondents told us the regulation of LSIFs should be harmonized with the regulation of mutual funds, with modifications as necessary. One respondent strongly disagreed with this position. This respondent argued that LSIFs should not be subject to the regime contemplated by the Concept Proposal because most of it is inapplicable to LSIFs. We were informed that LSIFs already have highly evolved governance structures. As corporations, LSIFs are governed by boards of directors with the fiduciary duties outlined in their governing corporate statute. This respondent went to explain that LSIF boards would be unduly restricted if they were bound by the governance principles.

Commodity pools

Public comments

While some respondents felt the regulation of commodity pools should be harmonized with the regulation of mutual funds, others asked us to assess the regulation of commodity pools apart from this proposal. It is a subject for subsequent consideration, we were told.

Segregated funds

Public comments

A handful of respondents felt the regulation of segregated funds should be harmonized with the regulation of mutual funds. In contrast, some respondents, including the trade association for the insurance industry, argued the proposed framework should not be extended to individual variable insurance contracts related to segregated funds. One letter pointed out that the risks presented by segregated funds and mutual funds are quite different and these differences argue for a different approach to regulation. The trade association informed us that segregated funds are already subject to a governance regime that bears striking resemblance to the proposed regime.

Pooled funds

Public comments

Although a handful of respondents told us the regulation of pooled funds should be harmonized with the regulation of mutual funds, the vast majority of respondents told us it is inappropriate to expand our proposals to pooled funds. The major argument against this is that sophisticated pooled fund investors do not need the same protections as mutual fund investors. Investors in a pooled fund do not need a governance agency to oversee the management of the fund as they themselves act as their own governing body through their close relationship with the manager. We were reminded that pooled funds are used to structure innovative portfolios in a cost-effective manner. Layering on mutual fund rules would compromise their ability to invest efficiently. We were also reminded that the current adviser registration accurately reflects the reality of the core business and does not impose an artificial "product" perspective upon the business.

Hedge funds

Public comments

The comments were evenly split as to whether or not the regulation of hedge funds should be harmonized with the regulation of mutual funds. One manager of hedge funds told us adding mutual fund regulation to this market will prohibit the availability of such strategies and will, therefore, serve to perpetuate market inefficiencies, forcing hedge fund managers to focus on markets and investors outside of Canada. Such an approach would also deprive Canadian institutional investors of the benefits that would otherwise be available to them by investing in hedge funds, they said.

Exchange Traded Funds

Public comments

Again, the comments were evenly split as to whether or not the regulation of ETFs should be harmonized with the regulation of mutual funds. One manager of ETFs warned the proposal could significantly impact the current cost structure of ETFs and undermine the value of the product as it is currently structured.

Quasi closed-end funds

Public comments

All of the respondents on this point told us the regulation of quasi closed-ended funds should be harmonized with the regulation of mutual funds.

Closed-end funds

Public comments

The majority of respondents agreed the regulation of closed end funds should be harmonized with the regulation of mutual funds. They told us governance is even more important with respect to publicly offered closed-end funds, as investors do not have the right to effectively "vote with their feet" by redeeming at net asset value. A manager of closed-end funds warned us that if we regulate private closed-end funds like mutual funds, we will be closing a small but very valuable aspect of the Canadian capital markets and narrowing investment options for investors.

Capital accumulation plans

Public comments

All of the respondents on this point agreed CAPs should not be subject to a fund governance regime because it would discourage employers from offering savings plans to employees, add to the fund management costs borne by plan members and decrease their ultimate return. We were informed that the Canadian Association of Pension Supervisory Authorities is working with the pension industry on extensive plan governance guidelines. Also, the Joint Forum of Financial Market Regulators is looking at this area and we were encouraged to await the outcome of the Joint Forum's work before introducing an entirely new area of regulation to this part of the industry.

Wrap accounts

Public comments

The only respondent on this point told us wrap accounts should be treated the same as mutual funds.

Appendix 1. List of respondents

Association of Canadian Pension Management
Acuity Funds Ltd.
AGF Management Limited
AIM Funds Management Inc.
Association for Investment Management and Research
Association of Labour Sponsored Investment Funds
Altamira Financial Services
Assante Asset Management Ltd.
Barclays Global Investors Canada
Borden Ladner Gervais LLP
BMO Investments Inc.
Certified General Accountants Association of Manitoba
Capital International Asset Management (Canada) Inc.
Canadian Imperial Bank of Commerce
Clarington Funds
Canadian Life and Health Insurance Association Inc.
Cundill Funds' Board of Governors
Cyril Fleming
Dynamic Mutual Funds Ltd.
Dynamic Mutual Funds' Board of Governors
Fasken Martineau Dumoulin LLP
Fidelity Investments
Fogler Rubinoff LLP for Friedberg Mercantile Group
Fonds des professionnels inc.
Frank Russell Canada Ltd.
Franklin Templeton Investments
Guardian Group of Funds
Howson Tattersall Investment Counsel Limited
HSBC Investments Funds Canada Inc.
Investment Counsel Association of Canada
Investment Company Institute
Investment Funds Institute of Canada
Investors Group
Jim Baillie at Schulich Investment Forum
Ken Kivenko
Lawrence Schwartz
Leith Wheeler Investment Counsel Ltd.
Lighthouse Private Client Corp.
Mawer Investment Mgt.
McCarthys
McLean Budden
MD Management Limited
Mulvihill Capital Management
National Bank
Northwater
Primerica Financial Services Investments Canada Ltd.
Phillips, Hager & North
PricewaterhouseCoopers
Robert Druzeta
Royal Bank of Canada Funds Inc.
Royal Mutual Funds' Board of Governors
Stikeman Elliott
Synergy Asset Management Inc.
TD Asset Management Inc.
Tradex Management Ltd.
Westcap Management Ltd.
Zenith Management and Research Corporation

6.1.2 Proposed National Instrument 81-107 Independent Review Committee for Mutual Funds

PROPOSED NATIONAL INSTRUMENT 81-107
INDEPENDENT REVIEW COMMITTEE FOR MUTUAL FUNDS

Note to reader

This Instrument will be a National Instrument. It will contain both legally binding rules and guidance on the application of those rules.

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Introduction

This National Instrument (the Instrument) is designed to promote investor protection in mutual funds while fostering market efficiency. It requires all publicly offered mutual funds to have an independent committee charged with reviewing any conflicts of interest that may arise out of the management of the funds and making recommendations to the manager as to how these conflicts may be fairly resolved.

This Instrument contains both rules and commentary on those rules. Each securities administrator in Canada has made the rules contained here under authority granted by the securities legislation of the applicable jurisdiction. The rules have the force of law in each province and territory of Canada.

Each securities administrator has also adopted the commentary on the rules as policies. *Commentary may explain the implications of a rule, offer examples or indicate different ways to comply with a rule. It may expand on a particular subject without being exhaustive. Commentary is not legally binding, but it does reflect the views of the Canadian securities regulatory authorities. Commentary is labelled as such and it always appears in italic type.*

Part 1 Definitions and Application

1.1 Definitions

Terms defined elsewhere in securities regulation have the meaning ascribed to them in those instruments.

Commentary

1. Terms used in this Instrument should be given their ordinary meaning, unless they are defined elsewhere in securities regulation (in local or national definition rules or in securities legislation).

1.2 Mutual funds subject to Instrument

(1) This Instrument applies only to a mutual fund that is a reporting issuer in the local jurisdiction.

(2) This Instrument does not apply to a mutual fund that is

(a) a labour-sponsored fund;

(b) listed and posted for trading on a stock exchange or quoted on an over-the- counter market; or

(c) not governed by National Instrument 81-102 Mutual Funds.

Commentary

1. *The terms "investment fund" and "mutual fund" are defined in securities legislation. The term "labour-sponsored fund" is defined in proposed National Instrument 81-106 Investment Fund Continuous Disclosure.*

2. *This Instrument applies only to specific publicly offered mutual funds. Those mutual funds are investment funds that*

   (a) *an investor would reasonably understand as being conventional mutual funds; and*

   (b) *a dealer or a representative licensed to sell mutual funds is qualified to sell.*

3. *This Instrument does not regulate*

   (a) *investment funds that are not mutual funds;*

   (b) *mutual funds (commonly referred to as pooled funds) that sell securities to the public only under capital raising exemptions permitted by securities legislation (and, therefore, are not reporting issuers); and*

   (c) *investment funds that may strictly fall within the definition of "mutual fund" in securities legislation, but that are specifically excluded from the scope of this Instrument under section 1.2(2), because they are not structured like conventional mutual funds.*

Issues for Comment

01. Do you think this Instrument should apply either more broadly or more narrowly? If so, please explain why and in what matter.

1.3 Multiple class mutual funds

For multiple class mutual funds, each class or series should be considered a separate mutual fund if the class or series has a fundamental investment objective that is different from the fundamental investment objectives of the other classes or series.

Commentary

1. *Some mutual funds have multiple classes or series of securities, with each invested according to a separate fundamental investment objective. The assets of multiple class mutual funds are notionally divided into separate portfolios of assets, with each portfolio referable to a specific class or series of the mutual fund. These multiple class mutual funds are distinguishable from those mutual funds which are divided into different classes (for purposes of distinguishing different fee and service structures, for example), but where the assets of those funds are invested according to a common fundamental investment objective.*

Part 2 Independent Review Committee

2.1 Independent review committee for a mutual fund

A mutual fund must have an independent review committee in accordance with this Part.

Commentary

1. *A manager should establish an independent review committee using a structure that works for the mutual funds it manages, having regard to the potential work-load of that committee. For example, a manager that manages more than one mutual fund may establish one independent review committee for all of the mutual funds it manages. Alternatively, the manager may establish an independent review committee for each of its mutual funds, or groups of its mutual funds.*

2. *This Instrument does not mandate a specific legal structure for an independent review committee, provided a manager complies with the minimum requirements set out in this Part when creating the committee. A manager may use any of the following for the independent review committee for its mutual funds:*

   - *individuals appointed as trustees for the mutual funds;*

   - *the board of directors, or a special committee of the board of directors, of a registered trust company that acts as trustee for the mutual funds; and*

   - *a committee of individuals, each of whom is independent from the manager.*

   The board of directors, or a special committee of the board of directors, of the manager or of an entity related to the manager cannot act as the independent review committee since those directors will have a material relationship with the manager and, therefore, not be independent.

   The manager of a corporate mutual fund may use the mutual fund's board of directors as the independent review committee if it meets the other requirements of this Part. Alternatively, it could establish a separate committee as the independent review committee to act independently from the board of directors of the mutual fund.

   This Instrument does not prevent mutual funds from sharing an independent review committee with another fund manager. Managers of smaller families of mutual funds may find this a cost-effective way to set up independent review committees for their mutual funds.

3. *The Canadian securities regulatory authorities recommend that a manager consider whether the constating documents for a mutual fund (the declaration of trust or the articles of incorporation) need to be amended to create the independent*

review committee. Managers must adhere to the amendment procedures imposed in those documents.

2.2 Initial appointment

(1) The manager must appoint the first members of the independent review committee.

(2) The appointments made pursuant to subsection (1) must occur

(a) before any purchase orders for the mutual fund are accepted, for a mutual fund that is established after the first anniversary of the date this Instrument comes into force; or

(b) by the first anniversary of the date this Instrument comes into force, for a mutual fund other than a mutual fund described in paragraph (a).

2.3 Composition, Term of office and vacancies

(1) An independent review committee must have at least three members.

(2) The term of office of a member of an independent review committee must be not less than 2 years and not more than 5 years.

(3) Except as provided in subsection (4), the remaining members of the independent review committee must forthwith appoint replacement members to fill any vacancies on the independent review committee.

(4) If all members of an independent review committee cease to be members at the same time because of the operation of subsection 2.10(1) or paragraph 2.10(2)(b), the manager must forthwith appoint replacement members.

Commentary

1. The manager will appoint the first members of an independent review committee and, if all members cease to be members at once, the manager will also appoint the replacement members. The Canadian securities regulatory authorities expect that the circumstances contemplated in subsection 2.3(4) will rarely occur—generally only in the event of a mass resignation by all the members of an independent review committee or a change of manager or change in control of the manager. In those circumstances, managers should consider their timely disclosure obligations under securities legislation. A manager should contact the securities regulatory authority in its principal jurisdiction to notify them of a mass resignation of the members of the independent review committee and the reasons for such resignation.

2. Although the manager may assist the independent review committee in recruiting nominees or recommending nominees to fill vacancies on the committee, except in circumstances where subsection 2.3(4) applies, the independent review committee

will ultimately decide. The Canadian securities regulatory authorities consider this consistent with good governance practices.

3. *All members of an independent review committee should be appointed with staggered terms. Staggered terms are important because they ensure continuity and continued independence from the manager. This Instrument does not prohibit the independent review committee from reappointing members or limit the number of terms that a member may serve.*

4. *A manager should consider the workload of the independent review committee in assessing the appropriate number of members of the committee to ensure the effectiveness of the committee.*

Note to reader

- Section 2.3 provides a transition period of one year from the coming into force of this Instrument that gives managers time to set up independent review committees for their mutual funds. After the first anniversary date, a manager must establish an independent review committee for any new mutual fund before offering securities of the mutual fund to the public.

2.4 Independence

(1) Every independent review committee member must be independent.

(2) A member of the independent review committee is not independent if the member has a direct or indirect material relationship with the manager, the mutual fund, or an entity related to the manager.

(3) For the purposes of subsection (2), a material relationship is any relationship that a reasonable person would consider might interfere with the exercise of the member's independent judgement regarding conflicts of interest facing the manager.

(4) For the purposes of this section, a person who is, or has been, a director of a registered trust company that acts as trustee for a mutual fund, will be independent, if he or she is, or was, considered an independent director of the registered trust company for the purposes of the governing regulation of the registered trust company and does not or did not otherwise have a material relationship with the manager or the mutual fund.

Commentary

1. *All members of the independent review committee must be independent from the manager, the mutual fund and entities related to the manager because one of the principal functions of the independent review committee is to review the manager's conflicts of interest. The phrase "an entity related to the manager" is defined for the purposes of this Instrument in subsection 3.1(3).*

2. *The directors or a special committee of the board of directors of the manager or of an entity related to the manager cannot act as the independent review committee*

since those directors will be considered to have a material relationship with the manager.

The members of the independent review committee should not themselves be subject to inherent conflicts or divided loyalties. The Canadian securities regulatory authorities recognize, however, that there may be inherent conflicts relating to inter-fund issues where a single independent review committee acts for a family of mutual funds. In such cases, the committee's recommendation must comply with subsection 2.5(1) for each fund.

3. *A direct or indirect material relationship referred to in subsection 2.4(2) may include ownership, commercial, charitable, industrial, banking, consulting, legal, accounting or familial relationships. However, only those relationships, which might, in the view of a reasonable person, interfere with the exercise of a member's independent judgement, should be considered material relationships within the meaning of section 2.4.*

4. *The Canadian securities regulatory authorities believe that the following persons will in most circumstances be considered to have a relationship with the manager, the mutual fund or an entity related to the manager that might reasonably interfere with the exercise of the person's independent judgement. Consequently, these persons would not be considered to be independent for the purposes of this Instrument and could not be members of an independent review committee of the mutual fund*

   - *a person who is, or whose immediate family member is, or at any time during the previous 3 years has been, an officer, director or employee of the manager, the mutual fund or an entity related to the manager;*

   - *a person who has accepted, directly or indirectly, at any time during the past 3 years, any consulting, advisory or other compensatory fee from the manager, the mutual fund or an entity related to the manager; and*

   - *a person who is an associate of any person referred to above.*

   The indirect acceptance by a person of any consulting, advisory or other compensatory fee includes acceptance of a fee by:

   - *an immediate family member of that person; or*

   - *an entity that provides accounting, consulting, legal, investment banking, portfolio management, back office services or financial advisory services to the manager or the mutual fund or any company related to the manager, in which the person is a partner, member or executive officer of, or person who occupies a similar position but not an entity in which such person is a limited partner, non-managing member or person occupying a similar*

position who, in each case, has no active role in providing services to the entity.

Managers should consider the nature of the relationships outlined above when applying the general independence test set out in subsections 2.4(2) and (3) to other relationships. .

5. *In subsection 2.4(4), the Canadian securities regulatory authorities recognize that the independent members of the board of a registered trust company that acts as trustee of a mutual fund are sufficiently independent from the manager and the mutual fund to properly carry out the role of the independent review committee, due to the regulation of registered trust companies and their responsibilities at law as trustees.*

6. *The Canadian securities regulatory authorities expect the independent review committee will have in place policies that describe how members should conduct themselves when they are conflicted in relation to a matter the manager has referred to the committee.*

Note to reader

- Section 2.4 requires that all of the members of the independent review committee be independent from the manager and the mutual fund. Commentary 4 parallels proposed Multilateral Instrument 52-110 *Audit Committees,* but is tailored to mutual funds. We will change Commentary 4 to conform to the requirements in force when the CSA finalize this Instrument.

  Subsection 2.4(4) builds in an exemption for registered trust companies that act as trustees for mutual funds and that are entities related to the manager of those mutual funds.

Issues for Comment

02. Do you agree with a 'principles' based definition of independence? Are there alternatives?

03. Do you consider the definition of independence in subsections 2.4(2) and (3) appropriate?

04. Commentary 4 describes certain categories of persons we consider to have a material relationship with the manager or the mutual fund. Do you agree with the categories of precluded persons? Are there other categories that should be added?

05. Is the 'cooling off' period in Commentary 4 an appropriate period? Too long? Too short?

2.5 Responsibilities

(1) The independent review committee must consider and provide impartial judgement on a matter referred to it by the manager and recommend to the manager what action the manager should take to achieve a fair and reasonable result for the mutual fund.

(2) The independent review committee must deliberate on and decide on a recommendation to the manager in the absence of any representative of the manager or any entity related to the manager.

(3) Within six months of its formation, the independent review committee must adopt a written charter that sets out its mandate and responsibilities.

Commentary

1. The role of the independent review committee is to provide impartial judgement and make recommendations to the manager of the mutual fund about matters where the manager's interests conflict with the interests of the mutual fund.

The Canadian securities regulatory authorities expect the written charter to identify categories of matters that the manager should refer to the independent review committee for its consideration. The independent review committee should consider the specific conflicts to which the manager is subject when developing the written charter. The independent review committee and the manager are expected to review periodically this charter to ensure that they are both complying with this Instrument.

2. Subsection 2.5(2) does not preclude the independent review committee from receiving oral or written submissions from the manager.

3. The manager and the independent review committee may mutually agree that the independent review committee should have a broader mandate. For example, the independent review committee may monitor the administration and management of the mutual funds or give general advice to the manager. This Instrument does not regulate those arrangements.

2.6 Standard of care

(1) When carrying out his or her functions, a member of a mutual fund's independent review committee must

(a) act honestly and in good faith;

(b) act in the best interests of the mutual fund; and

(c) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

(2) A member of an independent review committee will not contravene his or her standard of care set out in subsection (1), if he or she exercises reasonable judgement based on the information available at the time he or she considers a matter referred to the committee.

Commentary

1. Section 2.6 recognizes the special relationship between the independent review committee and the mutual fund and therefore imposes a standard of care consistent with that relationship.

2. *For the purposes of this section, the Canadian securities regulatory authorities consider that a member has met his or her responsibility to act in the best interests of the mutual fund if the member makes his or her recommendation under subsection 2.5(1) with a view to what is a fair and reasonable result for the mutual fund without regard to the interests of the manager or any entity related to the manager. The standard of care for a member of an independent review committee is that of a reasonably prudent person.*

2.7 Authority

(1) An independent review committee must have authority to

(a) engage independent counsel and other advisors it determines necessary to carry out its duties;

(b) set and pay the compensation and proper expenses for any advisors employed by the independent review committee from the assets of the mutual fund; and

(c) set and pay the compensation and proper expenses for the members of the independent review committee from the assets of the mutual fund.

Commentary

1. *The manager may recommend the amount and type of compensation to be paid by a mutual fund to the members of the independent review committee . Consistent with good governance practices, the independent review committee will decide on its compensation considering the manager's recommendation, if any. The compensation should reflect what would be fair and reasonable for the mutual fund and the workload of the independent review committee.*

2. *The manager should not pay any compensation directly or indirectly (by reimbursing the mutual fund) to the independent review committee because this practice could jeopardize the independence of independent review committee members.*

2.8 Liability

Commentary

1. *The Canadian securities regulatory authorities believe the members of an independent review committee should be accountable for their actions. At the same time, we are not adverse to such liability being limited.*

2. *A mutual fund may indemnify or purchase insurance coverage for the members of the independent review committee, on reasonable commercial terms. The Canadian Securities regulatory authorities expect, however, that such insurance would not*

cover any liability resulting from members of the independent review committee not fulfilling their responsibilities and standard of care.

Note to Reader

Although we received many submissions recommending that we limit the liability of members of the independent review committee for breaches of the standard of care, we currently do not have the regulatory authority to limit the liability of the independent review committee that may arise at common law. We will continue to monitor the Uniform Securities Legislation initiative, which may give us the authority to limit the liability of members of the independent review committee.

Issues for Comment

06. We were told that without a limit on the liability of members of the independent review committee, insurance coverage for the members would be difficult to obtain. What are your views, given the responsibilities the IRC will have under this Instrument?

07. Will potential members be deterred from sitting on the independent review committee without such a limitation?

2.9 Proceedings

An independent review committee must maintain a record of

(a) its written charter;

(b) minutes of its meetings; and

(c) its reports and recommendations.

Commentary

1. Section 2.9 sets out the minimum requirements regarding the proceedings of an independent review committee. Subject to these requirements, the independent review committee may conduct its proceedings as it sees fit.

2.10 Ceasing to be a member

(1) An individual ceases to be a member of an independent review committee when

(a) the member dies or resigns;

(b) the member is removed in accordance with subsection (2);

(c) the member becomes disqualified under subsection (3);

(d) the member's term of office expires;

(e) the mutual fund terminates; or

(f) the manager of the mutual fund changes.

(2) A member of an independent review committee can be removed from the committee by vote of a majority of

(a) the remaining members of the independent review committee; or

(b) the securityholders of the mutual fund at a special meeting called for that purpose by the manager.

(3) A individual will cease to be a member of the independent review committee if he or she is

(a) no longer independent within the meaning of this Instrument;

(b) of unsound mind and has been so found by a court in Canada or elsewhere; or

(c) bankrupt.

Commentary

1. The Canadian securities regulatory authorities believe the manager should not have the power to remove a member of an independent review committee without obtaining the agreement of the remaining members of the committee or the approval of securityholders. Members of an independent review committee must be free to perform their functions in accordance with this Instrument without fear of being removed by the manager.

2. If a change of manager occurs, this Instrument provides that the term of office for all members of the mutual fund's independent review committee will end. The new manager (or the manager, under new controlling shareholders) must, under subsection 2.3(3) appoint new members of the independent review committee. These members may be the same members as previously appointed, provided these members continue to meet the independence requirements.

2.11 Disclosure

(1) A mutual fund must disclose in its prospectus and in its periodic continuous disclosure reports

(a) the written charter of the independent review committee or an appropriate summary of the written charter; and

(b) the identity and experience of the independent review committee members.

(2) For the relevant period, a mutual fund must disclose in each disclosure made under subsection (1)

(a) any changes in membership of the independent review committee;

(b) any instances where the manager did not follow a recommendation of the independent review committee, the general nature of the recommendation and the reasons for not following the recommendation; and

(c) any report of the independent review committee that it directs the manager to incorporate into the prospectus or periodic continuous disclosure reports of the mutual fund.

Commentary

1. Section 2.11 sets out the minimum expectations regarding the disclosure to securityholders about the independent review committee. A manager should consider its obligations to make timely disclosure of any significant or material change in the mutual fund, particularly in the circumstances contemplated by paragraph 2.11(2)(b).

Notes to reader

- This Instrument assumes that proposed NI 81-106 *Investment Fund Continuous Disclosure* is in force. In this Instrument, the word “prospectus” has been used to refer to disclosure in a point of sale document (today’s simplified prospectus and annual information form) and the phrase “periodic continuous disclosure reports” has been used to generically refer to the documents proposed by NI 81-106. We will change these references to conform to the disclosure requirements in force when the CSA finalize this Instrument.

- Section 2.11 and the commentary recognize that disclosure of any instances where the manager did not follow a recommendation of the independent review committee is a practical and realistic method of moderating disputes.

Part 3 Matters to be referred to the independent review committee

3.1 Conflicts of interest

(1) If a reasonable person would question whether a manager has a conflict of interest in a matter related to its management of a mutual fund, the manager must refer the matter to the mutual fund’s independent review committee for its recommendation before taking any action in such matter.

(2) In addition to any other conflict of interest that might be caught by the test in subsection (1), for the purposes of this Instrument, a manager is considered to have a “conflict of interest” where either

(a) the manager; or

(b) an entity related to the manager

has an interest in the matter that is different from, or conflicts with, the best interests of the mutual fund.

(3) For the purposes of this Instrument, an entity is related to the manager, if it is

(a) a person who can direct or cause the direction of the management and policies of the manager, whether through ownership of voting securities or otherwise, other than the independent review committee of the mutual fund; or

(b) an affiliate, associate or a subsidiary of the manager or of a person referred to in paragraph (a).

Commentary

1. *A manager can find itself in situations where its business and commercial interests conflict with its duty to act in the best interests of the mutual fund.*

   Section 3.1 recognizes that a manager may not be able to objectively determine whether it is acting in the best interests of the mutual fund when it is in a conflict of interest situation. This Instrument therefore requires that any situation in which a reasonable person would question whether the manager has a conflict of interest be referred by the manager to the independent review committee for a recommendation.

   Subsection 3.1(2) sets out particular circumstances where the Canadian securities regulatory authorities believe a reasonable person would question whether the manager has a conflict of interest.

2. *This Instrument does not list all the possible circumstances when a manager might experience a conflict between its own interests and the best interests of the mutual fund.*

3. *A manager may experience two different types of conflict situations—business conflicts and related party conflicts. These are described below. Not all managers will experience these conflicts and some may face conflicts that are not listed.*

4. *Business conflicts -- A manager may be making decisions that are motivated by its business interests rather than only the best interests of the mutual fund. These business conflicts would include situations where the manager may be motivated to favour one mutual fund over another mutual fund. Examples of situations when a manager might experience a conflict between its interests and its duty to act in the best interests of the mutual fund include:*

   - *Charging the mutual fund for the costs the manager has incurred in operating the mutual fund, in addition to charging the mutual fund a management fee;*

   - *Allocating securities among mutual funds in a fund family and among its non mutual fund clients;*

- *Allocating the costs incurred by the manager in operating mutual funds and carrying on its other portfolio management business, both among mutual funds in the fund family and among its non mutual fund clients;*

- *Correcting material errors made by the manager in administering or managing the mutual fund;*

- *Seeking best execution for the portfolios of the mutual funds and also for its non mutual fund clients;*

- *Charging the mutual fund a fee based on the manager's performance;*

- *Voting proxies or taking other corporate action on securities held by the mutual fund, when the manager has business relationships with the issuer of the securities;*

- *Marketing the mutual fund for sale through distributors, whether related to the manager or not, if the manager provides incentives to the distributors to sell the mutual fund and other mutual funds;*

- *Negotiating soft commissions with dealers with whom the manager places portfolio transactions for the mutual fund ;*

- *Making changes to the mutual fund (as contemplated by section 3.3);*

- *Favouring certain investors to obtain or maintain their investment in the mutual fund; and*

- *Bringing portfolio management of the mutual fund in house or to a party related to the manager if it was previously managed by a third party.*

5. *Related party conflicts -- A manager may contract for services or investments to be provided to the mutual fund by a person related to the manager. Examples of transactions with related parties include:*

   - *The mutual fund purchases securities (whether debt or equity) issued by a company related to the manager;*

   - *The mutual fund invests in an issuer of which a director, officer or shareholder of the manager or of a related company is a director or officer, or in which any of such people has a material interest;*

   - *The mutual fund purchases or sells securities to or from a company related to the manager (principal trading);*

- *Mutual funds within a fund family purchase and sell securities amongst themselves or with pooled funds that have the same manager (inter-fund trading);*

- *The mutual fund purchases securities that are in primary distribution or within a short period of time after that, that have been underwritten by a dealer that is a company related to the manager;*

- *Services are provided to the mutual fund by parties who are related to the manager; and*

- *Portfolio transactions for the mutual fund are allocated to a dealer who is related to the manager.*

6. When it first establishes the independent review committee, and periodically after that, a manager should consider all potentially applicable conflict situations contemplated by section 3.1 and discuss those situations with the independent review committee. This Instrument permits the manager and the independent review committee to decide how they will deal with each potential conflict situation in light of the particular circumstances that apply to the manager and the mutual fund. For example, the manager might suggest that the independent review committee

(i) review and comment on the manager's policies on conflicts of interest;

(ii) make recommendations in advance on the steps to be taken in specific conflict situations, including the mutual fund participating in transactions involving related parties; and/or

(iii) review periodic compliance reports from the manager on how it dealt with conflict situations.

3.2 Changes to the mutual fund

(1) The manager must refer the following matters to a mutual fund's independent review committee for its recommendation before taking any action:

1. a proposed change to the basis of the calculation of a fee or expense, or the introduction of a fee or expense, that is charged to the mutual fund or directly to its securityholders by the mutual fund or its manager in connection with the holdings of securities of the mutual fund, that could result in an increase in charges to the mutual fund or to its securityholders;

2. a proposed change in the manager of the mutual fund, unless the new manager is an affiliate of the manager;

3. a proposed change to the fundamental investment objectives of the mutual fund;

4. a proposed change in the auditor of the mutual fund;

5. a proposed decrease in the frequency of the calculation of the net asset value per security;

6 a proposed reorganization of the mutual fund with, or transfer of its assets to, another mutual fund, if

(a) the mutual fund ceases to continue after the reorganization or transfer of assets; and

(b) the transaction results in the securityholders of the mutual fund becoming securityholders in another mutual fund; or

7. a proposed reorganization of the mutual fund with, or acquisition of assets from, another mutual fund, if

(a) the mutual fund continues after the reorganization or acquisition of assets;

(b) the transaction results in the securityholders of the other mutual fund becoming securityholders in the mutual fund; and

(c) the transaction would be a significant change to the mutual fund.

(2) Before proceeding with a change contemplated in paragraphs 1 and 3, the mutual fund must also

(a) obtain approval of its securityholders at a meeting called in accordance with National Instrument 81-102 Mutual Funds;

(b) include with the notice of meeting sent in accordance with National Instrument 81-102 Mutual Funds a summary of the recommendation of the independent review committee; and

(c) up to and including the effective date of the change, allow a securityholder to redeem securities of the mutual fund and purchase securities of another mutual fund managed by the manager without payment of any fee.

(3) Before proceeding with a change contemplated in paragraphs 2,4,5,6 and 7, the mutual fund must also

(a) send a notice to all its securityholders at least 60 days before the effective date of the change that

(i) contains sufficient information about the change to enable a securityholder to make an informed decision about whether to continue to hold his or her securities of the mutual fund;

(ii) describes the free transfer right required by paragraph 3.2(3)(c); and

(iii) is filed with the securities regulatory authority or regulator concurrently with being sent to securityholders;

(b) include with the notice a summary of the recommendation of the independent review committee; and

(c) up to and including the effective date of the change, allow a securityholder to redeem securities of that mutual fund and purchase securities of another mutual fund managed by the manager without payment of any fee.

Commentary

1. *The Canadian securities regulatory authorities believe that the changes to the mutual fund set out in section 3.2 involve matters where a manager would have a conflict of interest. This Instrument requires the manager to refer any proposal to make any of these changes to the independent review committee. The independent review committee will review the proposed change to determine whether it is fair and reasonable to the mutual fund. Among other things, the independent review committee may recommend changes to the information being sent to securityholders or may recommend changes to the manager's proposal. The independent review committee may review the costs and expenses of carrying out the proposed change if the manager proposes that the mutual fund should bear these costs or expenses.*

2. *Section 3.2 does not override the constating documents of a mutual fund. A manager must follow any requirements set out in those documents, in addition to complying with this Instrument.*

3. *Section 3.2 does not replace the timely disclosure requirements set by securities regulation. A change to a mutual fund contemplated by section 3.2 may also constitute a significant or material change to the mutual fund. The obligations of a manager and a mutual fund to make timely disclosure of a significant or material change to the mutual fund are established in proposed National Instrument 81-106 Investment Fund Continuous Disclosure.*

4. *When a manager proposes to make a change to a mutual fund contemplated by section 3.2, the manager must give securityholders in that mutual fund a right to transfer, free of charge, to another mutual fund managed by that manager, without changes to any redemption fee schedule associated with their investment.*

5. *As well as any other information the manager of a mutual fund considers important, the manager should consider whether to include information about the following matters in the notice about a proposed change in order to meet the requirements of paragraph 3.2(3)(a):*

- *the reasons for the proposed change;*
- *why the manager believes the change is in the best interests of the mutual fund;*
- *how the proposed change will affect the mutual fund and its securityholders;*
- *if applicable, the amount of any costs and expenses associated with the proposed change to be charged to the mutual fund and the reasons why the manager believes these costs and expenses are properly expenses of the mutual fund; and*
- *the alternatives available to security holders. These alternatives will include the right to switch to another mutual fund without charge and the right to redeem. If deferred sales charges or redemption fees will be charged to securityholders who opt to redeem (without transferring to another mutual fund managed by the manager), this fact and the applicable fees.*

Notes to reader

- For mutual funds subject to this Instrument, section 3.2 will replace the existing securityholder approval mechanism for the changes – specifically, the changes contemplated by paragraphs (b),(d),(e),(f) and (g) of section 5.1 of NI 81-102 Mutual Funds.
- Notices must contain all relevant information and be written in plain language. All notices will be filed on SEDAR and therefore with the regulators.

Issues for Comment

08. We believe the changes to a mutual fund set out in section 3.3 involve conflicts of interest which can appropriately be referred to the independent review committee. Is this the right approach? Are there alternatives?

09. Does the right to transfer free of charge to another mutual fund managed by the same manager need to be mandated or is it industry practice?

3.3 Inter-fund Trades

(1) A mutual fund must not purchase or sell securities from or to a mutual fund managed by the same manager or from or to a pooled fund managed by the same manager (engage in inter-fund trades) unless the manager of the mutual fund refers the matter to the independent review committee for its recommendation and:

(a) the transaction is a purchase or sale for which quotations for the bid and offer price of the security are readily available;

(b) the transaction is executed at the current market price of the security, which for the purposes of this paragraph is:

1. if the security is an exchange-traded security or foreign exchange-traded security, the last sale price on the day of the transaction reported on the exchange upon which the security is listed or the quotation trade reporting system upon which the security is quoted, or, if there are no reported transactions for the day of the transaction, the average of the highest current bid and lowest current offer for such security as displayed on the exchange or the quotation trade reporting system upon which the security is quoted; or

2. for all other securities, the average of the highest current bid and lowest current offer determined on the basis of reasonable inquiry;

(c) the transaction is subject to market integrity requirements, which for the purposes of this paragraph are

(i) if the security is exchange-traded,

1. the purchase or sale is printed through a member of an exchange or a user of the quotation and trade reporting system in accordance with the rules of the exchange or quotation and trade reporting system; and

2. the purchase or sale is subject to the market conduct and display requirements of the exchange, quotation and trade reporting system and securities regulatory authorities; or

(ii) if the security is foreign exchange-traded, the purchase or sale complies with the requirements that govern transparency and trading of foreign exchange-traded securities on the foreign exchange or foreign quotation and trade reporting system; or

(iii) for all other securities, the purchase is reported to a registered dealer, if the purchase or sale would otherwise have to be reported by a registered dealer under applicable securities laws; and

(d) the mutual fund must keep records of

(i) its policies and procedures to effect inter-fund trades;

(ii) each such purchase and sale of securities; and

(iii) the reports and recommendations of the manager to the independent review committee.

(2) An inter-fund trade made in accordance with the terms of subsection 3.3(1) is exempt from the provisions of National Instrument 21-101 Marketplace Operation and Section 6.1 and Part 8 of National Instrument 23-101 Trading Rules.

Commentary

1. *The terms "exchange-traded securities", "foreign exchange-traded securities" and "member" are defined in National Instrument 21-101 Marketplace Operation. The term "pooled fund" is defined in proposed National Instrument 81-106 Investment Fund Continuous Disclosure.*

2. *This section is not intended to apply to securities issued by a mutual fund that are purchased by another fund within the same fund family.*

3. *This Instrument does not specify other policies and procedures that a manager and an independent review committee must follow to effect inter-fund trades. However, the Canadian securities regulatory authorities would usually expect such policies to include:*

    - *requirements that the inter-fund trade be consistent with, or necessary to meet, the investment objectives of the mutual fund;*

    - *requirements that no consideration other than cash payment against prompt delivery of a security and a printing fee will be paid between the mutual funds in connection with the transaction;*

    - *factors or criteria for allocating securities purchased for or sold by two or more funds managed by the manager;*

    - *requirements that the fund obtain at least one quote from an independent, arm's-length purchaser or seller, immediately before the purchase or sale; and*

    - *requirements that periodic reviews of the inter-fund trades be conducted by the independent review committee.*

4. *Paragraph 3.3(1)(a) requires that the market quotations for the transactions be transparent, and that information be readily available from a newspaper or through a data vendor, for example.*

5. *Paragraph 3.3(1)(b) requires that the purchase price be not more than, or the sale price not less than, the price generally available for the same quantity of securities to other market participants in independent, arm's-length transactions. The Canadian securities regulatory authorities expect that the terms of purchase or sale would be no less beneficial to the mutual fund than those generally available to other market participants in arm's-length transactions.*

6. *Paragraph 3.3(1)(d) sets out the minimum expectations regarding the records a mutual fund must keep of its inter-fund trades. The Canadian securities regulatory authorities expect such records to be detailed, and sufficient to establish a good audit trail of the transactions. Accordingly, the records of each inter-fund transaction would likely include:*

    - *the securities purchased or sold;*

- *the parties to the transaction;*
- *the terms of the purchase or sale;*
- *the information or materials upon which the determination to purchase or sell was made;*
- *the closing price of the security (if applicable);*
- *the highest current independent bid and lowest current independent offer for such security on the day of the transaction (if there were no purchases or sales reported for such security on the day of the transaction); and*
- *full documentation of the reasons for any allocation to the mutual funds that departed from the stated allocation factors or criteria.*

Note to reader

This Instrument permits inter-fund trading of exchange-traded securities, benchmark government debt securities and certain corporate debt securities between mutual funds subject to this Instrument and between mutual funds managed by the same manager and pooled funds managed by the same manager. Section 3.3 is meant to address market transparency and market integrity concerns.

Issues for Comment

10. Do you agree with our proposals for inter-fund trading (in particular, the scope of the provisions?) If not, please explain.

11. Should clause 3.3(1)(b)(1) refer to "the last sale price" or should it enable managers to trade within the bid/offer spread during the trading day?

12. Is the pricing referred to in paragraph 3.3(1)(b) appropriate for illiquid exchange-traded and foreign exchange-traded securities, over-the-counter equity securities and debt securities?

13. Should the current market price of illiquid equity securities on an exchange be treated differently from over-the-counter equity securities?

3.4 Supporting Information

(1) When a manager refers a matter to the independent review committee the manager must

(a) provide the independent review committee with information sufficient for the independent review committee to properly carry out its responsibilities, including

(i) a description of the facts and circumstances giving rise to the matter referred;

(ii) the manager's proposed course or alternate courses of action in the matter; and

(iii) all further information requested by the independent review committee;

(b) make its senior officers who are knowledgeable about the matter available to attend meetings of the independent review committee as the committee may direct; and

(c) if directed to do so by the independent review committee, send information about the matter to the securityholders of the mutual fund or convene a special meeting of the securityholders of the mutual fund to consider and vote on the matter.

Commentary

1. Subsection 3.4(1) requires the manager to give the independent review committee the information it needs to properly carry out its functions. In addition to providing written information, senior officers of the manager knowledgeable about the matter should be prepared to attend meetings of the independent review committee. Depending on the circumstance, it may be appropriate for the chief executive officer and the chief financial officer of the manager to attend meetings or provide information.

Subsection 3.4 (1)(c) recognizes that, in exceptional circumstances, an independent review committee may need a mechanism to contact securityholders of the mutual fund. An independent review committee should only require a manager to send information to securityholders or to convene a special meeting in unique circumstances, including when it has been unable to resolve a difference of opinion with the manager.

Part 4 Exemptions

4.1 Exemptions

(1) The regulator or securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.

4.2 Revocation of exemptions, waivers or approvals

(1) A manager or a mutual fund that has obtained an exemption, waiver, or approval from a regulator or securities regulatory authority under a provision of securities regulation that was effective before this Instrument came into force, that deals with the matters regulated by this Instrument, may no longer rely on the exemption, waiver or approval as of the date one year after this Instrument comes into force.

(2) In British Columbia, subsection (1) does not apply.

Commentary

1. *The Canadian securities regulatory authorities are of the view that subsection 4.2(1) will effectively cause exemptions, waivers and approvals granted before this Instrument comes into force relating to matters dealt with by this Instrument, to expire one year after its coming into force.*

Note to Reader

Because of differences in legislation, in British Columbia, the securities regulatory authority expects to achieve the same result as this part, through a blanket order.

Part 5 Effective Date

5.1 Effective date

(1) This Instrument comes into force on [ ].

6.1.3 Notice of Proposed Amendments to Rule 61-501 – Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions and Companion Policy 61-501CP

NOTICE OF PROPOSED AMENDMENTS TO RULE 61-501 – *INSIDER BIDS, ISSUER BIDS, GOING PRIVATE TRANSACTIONS AND RELATED PARTY TRANSACTIONS* AND COMPANION POLICY 61-501CP

Substance and Purpose of Proposed Amendments

On February 28, 2003, the Commission published proposed amended versions of Rule 61-501 – *Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions* (the "Rule") and Companion Policy 61-501CP (the "Companion Policy") at (2003), 26 OSCB 1822. As stated in the Notice of the proposals, the amendments were primarily intended to clarify grey areas, reduce the necessity for applications for exemptive relief and generally make the Rule more user friendly. Some of the proposed changes were also designed to eliminate regulatory burdens of which the costs to issuers and their security holders may not outweigh the benefits, particularly for junior issuers.

The Notice and proposed revised versions of the Rule and Companion Policy (the "2003 proposed Rule" and "2003 proposed Companion Policy") were accompanied by a request for comments. A list of commenters, a summary of the comments and the Commission's responses are contained in Appendix A of this Notice. After reviewing the comments and on further consideration, the Commission has made some changes to the 2003 proposals.

Summary of Proposed Changes from 2003 Proposals

The most significant changes from the 2003 proposals are described below. Other changes are discussed in the responses to the comments and in footnotes to the black-lined versions of the proposed amended Rule and Companion Policy that accompany this Notice.

1. Collateral Benefits

The 2003 proposed Rule introduced a definition of "collateral benefit". As stated in the February 2003 Notice, the general wording of the current Rule's provisions on collateral benefits has given rise to inconsistencies in the manner in which participants in transactions covered by the Rule and their advisers have interpreted the concept.

Under the proposed definition, a collateral benefit, for a transaction such as an acquisition of a reporting issuer, would include any benefit that a related party of the issuer would receive as a consequence of the transaction (other than pro rata consideration received by the general body of the issuer's equity security holders), subject to exceptions for employment benefits under specified circumstances. As a result of the comments received, some revisions have been made to the exceptions.

Issues relating to collateral benefits arise primarily when a party proposes to acquire all of the outstanding securities of an issuer that it does not already own, either by making a take-over bid followed by a forced acquisition of the securities not tendered to the bid or through one transaction requiring approval of the issuer's security holders. In both cases, security holders who do not wish to sell their securities for the consideration being offered, whether that consideration is cash or securities of the acquiring party, can be forced to do so if enough of the other security holders tender to the bid or vote in favour of the transaction. If a vote of security holders is necessary to complete the acquisition, the Rule may, depending on the circumstances (and in addition to the requirements of corporate law), require that vote to be by way of "minority approval".

In a minority approval vote, the votes of the "interested parties", and certain other security holders that are related to the interested parties, are excluded. Interested parties have actual or reasonably perceived conflicts of interest that could cause them to view the transaction favourably for reasons other than the value of the consideration being offered to the general body of security holders. In view of the fact that a simple majority of the votes cast is required in order to force dissenting security holders to relinquish their securities at a price they may regard as insufficient, it is important, from the standpoint of fairness, for the participants in that vote to be comprised primarily of security holders who are voting on the adequacy of that price, and not on benefits they may receive in addition to that price. (Appraisal rights are normally available, but the time and expense involved makes the process impractical for many security holders.) The 2003 proposed Rule reflected this principle, and the Commission's views on this have not changed.

To accommodate the generally accepted practice for business acquisitions to be accompanied by revised compensation arrangements for employees of the business being acquired, the proposed definition of collateral benefit contained exceptions for certain employee-related benefits, such as participation in a group benefit plan for employees of the successor issuer. For other benefits from employment, such as "golden parachutes" and increased remuneration from the successor issuer, the 2003 proposed Rule contained an exception where the recipients of the benefits did not own, in the aggregate, more than 10% of the outstanding securities of any class of equity securities of the issuer. This exception was proposed on the basis that, at an ownership level not exceeding 10%, the likelihood of the outcome of the vote being determined by the votes of the recipients of

the benefits would not be high enough to justify the disenfranchisement of those recipients. For the exception to apply, the benefit would have had to be reasonably consistent with customary industry practices and not conditional on the recipient supporting the main transaction.

In response to a number of the comments, the definition has been revised to change the 10% ownership exception to a different materiality threshold that takes into account the significance of the benefit in relation to the consideration the related party recipient would receive in the main transaction. Under the revised definition, the exception will apply if the value of the employment-related benefit, net of offsetting costs to the recipient, is less than 5% of the value of the consideration that the recipient will receive in exchange for its equity securities in the main transaction. The determination that the exception is applicable will be the responsibility of an independent committee of the issuer's board of directors, and disclosure of the determination will be required in the information circular (or directors' circular in the case of a take-over bid) sent to the security holders in connection with the transaction. There will also be an exception where the related party receiving a benefit, together with that party's associates, owns less than one per cent of the outstanding securities of each class of equity securities of the issuer.

Due to the concern expressed by some commenters that uncertainty could result from the proposal in the 2003 proposed Rule that, in order for a benefit to fall within the employment-related exceptions, it must be consistent with customary industry practices, that condition has been removed. It has been replaced with the condition that the benefit not be conferred for the purpose of increasing the value of the consideration paid to the recipient for securities relinquished under the main transaction.

Concerns were also expressed regarding the condition that the benefit not be conditional on the recipient supporting the main transaction. However, the Commission regards this condition as important to preserve the integrity of the minority approval vote and prevent the perception that related parties have been "bribed" to vote in favour of the transaction. Words have been added to clarify that the condition refers only to a benefit that, "by its terms", is conditional on the recipient's support of the transaction.

2. Minority Approval Exemption for Certain Junior Company Financings

The 2003 proposed Rule introduced a formal valuation exemption for issuers that were not listed or quoted on specified markets, including the Toronto Stock Exchange and the major U.S. markets. This exemption would replace the current exemptions for related party transactions smaller than $500,000 and for certain types of transactions by issuers listed on the TSX Venture Exchange.

To further relieve junior issuers from regulatory burdens that may outweigh the benefits, a new minority approval exemption has been introduced for related party cash financing transactions of $2.5 million or less, for issuers not listed or quoted on the same markets that are referenced in the formal valuation exemption described in the preceding paragraph. The exemption is in new paragraph 3 of subsection 5.7(1). To qualify for the exemption, the issuer must have one or more directors who are both independent of the transaction and not employees of the issuer, and two-thirds of the directors that meet those criteria must approve the transaction.

3. Definition of Insider Bid

The definition of "insider bid" has been expanded in the new proposals to include a bid where the offeror was an insider of the offeree issuer (or had a similar connection with the offeree issuer, as described in the current definition) within 12 months preceding the bid. This change was made partly to prevent avoidance of the Rule (by, for example, resigning from the board of the offeree issuer shortly before launching a bid). The change is also consistent with the policy behind the formal valuation exemption based on "lack of knowledge and representation", in paragraph 2 of subsection 2.4(1) of the Rule, which applies where the bidder has had a lack of involvement with the offeree issuer within the preceding 12 months.

Policy Q-27 of the Quebec Securities Commission

Commission staff have been working with the staff of the Quebec Securities Commission with a view to maintaining the existing harmonization of the Rule with Policy Q-27 in the context of the proposed amendments.

Authority for the Proposed Amendments

The following provisions of the Act provide the Commission with the authority to make the amendments to the Rule. Subsection 1(1.1) of the Act provides that "going private transaction", "insider bid" and "related party transactions" may be defined in a Rule. (Section 1.5 of the proposed amended Rule defines "going private transaction", for purposes of the Act, as having the meaning ascribed to the term "business combination" in the Rule.) Paragraph 143(1)28 authorizes the Commission to make rules to regulate issuer bids, insider bids, going private transactions and related party transactions, including, in clause v, prescribing requirements for disclosure, valuations, review by independent committees of boards of directors and approval by minority security holders.

Unpublished Materials

In proposing these amendments, the Commission has not relied on any significant unpublished study, report or other materials.

Anticipated Costs and Benefits

The Commission believes that the proposed amendments will enhance efficiency for market participants that are subject to the Rule, as there will be greater clarity regarding the application of the Rule and reduced circumstances requiring valuations and exemptive relief. To the extent that the amendments are substantive in nature, they will have benefits in terms of increased fairness to security holders and reduced regulatory burdens that will outweigh the costs.

Comments

Interested parties are invited to make written submissions with respect to the proposed amended Rule and Companion Policy. Submissions received by February 11, 2004 will be considered.

Submissions should be made to:

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
jstevenson@osc.gov.on.ca

A diskette containing the submission in Word format should also be submitted. As the Act requires that a summary of written comments received during the comment period be published, confidentiality of submissions cannot be maintained.

Questions may be referred to:

Ralph Shay
Director, Take-over/Issuer Bids, Mergers & Acquisitions
Ontario Securities Commission
(416) 593-2345

Texts of the Proposed Amended Rule and Companion Policy

The texts of the proposed amended Rule and Companion Policy follow, black-lined to the 2003 proposed Rule and the 2003 proposed Companion Policy, together with footnotes that are not part of the proposals but have been included to provide both background and explanation.

January 9, 2004.

APPENDIX A

SUMMARY OF WRITTEN COMMENTS RECEIVED AND RESPONSES OF THE COMMISSION

The Commission received submissions on the proposed amendments from the following:

Fasken Martineau DuMoulin LLP
Simon Romano
Robert W. A. Nicholls
Osler, Hoskin & Harcourt LLP
Securities Law Subcommittee, Business Law Section, Ontario Bar Association
Ogilvy Renault
TSX Venture Exchange
Torys LLP

The Commission has considered the submissions and thanks the commenters for taking the time to provide their views.

The following is a summary of the comments received, together with the Commission's responses. Unless otherwise provided, references to section numbers or to the "amended Rule" or "amended Companion Policy" are in reference to the 2003 proposed Rule or the 2003 proposed Companion Policy, as applicable.

Some of the comments pertained to parts of the current version of the Rule and Companion Policy that the Commission had not proposed to change. For the assistance of readers, those comments are preceded by "*Comment(s) Not on Proposed Amendments*" in the discussion below.

A. GENERAL COMMENTS

1. The Rule and Amendments Generally

Comments

Three commenters expressed general support for the proposed amendments. One commenter was of the view that the changes placed a better focus on the underlying policy purpose of the Rule, which is to provide enhanced shareholder protection in certain types of transactions where the interests of minority shareholders have the potential to be in conflict with the interests of insiders. Another commenter supported the Commission's effort to clarify the application of the Rule, reduce the necessity for exemptive relief applications and make the Rule more user friendly.

Comments Not on Proposed Amendments: One commenter suggested that related party transactions be removed from the purview of the Rule, and a public interest-focussed policy statement approach adopted instead. In support of this view, the commenter cited the lack of harmonization with other jurisdictions, the complexity of the Rule and the fiduciary principles that already regulate related party transactions. Another commenter was critical of the complexity resulting from the large number of exemptions in the Rule.

Response

The Commission's experience in the course of its ongoing contact with the various constituents of the investment community is that the subject of conflicts of interest is a highly sensitive one for investors. The Commission considered the question of whether related party transactions should be regulated by rule or policy statement in the late 1990s and was not convinced that a policy statement would provide sufficient protection for minority security holders. The principles and concerns that gave rise to the adoption of the Rule have not diminished with the passage of time.

The Commission believes that the proposed amendments will make the Rule less complex and significantly reduce regulatory burdens for issuers carrying out related party transactions. A further substantial reduction in the ambit of the Rule could unduly compromise investor protection. The elimination of more of the Rule's detailed provisions for the sake of simplicity would likely create an undesirable level of uncertainty for issuers and other market participants. While much of the perceived complexity of the Rule is due to the length of the exemptions, a reduction in the breadth of the exemptions would lead to the need for a greater number of costly and time-consuming applications for exemptive relief.

2. General Drafting Issues

(a) Associated entity - Comment: One commenter suggested that wherever "associated or affiliated entity" appears in the amended Rule, it should be replaced with "associated entity or affiliated entity", because "associated entity" is a defined term.

Response: While this suggestion is consistent with conventional legal drafting practice, the Canadian securities commissions have been moving towards a more "plain language" style of drafting. Among other things, this style calls for the exclusion of words that are not necessary to a proper understanding of a provision. The extra "entity" suggested by the commenter falls into that category. The language has been similarly simplified in other parts of the amended Rule and Companion Policy.

(b) Beneficial holder - Comment: One commenter thought the removal of the word "beneficial" before "holder" in parts of the amended Rule left one confused as to how the Rule affected beneficial, as opposed to registered, security holders.

Response: The term "beneficially owned" is used in a variety of contexts in securities law (e.g. ownership through an intermediary, ownership of securities held by an affiliate, the holding of a right to acquire securities within 60 days). "Beneficial" before "holder" was removed in the parts of the amended Rule where it was not considered necessary and to eliminate possible confusion as to which of its various meanings applies in the particular context. Its removal does not detract from any rights of persons who hold their securities through an intermediary.

(c) Disclosure document - Comment: One commenter noted that some references to a "disclosure document" in the amended Rule are followed by the words "if any", presumably to reflect the Commission's view that the Rule does not itself impose a requirement to publish a disclosure document. The commenter thought in those instances where "if any" was missing, the Rule seemed to be mandating a disclosure document, even for non-material transactions that did not otherwise require a disclosure document. The commenter suggested that "if any" be added to every reference in the Rule to "disclosure document" where it does not already appear in the amended Rule.

Response: "If any" follows "disclosure document" only in the parts of the amended Rule that address related party transactions that do not necessarily require a disclosure document. The words are not necessary in reference to insider bids, issuer bids or business combinations, since those transactions are required to have a disclosure document if they are subject to the Rule.

(d) "Acquire the issuer" - Comment: The amended Rule refers in a number of places to a transaction in which a related party would "acquire the issuer or the business of the issuer, or combine with the issuer, through an amalgamation, arrangement or otherwise, whether alone or with joint actors". One commenter did not understand what "acquire" meant and suggested that it be replaced with a reference to the acquisition of a majority of the equity securities. Another commenter thought the use of "acquire" and "combine" could cause substantial uncertainty because those terms do not have well-understood legal meanings. That commenter suggested that the terms be replaced with a reference to the acquisition of control of the issuer or of all or substantially all of the issuer's assets.

Response: The Commission believes that the alternative wording proposed by the commenters would capture more transactions than are intended. The applicable provisions do not apply to the mere acquisition of a controlling interest, but to the acquisition of the entire issuer or its business, whether with joint actors or otherwise. This is what normally happens in a business combination, for which the terminology is primarily used, and it is unlikely that the words will be misunderstood in that context. In light of the comments, however, section 2.10 has been added to the Companion Policy to confirm the intended meaning.

(e) Special committee - Comment: One commenter noted that the amended Rule has the defined term "independent committee", but also refers to a "special committee" in several places. The commenter suggested that the references to a special committee be changed to conform to the defined term.

Response: The terms "independent committee" and "special committee" do not have identical meanings in the amended Rule. An independent committee is mandated by the Rule in certain circumstances, in which case it must meet the Rule's criteria as to its composition. This is not the case for every special committee.

Comments Not on Proposed Amendments

(f) Time references - Comment: One commenter noted that the Rule uses different references to identify the time at which certain determinations are to be made. In various parts of the Rule, references are made to the time a transaction is agreed to, the time it is proposed or the time it is publicly announced. The commenter suggested that these references be reviewed to ensure clarity and correctness from a policy perspective.

Response: The Commission agrees with the commenter and has made changes to a number of those references. The time a business combination is "proposed" is no longer used as a reference point. Section 2.9 has been added to the Companion Policy to provide an interpretation of when a transaction is "agreed to" for purposes of the Rule.

(g) Disclosure of differing views - Comment: In the parts of the Rule regarding disclosure, there are requirements for disclosure of differing views between the board of directors and an individual board member or the special committee in considering a transaction for approval. One commenter said that an issue has arisen in practice as to whether it is sufficient

simply to refer to the fact, for example, that a director voted against the transaction, or whether the director's expressed reasons for dissenting must be discussed. The commenter suggested that there be clarification of the required level of disclosure.

Response: Wording has been added to the applicable provisions to clarify that the disclosure must contain a discussion of the differing views, not just a statement as to their existence. The appropriate level of detail of the discussion will depend on the particular circumstances, including the extent to which the reasons for the differing views are disclosed to the board of directors.

B. COMMENTS ON SPECIFIC PROVISIONS

Section 1 – Definitions

3. "arm's length"

Comment

One commenter thought incorporating the *Income Tax Act* definition, which the commenter regarded as ambiguous and extremely complex, would not make the Rule more user friendly or helpful. According to the commenter, corporate and securities lawyers, as well as Commission staff, would need to constantly utilize expensive tax advice in interpreting the Rule. In addition, changes in tax interpretations would lead to undesired automatic amendments to the Rule.

Response

The Commission considers the proposed amendment to be an improvement over the present combination of provisions in the Rule and Companion Policy, which are more open to subjective interpretation. In any event, given the contexts in which "arm's length" appears in the Rule, the concept's application to particular fact situations will be obvious in the vast majority of cases.

4. "beneficially owns"

Comments

One commenter thought including the "direct and indirect" concept of beneficial ownership would lead to much uncertainty, especially after being layered on top of deemed ownership by subsidiaries. The commenter questioned what else was intended. The commenter also asked whether the reference to a partial exclusion of subsection 1(6) of the Act should be accompanied by a similar reference to subsection 1(5) of the Act. Both subsections deem entities to beneficially own securities that are beneficially owned by their affiliated entities.

Comment Not on Proposed Amendments: One commenter thought since section 90 of the Act (which, among other things, deems beneficial ownership to include having the right to acquire securities within 60 days) applies to the definition of "related party", the Rule's definition of "beneficially owns" should explicitly exclude lock-ups. Otherwise, lock-ups could cause transactions to fall under the definition of "business combination" or "related party transaction", which should not be the case.

Response

There are several references to direct and indirect beneficial ownership in the present version of the Rule. In the amended Rule, the direct or indirect concept was added to the definition to eliminate the need for those repeated references. The inclusion of the concept reduces the potential for avoidance of the Rule through an overly technical interpretation of what constitutes beneficial ownership. The Commission agrees that the definition should include a reference to subsection 1(5) of the Act and has made this change.

The Commission believes that the subject of lock-ups is adequately addressed in the amended Rule by the exclusion of lock-ups in the definition of "joint actors". Section 90 of the Act has no application to a voting lock-up, which is the normal type of lock-up for a business combination or related party transaction. Even if the lock-up is not a voting lock-up, it will not trigger the definition of business combination or related party transaction if the party in whose favour the lock-up is granted was not a related party of the issuer at the time the main transaction was agreed to.

5. "bona fide lender"

Comment

Comment Not on Proposed Amendments: One commenter thought the definition should extend to a participant in a loan in addition to an assignee or transferee.

Response

The Commission agrees with the commenter and has made the change.

6. "business combination"

Comments

One commenter said that, under the amended definition, current subsection 2.9(1) of the Companion Policy would seem to have no application. For example, an arm's length amalgamation between two major Canadian banks, none of which had a 10% or greater shareholder, would seem to be a "business combination" if a minor and immaterial collateral benefit, or warrants, preferred shares or debt securities, were involved. The commenter did not think this would be appropriate.

Paragraph (c) of the current definition, which is the exception for a compulsory termination of a holder's interest in a security under the terms attached to the class of securities, was removed in the 2003 proposed Rule. One commenter thought it should be preserved because it covers a forced repurchase in accordance with constrained share provisions as required under many Canadian (and other) ownership statutory regimes.

One commenter suggested simplifying the definition by eliminating paragraph (d) in the 2003 proposed Rule (paragraph (e) in the new draft), which contains the exception for transactions where no related party is affected differently from other security holders, and incorporating it in section 4.5 (which contains the minority approval requirement for a business combination).

Under clause (d)(iii)(C) in the 2003 proposed Rule, the exception in paragraph (d) would not apply if, as a consequence of the transaction, a related party would be entitled to receive consideration in exchange for securities of the issuer that were neither equity securities nor employee stock options. One commenter thought employee stock options should be broadened to include options held by non-employees and securities such as purchase rights and appreciation rights. Two commenters did not think a payment for non-equity securities should trigger the definition if, for example, debt securities were being purchased or repaid. One of those commenters said that the receipt of unusual consideration for non-equity securities presumably would be caught as a collateral benefit.

Clause (d)(iii)(D) in the 2003 proposed Rule (clause (e)(iii)(C) in the new draft) applied to issuers with more than one class of equity securities. Under this provision, the exception in paragraph (d) would not apply if, as a consequence of the transaction, a related party was entitled to receive consideration for securities of one class that was greater than the entitlement of the holders of another class in relation to the voting and financial participating interests in the issuer represented by the respective securities. One commenter thought this provision was unclear. The commenter gave as an example non-voting shares trading in the market at a lower price than the voting shares. According to the commenter, paying the two classes equally would, in effect, penalize those who paid more for voting shares and reward those who paid less for non-voting shares, and the commenter asked what "in relation to the voting and financial participating interests" meant.

The comments described in the preceding two paragraphs were also applicable to the definition of "interested party" and paragraph 8.2(b) of the amended Rule regarding which securities can be voted in favour of a second step business combination. See also the comments on the definition of "collateral benefit".

Response

Subsection 2.9(1) of the current Companion Policy would be replaced by section 2.5 of the amended Companion Policy, which more accurately reflects the intent of the definition of "business combination". One of the significant differences between the Rule and former OSC Policy 9.1, which the Rule replaced, was that a "going private transaction" under the Rule includes a transaction in which holders of equity securities could be forced to substitute their securities for different equity securities (and a related party is not treated identically to the other security holders). Whether this forced substitution is accomplished by way of an "amalgamation" or a different method should not affect whether security holders receive the protections provided by the Rule. The fact that amalgamating parties are at arm's length to each other does not necessarily mean that unequal treatment of their security holders, in the form of extra benefits flowing to related parties, should be ignored by the Rule.

The Commission agrees with the comment regarding current paragraph (c) of the definition. The paragraph has been restored in the new draft, but it has been changed to confine its application to constrained securities.

While removing the last paragraph of the definition would simplify the definition itself, it would also introduce the necessity for the reader to review the parts of the Rule regarding disclosure, formal valuations and minority approval to determine how those parts applied to a particular business combination even if all related parties were being treated identically to the other security holders. From a user-friendliness standpoint, the Commission prefers to leave the paragraph in the definition.

Clause (d)(ii)(C) of the definition in the 2003 proposed Rule has been removed, and its subject matter has been incorporated into the definition of "collateral benefit". That definition does not distinguish between employee stock options and other types of non-equity securities that have been issued to employees or directors. In response to the comments regarding consideration that would be paid to a related party for debt or other non-equity securities as a consequence of a business combination, this consideration could cause the related party to favour the business combination for reasons other than the price that would be paid for the equity securities. Since the interests of the related party are not necessarily aligned with those of the general body of holders of equity securities in that circumstance, minority approval would be an appropriate requirement, subject to the applicable materiality tests in the collateral benefit definition.

The application of clause (d)(iii)(D) (now clause (e)(iii)(C)) of the definition in the 2003 proposed Rule is discussed in subsection 2.1(2) of the Companion Policy, with illustrative examples that, in the Commission's view, provide the necessary interpretive guidance for issuers with multiple classes of equity securities. On the substantive issue raised by the commenter, the amended Rule does not prohibit differential treatment among holders of different classes of equity securities in a business combination or related party transaction. The amended Rule recognizes, however, that a related party that is a beneficiary of the preferential treatment may have a conflict of interest that should, for example, preclude its votes from being counted in a vote of holders of the class receiving the lesser consideration.

7. "collateral benefit"

Comments

In the amended Rule, "collateral benefit" is a newly defined term which is used in the definitions of "business combination" and "interested party", and in paragraph 8.2(b) of the amended Rule regarding which securities can be voted in favour of a second step business combination. The main significance of the definition is that the votes of a related party that would receive a collateral benefit as a consequence of a business combination (or as a consequence of a formal bid preceding a business combination) would not be counted in a minority approval vote on the business combination.

One commenter agreed that employment benefits to related parties should be subject to special scrutiny, but thought there should be a general exclusion in the definition for benefits that are not, in the aggregate, material to the related parties receiving them, as determined by the issuer's board acting in good faith. This would replace the proposed exception for transactions where the related parties receiving benefits do not own more than 10% of the outstanding securities. The commenter did not think that owners of more than 10% of the securities should be disenfranchised on an acquisition transaction if their benefits are not material and are in accordance with customary industry practices.

Five commenters did not think that there should be a change to the status quo regarding how collateral benefits are treated under the Rule, and they disagreed with the proposed definition. The objections raised by one or more of those commenters included:

- determining whether a benefit is reasonably consistent with customary industry practices is difficult and would likely require expensive advice from compensation consultants;

- the disregarding of offsetting costs would change the Commission's historic approach of only regulating collateral benefits that provide consideration of greater value than that paid to all security holders;

- if the conferring of a benefit on a related party of the target issuer is conditional on the related party supporting the transaction, this should not cause the related party's votes to be excluded in a minority vote, because having the support of key employees or directors of the target may be important to the acquirer;

- related parties with pre-existing rights, such as "golden parachutes", should not, for that reason, be disenfranchised in a minority vote; they would have provided value for those rights, and the exclusion of their votes would seem unfair from the perspective of the proposed acquirer;

- the proposed exception where recipients of the benefits own less than 10% of the outstanding securities in the aggregate is not appropriate because the issue of whether a benefit is a collateral benefit should depend on the benefit itself, not the security ownership level of the recipient, and extra benefits received by large security holders are unlikely to be significant in comparison to the consideration those holders receive in the main transaction;

- the proposal would create uncertainty and make business combinations more difficult to achieve;

- collateral agreements are often integral commercial components of acquisition transactions; and

- just requiring disclosure of benefits in the information circular would be sufficient or should be considered as an alternative to the proposal.

One of the objecting commenters thought the open-endedness of the definition would result in there being various types of benefits, not currently contemplated, that would not justify a related party's exclusion from the vote and require exemptive relief. The commenter also thought for a large percentage of Canadian public companies, an arm's length acquisition transaction would probably trigger a minority approval vote under the proposed definition solely because directors and senior officers with pre-existing employment arrangements collectively would hold more than 10% of the shares. According to the commenter, prospective acquirers of those companies will be faced with much less deal certainty, since any lock-up agreements negotiated with those directors and officers will be rendered much less meaningful, which will cause lost transaction value.

One of the objecting commenters was of the view that the Commission, in originally establishing the Rule, intended the treatment of collateral benefits for going private transactions to be the same as for take-over bids under the Act, and that there is no reasonable basis for drawing a distinction between the two. The commenter said that in both cases, the Director (in the case of a going private transaction) or the Commission (in the case of a take-over bid) has in the past and should continue to review collateral agreements and grant exemptions from the applicable provisions of the Rule or Act upon being satisfied that the terms of an agreement are commercially reasonable and that the agreement is made for reasons other than to increase the value of the consideration to be paid for securities under the going private transaction or bid. The commenter did not think that going private transactions should be distinguished from take-over bids in this respect just because the consequence of an exemption refusal in the case of a bid would be to prevent the bid from occurring (or the benefit from being provided), whereas in a going private transaction the collateral benefit could still take place with minority approval. The commenter said that whether the concern is called "unequal treatment" under the Act or "conflict of interest" under the Rule, the principles are the same in both and should be applied in the same manner. The commenter pointed out that security holders can be squeezed out following a take-over bid if, for example, an arm's length bidder enters into a collateral agreement with a holder of 90% of the outstanding securities, and that this type of circumstance does not prevent the Commission from granting collateral benefit relief for the bid.

One commenter thought the Companion Policy should clarify that collateral benefits will be permitted in the bid context, subject to the obtaining of discretionary relief and, if appropriate, with adjusted minimum tender requirements to approximate minority approval. Otherwise, according to the commenter, form may triumph over substance. The commenter said that in some cases, collateral benefits are essential to complete a transaction, but the "street" believes, based on past Commission practice, that exemptive relief would not be available, forcing one into a voting transaction.

Response

The Commission has revised the definition in response to a number of these comments. As suggested by the first commenter, the materiality of a benefit to the recipient will now be a factor in determining whether the benefit would fit within the definition, to the extent that the benefit is related to services as an employee or director. However, rather than requiring the board of directors to make a subjective determination of materiality, which could result in inconsistent interpretations by boards of different issuers in similar fact situations, an objective test has been introduced. Under the revised definition, the test will be based on whether the value of the benefit, net of offsetting costs, would be less than 5% of the value of the consideration that the recipient would receive for its equity securities in the main transaction. An independent committee of the issuer would make the determination. The exception in the definition based on aggregate ownership of 10% or less has been replaced by an exception based on less than 1% ownership on an individual basis.

In response to the concerns expressed by some commenters regarding the condition that the benefits be consistent with customary industry practices, that condition has been replaced with a condition that the benefit not be conferred for the purpose of increasing the value of the consideration paid to the recipient for securities relinquished under the main transaction. Regarding the condition that the benefit not be conditional on the recipient supporting the main transaction, words have been added to clarify that this provision does not cause a benefit to be a collateral benefit solely because the recipient supports the main transaction; the provision applies where the conferring of the benefit is, by its terms, conditional on that support. The issue of offsetting costs is addressed in the new 5% exception.

The Commission believes that these changes address a number of the commenters' concerns in a manner that strikes a reasonable balance between the interests of related parties and fairness to other security holders who may be forced to relinquish their securities without their consent. The Commission recognizes that this approach represents a change from historic practice and does not necessarily reflect what the framers of the current version of the Rule had in mind. However, the Commission regards the changes as necessary to support the principle of equal treatment and to adequately address conflict of interest issues.

While disclosure of benefits that are provided to related parties is essential, it is not an adequate substitute for a properly constituted minority vote. Disclosure of material collateral benefits assists security holders in making an informed voting decision but would not prevent the recipients of those benefits from outvoting the other security holders.

To the extent that a collateral benefit, including a pre-existing benefit such as a golden parachute, is significant enough that it could reasonably be expected to influence a related party's decision as to whether to support a transaction, the Commission does not consider it unreasonable for the other security holders to decide whether the transaction is acceptable. This is

particularly the case in light of the fact that in a minority approval vote, a simple majority of votes can force security holders to relinquish their securities at a price that they may consider inadequate. While the approach may provide less certainty for potential acquirers in some cases, this concern is not sufficient, in the Commission's view, to override the fundamental principles of fairness underlying the Rule.

On the comments regarding differential regulatory treatment of collateral benefits as between voting transactions and take-over bids, the Commission agrees that the treatment should be similar to the extent practical. As noted by the commenters, there is a current difference in that the consequence of a collateral benefit being unacceptable in the bid context is that either the bid cannot proceed or the benefit cannot be provided, whereas in the case of a voting transaction the same benefit can be provided if minority approval of the transaction is obtained. The Commission does not regard the proposed amendments as introducing new regulatory discrepancies as between the two types of transactions that outweigh the benefits of the proposals. Regardless of the method of acquisition chosen, in most cases an intended acquisition of all of an issuer's securities will only succeed if holders of a majority of the securities that are not prohibited from voting under the amended Rule are in favour of the transaction. Their support will be demonstrated by their tendering to the bid or their vote in favour of the business combination, which may be a second step transaction following a bid. This will be the case because, if a take-over bid is permitted to proceed despite the existence of a benefit that would be a collateral benefit under the amended Rule, the votes attached to the securities tendered to the bid by the recipient of the benefit would not be counted in a vote on a second step business combination.

As pointed out by one commenter, there may be circumstances in which a potential acquirer of all the issuer's securities would have certainty of succeeding in a take-over bid but, because of the treatment of collateral benefits in the amended Rule, the same certainty would not be available in a voting transaction. For example, a holder of more than 90% of the outstanding equity securities may agree to sell its securities to the acquirer and also receive a collateral benefit that, while meeting the requirements for an exemption in the bid context, would disqualify the votes of that holder in a voting transaction. This scenario would be uncommon in light of the newly proposed 5% materiality exception, but if it does occur, exemptive relief may be sought to allow the securities to be voted.

On the suggested addition of clarification in the Companion Policy regarding the possibility of discretionary relief in the bid context with adjusted minimum tender requirements, it would probably be more appropriate for a provision of this nature to be situated in a regulatory instrument relating to bids generally. The Commission intends to consider the comment in determining whether there should be a review of the manner in which collateral benefits are regulated in the bid context.

8. "connected transactions"

Comments

One commenter did not think that the definition should extend to transactions that are not conditional on each other, since the "approximate simultaneity" test could easily lead to inappropriate results. The commenter also thought the Rule, rather than the Companion Policy, should clarify that a lock-up agreement is not a connected transaction. In addition, the commenter though that the concept of an "indirect party" created uncertainty and should be dropped, and that at a minimum section 2.4 of the amended Companion Policy, which interprets "indirect party", should be in the Rule.

Response

In the circumstances in which the connected transactions concept would arise in the amended Rule, it would be rare for the approximate simultaneity test to have inappropriate results, and exemptive relief would be available in those cases. Without this test, for example, an amalgamation carried out in conjunction with a sale of assets of one of the amalgamating issuers to the controlling shareholder of that issuer would not necessarily be covered by the Rule. Even if the two transactions in this example were not conditional on each other, the amalgamation could reasonably be perceived by minority shareholders to give rise to a conflict of interest.

The discussions of lock-ups and indirect parties in subsection 2.9(3) (subsection 2.8(3) in the new draft) and section 2.4 of the 2003 proposed Companion Policy, respectively, are interpretations of terms used in the Rule and as such are, in the Commission's view, properly situated in the Companion Policy. Inclusion of the "direct or indirect" concept in the definition of "connected transactions" is intended to reduce the potential for technical avoidance of the Rule, and section 2.4 of the 2003 proposed Companion Policy clarifies the application of the concept.

9. "controlled"

Comment

Comment Not on Proposed Amendments: One commenter asked whether the reference in paragraph (b) to 50 per cent of the interests in a partnership or other entity should be to "voting" interests.

Response

The Commission agrees that "voting" should be added and has made the change.

10. "fair market value"

Comment

Comment Not on Proposed Amendments: One commenter suggested that the words "except as provided in paragraph 6.4(2)(d)" be replaced by "subject to paragraph 6.4(2)(d)" or deleted entirely since paragraph 6.4(2)(d) itself contains the modification to the definition.

Response

The Commission agrees with the commenter's first suggestion from the standpoint of technical consistency, but prefers the existing wording as being more user friendly. In regard to the second suggested alternative, it is desirable that there be words to alert readers to the existence of an exception elsewhere in the Rule.

11. "freely tradeable"

Comment

Comment Not on Proposed Amendments: One commenter asked if the first component of the definition should be amended by adding "without satisfaction of any conditions" after "transferable". This was based on the commenter's view that securities of a company with restrictions on transfer (such as where the approval of the shareholders or directors is required for transfers) are arguably still transferable.

Response

The Commission does not regard the additional words as necessary. The term "freely tradeable" is used in the Rule only in reference to publicly traded securities which would not have the restrictions referred to in the comment. In addition, the absolute exclusion of conditions could be interpreted to capture, for example, publicly traded securities that have transfer restrictions for the purpose of maintaining Canadian ownership or qualifying the issuer to carry on a certain type of business.

12. "incentive plan"

Comment

One commenter suggested removal of "employee", since incentive plans can extend beyond employees.

Response

The Commission agrees with the commenter and has made the change.

13. "interested party"

Comments

Under clause (d)(ii)(B) of the definition in the 2003 proposed Rule, an interested party for a related party transaction included a related party that, as a consequence of the transaction, would be entitled to receive a payment or distribution made to holders of non-equity securities. One commenter asked why there was not an exception where the non-equity securities were employee stock options.

Comments Not on Proposed Amendments: Under subparagraph (b)(ii) of the definition in the amended Rule, an interested party for an issuer bid includes a person or company that is expected to be control block holder of the issuer "upon successful completion of the issuer bid." One commenter asked if "and any connected transaction" should be added to the end of this provision. Another commenter, in reference to the definition of interested party for a related party transaction, asked if a "party to the transaction" in subparagraph (d)(i) includes an officer or director whose rights or position are terminated, amended or continued, such as where an employment agreement or amendment is required.

Response

Clause (d)(ii)(B) was intended to cover circumstances that would include a payment or distribution to holders of non-equity securities in conjunction with a rights offering or other distribution of securities to holders of equity securities. An exception for holders of employee stock options was not considered justified in this context. Clause (d)(ii)(B) has been removed in any event because the transactions it was intended to cover would normally be covered by the definition of collateral benefit as well as being related party transactions in their own right.

A reference to connected transactions could be included in the definition as it relates to an issuer bid, but in light of the breadth of the definition of connected transactions, their inclusion could have unintended consequences or add unnecessary complications. The implications of a person or company being an interested party for an issuer bid are primarily disclosure-related, and if an issuer carrying out an issuer bid became aware of a pending transaction that would materially affect its control, disclosure requirements would be triggered in any event.

For a related party transaction, a "party to the transaction" does not include a person whose sole connection with the transaction arises from the fact that his or her employment arrangements will be affected by it.

14. "joint actors"

Comments

One commenter strongly supported the proposal to have in the Rule a definition of joint actors that states explicitly that the definition does not pick up securities that are subject to a lock-up agreement.

Comment Not on Proposed Amendments: One commenter suggested that the definition state explicitly that the recipient of a collateral benefit is not, for that reason alone, a joint actor with an interested party or with a related party of an interested party.

Response

Regarding the second comment, it has not been the Commission's experience that users of the Rule have interpreted persons to be "acting jointly or in concert" solely because they receive collateral benefits. Apart from the exclusion of lock-ups and support agreements, which was added in the amended Rule to address an area of uncertainty, the Commission is reluctant to add to the length of the definition by covering matters that have not given rise to interpretation difficulties. A list of exclusions may give rise to the assumption that non-codified exclusions are caught by the definition, which may not be the case.

15. "minority approval"

Comment

Comment Not on Proposed Amendments: One commenter thought the Rule should allow issuers (particularly emerging issuers) to satisfy the minority approval requirement by obtaining written consents from holders of securities, as an alternative to holding a meeting of security holders, in order to relieve the issuers from the cost burden of holding the meeting. The commenter said that perhaps the nature of this alternative could be a requirement that all beneficial holders of more than 5% of the outstanding securities must approve the transaction.

Response

Section 3.1 of the amended Companion Policy provides for the possibility of a discretionary exemption being granted to permit an issuer to obtain security holder approval in writing. The Commission does not wish to make the exemption automatic, mainly because the Director should be satisfied that the security holders who provide their consent are doing so with adequate disclosure regarding the transaction, and this should be accomplished as part of the exemption application process. On the possibility of requiring approval from holders of more than 5% of the outstanding securities, the Commission would normally consider it appropriate to base the discretionary exemption on consents from holders of a majority of the outstanding securities that would be eligible to be voted if a meeting were held, regardless of the size of each holding.

16. "related party"

Comments

One commenter asked if receivers and liquidators should be added as exclusions in paragraph (f).

Comments Not on Proposed Amendments: One commenter thought the presence of both paragraphs (a) (control block holder) and (d) (holder of securities carrying more than 10 per cent of the votes) seemed unnecessary, and that (a) alone should suffice.

Another commenter thought the definition may be overly broad in that it captures, for example, a purchase of assets of an issuer by a non-top ranking officer of the issuer who is not a director and has a small shareholding in the issuer.

Response

In paragraph (f), "appointed" has been changed to "acting", so that persons who, as a result of either a court appointment under a statute or the operation of a contract, manage an issuer under insolvency law are excluded from being caught by the definition under this paragraph.

Paragraph (d) is necessary to cover large security holders who are not part of a control group. While these insiders may not necessarily be in a position to influence an issuer's actions on their own, they may still reasonably be perceived to have an informational advantage in light of their security holdings. The same holds true for senior officers who are neither directors nor large security holders.

17. "related party transaction"

Comments

For paragraph (j) regarding a credit facility, one commenter suggested that "creates" be changed to "enters into" if it is intended that both the granter and the recipient of a credit facility could be considered to be engaging in a related party transaction. Another commenter was concerned that paragraph (l) (material change to terms of debt or credit facility) appears to capture banks and other arm's length lenders with substantial control or influence as a result of a default, and who agree to amended terms in the context of an insolvent borrower. The commenter thought paragraph (l) could make it impossible to amend a loan in such a situation.

Response

The Commission agrees with the first commenter and has made the change. On the second comment, paragraph (l) is needed to address conflict of interest concerns that could arise in the context of an amendment to a loan from a related party. In the scenario described by the commenter (and assuming that the bank or other lender meets the Rule's definition of "related party"), financial hardship or insolvency exemptions are likely to be available. If they are not, it may be appropriate for the protections of the Rule to come into play, or exemptive relief may be sought.

18. Section 1.2 – Liquid Market

Comment

Comment Not on Proposed Amendments: One commenter thought since it is unclear whether new competitive marketplaces will all provide supporting liquidity opinions, the requirement for an opinion from the published market should be reconsidered. The commenter also thought, for consistency with the POP issuer criteria (subsection 2.9(3) of National Instrument 44-101), securities held by certain institutional investors that are related parties should not be excluded from the market value calculation.

Response

The Commission does not propose to eliminate the requirement to obtain a liquidity opinion from the published market under the circumstances described in the Rule. Given the limited nature of those circumstances (particularly under the amended Rule), the Commission considers the possibility remote that competitive marketplaces will have a material impact in this area, at least for the foreseeable future. While not discounting the legitimacy of the issues raised by both comments, the Commission is reluctant to reduce investor protections or impose additional provisions on users of the Rule to address every conceivable circumstance, no matter how unlikely, that could give rise to a need for exemptive relief at some point in the future.

19. Section 1.3 – Transactions by Wholly-Owned Subsidiary Entity

Comments

One commenter asked why non-wholly-owned subsidiaries were not addressed, and also suggested that the section conclude by deeming a bid by a wholly-owned subsidiary of an issuer for securities of the issuer not to be a take-over bid in the Rule or the Act.

Response

The section is intended to reflect the fact that a wholly-owned subsidiary is essentially an alter ego of its parent issuer, insofar as transactions are concerned, and should be treated as such for the purposes of the Rule. The same cannot necessarily be said

for partially-owned subsidiaries. While the Rule addresses partially-owned subsidiaries through concepts such as beneficial ownership and indirect parties to transactions, a deeming provision that equates transactions of partially-owned subsidiaries with those of their parents would, in the Commission's view, introduce undesirable complications into the Rule. On the second point raised by the commenter, the Commission does not consider the suggested additional deeming provision to fall within the intended subject matter of the Rule, and the issue would arise extremely rarely in any event.

20. Section 1.4 – Transactions by Underlying Operating Entity of Income Trust

Comments

One commenter thought this section was unnecessary and confusing. The commenter asked why a special provision was required for an underlying operating entity, which was presumably a subsidiary, and not for other public holding companies or entities. The commenter also noted that "income trust" was not a defined term.

Response

Given the rapid growth in the number of publicly traded income trusts, the Commission considers it important for the Rule to specifically address transactions involving the assets on which the entire value of the securities of an income trust depends. A definition of income trust has now been added to the amended Rule and includes entities other than trusts. Further requirements to address various other types of holding entities would, in the Commission's view, introduce undesirable complications into the Rule.

21. Section 2.3 – Insider Bids – Formal Valuation – Independent Committee

Comment

Paragraph (d) would require the independent committee, in the case of an insider bid, to use its best efforts to ensure that the formal valuation is completed and provided to the offeror in a timely manner. One commenter, while appreciating the policy reason behind the provision, thought the section as drafted might impose an unduly onerous standard of performance on the special committee. The commenter suggested the following alternate wording: "…use reasonable efforts appropriate in the circumstances to facilitate the provision of the formal valuation in a timely manner."

Response

As the provision is intended primarily to address unfriendly bids, the Commission prefers to emphasize the importance of shareholders receiving a bid in a timely manner by using the stronger language contained in the 2003 proposed Rule. The provision is really a codification of one of the responsibilities reasonably expected of an independent committee in any event.

22. Subsection 2.4(1), Para. 3 and Subsection 4.4(1), Para. 3 – Exemption from Formal Valuation Requirement – Previous Arm's Length Negotiations – Insider Bids and Business Combinations

Comment

Comment Not on Proposed Amendments: One commenter was of the view that this exemption is much too complex.

Response

The Commission considers the exemption to be justified only if all the conditions contained in it are met. Accordingly, none of the conditions could be removed without eliminating the entire exemption. While the conditions may appear complex in the abstract, ascertaining whether the exemption is available in the context of a specific transaction should be fairly simple in most cases, and far less time-consuming than the process of obtaining a discretionary exemption.

23. Paras. 4.1(c) and 5.1(c) – Application – Less than 2% of Security Holders in Ontario – Business Combinations and Related Party Transactions

Comments

One commenter thought requiring the determination to be made at the time the business combination was "proposed", in paragraph 4.1(c), was too vague. The commenter also thought the *de minimis* test should be met if it is satisfied for either registered or beneficial owners, as in the current Rule, rather than having to be satisfied for both registered and beneficial owners.

Comment Not on Proposed Amendments: Two commenters thought the two per cent threshold was too low. One of those commenters was of the view that, given that other provinces have not adopted the Rule, other jurisdictions do not have the same requirements, and the relative size of Ontario's capital markets in Canada, a 10% or greater threshold would seem more reasonable from a cost-benefit analysis.

Response

The Commission agrees with the comment regarding the use of the word "proposed", which is used in a similar manner in provisions regarding going private transactions in other parts of the current version of the Rule. In the amended Rule, "proposed" has now been changed to "agreed to" in this provision and in those other parts. The change regarding registered and beneficial ownership reflects the fact that a substantial portion of a Canadian issuer's securities may be registered in the name of a depository under an address in a single province, which may not reflect the true location of the issuer's beneficial security holders.

Regarding the two per cent threshold, proposed National Instrument 71-102 – *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* will contain significantly higher thresholds for most foreign issuers, based on the level of Canadian ownership of the issuer's securities. For Canadian issuers, the Commission regards the benefits of the Rule as outweighing concerns about extra-jurisdictional regulatory reach, except where the security holdings in Ontario are nominal.

24. Sections 4.2 and 5.3 – Meeting and Information Circular

Comments

Paragraph (3)(h) of section 4.2 and 5.3 of the amended Rule would require disclosure in the information circular of the number of votes attached to the securities that, to the knowledge of the issuer after reasonable inquiry, would be excluded in a minority approval vote. One commenter said that this number is often difficult to assess, given the broad definitions of terms such as related party and joint actors. The commenter suggested that the provision begin with words such as "to the extent determinable".

Comments Not on Proposed Amendments: Subsections 4.2(4) and 5.3(4) of the amended Rule (which are substantially identical to subsections 4.2(3) and 5.4(3) of the current Rule, respectively) provide that if a material change occurs between the time of the sending of the information circular and the meeting of security holders to vote on the transaction, the issuer must promptly disseminate disclosure of the change sufficiently in advance of the meeting that security holders will be able to assess the impact of the change. One commenter said that it should be clarified that the provision only applies to changes within the control of the issuer, as is the case for the bidder in a take-over bid under the Act. The commenter also asked how to comply with the requirement if the change occurs just before the meeting, and whether an adjournment is required.

Response

On the first comment, the Commission does not consider the suggested additional words to be strictly necessary in light of the inclusion of the words "to the knowledge of the issuer after reasonable inquiry".

On the other comments, given the importance of security holders being in a position to make an informed decision when voting on a transaction covered by the Rule, the Commission is reluctant to change the Rule in a manner that may reduce the access of security holders to information that could materially affect that decision. If the issuer is unable to give security holders adequate notice of a material change in advance of the scheduled time of the meeting, the issuer may need to adjourn the meeting in order to comply with the Rule.

25. Section 4.3 – Business Combinations – Requirement for Formal Valuation

Comments

Subsection (1) in the amended Rule sets out the circumstances in which a formal valuation for a business combination is required. The criteria are based on the significance of the level of participation of interested parties in the business combination or in a connected transaction. One commenter thought the references to "interested party" should be changed to "related party" to avoid circularity in the use of the former term. The commenter also suggested that paragraph (b) explicitly state that, in determining whether a connected related party transaction will trigger a formal valuation requirement for a business combination, the connected transaction should be considered separately from the business combination for purposes of paragraph 2 of section 5.5 of the amended Rule (the less than 25% of market capitalization exemption).

Another commenter thought paragraph (b) was unclear as to whether it required a valuation for the business combination or just for related party transactions that were connected to the business combination.

Response

The Commission does not regard the use of the term "interested party" as being circular, because the section does not refer to the term in a definitional sense. The Commission also does not consider the proposed explicit reference to the 25% exemption to be necessary. Subparagraph (c) of that exemption in the 2003 proposed Rule, which required aggregation of connected related party transactions for purposes of the 25% calculation, explicitly confined its application to transactions that were subject to Part 5 of the Rule. (A change to this provision in the new draft confines its application further.) Under paragraph 5.1(e) of the amended Rule, business combinations are not subject to Part 5.

The introductory words of the section have been changed to clarify that paragraph (b) requires a valuation for the business combination if the circumstances described in that paragraph apply.

26. Subsection 4.4(1), Para. 2 and Section 5.5, Para. 3 – Formal Valuation Exemption for Issuers Not Listed on Specified Markets – Business Combinations and Related Party Transactions

Comments

Under these paragraphs, issuers not listed or quoted on specified stock markets will be exempt from the requirement to obtain a formal valuation for a business combination or related party transaction. The specified markets in the 2003 proposed Rule were the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ National Market, the NASDAQ SmallCap Market and any stock exchange outside of North America.

The TSX Venture Exchange supported these exemptions and believed they would be of considerable benefit to emerging issuers listed on that exchange, providing them with both time and cost savings. Another commenter thought the proposal treated foreign small-cap markets, such as the NASDAQ SmallCap Market, differently from Canadian small-cap markets, which was inappropriate, and that the proposal did not address quotation and trade reporting systems.

Response

On the second comment, this exemption is intended to apply to junior issuers such as those listed on the TSX Venture Exchange. The NASDAQ SmallCap Market has listing requirements significantly higher than those of the TSX Venture Exchange. In regard to other foreign markets, it would be extremely rare for a junior issuer, listed on a stock exchange outside of Canada and the United States, to be a reporting issuer that is subject to the formal valuation requirement in the Rule. Exemptive relief can be sought if this does occur. It is also highly unlikely, at least for the foreseeable future, that there would be a senior reporting issuer that could avoid the formal valuation requirement solely by reason of not being listed or quoted on one of the markets specified in the exemption.

27. Subsection 4.4(1), Para. 5 and Section 8.2 – Second Step Business Combination – Formal Valuation Exemption and Including Votes of Securities Acquired in Bid

Comments

These provisions provide a formal valuation exemption, and allow securities acquired in a formal bid to be voted, for a business combination that is completed within 120 days after the expiry of the bid if certain conditions are met. One of the conditions is that the disclosure document for the formal bid must have disclosed that the offeror, if it acquired securities under the bid, intended to acquire the remainder of the securities under a statutory right of acquisition or under a business combination that would satisfy the conditions of the exemption. One commenter thought "intended" was too strong, because circumstances may change and, in practice, the statement of intention must be qualified with words such as "currently intends".

Comment Not on Proposed Amendments: One commenter thought the 120-day period for completion of the business combination should start at the time of the mailing of the information circular for, or the time of proposing, the business combination. The commenter said that sometimes completion gets delayed for regulatory or other reasons, and one should not be suddenly pushed off-side at the end for this type of reason.

Response

This valuation exemption and the provision that allows securities acquired in a formal bid to be voted are based on the premise that there are certain conditions under which it is fair to security holders for a formal bid and a subsequent business combination to be treated, for regulatory purposes, as though they were a single transaction. This is the case where the two steps are sufficiently linked so that it is reasonable to assume that the interests of the security holders who tendered to the bid are generally aligned with the interests of the security holders who vote on the subsequent business combination. In order for this to be the case, the transactions must be completed within a reasonable time of each other, and the Commission regards 120 days

from the expiry of the bid to be both the appropriate time limit for this purpose as well as a reasonable period in which to complete the business combination. Exemptive relief may be sought in unusual cases.

Similarly, the interests of the two groups of security holders may not be aligned if there is a reasonable possibility that security holders who tender to the bid are motivated by factors other than the bid price. This may be the case if the bidder does not state that it intends subsequently to acquire untendered securities at the bid price in the event that the bid meets its minimum tender condition. In that case, security holders may tender out of a concern that their securities may be less liquid after the bid, and also of less value due to the potential loss of the opportunity to receive a control premium for the securities. In this circumstance, tendering to the bid does not necessarily equate to approval of the bid price. Under the amended Rule, it will still be permissible to qualify the expressed intention in order take into account the possibility of unforeseen events, but the intention must otherwise be firm.

28. Section 4.5 – Minority Approval for Business Combination

Comment

One commenter thought a related party transaction that is connected with a business combination should trigger the minority approval requirement for the business combination only if the related party transaction itself must receive minority approval under the Rule. This would be the same as the approach taken for the formal valuation requirement in paragraph 4.3(1)(b) of the amended Rule.

Response

While the number of circumstances requiring a formal valuation has been reduced in the amended Rule as part of an effort to eliminate regulatory burdens that may not be justified in relation to their costs, identical principles do not necessarily apply to the minority approval requirement. In the case of a business combination, where a majority of security holders can force the minority to relinquish their securities against their will, it is important that this majority be comprised, to the extent possible, of security holders who are voting solely on the merits of the business combination. A related party that stands to benefit from a connected transaction if the business combination proceeds may have an added incentive to vote in favour of the business combination even if the connected transaction is not of sufficient size to be subject to minority approval under the rule.

29. Subsection 4.6, Para. 2 and Subsection 5.7, Para. 7 of 2003 Proposed Rule (para. 8 in new draft) – Minority Approval Exemption Where Interested Parties Own 90%

Comment

One commenter thought the interested parties comprising the 90% holding should include certain types of interested parties that are not actual parties to the business combination or related party transaction, such as persons who are interested parties only because they would receive collateral benefits as a result of the transaction.

Response

The exemption is primarily intended to apply to issuers that are controlled as to 90% or more. The exclusion of interested parties that, for example, only receive collateral benefits is consistent with this intent and also removes the potential for avoidance tactics such as providing security holders with collateral benefits for the purpose of having them included in the 90% calculation.

30. Paragraph 5.1(e) – Application – Related Party Transaction that is Also a Business Combination

Comment

Comment Not on Proposed Amendments: This provision excludes a business combination from the application of Part 5 of the Rule, which contains the requirements for related party transactions. One commenter suggested that the provision also explicitly state that, for greater certainty, a related party transaction that is connected to a business combination is subject to Part 5.

Response

Clarifying language on this subject has been added to subsection 2.8(2) of the Companion Policy.

31. Section 5.5, Para. 2 – Less than 25% of Market Capitalization Exemption

Comments

In the 2003 proposed Rule, the exemption was expressed as being based on the transaction's fair market value, insofar as it involved "related" parties. One commenter thought "related" should be replaced with "interested" to prevent difficulties in interpretation that could cause inappropriate related parties to be included in the 25% calculation.

Subparagraph (b) in the amended Rule provides, in essence, that if the transaction is one in which the issuer combines with a related party, the securities of the related party that are already held by the issuer need not be counted in determining the size of the transaction for the purpose of the 25% exemption. One commenter noted that in the current version of the Rule, this exclusion only applies in the case of a downstream transaction for the issuer. The commenter was not sure that it made sense in the upstream context.

Subparagraph (c) in the amended Rule requires the values of all connected related party transactions to be combined for the purpose of determining whether the 25% exemption is available. There was an exception for those transactions that had one of the other automatic exemptions in section 5.5. One commenter asked whether there should also be an exception for a transaction for which the Director has granted a discretionary exemption.

Subparagraph (d) in the 2003 proposed Rule required warrants, options and similar instruments to be included in the calculation used to determine whether the 25% exemption was available, based on the maximum potential effect of the exercise of the instruments. One commenter thought the amount that the provision required to be included was the sum of the fair market value of the underlying assets and the amount payable on exercise. The commenter disagreed with the duplication that the provision suggested.

Response

The Commission has made the change suggested in the first comment.

In addition to downstream transactions, subparagraph (b) is intended to cover transactions in which, for example, a wholly-owned subsidiary of an issuer amalgamates with a company that is partially owned by a related party of the issuer and partially owned by the issuer. A merger or amalgamation that is an upstream transaction for an issuer will normally be a business combination for that issuer under the amended Rule, in which case the 25% exemption will not be relevant. Even for an upstream transaction that is not a business combination, the subparagraph still should apply to cover the possibility of the issuer already owning securities of the entity with which it is combining.

Subparagraph (c), regarding aggregation of connected transactions, has been amended in the new draft to confine its application to transactions that would require a formal valuation if it were not for this exemption. Therefore, a transaction for which a discretionary exemption is granted will not be subject to aggregation unless the terms of that exemption provide otherwise.

Subparagraph (d) has been redrafted to clarify the amount to be included in the calculation for purposes of the exemption when the transaction includes warrants, options and similar instruments. The amount is the fair market value, as of the time the initial transaction is agreed to, of the maximum number of securities or other consideration that the issuer may be required to issue or pay on exercise.

32. Less than $500,000 Formal Valuation Exemption for Related Party Transactions in Section 5.6, Para. 13 of Current Rule

Comment

One commenter disagreed with the proposed elimination of the current formal valuation exemption for transactions having a fair market value of under $500,000. In the 2003 proposed Rule, this exemption was replaced, in paragraph 3 of section 5.5, with an exemption for all issuers not listed or quoted on a specified senior stock market such as the Toronto Stock Exchange. The commenter thought the current exemption was appropriate for Toronto Stock Exchange issuers that have shrunk in value, and that the threshold for the exemption should be increased to perhaps $2.5 million.

Response

The Toronto Stock Exchange has positioned itself as a market for senior equities. For the purposes of making regulatory accommodations for junior issuers, it is reasonable to differentiate between junior and senior issuers in a manner that coincides with the general perceptions of the investing public. Differentiating on the basis of whether the issuer is traded on a junior or senior market will assist the public in determining which regulatory regime applies to a particular issuer. This is also the

approach that has been taken in proposed National Instrument 51-102 – *Continuous Disclosure Obligations* and proposed Multilateral Instrument 52-110 – *Audit Committees*.

33. Section 5.5, Para. 4 – Formal Valuation Exemption for Distribution of Securities for Cash

Comment

Comment Not on Proposed Amendments: This exemption is conditional on neither the issuer nor, to the knowledge of the issuer after reasonable inquiry, the related party having knowledge of material, undisclosed information regarding the issuer or its securities. One commenter thought the proposed transaction itself should be excluded from this condition.

Response

The condition is applicable at the time the related party transaction is carried out, and since the issuer would need to rely on this exemption only for a highly significant transaction (otherwise the exemption based on the size of the transaction would be available), it is highly likely (and normally desirable) that the transaction would be publicly announced before it is carried out. Therefore, the Commission does not consider it necessary to add extra wording to exclude the transaction itself from the condition.

34. Section 5.5, Para. 9 – Formal Valuation Exemption for Amalgamation or Equivalent Transaction with No Adverse Effect on Minority

Comment

Comment Not on Proposed Amendments: One commenter noted that this paragraph uses various terms to refer to the combined entity, and suggested that “entity resulting from the combination” be used throughout.

Response

The Commission agrees with the commenter and has made the change.

35. Section 5.7, Para. 6 of 2003 Proposed Rule (para. 7 in new draft) – Minority Approval Exemption for Loan to Issuer

Comments

In the 2003 proposed Rule, this exemption was changed so as not to apply to an advance under a credit facility, in order to remove the implication that an advance was regulated as a related party transaction distinct from the creation of the credit facility. An advance would normally be excluded from being regulated as a separate transaction by virtue of subparagraph 5.1(h)(iii) of the amended Rule, which excludes a transaction carried out under the terms of a previous transaction (which in this case would be the creation of the credit facility). A condition in subparagraph 5.1(h)(iii) is that the terms of the previous transaction must have been generally disclosed. One commenter said that the creation of a credit facility may not be material enough to trigger a disclosure obligation under the timely or continuous disclosure requirements of securities law, and that the Rule should not create an additional disclosure requirement. Therefore, the commenter suggested that different wording be used to meet the Commission’s objective of ensuring that an advance is not caught by the Rule.

The exemption does not apply where the loan is convertible into equity or voting securities of the issuer and in certain other circumstances. One commenter noted that the list of these circumstances does not capture the common case of ancillary warrants that may accompany a loan.

Response

If the creation of a credit facility with a related party is not sufficiently material to trigger a public disclosure obligation under securities law, advances under that credit facility would normally be expected to have the benefit of the exemption in paragraph 2 for a transaction that is smaller than 25% of the issuer’s market capitalization. The Commission is of the view that if none of the exemptions in the amended Rule apply to the advances, the creation of the credit facility is likely material and should be generally disclosed before advances under it are made.

The existence of ancillary warrants is not included as a circumstance that negates the exemption because, given that the exemption only applies if the loan is on reasonable commercial terms, the number of ancillary warrants may not be sufficiently large to justify the loss of the exemption. The issuance of the warrants will generally be subject to minority approval under the Rule if the current value of the securities issuable on exercise of the warrants exceeds 25% of the issuer’s current market capitalization.

36. Minority Approval Requirement for Junior Issuers

Comment

The TSX Venture Exchange ("TSX Venture") submitted that the exemption from the formal valuation requirement in the amended Rule for issuers not listed or quoted on a senior stock market should also be a minority approval exemption if the issuer is traded on a market that has security holder approval and disclosure requirements respecting business combinations and related party transactions. TSX Venture, in its submission, has adequate review procedures and safeguards in place to ensure that security holders are not prejudiced by these transactions. Among other things, TSX Venture requires minority approval for a private placement that would cause a related party that was not a control person to become a control person, and TSX Venture does not allow any private placement (whether or not to related parties) to be priced at below the market price less a specified discount. TSX Venture also said that since emerging issuers, by their nature, often rely on financings from related parties, it would be inappropriate for those financings to be subject to minority approval, particularly considering the cost burdens involved. Typically, it was these emerging issuers that were least able to bear these cost burdens, which largely outweighed the benefits of increased financings for the issuers.

Response

The minority approval requirement is a fundamental contributor to fairness and the appearance of fairness in transactions that may give rise to significant conflicts of interest involving an issuer and its related parties. While stock exchanges and quotation systems may have their own systems for regulating related party transactions, these systems may not cover all the concerns the Rule is intended to address. For example, a large private placement that is priced at a discount from the market price (which may be as much as a 25% discount) and made to a person that already controls the issuer could give rise to a reasonable perception of a conflict of interest, but it does not trigger a minority approval requirement under TSX Venture policies, regardless of its size.

However, the Commission agrees that for smaller financings, the minority approval requirement can impose costs, in relation to the amount of money raised, that may outweigh the benefits. Accordingly, a minority approval exemption has been added, in paragraph 3 of subsection 5.7(1), for cash financings of not greater than $2.5 million, for issuers not traded on a senior stock market. The availability of the exemption is subject to the issuer having one or more directors who are both independent of the transaction and not employees of the issuer, and approval of the transaction by two-thirds of the directors that meet those criteria.

37. Section 6.3 – Subject Matter of Formal Valuation

Comment

For a related party transaction, subsection (2) in the amended Rule does not require a formal valuation of securities of a reporting issuer or securities of a class for which there is a public market, subject to certain conditions. One of the conditions is that, in the case of a transaction by the issuer of the securities, neither the issuer nor, to the issuer's knowledge after reasonable inquiry, the related party has knowledge of any undisclosed material information concerning the issuer or its securities. One commenter asked whether it was intended that securities not requiring a valuation would include newly created securities for the purpose of the transaction or whether "for which there is a public market" modified both references to "securities". If the former was intended, the commenter questioned whether, for a transaction by the issuer of the securities, the conditions were sufficient to ensure that the person to whom these securities were offered would have sufficiently detailed knowledge of the value in order to justify no valuation being required.

Response

A minor drafting change has been made to subsection (2) to clarify that, for a related party transaction, a formal valuation of securities of a reporting issuer is not required regardless of whether there is a published market for those securities (subject to the conditions). On the other point, the conditions are intended to eliminate any informational advantage the related party receiving the securities might have, so that security holders who, for example, vote on the transaction will not be deprived of relevant information when making their voting decisions. The conditions are not designed to address the related party's level of knowledge in any other respect.

38. Section 6.4 – Preparation of Formal Valuation

Comments

Paragraph (2)(d) in the current Rule provides that, in determining the fair market value of securities, the valuator must not make a downward adjustment to reflect the liquidity of the securities, the effect of the transaction on the securities or the fact that the securities do not form part of a controlling interest. In the amended Rule, this paragraph was changed so as to apply only to

offeree securities or affected securities. It would no longer apply, for example, to shares that would be received by the shareholders of a target company in a share exchange insider bid or business combination.

One commenter said that the current version of the Rule has led providers of fairness opinions to say that if a controlling shareholder is offering less than "intrinsic value" (i.e. without downward adjustments), the transaction is not "fair". As a result, boards have not been willing to recommend such transactions. The commenter said that a price that is lower than the intrinsic value may nonetheless be a very fair price to offer shareholders, and if that price is at a significant premium to the market price, minority shareholders will likely never obtain a better price. This refusal to allow for downward adjustments does not reflect reality, according to the commenter, and was likely to prevent certain value-enhancing transactions. The commenter thought there was double prejudice from allowing "effect of transaction" increases, but not decreases, and from the fact that securities being offered by an acquirer are to be subject to downward adjustments. A preferable route, in the commenter's view, would be to allow for downward adjustments in the valuator's discretion, provided that they are explicitly disclosed along with the intrinsic value. In addition, the commenter thought the Companion Policy should clarify that value does not necessarily equate to fairness, so that, for example, a transaction may be fair even if the price offered is not equal to the intrinsic value.

One commenter suggested that subsection (3) in the 2003 proposed Rule regarding the non-application of National Policy 48 should be moved to the Companion Policy.

Response

The disclosure requirements of the Rule are not exhaustive of the information that may be provided to holders of securities in connection with the transactions covered by the Rule. If, for example, a board of directors of an issuer, in consultation with the valuator, decides that it would be useful for shareholders to have the additional benefit of the valuator's views as to the value of the shares on an adjusted basis, this information can be provided. Where this additional disclosure appears, it should be clearly distinguished from the valuation information that has been prepared in accordance with the Rule. On the commenter's suggested inclusion in the Companion Policy of a statement regarding value and fairness, the Commission prefers to let directors and security holders decide for themselves the weight they wish to attach to the results of valuations.

The Commission agrees with the commenter's suggestion regarding subsection (3) and has moved it to the Companion Policy.

39. Section 6.7 – Valuator's Consent

Comment

One commenter thought the requirement to file the valuator's consent with the Commission seemed to create unnecessary paperwork and should be removed. The commenter also asked why this provision was needed in addition to the required statement of the valuator's consent in the disclosure document, and how the latter requirement works with the provisions of section 6.8 on prior valuations.

Response

The Commission agrees that the filing of the valuator's consent with the Commission is not essential, and the requirement has been removed. On the last question, the statement of the valuator's consent relates only to formal valuations that are prepared as required by the Rule for the transaction to which the disclosure document relates. The requirements that apply to prior valuations are independent of those for formal valuations.

40. Section 8.1 – Minority Approval -- Separate Votes for Each Series – Removal of Subsection (2) from the Current Rule

Comments

Subsection (2) in the current Rule, which provides that holders of a series of securities are entitled to vote separately as a series if the transaction would affect that series in a manner different from other securities of the class, was removed in the 2003 proposed Rule. Two reasons for the removal were set out in a footnote. The first was that the provision was unnecessary in light of the Rule's interpretation of "class", which includes a series. The second was that each series should vote separately even if all series receive identical treatment in the transaction, since the different attributes of a series may warrant different treatment. Two commenters thought subsection (2) should be retained. One thought the analysis in the footnote was flawed. The other said that requiring series votes even where the series are not differentially affected may be inappropriate, as it would give rise to veto rights and associated opportunities to demand ransom fees, and that current subsection (2) was more consistent with corporate law.

Response

The minority approval requirement applies only to votes of holders of equity securities, which are very rarely issued in series, and so this issue will seldom arise. If it does arise, however, the Commission does not consider there to be a strong basis for the Rule to treat multiple series differently from multiple classes. Apart from equal priority in the payment of dividends and repayment of capital, corporate statutes generally do not prohibit different series within a class from having substantially different attributes from one another, even if this may be unusual. If an issuer takes the position that holders of a series have an unfair veto power under the particular circumstances, exemptive relief may be sought. A sentence contemplating this type of situation, as well other circumstances where exemptive relief may be appropriate in the context of a dual class structure, has now been added to section 3.3 of the amended Companion Policy.

41. Section 9.1 – Exemption

Comment

Comment Not on Proposed Amendments: One commenter thought exemptions should also be available from the Commission, in addition to the Director, or that the Rule should expressly provide for a de novo non-deferential appeal to the Commission.

Response

For the purposes of regulatory efficiency, the Commission regards it as preferable for exemptions to be granted by the Director, as is the case for other rules. In a hearing and review of the Director's decision, the Commission is not required to be deferential to the Director and, as provided in the Act, may make a decision, different from that of the Director, as the Commission considers proper.

42. Companion Policy – Subsection 2.1(5) – Principle of Equal Treatment in Business Combinations

Comments

This subsection, while acknowledging that there may be circumstances where not all security holders will be treated identically in a business combination, includes a statement that giving a security holder preferential treatment in order to obtain that holder's support of the transaction will not normally be considered justifiable. One commenter thought the subsection should clarify that a related party that is a buyer or acting in concert with a buyer in the business combination does not have to be treated equally to the sellers. The commenter also thought the subsection is too strong. The commenter said that where a party that has a veto in a minority vote cannot be treated differently, it may be that no transaction can occur. Since the Rule gives vetoes to minority security holders and does not punish them for using the vetoes to get more value, the commenter asked why a substantial security holder is threatened with punishment for using its veto to agree to a transaction that the board considers worthy of doing and on which minority security holders get to vote. The commenter also thought this subsection seemed in direct contrast with section 2.2 of the amended Companion Policy, which interprets a "joint actor" in a bid to include a security holder that is provided with an opportunity not offered to all security holders to maintain or acquire an interest in the offeror, the issuer or the issuer's assets.

Response

The first sentence of the subsection excludes the buyer as a security holder to whom the equality principle applies, and this exclusion would apply to multiple buyers by implication. On the second comment, if it is proposed that a security holder will receive preferential treatment in return for its support of the transaction, the unfairness to the other security holders may override concerns about the possibility of the transaction not occurring. If minority security holders use their veto to get more value for the general body of security holders, and are not treated differently themselves, this is not objectionable. On the last comment, section 2.2 primarily addresses circumstances where an insider essentially would be one of the acquirers of the issuer without being the actual bidder. Section 2.1(5) is directed more toward possible unequal treatment among security holders who relinquish their securities in a business combination, although its application will necessarily depend on the particular facts.

43. 2003 Proposed Companion Policy – Section 2.7 – Redeemable Preference Shares

Comment

Comment Not on Proposed Amendments: In this section, the Commission expresses the view that redeemable preference shares that are immediately redeemed for cash after they are issued to security holders in a business combination are equivalent to cash for the purposes of certain provisions of the Rule. One commenter thought this should be incorporated into the Rule.

Response

The Commission agrees with the commenter and has moved the interpretation to the new draft of the amended Rule as section 1.5.

44. 2003 Proposed Companion Policy – Section 2.8 (section 2.7 in new draft) – Previous Arm's Length Negotiations Exemption

Comment

Comment Not on Proposed Amendments: Subsection (1) clarifies that the arm's length relationship must be between the selling security holder and all persons or companies that negotiated with the selling security holder. One commenter asked if this meant that if a non-arm's length go-between facilitated negotiations, the exemption would not be available. If so, the commenter thought the subsection should be changed because if the buyer is at arm's length, that should suffice.

Response

If a go-between is not at arm's length to the seller but negotiates solely on behalf of the seller in an agency or similar capacity, then the go-between's involvement would not negate the exemption. If that go-between performs a different role, it would not normally be appropriate for the exemption to apply.

45. Companion Policy – Section 5.1 – Formal Valuations

Comment

Comment Not on Proposed Amendments: Subsection (4) includes the statement that it is inappropriate for any interested party to exercise or attempt to exercise any influence over a valuator. One commenter thought it should be clarified that reasoned discussion is not "influence", perhaps by adding "improper" before "influence". Especially in an unsolicited insider bid, the valuator may, according to the commenter, be pushing the value up to please its client, and discussion should be permitted.

Response

The Commission is reluctant to make a change that indicates that it is permissible for an interested party to exert influence on the valuator. "Improper" is subjective, and the valuation requirement is intended to provide security holders with information from a perspective that is truly independent from the interested party. If an interested party disagrees with the results of the valuation, the reasons for the disagreement can be provided to the security holders in the disclosure document for the transaction.

6.1.4 OSC Rule 61-501 - Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions

ONTARIO SECURITIES COMMISSION RULE 61-501
INSIDER BIDS, ISSUER BIDS, BUSINESS COMBINATIONS
AND RELATED PARTY TRANSACTIONS

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ONTARIO SECURITIES COMMISSION RULE 61-501
INSIDER BIDS, ISSUER BIDS, BUSINESS COMBINATIONS AND RELATED PARTY TRANSACTIONS

PART 1 INTERPRETATION

1.1 Definitions and Interpretations - In this Rule

"affected security" means

(a) for a business combination of an issuer, an equity security of the issuer in which the interest of a holder would be terminated as a consequence of the transaction, and

(b) for a related party transaction of an issuer, an equity security of the issuer;

"affiliated entity": a person or company is considered to be an affiliated entity of another person or company if one is a subsidiary entity of the other or if both are subsidiary entities of the same person or company;

"arm's length" has the meaning ascribed to that term in section 251 of the *Income Tax Act* (Canada), or any successor to that legislation, and, in addition to that meaning, an entity is deemed not to deal at arm's length with a related party of the entity;

"associated entity", where used to indicate a relationship with an entity, has the meaning ascribed to the term "associate" in subsection 1(1) of the Act and also includes any person of which the entity beneficially owns voting securities carrying more than 10 per cent of the voting rights attached to all outstanding voting securities of the person;

"beneficially owns" includes direct or indirect beneficial ownership, and

(a) despite ~~subsection~~subsections 1(5) and 1(6) of the Act, a person or company is not deemed to beneficially own securities that are beneficially owned by its affiliated entity, unless the affiliated entity is also its subsidiary entity, and

(b) for the purposes of the definitions of control block holder and related party, section 90 of the Act applies in determining beneficial ownership of securities;

"bona fide lender" means a person or company that

(a) holds securities sufficient to affect materially the control of an issuer~~(i)~~ solely as collateral for a debt under a written ~~pledge~~ agreement entered into by the person or company as a lender, ~~or (ii) solely as collateral acquired under a written agreement by the person or company as an assignee or transferee of the debt and collateral referred to in subparagraph (i),~~assignee, transferee or participant,

(b) is not yet legally entitled to dispose of the securities for the purpose of applying proceeds of realization in repayment of the secured debt, and

(c) was not a related party of the issuer at the time the ~~pledge~~ agreement referred to in ~~subparagraph (a)(i) or the assignment or transfer referred to in subparagraph (a)(ii~~paragraph (a) was entered into;

"business combination" means, for an issuer, an amalgamation, arrangement, consolidation, amendment to the terms of a class of equity securities or any other transaction of the issuer, as a consequence of which the interest of a holder of an equity security of the issuer may be terminated without the holder's consent, regardless of whether the equity security is replaced with another security, but does not include

(a) an acquisition of an equity security of the issuer under a statutory right of compulsory acquisition,

(b) a consolidation of securities that does not have the effect of terminating the interests of holders of equity securities of the issuer in those securities without their consent, through the elimination of post-consolidated fractional interests or otherwise, except to an extent that is nominal in the circumstances,

(c) a termination of a holder's interest in a security, under the terms attached to the security, for the purpose of enforcing an ownership or voting constraint that is necessary to enable the issuer to comply with legislation, lawfully engage in a particular activity or have a specified level of Canadian ownership,

(d) ~~(c)~~ a downstream transaction for the issuer, or

(e) ~~(d)~~ a transaction in which no person or company that is a related party of the issuer at the time the transaction is agreed to

(i) would, as a consequence of the transaction, directly or indirectly acquire the issuer or the business of the issuer, or combine with the issuer, through an amalgamation, arrangement or otherwise, whether alone or with joint actors,

(ii) is a party to any connected transaction to the transaction, or

(iii) is entitled to receive, directly or indirectly, as a consequence of the transaction

(A) consideration per equity security that is not identical in amount and form to the entitlement of the general body of holders in Canada of ~~equity~~ securities of the same class,

(B) a collateral benefit, or

~~(C) consideration for securities of the issuer if those securities are neither equity securities nor employee stock options, or~~ [1]

(~~D~~C) consideration for securities of a class of equity securities of the issuer if the issuer has more than one outstanding class of equity securities, unless that consideration is not greater than the entitlement of the general body of holders in Canada of every other class of equity securities of the issuer in relation to the voting and financial participating interests in the issuer represented by the respective securities;

"class" includes a series of a class;

"collateral benefit", for a transaction of an issuer or for a formal bid for securities of an issuer, means any benefit that a related party of the issuer is entitled to receive, directly or indirectly, as a consequence of the transaction or bid, including, without limitation, an increase in salary, a lump sum payment, a payment for surrendering ~~stock options~~securities, or other enhancement in benefits related to past or future ~~employment with~~services as an employee or director of the issuer or of another entity, regardless of the existence of any offsetting costs to the related party or whether the benefit is provided, or agreed to, by the issuer ~~or by~~, another party to the transaction or the offeror in the bid, but does not include

(a) a payment or distribution per equity security that is identical in amount and form to the entitlement of the general body of holders in Canada of ~~equity~~ securities of the same class,

(b) an enhancement of employee benefits resulting from participation by the related party in a group plan, other than an incentive plan, for employees of a successor to the business of the issuer, if the benefits provided by the group plan are ~~reasonably consistent with customary industry practices and are~~ generally provided to employees of the successor to the business of the issuer who hold positions of a similar nature to the position held by the related party, or

(c) a benefit, not described in paragraph (b), that is received solely in connection with the ~~past or future employment of the~~ related party ~~with~~'s services as an employee or director of the issuer, an affiliated entity of the issuer or a successor to the business of the issuer, if

(i) the ~~conferring of the benefit is reasonably consistent with customary industry practices,~~benefit is not conferred for the purpose, in whole or in part, of increasing the value of the consideration paid to the related party for securities relinquished under the transaction or bid,

(ii) the conferring of the benefit is not, by its terms, conditional on the related party supporting the transaction or bid in any manner,

(iii) full particulars of the benefit are disclosed in the disclosure document for the transaction, or in the directors' circular in the case of a take-over bid, and

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[1] The subject matter of former clause (C) now falls under the collateral benefit definition. This change has also been made in the definition of "interested party" and in section 8.2 regarding the minority approval vote in a second step business combination.

~~(iv) related parties, and associated entities of related parties, of the issuer that are entitled to receive benefits described in this paragraph (c) do not,~~

(iv) (A) at the time the transaction is agreed to~~, whether alone or with joint actors,~~ or the bid is publicly announced, the related party and its associated entities beneficially own or exercise control or direction over~~, in the aggregate, more~~ less than ~~10~~one per cent of the outstanding securities of ~~any~~each class of equity securities of the issuer, ~~and~~or

(B) if the transaction is a business combination for the issuer or a formal bid for securities of the issuer,

(I) the related party discloses to an independent committee of the issuer the amount of consideration that the related party expects it will be beneficially entitled to receive, under the terms of the transaction or bid, in exchange for the equity securities beneficially owned by the related party,

(II) the independent committee, acting in good faith, determines that the value of the benefit, net of any offsetting costs to the related party, is less than five per cent of the value referred to in subclause (I), and

~~(iv) full particulars of the benefits described in this paragraph (c) are~~

(III) the independent committee's determination is disclosed in ~~any~~the disclosure document ~~sent to security holders of the issuer in connection with~~for the transaction, or in the directors' circular in the case of a take-over bid;

"connected transactions" means two or more transactions that have at least one party in common, directly or indirectly, and

(a) are negotiated or completed at approximately the same time, or

(b) the completion of at least one of the transactions is conditional on the completion of each of the other transactions,

other than transactions ~~relating~~related solely to ~~employment;~~services as an employee or director;[2]

"control block holder" of an entity means a person or company, other than a bona fide lender, that, whether alone or with joint actors, beneficially owns or exercises control or direction over securities of the entity sufficient to affect materially the control of the entity, and in the absence of evidence to the contrary, beneficial ownership or control or direction over voting securities to which are attached more than 20 per cent of the votes attached to all of the outstanding voting securities of the entity is considered sufficient to affect materially the control of the entity;

"controlled": for the purposes only of the definition of "subsidiary entity", an entity is considered to be controlled by a person or company if

(a) in the case of an entity that has directors

(i) the person or company beneficially owns or exercises control or direction over voting securities of the entity carrying more than 50 per cent of the votes for the election of directors, and

(ii) the votes carried by the securities ~~are entitled, if exercised,~~entitle the holder to elect a majority of the directors of the entity,

(b) in the case of a partnership or other entity that does not have directors, other than a limited partnership, the person or company beneficially owns or exercises control or direction over more than 50 per cent of the voting interests in the partnership or other entity, or

(c) in the case of an entity that is a limited partnership, the person or company is the general partner or controls the general partner within the meaning of paragraph (a) or (b);

2 Transactions related to services as a director are now included explicitly in the definition of "collateral benefit".

"convertible" means convertible into, exchangeable for, or carrying the right to purchase or cause the purchase of, another security;

"director", for an issuer that is a limited partnership, includes a director of the general partner of the issuer, except for the purposes of the definition of "controlled";

"disclosure document" means

(a) for a take-over bid[3] (including an insider bid),

(i) a take-over bid circular sent to holders of offeree securities, or

(ii) if the ~~insider~~take-over bid takes the form of a stock exchange ~~insider~~take-over bid, the disclosure document sent to holders of offeree securities that is deemed to be a take-over bid circular under subsection 131(10) of the Act,

(b) for an issuer bid,

(i) an issuer bid circular sent to holders of offeree securities, or

(ii) if the issuer bid takes the form of a stock exchange issuer bid, the disclosure document sent to holders of offeree securities that is deemed to be an issuer bid circular under subsection 131(10) of the Act,

(c) for a business combination, an information circular sent to holders of affected securities, or, if no information circular is required, another document sent to holders of affected securities in connection with a meeting of holders of affected securities, and

(d) for a related party transaction,

(i) an information circular sent to holders of affected securities,

(ii) if no information circular is required, another document sent to holders of affected securities in connection with a meeting of holders of affected securities, or

(iii) if no information circular or other document referred to in subparagraph (ii) is required, a material change report filed for the transaction;

"downstream transaction" means, for an issuer, a transaction between the issuer and a related party of the issuer if, at the time the transaction is agreed to

(a) the issuer is a control block holder of the related party, and

(b) to the knowledge of the issuer after reasonable inquiry, no related party of the issuer, other than a wholly-owned subsidiary entity of the issuer, beneficially owns or exercises control or direction over, other than through its interest in the issuer, more than five per cent of any class of voting or equity securities of the related party that is a party to the transaction;

"entity" means a person or company;

"equity security" has the meaning ascribed to that term in subsection 89(1) of the Act;

"fair market value" means, except as provided in paragraph 6.4(2)(d), the monetary consideration that, in an open and unrestricted market, a prudent and informed buyer would pay to a prudent and informed seller, each acting at arm's length with the other and under no compulsion to act;

"formal bid" has the meaning ascribed to that term in subsection 89(1) of the Act;

"formal valuation" means a valuation prepared in accordance with Part 6;

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[3] "Take-over bid" has been substituted for "insider bid" because there are references in the Rule to a disclosure document for a formal bid preceding a second step business combination, and that formal bid may be a take-over bid that is not necessarily an insider bid.

"freely tradeable" means, for securities, that

(a) the securities are transferable,

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

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

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

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

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

"incentive plan" means ~~an employee~~a group plan that provides for stock options or other equity incentives, profit sharing, bonuses, or other performance-based payments;

"income trust" means a trust or other entity that issues securities that entitle the holders to net cash flows generated by another entity;

"independent committee" means, for an issuer, a committee consisting exclusively of one or more independent directors of the issuer;

"independent director" means, for an issuer in respect of a transaction, a director who is independent as determined in section 7.1;

"independent valuator" means, for a transaction, a valuator that is independent of all interested parties in the transaction, as determined in section 6.1;

"insider bid" means a take-over bid made by

(a) an issuer insider of the offeree issuer,

(b) an associated or affiliated entity of an issuer insider of the offeree issuer,

(c) an associated or affiliated entity of the offeree issuer, ~~or~~

(d) a person or company described in paragraphs (a), (b) or (c) at any time within 12 months preceding the commencement of the bid, or

(~~d~~e) a joint actor with a person or company referred to in paragraphs (a), (b) ~~or~~, (c)~~;~~ or (d);

"interested party" means

(a) for a take-over bid[4] (including an insider bid), the offeror or a joint actor with the offeror,

(b) for an issuer bid

(i) the issuer, and

(ii) any control block holder of the issuer, or any person or company that would reasonably be expected to be a control block holder of the issuer upon successful completion of the issuer bid,

[4] "Take-over bid" has been substituted for "insider bid" in view of changes to the collateral benefit definition, particularly the introduction of the potential involvement of an independent committee. This change could make the identity of interested parties for a take-over bid relevant in determining whether there is a collateral benefit for a take-over bid that is followed by a second step business combination, regardless of whether the take-over bid was an insider bid.

(c) for a business combination, a related party of the issuer at the time the transaction is agreed to, if the related party

(i) would, as a consequence of the transaction, directly or indirectly acquire the issuer or the business of the issuer, or combine with the issuer, through an amalgamation, arrangement or otherwise, whether alone or with joint actors,

(ii) is a party to any connected transaction to the business combination, or

(iii) is entitled to receive, directly or indirectly, as a consequence of the transaction

(A) consideration per affected security that is not identical in amount and form to the entitlement of the general body of holders in Canada of ~~affected~~ securities of the same class,

(B) a collateral benefit, or

~~(C) consideration for securities of the issuer if those securities are neither equity securities nor employee stock options, or~~

(C) ~~(D)~~ consideration for securities of a class of equity securities of the issuer if the issuer has more than one outstanding class of equity securities, unless that consideration is not greater than the entitlement of the general body of holders in Canada of every other class of equity securities of the issuer in relation to the voting and financial participating interests in the issuer represented by the respective securities, and

(d) for a related party transaction, a related party of the issuer at the time the transaction is agreed to, if the related party

(i) is a party to the transaction, unless it is a party only in its capacity as a holder of affected securities and is treated identically to the general body of holders in Canada of securities of the same class on a per security basis, or

(ii) is entitled to receive, directly or indirectly, as a consequence of the transaction

(A) a collateral benefit, or

(B) a payment or distribution made to one or more holders of ~~securities of the issuer if those securities are not equity securities, or(C) a payment or distribution made to one or more holders of~~ a class of equity securities of the issuer if the issuer has more than one outstanding class of equity securities, unless the amount of that payment or distribution is not greater than the entitlement of the general body of holders in Canada of every other class of equity securities of the issuer in relation to the voting and financial participating interests in the issuer represented by the respective securities;

"issuer insider" means, for an issuer

(a) every director or senior officer of the issuer,

(b) every director or senior officer of an entity that is itself an issuer insider or subsidiary entity of the issuer, and

(c) a person or company that beneficially owns voting securities of the issuer or that exercises control or direction over voting securities of the issuer, or a combination of both, carrying more than 10 per cent of the voting rights attached to all voting securities of the issuer for the time being outstanding, other than voting securities beneficially owned by the person or company as an underwriter in the course of a distribution;

"joint actors", when used to describe the relationship among two or more entities, means persons or companies "acting jointly or in concert" as defined in section 91 of the Act, with necessary modifications where the term is used in the context of a transaction that is not a take-over bid or issuer bid, but a security holder is not considered to be a joint actor with an offeror making a formal bid, or with a person or company involved in a business combination or related party transaction, solely because there is an agreement, commitment or understanding that the security holder will tender to the bid or vote in favour of the transaction;

"liquid market" means a market that meets the criteria specified in section 1.2;

"market capitalization" of an issuer means, for a transaction, the aggregate market price of all outstanding securities of all classes of equity securities of the issuer, the market price of the outstanding securities of a class being

(a) in the case of equity securities of a class for which there is a published market, the product of

(i) the number of securities of the class outstanding as of the close of business on the last business day of the calendar month preceding the calendar month in which the transaction is agreed to or, if no securities of the class were outstanding on that day, on the first business day after that day that securities of the class became outstanding, so long as that day precedes the date the transaction is agreed to, and

(ii) the market price of the securities at the time referred to in subparagraph (i), on the published market on which the class of securities is principally traded, as determined in accordance with subsections 183(1), (2) and (4) of the Regulation,

(b) in the case of equity securities of a class for which there is no published market but that are currently convertible into a class of equity securities for which there is a published market, the product of

(i) the number of equity securities into which the convertible securities were convertible as of the close of business on the last business day of the calendar month preceding the calendar month in which the transaction is agreed to or, if no convertible securities were outstanding or convertible on that day, on the first business day after that day that the convertible securities became outstanding or convertible, so long as that day precedes the date the transaction is agreed to, and

(ii) the market price of the securities into which the convertible securities were convertible, at the time referred to in subparagraph (i), on the published market on which the class of securities is principally traded, as determined in accordance with subsections 183(1), (2) and (4) of the Regulation, and

(c) in the case of equity securities of a class not referred to in paragraphs (a) or (b), the amount determined by the issuer's board of directors in good faith to represent the fair market value of the outstanding securities of that class;

"minority approval" means, for a business combination or related party transaction of an issuer, approval of the proposed transaction by a majority of the votes as specified in Part 8, cast by holders of each class of affected securities at a meeting of security holders of that class called to consider the transaction;

"OBCA" means the *Business Corporations Act*;

"offeree security" means a security that is subject to a take-over bid or issuer bid;

"offeror" has the meaning ascribed to that term in subsection 89(1) of the Act;

"prior valuation" means a valuation or appraisal of an issuer or its securities or material assets, whether or not prepared by an independent valuator, that, if disclosed, would reasonably be expected to affect the decision of a security holder to vote for or against a transaction, or to retain or dispose of affected securities or offeree securities, other than

(a) a report of a valuation or appraisal prepared by an entity other than the issuer, if

(i) the report was not solicited by the issuer, and

(ii) the entity preparing the report did so without knowledge of any material information concerning the issuer, its securities or any of its material assets, that had not been generally disclosed at the time the report was prepared,

(b) an internal valuation or appraisal prepared for the issuer in the ordinary course of business that has not been made available to, and has been prepared without the participation of

(i) the board of directors of the issuer, or

(ii) any director or senior officer of an interested party, except a senior officer of the issuer in the case of an issuer bid,

(c) a report of a market analyst or financial analyst that

(i) has been prepared by or for and at the expense of an entity other than the issuer, an interested party, or an associated or affiliated entity of the issuer or an interested party, and

(ii) is either generally available to clients of the analyst or of the analyst's employer or of an associated or affiliated entity of the analyst’s employer or, if not, is not based, so far as the entity required to disclose a prior valuation is aware, on any material information concerning the issuer, its securities or any of its material assets, that had not been generally disclosed at the time the report was prepared,

(d) a valuation or appraisal prepared by an entity or a person or company retained by the entity, for the purpose of assisting the entity in determining the price at which to propose a transaction that resulted in the entity becoming an issuer insider, if the valuation or appraisal is not made available to any of the independent directors of the issuer, or

(e) a valuation or appraisal prepared by an interested party or an entity retained by the interested party, for the purpose of assisting the interested party in determining the price at which to propose a transaction that, if pursued, would be an insider bid, business combination or related party transaction, if the valuation or appraisal is not made available to any of the independent directors of the issuer;

“related party” of an entity means a person or company that, at the relevant time and after reasonable inquiry, is known by the entity or a director or senior officer of the entity to be

(a) a control block holder of the entity,

(b) a person or company of which a person or company referred to in paragraph (a) is a control block holder,

(c) a person or company of which the entity is a control block holder,

(d) a person or company that beneficially owns or exercises control or direction over voting securities of the entity carrying more than 10 per cent of the voting rights attached to all of the outstanding voting securities of the entity,

(e) a director or senior officer of

(i) the entity, or

(ii) a person or company described in any other paragraph of this definition,

(f) a person or company that manages or directs, to any substantial degree, the affairs or operations of the entity under an agreement, arrangement or understanding between the person or company and the entity, including the general partner of an entity that is a limited partnership, but excluding a person or company ~~appointed~~acting under bankruptcy or insolvency law,

(g) a person or company of which persons or companies described in any paragraph of this definition beneficially own, in the aggregate, more than 50 per cent of the securities of any outstanding class of equity securities, or

(h) an affiliated entity of any person or company described in any other paragraph of this definition;

“related party transaction” means, for an issuer, a transaction between the issuer and a person or company that is a related party of the issuer at the time the transaction is agreed to, whether or not there are also other parties to the transaction, as a consequence of which, either through the transaction itself or together with connected transactions, the issuer directly or indirectly

(a) purchases or acquires an asset from the related party for valuable consideration,

(b) purchases or acquires, as a joint actor with the related party, an asset from a third party if the proportion of the asset acquired by the issuer is less than the proportion of the consideration paid by the issuer,

(c) sells, transfers or disposes of an asset to the related party,

(d) sells, transfers or disposes of, as a joint actor with the related party, an asset to a third party if the proportion of the consideration received by the issuer is less than the proportion of the asset sold, transferred or disposed of by the issuer,

(e) leases property to or from the related party,

(f) acquires the related party, or combines with the related party, through an amalgamation, arrangement or otherwise, whether alone or with joint actors,

(g) issues a security to the related party or subscribes for a security of the related party,

(h) amends the terms of a security of the issuer if the security is beneficially owned, or is one over which control or direction is exercised, by the related party, or agrees to the amendment of the terms of a security of the related party if the security is beneficially owned by the issuer or is one over which the issuer exercises control or direction,

(i) assumes or otherwise becomes subject to a liability of the related party,

(j) borrows money from or lends money to the related party, or ~~creates~~enters into a credit facility with the related party,

(k) releases, cancels or forgives a debt or liability owed by the related party,

(l) materially amends the terms of an outstanding debt or liability owed by or to the related party, or the terms of an outstanding credit facility with the related party, or

(m) provides a guarantee or collateral security for a debt or liability of the related party, or materially amends the terms of the guarantee or security;

“senior officer”, for an issuer that is a limited partnership, includes a senior officer of the general partner of the issuer;

“stock exchange insider bid” means an insider bid described in subclause (b)(i) of the definition of “formal bid” in subsection 89(1) of the Act;

“stock exchange issuer bid” means an issuer bid described in subclause (b)(i) of the definition of “formal bid” in subsection 89(1) of the Act;

“subsidiary entity”: a person or company is considered to be a subsidiary entity of another person or company if

(a) it is controlled by

(i) that other,

(ii) that other and one or more persons or companies, each of which is controlled by that other, or

(iii) two or more persons or companies, each of which is controlled by that other, or

(b) it is a subsidiary entity of a person or company that is that other's subsidiary entity; and

“wholly-owned subsidiary entity”: a person or company is considered to be a wholly-owned subsidiary entity of an issuer if the issuer owns, directly or indirectly, all the voting and equity securities and securities convertible into voting and equity securities of the person or company.

1.2 Liquid Market

(1) For the purposes of this Rule, a liquid market in a class of securities of an issuer in respect of a transaction exists at a particular time only

(a) if

(i) there is a published market for the class of securities,

(ii) during the period of 12 months before the date the transaction is agreed to in the case of a ~~related party transaction~~business combination, or 12 months before the date the transaction is publicly announced in the case of an insider bid~~,~~ or issuer bid ~~or business combination~~[5]

(A) the number of outstanding securities of the class was at all times at least 5,000,000, excluding securities beneficially owned, or over which control or direction was exercised, by related parties and securities that were not freely tradeable,

(B) the aggregate trading volume of the class of securities on the published market on which the class was principally traded was at least 1,000,000 securities,

(C) there were at least 1,000 trades in securities of the class on the published market on which the class was principally traded, and

(D) the aggregate value of the trades in securities of the class on the published market on which the class was principally traded was at least $15,000,000, and

(iii) the market value of the class of securities on the published market on which the class was principally traded, as determined in accordance with subsection (2), was at least $75,000,000 for the calendar month preceding the calendar month

(A) in which the transaction is agreed to, in the case of a ~~related party transaction, or~~ business combination, or

(B) in which the transaction is publicly announced, in the case of an insider bid~~,~~ or issuer bid ~~or business combination~~; or

(b) if the test set out in paragraph (a) is not met,

(i) there is a published market for the class of securities,

(ii) a person or company that is qualified and independent of all interested parties to the transaction, as determined on the same basis applicable to a valuator preparing a formal valuation under section 6.1, provides an opinion to the issuer that there is a liquid market in the class at the date the transaction is agreed to in the case of a ~~related party transaction~~business combination, or at the date the transaction is publicly announced in the case of an insider bid~~,~~ or issuer bid ~~or business combination~~,

(iii) the opinion is included in the disclosure document for the transaction, together with a statement that the published market on which the class is principally traded has sent a letter to the Director indicating concurrence with the opinion or providing a similar opinion, and

(iv) the disclosure document for the transaction includes the same disclosure regarding the person or company providing the opinion as is required for a valuator under section 6.2.

(2) For the purpose of determining whether an issuer satisfies the market value requirement of subparagraph (1)(a)(iii), the market value of a class of securities for a calendar month is calculated by multiplying

(a) the number of securities of the class outstanding as of the close of business on the last business day of the calendar month, excluding securities beneficially owned, or over which control or direction was exercised, by related parties of the issuer and securities that were not freely tradeable; by

(b) if

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[5] The references in this subsection to related party transactions have been removed because the liquid market concept is not relevant to related party transactions in the amended Rule. For a business combination, the time the transaction has been agreed to has replaced the time the transaction is publicly announced, or the time the transaction is proposed, in this subsection and elsewhere in the amended Rule. This has been done in response to a comment and for purposes of consistency. New Section 2.9 of the amended Companion Policy interprets "agreed to".

(i) the published market provides a closing price for the securities, the arithmetic average of the closing prices of the securities of that class on the published market on which that class was principally traded for each of the trading days during the calendar month, or

(ii) the published market does not provide a closing price, but provides only the highest and lowest prices of securities traded on a particular day, the arithmetic average of the simple averages of the highest and lowest prices of the securities of that class on the published market on which that class was principally traded for each of the trading days for which the securities traded during the calendar month.

(3) An issuer that relies on an opinion referred to in subparagraph (1)(b)(ii) shall cause the letter referred to in subparagraph (1)(b)(iii) to be sent promptly to the Director.

1.3 Transactions by Wholly-Owned Subsidiary Entity - In this Rule, a transaction of a wholly-owned subsidiary entity of an issuer is deemed to be a transaction of the issuer, and, for greater certainty, a formal bid made by a wholly-owned subsidiary entity of an issuer for securities of the issuer is deemed to be an issuer bid made by the issuer.

1.4 Transactions by Underlying Operating Entity of Income Trust - In this Rule, a transaction of an underlying operating entity of an income trust is deemed to be a transaction of the income trust, and a related party of the underlying operating ~~company~~entity is deemed to be a related party of the income trust.

1.5 Redeemable Securities as Consideration in Business Combination - In this Rule, if all or part of the consideration that holders of affected securities receive in a business combination consists of securities that are redeemed for cash within seven days of their issuance, the cash proceeds of the redemption are deemed to be consideration that the holders of the affected securities receive in the business combination.[6]

1.6 Application to Act, Regulation and Other Rules - For the purposes of the Act, the Regulation and the rules, “going private transaction” has the meaning ascribed to the term “business combination” in section 1.1 of this Rule, and “insider bid” and “related party transaction” have the meanings ascribed to those terms in section 1.1 of this Rule.

PART 2 INSIDER BIDS

2.1 Application

(1) This Part does not apply to an insider bid that is exempt from sections 95 to 100 of the Act under

(a) clause 93(1)(a) of the Act, unless it is a stock exchange insider bid;

(b) clauses 93(1)(b) to (f) of the Act~~; or~~ or section 184 of the Regulation; or

(c) a decision made by the Commission under clause 104(2)(c) of the Act, unless the decision provides otherwise.

(2) This Part does not apply to a take-over bid that is an insider bid solely because of the application of section 90 of the Act to an agreement between the offeror and a security holder of the offeree issuer that offeree securities beneficially owned by the security holder, or over which the security holder exercises control or direction, will be tendered to the bid, if

(a) the security holder is not a joint actor with the offeror; and

(b) the general nature and material terms of the agreement to tender are disclosed in a news release and report filed under section 101 of the Act, or are otherwise generally disclosed.

(3) This Part does not apply to an insider bid in respect of which the offeror complies with National Instrument 71-101 - The *Multijurisdictional Disclosure System*, unless persons or companies whose last address as shown on the books of the offeree issuer is in Canada, as determined in accordance with subsections 12.1(2) to (4) of National Instrument 71-101, hold 20 per cent or more of the class of securities that is the subject of the bid.

[6] Replaces the previously proposed section 2.7 of the amended Companion Policy, which was similar. The provision is relevant for the purpose of determining whether the consideration is at least equal in value to, and is in the same form as, other consideration, and for the purpose of determining the required subject matter of a formal valuation under section 6.3.

2.2 Disclosure

(1) The offeror shall disclose in the disclosure document for an insider bid

(a) the background to the insider bid;

(b) in accordance with section 6.8, every prior valuation in respect of the offeree issuer

(i) that has been made in the 24 months before the date of the insider bid, and

(ii) the existence of which is known, after reasonable inquiry, to the offeror or any director or senior officer of the offeror; and

(c) the formal valuation exemption, if any, on which the offeror is relying under section 2.4 and the facts supporting that reliance.

(2) The offeror shall include in the disclosure document for a stock exchange insider bid the disclosure required by Form 33 of the Regulation, appropriately modified.

(3) The board of directors of the offeree issuer shall include in the directors' circular for an insider bid

(a) disclosure, in accordance with section 6.8, of every prior valuation in respect of the offeree issuer not disclosed in the disclosure document for the insider bid

(i) that has been made in the 24 months before the date of the insider bid, and

(ii) the existence of which is known, after reasonable inquiry, to the offeree issuer or to any director or senior officer of the offeree issuer;

(b) a description of the background to the insider bid to the extent the background has not been disclosed in the disclosure document for the insider bid;

(c) disclosure of any bona fide prior offer that relates to the offeree securities or is otherwise relevant to the insider bid, which offer was received by the issuer during the 24 months before the insider bid was publicly announced, and a description of the offer and the background to the offer; and

(d) a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the offeree issuer for the insider bid, including a discussion of[7] any materially contrary view or abstention by a director and any material disagreement between the board and the special committee.

2.3 Formal Valuation

(1) Subject to section 2.4, the offeror in an insider bid shall

(a) obtain, at its own expense, a formal valuation;

(b) provide the disclosure required by section 6.2;

(c) include, in accordance with section 6.5, a summary of the formal valuation in the disclosure document for the insider bid, unless the formal valuation is included in its entirety in the disclosure document; and

(d) comply with the other provisions of Part 6 applicable to it relating to formal valuations.

(2) An independent committee of the offeree issuer shall, and the offeror shall enable the independent committee to

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[7] In response to a comment, words have been added here, and in corresponding provisions for issuer bids, business combinations and related party transactions, to clarify that the disclosure must contain a discussion of the differing views, not just a statement as to their existence.

(a) determine who the valuator will be;

(b) supervise the preparation of the formal valuation; and

(c) use its best efforts to ensure that the formal valuation is completed and provided to the offeror in a timely manner.

2.4 Exemptions from Formal Valuation Requirement

(1) Section 2.3 does not apply to an offeror in connection with an insider bid in any of the following circumstances:

1. **Discretionary Exemption** - The offeror has been granted an exemption from section 2.3 under section 9.1.

2. **Lack of Knowledge and Representation** - Neither the offeror nor any joint actor with the offeror has, or has had within the preceding 12 months, any board or management representation in respect of the offeree issuer, or has knowledge of any material information concerning the offeree issuer or its securities that has not been generally disclosed.

3. **Previous Arm's Length Negotiations** - If

(a) the consideration per security under the insider bid is at least equal in value to and is in the same form as the highest consideration agreed to with one or more selling security holders of the offeree issuer in arm’s length negotiations in connection with

(i) the making of the insider bid,

(ii) one or more other transactions agreed to within 12 months before the date of the first public announcement of the insider bid, or

(iii) a combination of transactions referred to in clauses (i) and (ii),

(b) at least one of the selling security holders party to an agreement referred to in clause (a)(i) or (ii) beneficially owns or exercises control or direction over, or beneficially owned or exercised control or direction over, and agreed to sell

(i) at least five per cent of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (2), if the person or company that entered into the agreement with the selling security holder beneficially owned 80 per cent or more of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (2), or

(ii) at least 10 per cent of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (2), if the person or company that entered into the agreement with the selling security holder beneficially owned less than 80 per cent of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (2),

(c) one or more of the selling security holders party to any of the transactions referred to in subparagraph (a) beneficially own or exercise control or direction over, or beneficially owned or exercised control or direction over, and agreed to sell, in the aggregate, at least 20 per cent of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (3), beneficially owned, or over which control or direction was exercised, by entities other than the person or company, and joint actors with the person or company, that entered into the agreements with the selling security holders,

(d) the offeror reasonably believes, after reasonable inquiry, that at the time of each of the agreements referred to in subparagraph (a)

(i) each selling security holder party to the agreement had full knowledge and access to information concerning the offeree issuer and its securities, and

(ii) any factors peculiar to a selling security holder party to the agreement, including non-financial factors, that were considered relevant by that selling security holder in assessing the consideration did not have the effect of reducing the price that would otherwise have been considered acceptable by that selling security holder,

(e) at the time of each of the agreements referred to in subparagraph (a), the offeror did not know of any material information in respect of the offeree issuer or the offeree securities that

(i) had not been generally disclosed, and

(ii) if generally disclosed, could have reasonably been expected to increase the agreed consideration,

(f) any of the agreements referred to in subparagraph (a) was entered into with a selling security holder by a person or company other than the offeror, the offeror reasonably believes, after reasonable inquiry, that at the time of that agreement, the person or company did not know of any material information in respect of the offeree issuer or the offeree securities that

(i) had not been generally disclosed, and

(ii) if disclosed, could have reasonably been expected to increase the agreed consideration, and

(g) the offeror does not know, after reasonable inquiry, of any material information in respect of the offeree issuer or the offeree securities since the time of each of the agreements referred to in subparagraph (a) that has not been generally disclosed and could reasonably be expected to increase the value of the offeree securities.

4. **Auction** - If

(a) the insider bid is publicly announced or made while

(i) one or more formal bids for securities of the same class that is the subject of the insider bid have been made and are outstanding, or

(ii) one or more proposed transactions are outstanding that

(A) are business combinations in respect of securities of the same class that is the subject of the insider bid, or

(B) would be business combinations in respect of securities of the same class that is the subject of the insider bid, except that they come within the exception in paragraph (~~d~~e) of the definition of business combination,

and ascribe a per security value to those securities,

(b) at the time the insider bid is made, the offeree issuer has provided equal access to the offeree issuer, and to information concerning the offeree issuer and its securities, to the offeror in the insider bid, all offerors in the other formal bids, and all ~~other persons or companies that~~parties to the proposed~~ the~~ transactions described in clause (a)(ii), and

(c) the offeror, in the disclosure document for the insider bid,

(i) includes all material information concerning the offeree issuer and its securities that is known to the offeror after reasonable inquiry but has not been generally disclosed, together with a description of the nature of the offeror's access to the issuer, and

(ii) states that the offeror does not know, after reasonable inquiry, of any material information concerning the offeree issuer and its securities other than information that has been disclosed under clause (i) or that has otherwise been generally disclosed.

(2) For the purposes of subparagraph 3(b) of subsection (1), the number of outstanding securities of the class of offeree securities

(a) is calculated at the time of the agreement referred to in clause 3(a)(i) or (ii) of subsection (1), if the offeror knows the number of securities of the class outstanding at that time; or

(b) if paragraph (a) does not apply, is determined based on the information most recently provided by the offeree issuer in a material change report or under section 2.1 of National Instrument 62-102 - *Disclosure of Outstanding Share Data*, immediately preceding the date of the agreement referred to in clause 3(a)(i) or (ii) of subsection (1).

(3) For the purposes of subparagraph 3(c) of subsection (1), the number of outstanding securities of the class of offeree securities

(a) is calculated at the time of the last of the agreements referred to in subparagraph 3(a) of subsection (1), if the offeror knows the number of securities of the class outstanding at that time; or

(b) if paragraph (a) does not apply, is determined based on the information most recently provided by the offeree issuer in a material change report or under section 2.1 of National Instrument 62-102, immediately preceding the date of the last of the agreements referred to in subparagraph 3(a) of subsection (1).

PART 3 ISSUER BIDS

3.1 Application

(1) This Part does not apply to an issuer bid that is exempt from sections 95 to 100 of Part XX of the Act under

(a) clauses 93(3)(a) to (d) and (f) to (i) of the Act;

(b) clause 93(3)(e) of the Act, unless it is a stock exchange issuer bid; or

(c) a decision made by the Commission under clause 104(2)(c) of the Act, unless the decision provides otherwise.

(2) This Part does not apply to an issuer bid that complies with National Instrument 71-101 - *The Multijurisdictional Disclosure System*, unless persons or companies whose last address as shown on the books of the issuer is in Canada, as determined in accordance with subsections 12.1(2) to (4) of National Instrument 71-101, hold 20 per cent or more of the class of securities that is the subject of the bid.

3.2 Disclosure

(1) The issuer shall include in the disclosure document for an issuer bid

(a) the disclosure required by Item 16, “Right of Appraisal and Acquisition”, of Form 32 of the Regulation, to the extent applicable;

(b) a description of the background to the issuer bid;

(c) disclosure, in accordance with section 6.8, of every prior valuation in respect of the issuer

(i) that has been made in the 24 months before the date of the issuer bid, and

(ii) the existence of which is known, after reasonable inquiry, to the issuer or to any director or senior officer of the issuer;

(d) disclosure of any bona fide prior offer that relates to the offeree securities or is otherwise relevant to the issuer bid, which offer was received by the issuer during the 24 months before the issuer bid was publicly announced, and a description of the offer and the background to the offer;

(e) a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer for the issuer bid, including a discussion of any materially contrary

view or abstention by a director and any material disagreement between the board and the special committee;

(f) a statement of the intention, if known to the issuer after reasonable inquiry, of every interested party to accept or not to accept the issuer bid;

(g) a description of the effect that the issuer anticipates the issuer bid, if successful, will have on the direct or indirect voting interest in the issuer of every interested party; and

(h) disclosure of the formal valuation exemption, if any, on which the issuer is relying under section 3.4 and the facts supporting that reliance.

(2) The issuer shall include in the disclosure document for a stock exchange issuer bid the applicable disclosure required by Form 33 of the Regulation.

3.3 Formal Valuation

(1) Subject to section 3.4, an issuer that makes an issuer bid shall

(a) obtain a formal valuation;

(b) provide the disclosure required by section 6.2;

(c) include, in accordance with section 6.5, a summary of the formal valuation in the disclosure document for the issuer bid, unless the formal valuation is included in its entirety in the disclosure document;

(d) if there is an interested party other than the issuer, state in the disclosure document who will pay or has paid for the valuation; and

(e) comply with the other provisions of Part 6 applicable to it relating to formal valuations.

(2) The board of directors of the issuer or an independent committee of the board shall

(a) determine who the valuator will be; and

(b) supervise the preparation of the formal valuation.

3.4 Exemptions from Formal Valuation Requirement - Section 3.3 does not apply to an issuer in connection with an issuer bid in any of the following circumstances:

1. **Discretionary Exemption** - The issuer has been granted an exemption from section 3.3 under section 9.1.

2. **Bid for Non-Convertible Securities** - The issuer bid is for securities that are not equity securities and that are not, directly or indirectly, convertible into equity securities.

3. **Liquid Market** - The issuer bid is made for securities for which

(a) a liquid market exists,

(b) it is reasonable to conclude that, following the completion of the bid, there will be a market for holders of the securities who do not tender to the bid that is not materially less liquid than the market that existed at the time of the making of the bid, and

(c) if an opinion referred to in subparagraph (b)(ii) of subsection 1.2(1) is provided, the person or company providing the opinion reaches the conclusion described in subparagraph 3(b) of this section 3.4 and so states in its opinion.

PART 4 BUSINESS COMBINATIONS

4.1 Application - This Part does not apply to an issuer carrying out a business combination if

(a) the issuer is not a reporting issuer;

(b) the issuer is a mutual fund; or

(c) (i) at the time the business combination is ~~proposed,~~ agreed to,

(A) persons or companies whose last address as shown on the books of the issuer is in Ontario hold less than two per cent of the outstanding securities of each class of affected securities of the issuer, and

(B) the issuer reasonably believes that persons or companies who are in Ontario beneficially own less than two per cent of the outstanding securities of each class of affected securities of the issuer, and

(ii) all documents concerning the transaction that are sent generally to other holders of affected securities of the issuer are concurrently sent to all holders of the securities whose last address as shown on the books of the issuer is in Ontario.

4.2 Meeting and Information Circular

(1) Without limiting the application of any other legal requirements that apply to meetings of security holders and information circulars, this section applies only to a business combination for which section 4.5 requires the issuer to obtain minority approval.

(2) An issuer proposing to carry out a business combination shall call a meeting of holders of affected securities and send an information circular to those holders.

(3) The issuer shall include in the information circular

(a) the disclosure required by Form 33 of the Regulation, to the extent applicable and with necessary modifications;

(b) the disclosure required by Item 16, "Right of Appraisal and Acquisition", of Form 32 of the Regulation, to the extent applicable, together with a description of rights that may be available to security holders opposed to the transaction;

(c) a description of the background to the business combination;

(d) disclosure in accordance with section 6.8 of every prior valuation in respect of the issuer

(i) that has been made in the 24 months before the date of the information circular, and

(ii) the existence of which is known, after reasonable inquiry, to the issuer or to any director or senior officer of the issuer;

(e) disclosure of any bona fide prior offer that relates to the subject matter of or is otherwise relevant to the transaction, which offer was received by the issuer during the 24 months before the ~~transaction~~business combination was ~~publicly announced~~agreed to, and a description of the offer and the background to the offer;

(f) a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer for the transaction, including a discussion of any materially contrary view or abstention by a director and any material disagreement between the board and the special committee;

(g) disclosure of the formal valuation exemption, if any, on which the issuer is relying under section 4.4 and the facts supporting that reliance; and

(h) disclosure of the number of votes attached to the securities that, to the knowledge of the issuer after reasonable inquiry, will be excluded in determining whether minority approval for the business combination is obtained.

(4) If, after sending the information circular and before the meeting, a change occurs that, if disclosed, would reasonably be expected to affect the decision of a holder of affected securities to vote for or against the

business combination or to retain or dispose of affected securities, the issuer shall promptly disseminate disclosure of the change

(a) in a manner that the issuer reasonably determines will inform beneficial owners of affected securities of the change; and

(b) sufficiently in advance of the meeting that the beneficial owners of affected securities will be able to assess the impact of the change.

(5) If subsection (4) applies, the issuer shall file a copy of the disseminated information contemporaneously with its dissemination.

4.3 Formal Valuation

(1) Subject to section 4.4, an issuer ~~carrying out a business combination~~ shall obtain a formal valuation for a business combination[8] if

(a) an interested party would, as a consequence of the transaction, directly or indirectly acquire the issuer or the business of the issuer, or combine with the issuer, through an amalgamation, arrangement or otherwise, whether alone or with joint actors, or

(b) an interested party is a party to any connected transaction to the business combination, if the connected transaction is a related party transaction for which the issuer is required to obtain a formal valuation under section 5.4.

(2) If a formal valuation is required under subsection (1), the issuer shall

(a) provide the disclosure required by section 6.2;

(b) include, in accordance with section 6.5, a summary of the formal valuation in the disclosure document for the business combination, unless the formal valuation is included in its entirety in the disclosure document;

(c) state in the disclosure document for the business combination who will pay or has paid for the valuation; and

(d) comply with the other provisions of Part 6 applicable to it relating to formal valuations.

(3) The board of directors of the issuer or an independent committee of the board shall

(a) determine who the valuator will be; and

(b) supervise the preparation of the formal valuation.

4.4 Exemptions from Formal Valuation Requirement

(1) Section 4.3 does not apply to an issuer carrying out a business combination in any of the following circumstances:

1. **Discretionary Exemption** - The issuer has been granted an exemption from section 4.3 under section 9.1.

2. **Issuer Not Listed on Specified Markets** - No securities of the issuer are listed or quoted on the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ ~~National~~Stock Market~~, the NASDAQ SmallCap Market~~[9] or a stock exchange outside of ~~North America~~Canada and the United States.

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[8] In response to a comment, the introductory words of the subsection have been changed to clarify that if paragraph (b) applies, there must be a valuation for the business combination (in addition to the valuation for the related party transaction to which paragraph (b) refers).

[9] The NASDAQ Stock Market is comprised of the NASDAQ National Market and the NASDAQ SmallCap Market.

3. **Previous Arm's Length Negotiations** - If

(a) the consideration per affected security under the business combination is at least equal in value to and is in the same form as the highest consideration agreed to with one or more selling security holders of the issuer in arm's length negotiations in connection with

(i) the business combination,

(ii) one or more other transactions agreed to within 12 months before the date of the first public announcement of the business combination, or

(iii) a combination of transactions referred to in clauses (i) and (ii),

(b) at least one of the selling security holders party to an agreement referred to in clause (a)(i) or (ii) beneficially owns or exercises control or direction over, or beneficially owned or exercised control or direction over, and agreed to sell

(i) at least five per cent of the outstanding securities of the class of affected securities, as determined in accordance with subsection (2), if the person or company that entered into the agreement with the selling security holder beneficially owned 80 per cent or more of the outstanding securities of the class of affected securities, as determined in accordance with subsection (2), or

(ii) at least 10 per cent of the outstanding securities of the class of affected securities, as determined in accordance with subsection (2), if the person or company that entered into the agreement with the selling security holder beneficially owned less than 80 per cent of the outstanding securities of the class of affected securities, as determined in accordance with subsection (2),

(c) one or more of the selling security holders party to any of the transactions referred to in subparagraph (a) beneficially owns or exercises control or direction over, or beneficially owned or exercised control or direction over, and agreed to sell, in the aggregate, at least 20 per cent of the outstanding securities of the class of affected securities, as determined in accordance with subsection (3), beneficially owned or over which control or direction was exercised by entities other than the person or company, and joint actors with the person or company, that entered into the agreements with the selling security holders,

(d) the person or company proposing to carry out the business combination with the issuer reasonably believes, after reasonable inquiry, that at the time of each of the agreements referred to in subparagraph (a)

(i) each selling security holder party to the agreement had full knowledge of and access to information concerning the issuer and its securities, and

(ii) any factors peculiar to a selling security holder party to the agreement, including non-financial factors, that were considered relevant by the selling security holder in assessing the consideration did not have the effect of reducing the price that would otherwise have been considered acceptable by that selling security holder,

(e) at the time of each of the agreements referred to in subparagraph (a), the person or company proposing to carry out the business combination with the issuer did not know of any material information in respect of the issuer or the affected securities that

(i) had not been generally disclosed, and

(ii) if disclosed, could have reasonably been expected to increase the agreed consideration,

(f) any of the agreements referred to in subparagraph (a) was entered into with a selling security holder by an entity other than the person or company proposing to carry out the business combination with the issuer, the person or company proposing to carry out the business combination with the issuer reasonably believes, after reasonable inquiry, that at

the time of that agreement, the entity did not know of any material information in respect of the issuer or the affected securities that

(i) had not been generally disclosed, and

(ii) if disclosed, could have reasonably been expected to increase the agreed consideration, and

(g) the person or company proposing to carry out the business combination with the issuer does not know, after reasonable inquiry, of any material information in respect of the issuer or the affected securities since the time of each of the agreements referred to in subparagraph (a) that has not been generally disclosed and could reasonably be expected to increase the value of the affected securities.

4. **Auction** - If

(a) the business combination is publicly announced while

(i) one or more proposed transactions are outstanding that

(A) are business combinations in respect of the affected securities, or

(B) would be business combinations in respect of the affected securities, except that they come within the exception in paragraph (~~d~~e) of the definition of business combination,

and ascribe a per security value to those securities, or

(ii) one or more formal bids for the affected securities have been made and are outstanding, and

(b) at the time the disclosure document for the business combination is sent to the holders of affected securities, the issuer has provided equal access to the issuer, and to information concerning the issuer and its securities, to the person or company proposing to carry out the business combination with the issuer, all ~~persons or companies that have~~parties to the proposed ~~the other~~ transactions described in clause (a)(i), and all offerors in the formal bids.

5. **Second Step Business Combination** - If

(a) the business combination is being effected by an offeror that made a formal bid, or an affiliated entity of that offeror, and is in respect of the securities of the same class for which the bid was made and that were not acquired in the bid,

(b) the business combination is completed no later than 120 days after the date of expiry of the formal bid,

(c) the consideration per security that the security holders would be entitled to receive in the business combination is at least equal in value to and is in the same form as the consideration that the tendering security holders were entitled to receive in the formal bid,

(d) the disclosure document for the formal bid

(i) disclosed that if the offeror acquired securities under the formal bid, the offeror intended to acquire the remainder of the securities under a statutory right of acquisition or under a business combination that would satisfy the conditions in subparagraphs (b) and (c),

(ii) described the expected tax consequences of both the formal bid and the business combination if, at the time the bid was made, the tax consequences arising from the business combination

(A) were reasonably foreseeable to the offeror, and

(B) were reasonably expected to be different from the tax consequences of tendering to the bid, and

(iii) disclosed that the tax consequences of the formal bid and the business combination may be different if, at the time the bid was made, the offeror could not reasonably foresee the tax consequences arising from the business combination.

6. **Non-redeemable Investment Fund** - The issuer is a non-redeemable investment fund that

(a) at least once each quarter calculates and publicly disseminates the net asset value of its securities, and

(b) at the time of publicly announcing the business combination, publicly disseminates the net asset value of its securities as of the business day before the announcement.

(2) For the purposes of subparagraph 3(b) of subsection (1), the number of outstanding securities of the class of affected securities

(a) is calculated at the time of the agreement referred to in clause 3(a)(i) or (ii) of subsection (1), if the person or company proposing to carry out the business combination with the issuer knows the number of securities of the class outstanding at that time; or

(b) if subparagraph (a) does not apply, is determined based on the information most recently provided by the issuer in a material change report or under section 2.1 of National Instrument 62-102 - *Disclosure of Outstanding Share Data*, immediately preceding the date of the agreement referred to in clause 3(a)(i) or (ii) of subsection (1).

(3) For the purposes of subparagraph 3(c) of subsection (1), the number of outstanding securities of the class of affected securities

(a) is calculated at the time of the last of the agreements referred to in subparagraph 3(a) of subsection (1), if the person or company proposing to carry out the business combination with the issuer knows the number of securities of the class outstanding at that time; or

(b) if paragraph (a) does not apply, is determined based on the information most recently provided by the issuer in a material change report or under section 2.1 of National Instrument 62-102, immediately preceding the date of the last of the agreements referred to in subparagraph 3(a) of subsection (1).

4.5 Minority Approval - Subject to section 4.6, an issuer shall not carry out a business combination unless the issuer has obtained minority approval for the business combination under Part 8.

4.6 Exemptions from Minority Approval Requirement

(1) Section 4.5 does not apply to an issuer carrying out a business combination in any of the following circumstances if the exemption relied on, any formal valuation exemption relied on, and the facts supporting reliance on those exemptions are disclosed in the disclosure document for the business combination:

1. **Discretionary Exemption** - The issuer has been granted an exemption from section 4.5 under section 9.1.

2. **90 Per Cent Exemption** - Subject to subsection (2), one or more persons or companies that are interested parties within the meaning of subparagraph (c)(i) of the definition of interested party beneficially own, in the aggregate, 90 per cent or more of the outstanding securities of a class of affected securities at the time that the business combination is ~~proposed~~agreed to, and either

(a) an appraisal remedy is available to holders of the class of affected securities under the statute under which the issuer is organized or is governed as to corporate law matters, or

(b) if an appraisal remedy referred to in subparagraph (a) is not available, holders of the class of affected securities are given an enforceable right that is substantially equivalent to the appraisal remedy provided for in subsection 185(4) of the OBCA and that is described in the disclosure document for the business combination.

(2) If there are two or more classes of affected securities, paragraph 2 of subsection (1) applies only to a class of which the applicable interested parties beneficially own, in the aggregate, 90 per cent or more of the outstanding securities.

4.7 Conditions for Relief from OBCA Requirements - An issuer that is governed by the OBCA and proposes to carry out a "going private transaction", as defined in subsection 190(1) of the OBCA, is exempt from subsections (2), (3) and (4) of section 190 of the OBCA, and is not required to make an application for exemption from those subsections under subsection 190(6) of the OBCA, if

(a) the transaction is not a business combination;

(b) Part 4 does not apply to the transaction by reason of section 4.1; or

(c) the transaction is carried out in compliance with Part 4, and, for this purpose, compliance includes reliance on any applicable exemption from a requirement of Part 4, including a discretionary exemption granted by the Director under section 9.1.

PART 5 RELATED PARTY TRANSACTIONS

5.1 Application - This Part does not apply to an issuer carrying out a related party transaction if

(a) the issuer is not a reporting issuer;

(b) the issuer is a mutual fund;

(c) (i) at the time the transaction is agreed to,

(A) persons or companies whose last address as shown on the books of the issuer is in Ontario hold less than two per cent of the outstanding securities of each class of affected securities of the issuer, and

(B) the issuer reasonably believes that persons or companies who are in Ontario beneficially own less than two per cent of the outstanding securities of each class of affected securities of the issuer, and

(ii) all documents concerning the transaction that are sent generally to other holders of affected securities of the issuer are concurrently sent to all holders of the securities whose last address as shown on the books of the issuer is in Ontario;

(d) the parties to the transaction consist solely of

(i) an entity and one or more of its wholly-owned subsidiary entities, or

(ii) wholly-owned subsidiary entities of the same entity;

(e) the transaction is a business combination for the issuer;

(f) the transaction would be a business combination for the issuer except that it comes within an exception in any of paragraphs (a) to (~~d~~e) of the definition of business combination;

(g) the transaction is a downstream transaction for the issuer;

(h) the issuer is obligated to and does carry out the transaction substantially under the terms

(i) that were agreed to, and generally disclosed, before May 1, 2000,

(ii) that were agreed to, and generally disclosed, before the issuer became a reporting issuer, or

(iii) of a previous transaction the terms of which were generally disclosed, including an issuance of a convertible security, if the previous transaction was carried out in compliance with this Rule, including in reliance on any applicable exemption or exclusion, or was not subject to this Rule;

(i) the transaction is a distribution

(i) of securities of the issuer and is a related party transaction for the issuer solely because the interested party is an underwriter of the distribution, and

(ii) carried out in compliance with, including in reliance on any applicable exemption from, National Instrument 33-105 – *Underwriting Conflicts*;

(j) the issuer is subject to the requirements of Part IX of the *Loan and Trust Corporations Act*, Part XI of the *Bank Act* (Canada), Part XI of the *Insurance Companies Act* (Canada), or Part XI of the *Trust and Loan Companies Act* (Canada), or any successor to that legislation, and the issuer complies with those requirements; or

(k) the transaction is a rights offering, dividend, or any other transaction in which the general body of holders in Canada of affected securities of the same class are treated identically on a per security basis, if

(i) the transaction has no interested party within the meaning of paragraph (d) of the definition of interested party, or

(ii) the transaction is a rights offering, there is an interested party only because a related party of the issuer provides a stand-by commitment for the rights offering, and the stand-by commitment complies with Rule 45-101 – *Rights Offerings*.

5.2 Material Change Report

(1) An issuer shall include in a material change report, if any, required to be filed under the Act for a related party transaction

(a) a description of the transaction and its material terms;

(b) the purpose and business reasons for the transaction;

(c) the anticipated effect of the transaction on the issuer's business and affairs;

(d) a description of

(i) the interest in the transaction of every interested party and of the related parties and associated entities of the interested parties, and

(ii) the anticipated effect of the transaction on ~~every~~the percentage of securities of the issuer, or of an affiliated entity of the issuer, beneficially owned or controlled by each person or company referred to in subparagraph (i)~~, and~~ for which there would be a material change in that percentage;[10]

~~(iii) the nature of any benefit that will accrue as a consequence of the transaction to every person or company referred to in subparagraph (i);~~

(e) unless this information will be included in another disclosure document for the transaction, a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer for the transaction, including a discussion of any materially contrary view or abstention by a director and any material disagreement between the board and the special committee;

(f) subject to subsection (3), a summary, in accordance with section 6.5, of the formal valuation, if any, obtained for the transaction, unless the formal valuation is included in its entirety in the material change report or will be included in its entirety in another disclosure document for the transaction;

(g) disclosure, in accordance with section 6.8, of every prior valuation in respect of the issuer that relates to the subject matter of or is otherwise relevant to the transaction

(i) that has been made in the 24 months before the date of the material change report, and

(ii) the existence of which is known, after reasonable inquiry, to the issuer or to any director or senior officer of the issuer;

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[10] Paragraph (d) has been changed to be more specific regarding the disclosure required.

(h) the general nature and material terms of any agreement entered into by the issuer, or a related party of the issuer, with an interested party or a joint actor with an interested party, in connection with the transaction; and

(i) disclosure of the formal valuation and minority approval exemptions, if any, on which the issuer is relying under sections 5.5 and 5.7, respectively, and the facts supporting reliance on the exemptions.

(2) If the issuer files a material change report less than 21 days before the expected date of the closing of the transaction, the issuer shall explain in the news release required to be issued under the Act and in the material change report why the shorter period is reasonable or necessary in the circumstances.

(3) Despite paragraphs (1)(f) and 5.4(2)(a), if the issuer is required to include a summary of the formal valuation in the material change report and the formal valuation is not available at the time the issuer files the material change report, the issuer shall file a supplementary material change report containing the disclosure required by paragraph (1)(f) as soon as the formal valuation is available.

(4) The issuer shall send a copy of any material change report prepared by it in respect of the transaction to any security holder of the issuer upon request and without charge.

5.3 Meeting and Information Circular

(1) Without limiting the application of any other legal requirements that apply to meetings of security holders and information circulars, this section applies only to a related party transaction for which section 5.6 requires the issuer to obtain minority approval.

(2) An issuer proposing to carry out a related party transaction to which this section applies shall call a meeting of holders of affected securities and send an information circular to those holders.

(3) The issuer shall include in the information circular

(a) the disclosure required by Form 33 of the Regulation, to the extent applicable and with necessary modifications;

(b) the disclosure required by Item 16, “Right of Appraisal and Acquisition”, of Form 32 of the Regulation, to the extent applicable, together with a description of rights that may be available to security holders opposed to the transaction;

(c) a description of the background to the transaction;

(d) disclosure, in accordance with section 6.8, of every prior valuation in respect of the issuer that relates to the subject matter of or is otherwise relevant to the transaction

(i) that has been made in the 24 months before the date of the information circular, and

(ii) the existence of which is known, after reasonable inquiry, to the issuer or to any director or senior officer of the issuer;

(e) disclosure of any bona fide prior offer that relates to the subject matter of or is otherwise relevant to the transaction, which offer was received by the issuer during the 24 months before the transaction was ~~publicly announced~~agreed to, and a description of the offer and the background to the offer;

(f) a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer for the transaction, including a discussion of any materially contrary view or abstention by a director and any material disagreement between the board and the special committee;

(g) disclosure of the formal valuation exemption, if any, on which the issuer is relying under section 5.5 and the facts supporting that reliance; and

(h) disclosure of the number of votes attached to the securities that, to the knowledge of the issuer after reasonable inquiry, will be excluded in determining whether minority approval for the related party transaction is obtained.

(4) If, after sending the information circular and before the meeting, a change occurs that, if disclosed, would reasonably be expected to affect the decision of a holder of affected securities to vote for or against the related party transaction or to retain or dispose of affected securities, the issuer shall promptly disseminate disclosure of the change

(a) in a manner that the issuer reasonably determines will inform beneficial owners of affected securities of the change; and

(b) sufficiently in advance of the meeting that the beneficial owners of affected securities will be able to assess the impact of the change.

(5) If subsection (4) applies, the issuer shall file a copy of the disseminated information contemporaneously with its dissemination.

5.4 Formal Valuation

(1) Subject to section 5.5, an issuer shall obtain a formal valuation for a related party transaction described in any of paragraphs (a) to (g) of the definition of related party transaction.

(2) If a formal valuation is required under subsection (1), the issuer shall

(a) include, in accordance with section 6.5, a summary of the formal valuation in the disclosure document for the related party transaction, unless the formal valuation is included in its entirety in the disclosure document;

(b) state in the disclosure document who will pay or has paid for the valuation; and

(c) comply with the other provisions of Part 6 applicable to it relating to formal valuations.

(3) The board of directors of the issuer or an independent committee of the board shall

(a) determine who the valuator will be; and

(b) supervise the preparation of the formal valuation.

5.5 Exemptions from Formal Valuation Requirement - Section 5.4 does not apply to an issuer carrying out a related party transaction in any of the following circumstances:

1. **Discretionary Exemption** - The issuer has been granted an exemption from section 5.4 under section 9.1.

2. **Fair Market Value Not More Than 25% of Market Capitalization** - At the time the transaction is agreed to, neither the fair market value of the subject matter of, nor the fair market value of the consideration for, the transaction, insofar as it involves ~~related~~interested parties, exceeds 25 per cent of the issuer's market capitalization, and for this purpose

(a) if either of the fair market values is not readily determinable, any determination as to whether that fair market value exceeds ~~25 per cent of the issuer's market capitalization~~the threshold for this exemption shall be made by the issuer's board of directors acting in good faith,

(b) if the transaction is one in which the issuer or a wholly-owned subsidiary entity of the issuer combines with a related party, through an amalgamation, arrangement or otherwise, the subject matter of the transaction shall be deemed to be the securities of the related party held, at the time the transaction is agreed to, by persons or companies other than the issuer or a wholly-owned subsidiary entity of the issuer, and the consideration for the transaction shall be deemed to be the consideration received by those persons or companies,

(c) if the transaction is one of two or more connected transactions that are related party transactions ~~for the issuer and that are subject to this Part~~and would, without the exemption in this paragraph 2, require formal valuations under this Rule, the fair market values for all of those transactions shall be aggregated in determining whether the fair market value tests for this exemption are met~~, except for those transactions for which an exemption in any of paragraphs 3 to 11 applies to the issuer~~, and

(d) if the assets involved in the transaction (the "initial transaction") include warrants, options or other instruments providing for the possible future purchase of securities or other assets (the "future transaction"), the calculation of the ~~applicable~~fair market ~~values~~value for the initial transaction shall include the fair market value~~ of the underlying securities or other assets~~, as of the time the initial transaction is agreed to, ~~and the maximum amount potentially payable if the future purchase takes place~~of the maximum number of securities or other consideration that the issuer may be required to issue or pay in the future transaction.

3. **Issuer Not Listed on Specified Markets** - No securities of the issuer are listed or quoted on the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ ~~National~~Stock Market,~~ the NASDAQ SmallCap Market~~ or a stock exchange outside of ~~North America~~Canada and the United States.

4. **Distribution of Securities for Cash** - The transaction is a distribution of securities of the issuer to a related party for cash consideration, if

(a) neither the issuer nor, to the knowledge of the issuer after reasonable inquiry, the related party has knowledge of any material information concerning the issuer or its securities that has not been generally disclosed, and the disclosure document for the transaction includes a statement to that effect, and

(b) the disclosure document for the transaction includes a description of the effect of the distribution on the direct or indirect voting interest of the related party.

5. **Certain Transactions in the Ordinary Course of Business** - The transaction is

(a) a purchase or sale, in the ordinary course of business of the issuer, of inventory consisting of personal property under an agreement that has been approved by the board of directors of the issuer and the existence of which has been generally disclosed, or

(b) a lease of real or personal property under an agreement on reasonable commercial terms that, considered as a whole, are not less advantageous to the issuer than if the lease was with a person or company dealing at arm's length with the issuer and the existence of which has been generally disclosed.

6. **Transaction Supported by Arm's Length Control Block Holder** - The interested party beneficially owns, or exercises control or direction over, voting securities of the issuer that carry fewer voting rights than the voting securities beneficially owned, or over which control or direction is exercised, by another security holder of the issuer who is a control block holder of the issuer and who, in the circumstances of the transaction

(a) is not also an interested party,

(b) is at arm's length to the interested party, and

(c) supports the transaction.

7. **Bankruptcy, Insolvency, Court Order** - If

(a) the transaction is subject to court approval, or a court orders that the transaction be effected, under

(i) bankruptcy or insolvency law, or

(ii) section 191 of the *Canada Business Corporations Act*, any successor to that section, or equivalent legislation of a jurisdiction,

(b) the court is advised of the requirements of this Rule regarding formal valuations for related party transactions, and of the provisions of this paragraph 7, and

(c) the court does not require compliance with section 5.4.

8. **Financial Hardship** - If

(a) the issuer is insolvent or in serious financial difficulty,

(b) the transaction is designed to improve the financial position of the issuer,

(c) paragraph 7 is not applicable,

(d) ~~there is at least~~the issuer has one or more independent ~~director of the issuer~~directors in respect of the transaction, and

(e) the issuer's board of directors, acting in good faith, determines, and at least two-thirds of the issuer's independent directors, acting in good faith, determine that

(i) subparagraphs (a) and (b) apply, and

(ii) the terms of the transaction are reasonable in the circumstances of the issuer.

9. **Amalgamation or Equivalent Transaction with No Adverse Effect on Issuer or Minority** - The transaction is a statutory amalgamation, or substantially equivalent transaction, resulting in the combination of the issuer or a wholly-owned subsidiary entity of the issuer with an interested party, that is undertaken in whole or in part for the benefit of another related party, if

(a) the transaction does not and will not have any adverse tax or other consequences to the issuer, ~~an~~the entity resulting from the combination, or beneficial owners of affected securities generally,

(b) no material actual or contingent liability of the interested party with which the issuer or a wholly-owned subsidiary entity of the issuer is combining will be assumed by the issuer, the wholly-owned subsidiary entity of the issuer or ~~a successor to the issuer,~~the entity resulting from the combination,

(c) the related party benefiting from the transaction agrees to indemnify the issuer against any liabilities of the interested party with which the issuer, or a wholly-owned subsidiary entity of the issuer, is combining,

(d) after the transaction, the nature and extent of the voting and financial participating interests of holders of affected securities in the ~~combined~~ entity resulting from the combination will be the same as, and the value of their financial participating interests will not be less than, that of their interests in the issuer before the transaction, and

(e) the related party benefiting from the transaction pays for all of the costs and expenses resulting from the transaction.

10. **Asset Resale** - The subject matter of the related party transaction was acquired by the issuer or an interested party, as the case may be, in a prior arm's length transaction that was agreed to not more than 12 months before the date that the related party transaction is agreed to, and a qualified, independent valuator provides a written opinion that, after making such adjustments, if any, as the valuator considers appropriate in the exercise of the valuator's professional judgment

(a) the value of the consideration payable by the issuer for the subject matter of the related party transaction is not more than the value of the consideration paid by the interested party in the prior arm's length transaction, or

(b) the value of the consideration to be received by the issuer for the subject matter of the related party transaction is not less than the value of the consideration paid by the issuer in the prior arm's length transaction,

and the disclosure document for the related party transaction includes the same disclosure regarding the valuator as is required in the case of a formal valuation under section 6.2.

11. **Non-redeemable Investment Fund** - The issuer is a non-redeemable investment fund that

(a) at least once each quarter calculates and publicly disseminates the net asset value of its securities, and

(b) at the time of publicly announcing the related party transaction, publicly disseminates the net asset value of its securities as of the business day before the announcement.

5.6 Minority Approval - Subject to section 5.7, an issuer shall not carry out a related party transaction unless the issuer has obtained minority approval for the transaction under Part 8.

5.7 Exemptions from Minority Approval Requirement

(1) ~~Section~~Subject to subsections (2), (3), (4) and (5), section 5.6 does not apply to an issuer carrying out a related party transaction in any of the following circumstances if the exemption relied on, any formal valuation exemption relied on, and the facts supporting reliance on those exemptions are disclosed in the disclosure document, if any, for the transaction:

1. **Discretionary Exemption** - The issuer has been granted an exemption from section 5.6 under section 9.1.

2. **Fair Market Value Not More Than 25 Per Cent of Market Capitalization** ~~– Subject to subsection (2), the~~- The circumstances described in paragraph 2 of section 5.5.

3. **Fair Market Value Not More Than $2,500,000 – Distribution of Securities for Cash** - The circumstances described in paragraph 4 of section 5.5, if

   (a) no securities of the issuer are listed or quoted on the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ Stock Market, or a stock exchange outside of Canada and the United States,

   (b) at the time the transaction is agreed to, neither the fair market value of the subject matter of, nor the fair market value of the consideration for, the transaction, insofar as it involves interested parties, exceeds $2,500,000,

   (c) the issuer has one or more independent directors in respect of the transaction who are not employees of the issuer, and

   (d) at least two-thirds of the directors described in subparagraph (c) approve the transaction.

~~3.~~4. **Other Transactions Exempt from Formal Valuation** - The circumstances described in paragraphs 5, 6 and 9 of section 5.5.

~~4.~~5. **Bankruptcy, Insolvency, Court Order** - The circumstances described in subparagraph 7(a) of section 5.5, if the court is advised of the requirements of this Rule regarding minority approval for related party transactions, and of the provisions of this paragraph ~~4,~~5, and the court does not require compliance with section 5.6.

~~5.~~6. **Financial Hardship** - The circumstances described in paragraph 8 of section 5.5, if there is no other requirement, corporate or otherwise, to hold a meeting to obtain any approval of the holders of any class of affected securities.

~~6.~~7. **Loan to Issuer, No Equity or Voting Component** - The transaction is a loan, or the creation of a credit facility, that is obtained by the issuer from a related party on reasonable commercial terms that are not less advantageous to the issuer than if the loan or credit facility were obtained from a person or company dealing at arm's length with the issuer, and the loan, or each advance under the credit facility, as the case may be, is not

   (a) convertible, directly or indirectly, into equity or voting securities of the issuer or a subsidiary entity of the issuer, or otherwise participating in nature, or

   (b) repayable as to principal or interest, directly or indirectly, in equity or voting securities of the issuer or a subsidiary entity of the issuer,

   and for this purpose, any amendment to the terms of a loan or credit facility shall be deemed to create a new loan or credit facility.

~~7.~~8. **90 Per Cent Exemption** - ~~Subject to subsection (3), one~~One or more persons or companies that are interested parties within the meaning of subparagraph (d)(i) of the definition of interested party beneficially own, in the aggregate, 90 per cent or more of the outstanding securities of a class of affected securities at the time the transaction is agreed to, and either

(a) an appraisal remedy is available to holders of the class of affected securities under the statute under which the issuer is organized or is governed as to corporate law matters, or

(b) if an appraisal remedy referred to in subparagraph (a) is not available, holders of the class of affected securities are given an enforceable right that is substantially equivalent to the appraisal remedy provided for in subsection 185(4) of the OBCA and that is described in an information circular or other document sent to holders of that class of affected securities in connection with a meeting to approve the related party transaction, or, if there is no such meeting, in another document that is sent to those security holders not later than the time by which an information circular or other document would have been required to be sent to them if there had been a meeting.

(2) ~~Despite subparagraph 2(c) of section 5.5, if the transaction is one of two or more connected transactions that are related party transactions and would, without the exemptions in paragraphs 2 and 3 of subsection (1), require minority approval under this Rule, the fair market values for all of those transactions shall be aggregated in determining whether the fair market value tests for those exemptions are met.~~

(~~2~~3) If the transaction is a material amendment to the terms of a security, or of a loan or credit facility to which the exemption in paragraph ~~6~~7 of subsection (1) does not apply, the fair market value tests for the ~~exemption in paragraph 2~~exemptions in paragraphs 2 and 3 of subsection (1) shall be applied to the whole transaction as amended, insofar as it involves ~~related~~interested parties, rather than just to the amendment, and, for this purpose, any addition of, or amendment to, a term involving a right to convert into or otherwise acquire equity or voting securities is deemed to be a material amendment.

(~~3~~4) ~~Subparagraphs 2(a), (b) and (d) of section 5.5 apply to paragraph 3 of subsection 5.7(1).~~

(5) If there are two or more classes of affected securities, paragraph ~~7~~8 of subsection (1) applies only to a class of which the applicable interested parties beneficially own, in the aggregate, 90 per cent or more of the outstanding securities.

PART 6 FORMAL VALUATIONS AND PRIOR VALUATIONS

6.1 Independence and Qualifications of Valuator

(1) Every formal valuation required by this Rule for a transaction shall be prepared by a valuator that is independent of all interested parties in the transaction and that has appropriate qualifications.

(2) Subject to subsections (3) and (4), it is a question of fact as to whether a valuator is independent of an interested party or has appropriate qualifications.

(3) A valuator is not independent of an interested party in connection with a transaction if

(a) the valuator is an associated or affiliated entity or issuer insider of the interested party;

(b) except in the circumstances described in paragraph (e), the valuator acts as an adviser to the interested party in respect of the transaction, but for this purpose, a valuator that is retained by an issuer to prepare a formal valuation for an issuer bid is not, for that reason alone, considered to be an adviser to the interested party in respect of the transaction;

(c) the compensation of the valuator depends in whole or in part on an agreement, arrangement or understanding that gives the valuator a financial incentive in respect of the conclusion reached in the formal valuation or the outcome of the transaction;

(d) the valuator is

(i) a manager or co-manager of a soliciting dealer group for the transaction, or

(ii) a member of a soliciting dealer group for the transaction, if the valuator, in its capacity as a soliciting dealer, performs services beyond the customary soliciting dealer's function or receives more than the per security or per security holder fees payable to other members of the group;

(e) the valuator is the external auditor of the issuer or of an interested party, unless the valuator will not be the external auditor of the issuer or of an interested party upon completion of the transaction and that fact is publicly disclosed at the time of or prior to the public disclosure of the results of the valuation; or

(f) the valuator has a material financial interest in the completion of the transaction,

and for the purposes of this subsection, references to the valuator include any affiliated entity of the valuator.

(4) A valuator that is paid by one or more interested parties in a transaction, or paid jointly by the issuer and one or more interested parties in a transaction, to prepare a formal valuation for the transaction is not, by virtue of that fact alone, not independent.

6.2 Disclosure Re Valuator - An issuer or offeror required to obtain a formal valuation for a transaction shall include in the disclosure document for the transaction

(a) a statement that the valuator has been determined to be qualified and independent;

(b) a description of any past, present or anticipated relationship between the valuator and the issuer or an interested party that may be relevant to a perception of lack of independence;

(c) a description of the compensation paid or to be paid to the valuator;

(d) a description of any other factors relevant to a perceived lack of independence of the valuator;

(e) the basis for determining that the valuator is qualified; and

(f) the basis for determining that the valuator is independent, despite any perceived lack of independence, having regard to the amount of the compensation and any factors referred to in paragraphs (b) and (d).

6.3 Subject Matter of Formal Valuation

(1) An issuer or offeror required to obtain a formal valuation shall provide the valuation in respect of

(a) the offeree securities, in the case of an insider bid or issuer bid;

(b) the affected securities, in the case of a business combination;

(c) subject to subsection (2), any non-cash consideration being offered to, or to be received by, the holders of securities referred to in paragraphs (a) or (b); and

(d) subject to subsection (2), the non-cash assets involved in a related party transaction.

(2) A formal valuation of non-cash consideration or assets referred to in paragraphs (1)(c) or (d) is not required if

(a) the non-cash consideration or assets are securities of a reporting issuer or are securities of a class for which there is a published market;

(b) the person or company that would otherwise be required to obtain the formal valuation of those securities states in the disclosure document for the transaction that the person or company has no knowledge of any material information concerning the issuer of the securities, or concerning the securities, that has not been generally disclosed;

(c) in the case of an insider bid, issuer bid or business combination

(i) a liquid market in the class of securities exists,

(ii) the securities constitute 25 per cent or less of the number of securities of the class that are outstanding immediately before the transaction,

(iii) the securities are freely tradeable at the time the transaction is completed, and

(iv) the valuator is of the opinion that a valuation of the securities is not required; and

(d) in the case of a related party transaction for the issuer of the securities, the conditions in subparagraphs 4(a) and (b) of section 5.5 are satisfied, regardless of the form of the consideration for the securities.

6.4 Preparation of Formal Valuation

(1) A formal valuation shall contain the valuator's opinion as to a value or range of values representing the fair market value of the subject matter of the valuation.

(2) A person or company preparing a formal valuation under this Rule shall

(a) prepare the formal valuation in a diligent and professional manner;

(b) prepare the formal valuation as of an effective date that is not more than 120 days before the earlier of

(i) the date that the disclosure document for the transaction is first sent to security holders, if applicable, and

(ii) the date that the disclosure document is filed;

(c) make appropriate adjustments in the formal valuation for material intervening events of which it is aware between the effective date of the valuation and the earlier of the dates referred to in subparagraphs (i) and (ii) of paragraph (b);

(d) in determining the fair market value of offeree securities or affected securities, not include in the formal valuation a downward adjustment to reflect the liquidity of the securities, the effect of the transaction on the securities or the fact that the securities do not form part of a controlling interest; and

(e) provide sufficient disclosure in the formal valuation to allow the readers to understand the principal judgments and principal underlying reasoning of the valuator so as to form a reasoned judgment of the valuation opinion or conclusion.

~~(3) National Policy 48 - *Future-Oriented Financial Information*, does not apply to a formal valuation for which financial forecasts and projections are relied on and disclosed.~~
[11]

6.5 Summary of Formal Valuation

(1) An issuer or offeror required to provide a summary of a formal valuation shall ensure that the summary provides sufficient detail to allow the readers to understand the principal judgments and principal underlying reasoning of the valuator so as to form a reasoned judgment of the valuation opinion or conclusion.

(2) In addition to the disclosure referred to in subsection (1), if an issuer or offeror is required to provide a summary of a formal valuation, the issuer or offeror shall ensure that the summary

(a) discloses

(i) the effective date of the valuation, and

(ii) any distinctive material benefit that might accrue to an interested party as a consequence of the transaction, including the earlier use of available tax losses, lower income taxes, reduced costs or increased revenues;

(b) if the formal valuation differs materially from a prior valuation, explains the differences between the two valuations or, if it is not practicable to do so, the reasons why it is not practicable to do so;

(c) indicates an address where a copy of the formal valuation is available for inspection; and

[11] Former subsection (3) has been moved to the Companion Policy.

(d) states that a copy of the formal valuation will be sent to any security holder upon request and without charge or, if the issuer or offeror providing the summary so chooses, for a nominal charge sufficient to cover printing and postage.

6.6 Filing of Formal Valuation

(1) An issuer or offeror required to obtain a formal valuation in respect of a transaction shall file a copy of the formal valuation

(a) concurrently with the sending of the disclosure document for the transaction to security holders; or

(b) concurrently with the filing of a material change report for a related party transaction for which no disclosure document is sent to security holders, or if the formal valuation is not available at the time of filing the material change report, as soon as the formal valuation is available.

(2) If the formal valuation is included in its entirety in the disclosure document, an issuer or offeror satisfies the requirement in subsection (1) by filing the disclosure document.

6.7 Valuator's Consent - An issuer or offeror required to obtain a formal valuation shall

(a) obtain ~~and file~~ the valuator's consent to the filing of the formal valuation and to the inclusion of the formal valuation or its summary in the disclosure document for the transaction for which the formal valuation was obtained; and

(b) include in the disclosure document a statement, signed by the valuator, substantially as follows:

We refer to the formal valuation dated •, which we prepared for (indicate name of the person or company) for (briefly describe the transaction for which the formal valuation was prepared). We consent to the filing of the formal valuation with the Ontario Securities Commission and the inclusion of [a summary of the formal valuation/the formal valuation] in this document.

6.8 Disclosure of Prior Valuation

(1) A person or company required to disclose a prior valuation shall, in the document in which the prior valuation is required to be disclosed

(a) disclose sufficient detail to allow the readers to understand the prior valuation and its relevance to the present transaction;

(b) indicate an address where a copy of the prior valuation is available for inspection; and

(c) state that a copy of the prior valuation will be sent to any security holder upon request and without charge or, if the issuer or offeror providing the summary so chooses, for a nominal charge sufficient to cover printing and postage.

(2) If there are no prior valuations, the existence of which is known after reasonable inquiry, the person or company that would be required to disclose prior valuations, if any existed, shall include a statement to that effect in the document.

(3) Despite anything to the contrary in this Rule, disclosure of the contents of a prior valuation is not required in a document if

(a) the contents are not known to the person or company required to disclose the prior valuation;

(b) the prior valuation is not reasonably obtainable by the person or company required to disclose it, irrespective of any obligations of confidentiality; and

(c) the document contains statements regarding the prior valuation substantially to the effect of paragraphs (a) and (b).

6.9 Filing of Prior Valuation - A person or company required to disclose a prior valuation shall file a copy of the prior valuation concurrently with the filing of the first document in which that disclosure is required.

6.10 Consent of Prior Valuator Not Required - Despite section 196 of the Regulation, a person or company required to disclose a prior valuation under this Rule is not required to obtain or file the valuator's consent to the filing or disclosure of the prior valuation.

PART 7 INDEPENDENT DIRECTORS

7.1 Independent Directors

(1) Subject to subsections (2) and (3), it is a question of fact as to whether a director of an issuer is independent.

(2) A director of an issuer is not independent in connection with a transaction if he or she

(a) is an interested party in the transaction;

(b) is currently, or has been at any time during the 12 months before the date the transaction is agreed to, an employee, associated entity or issuer insider of an interested party, or of an affiliated entity of an interested party, other than solely in his or her capacity as a director of the issuer;

(c) is currently, or has been at any time during the 12 months before the date the transaction is agreed to, an adviser to an interested party in connection with the transaction, or an employee, associated entity or issuer insider of an adviser to an interested party in connection with the transaction, or of an affiliated entity of such an adviser, other than solely in his or her capacity as a director of the issuer;

(d) has a material financial interest in an interested party or an affiliated entity of an interested party; or

(e) would reasonably be expected to receive a benefit as a consequence of the transaction that is not also available on a pro rata basis to the general body of holders in Canada of offeree securities or affected securities, including, without limitation, the opportunity to obtain a financial interest in an interested party, an affiliated entity of an interested party, the issuer or a successor to the business of the issuer.

(3) For the purpose of this section, in the case of an issuer bid, a director of the issuer is not, by that fact alone, not independent of the issuer.

PART 8 MINORITY APPROVAL

8.1 General

(1) If minority approval is required for a business combination or related party transaction, it shall be obtained from the holders of every class of affected securities of the issuer, in each case voting separately as a class.

(2) Subject to section 8.2, in determining minority approval for a business combination or related party transaction, an issuer shall exclude the votes attached to affected securities that, to the knowledge of the issuer or any interested party or their respective directors or senior officers, after reasonable inquiry, are beneficially owned or over which control or direction is exercised by

(a) the issuer;

(b) an interested party;

(c) a related party of an interested party, unless the related party meets that description solely in its capacity as a director or senior officer of one or more entities that are neither interested parties nor issuer insiders of the issuer; or

(d) a joint actor with a person or company referred to in paragraphs (b) or (c) in respect of the transaction.

8.2 Second Step Business Combination - Despite subsection 8.1(2), the votes attached to securities acquired under a formal bid may be included as votes in favour of a subsequent business combination in determining whether minority approval has been obtained if

(a) the security holder that tendered the securities to the bid was not a joint actor with the offeror in respect of the bid;

(b) the security holder that tendered the securities to the bid was not~~, as a result of a transaction with, or negotiation directly or indirectly involving, the offeror or a joint actor with the offeror~~[12]

(i) a direct or indirect party to any connected transaction to the formal bid, or

(ii) entitled to receive, directly or indirectly, in connection with the formal bid

(A) consideration per offeree security that was not identical in amount and form to the entitlement of the general body of holders in Canada of ~~offeree~~ securities of the same class,

(B) a collateral benefit, or

~~(C) consideration for securities of the issuer if those securities were neither equity securities nor employee stock options, or~~

(~~D~~C) consideration for securities of a class of equity securities of the issuer if the issuer had more than one outstanding class of equity securities, unless that consideration was not greater than the entitlement of the general body of holders in Canada of every other class of equity securities of the issuer in relation to the voting and financial participating interests in the issuer represented by the respective securities;

(c) the business combination is being effected by the offeror that made the formal bid, or an affiliated entity of that offeror, and is in respect of the securities of the same class for which the bid was made and that were not acquired in the bid;

(d) the business combination is completed no later than 120 days after the date of expiry of the formal bid;

(e) the consideration per security that the holders of affected securities would be entitled to receive in the business combination is at least equal in value to and is in the same form as the consideration that the tendering security holders were entitled to receive in the formal bid; and

(f) the disclosure document for the formal bid

(i) disclosed that if the offeror acquired securities under the formal bid, the offeror intended to acquire the remainder of the securities under a statutory right of acquisition or under a business combination that would satisfy the conditions in paragraphs (d) and (e),

(ii) contained a summary of a formal valuation of the securities in accordance with the applicable provisions of Part 6, or contained the valuation in its entirety, if the offeror in the formal bid was subject to and not exempt from the requirement to obtain a formal valuation,

(iii) stated that the business combination would be subject to minority approval,

(iv) identified the securities, if known to the offeror after reasonable inquiry, the votes attached to which would be required to be excluded in determining whether minority approval for the business combination had been obtained,

(v) identified each class of securities the holders of which would be entitled to vote separately as a class on the business combination,

(vi) described the expected tax consequences of both the formal bid and the business combination if, at the time the bid was made, the tax consequences arising from the business combination

(A) were reasonably foreseeable to the offeror, and

(B) were reasonably expected to be different from the tax consequences of tendering to the bid, and

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[12] The deleted words have been replaced with new section 3.2 of the Companion Policy regarding the possibility of obtaining exemptive relief from paragraph (b) in the case of an unsolicited bid. With a broader materiality test for the exclusion of the votes of recipients of collateral benefits, the non-involvement of the offeror in the granting of the benefit would not be a basis for an automatic exemption, but it would be a factor in considering whether exemptive relief should be granted.

(vii) disclosed that the tax consequences of the formal bid and the business combination may be different if, at the time the bid was made, the offeror could not reasonably foresee the tax consequences arising from the business combination.

PART 9 EXEMPTION

9.1 Exemption - The Director may grant an exemption to this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

ONTARIO SECURITIES COMMISSION
COMPANION POLICY 61-501CP
TO ONTARIO SECURITIES COMMISSION RULE 61-501
INSIDER BIDS, ISSUER BIDS, BUSINESS COMBINATIONS
AND RELATED PARTY TRANSACTIONS

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ONTARIO SECURITIES COMMISSION
COMPANION POLICY 61-501CP
TO ONTARIO SECURITIES COMMISSION RULE 61-501
INSIDER BIDS, ISSUER BIDS, BUSINESS COMBINATIONS
AND RELATED PARTY TRANSACTIONS

PART 1 GENERAL

1.1 **General -** The Commission regards it as essential, in connection with the disclosure, valuation, review and approval processes followed for insider bids, issuer bids, business combinations and related party transactions, that all security holders be treated in a manner that is fair and that is perceived to be fair. In the view of the Commission, issuers and others who benefit from access to the capital markets assume an obligation to treat security holders fairly, and the fulfilment of this obligation is essential to the protection of the public interest in maintaining capital markets that operate efficiently, fairly and with integrity.

The Commission does not consider that the types of transactions covered by Rule 61-501 (the "Rule") are inherently unfair. The Commission recognizes, however, that these transactions are capable of being abusive or unfair, and has made the Rule to address this.

This Policy expresses the Commission's views on certain matters related to the Rule.

PART 2 INTERPRETATION

2.1 Equal Treatment of Security Holders

(1) **Security Holder Choice -** The definitions of business combination, collateral benefit and interested party, as well as other provisions in the Rule, include the concept of identical treatment of security holders in a transaction. For the purposes of the Rule, if security holders have an identical opportunity under a transaction, then they are considered to be treated identically. For example, if, under the terms of a business combination, each security holder has the choice of receiving, for each affected security, either $10 in cash or one common share of ABC Co., the Commission regards the security holders as having identical entitlements in amount and form, and as receiving identical treatment, even though they may not all make the same choice. This interpretation also applies where the Rule refers to consideration that is "at least equal in value" and "in the same form", such as in the provisions on second step business combinations.

(2) **Multiple Classes of Equity Securities -** The definitions of business combination and interested party, and the provisions on second step business combinations in section 8.2 of the Rule, refer to circumstances where an issuer carrying out a business combination or related party transaction has more than one class of equity securities. The Rule's treatment of these transactions depends on whether the entitlements of the holders of one class under the transaction are greater than those of the holders of the other classes in relation to the voting and financial participating interests in the issuer represented by the respective securities.

For example: An issuer has outstanding Subordinate Voting Shares carrying one vote per share, and Multiple Voting Shares carrying ten votes per share, with the shares of the two classes otherwise carrying identical rights. Under the terms of a business combination, holders of the Subordinate Voting Shares will receive $10 per share. For the Multiple Voting shareholders to be regarded as not being entitled to greater consideration than the Subordinate Voting shareholders under the Rule, the Multiple Voting shareholders must receive no more than $10 per share. As a second example: An issuer has the same share structure as the issuer in the first example. Under the terms of a business combination, Subordinate Voting shareholders will receive, for each Subordinate Voting Share, $10 and one Subordinate Voting Share of a successor issuer, carrying one vote per share. For the Multiple Voting shareholders to be regarded as not being entitled to greater consideration than the Subordinate Voting shareholders under the Rule, the Multiple Voting shareholders must receive, for each Multiple Voting Share, no more than $10 and one Multiple Voting Share of the successor issuer, carrying no more than ten votes per share and otherwise carrying no greater rights than those of the Subordinate Voting Shares of the successor issuer.

(3) **Related Party Holding Securities of Other Party to Transaction -** The Rule sets out specific criteria for determining related party and interested party status. Without limiting the application of those criteria, a related party of an issuer is not considered to be treated differently from other security holders of the issuer in a transaction, or to receive a collateral benefit, solely by reason of being a security holder of another party to the transaction. For example, if ABC Co. proposes to amalgamate with XYZ Co., the fact that a director of ABC Co., who is not a control block holder of ABC Co., owns common shares of XYZ Co. (but less than 50

per cent) will not, in and of itself, cause the amalgamation to be considered a business combination for ABC Co. under the Rule.

(4) **Consolidation of Securities -** One of the methods that may be used to effect a business combination is a consolidation of an issuer's securities at a ratio that eliminates the entire holdings of most holders of affected securities, through the elimination of post-consolidated fractional interests. Where this or a similar method is used, the security holders whose entire holdings are not eliminated are not considered to be treated identically to the general body of security holders under the Rule.

(5) **Principle of Equal Treatment in Business Combinations -** The Rule contemplates that a related party of an issuer might not be treated identically to all other security holders in the context of a business combination in which a person or company other than that related party acquires the issuer. There are provisions in the Rule, including the minority approval requirement, that are intended to address this circumstance. Despite these provisions, the Commission is of the view that, as a general principle, security holders should be treated equally in the context of a business combination, and that differential treatment is only justified if its benefits to the general body of security holders outweigh the principle of equal treatment. While the Commission will generally rely on an issuer's review and approval process, in combination with the provisions of the Rule, to achieve fairness for security holders, the Commission may intervene if it appears that differential treatment is not reasonably justified. Giving a security holder preferential treatment in order to obtain that holder's support of the transaction will not normally be considered justifiable.

2.2 Joint Actors in ~~Take-over~~ Bids - The definition of joint actor in the Rule incorporates the interpretation of the term "acting jointly or in concert" in section 91 of the Act, subject to certain qualifications. Among other things, the concept is relevant in determining whether a take-over bid is an insider bid under the Rule and whether securities acquired by an offeror in a ~~take-over~~formal bid can be included in a minority approval vote regarding a second step business combination under section 8.2 of the Rule. Without limiting the application of the definition, the Commission is of the view that, for a ~~take-over~~formal bid, an offeror and an insider may be viewed as joint actors if an agreement, commitment or understanding between the offeror and the insider provides that the insider shall not tender to the bid, or provides the insider with an opportunity not offered to all security holders to maintain or acquire a direct or indirect equity interest in the offeror, the issuer or a material asset of the issuer.

2.3 Director for Purposes of Section 1.2 - **Liquid Market -** Subsection 1.2(3) of the Rule requires a letter to be sent to the Director for purposes of satisfying the liquid market test in certain circumstances. That letter should be sent to the Director, Take-over/Issuer Bids, Mergers & Acquisitions.

2.4 Direct or Indirect Parties to a Transaction

(1) The Rule makes references to direct and indirect parties to a transaction in the definition of connected transactions and in subparagraph 8.2(b)(i) regarding minority approval for a second step business combination. For the purposes of the Rule, a person or company is considered to be an indirect party if, for example, a direct party to the transaction is a subsidiary entity, nominee or agent of the person or company. A person or company is not an indirect party merely because it negotiates or approves the transaction on behalf of a party, holds securities of a party or agrees to support the transaction in the capacity of a security holder of a party.

(2) For the purposes of the Rule, the Commission does not consider an entity to be a direct or indirect party to a business combination solely because the entity receives pro rata consideration in its capacity as a security holder of the issuer carrying out the business combination.

2.5 Amalgamations - Under the Rule, an amalgamation may be a business combination, related party transaction or neither, depending on the circumstances. For example, an amalgamation is a business combination for an issuer if, as a consequence of the amalgamation, holders of equity securities of the issuer become security holders of the amalgamated entity, unless an exception in one of the lettered paragraphs in the definition of business combination applies. An amalgamation is a related party transaction for an issuer rather than a business combination if, for example, a wholly-owned subsidiary entity of the issuer amalgamates with a related party of the issuer, leaving the equity securities of the issuer unaffected.

2.6 Transactions Involving More than One Reporting Issuer - The characterization of a transaction or the availability of a valuation or minority approval exemption under the Rule must be considered individually for each reporting issuer involved in the transaction. For example, an amalgamation may be a downstream transaction for one party and a business combination for the other, in which case the latter party is the only party to whom the requirements of the Rule may apply.

[13]
~~**2.7** **Redeemable Preference Shares** - The Commission is aware that often in business combinations, the consideration takes the form of redeemable preference shares, which are immediately redeemed for cash. The Commission is of the view that the preference shares in this circumstance are equivalent to cash for the purpose of determining whether the consideration is at least equal in value to and is in the same form as other consideration, and for the purpose of determining the required subject matter of a formal valuation under section 6.3 of the Rule.~~

~~2.8~~ Previous Arm's Length Negotiations Exemption

(1) For the purposes of the formal valuation exemptions based on previous arm's length negotiations in paragraph 3 of subsection 2.4(1) and paragraph 3 of subsection 4.4(1) of the Rule for insider bids and business combinations, respectively, the arm's length relationship must be between the selling security holder and all persons or companies that negotiated with the selling security holder.

(2) The Commission notes that the previous arm's length negotiations exemption is based on the view that those negotiations can be a substitute for a valuation. An important requirement for the exemption to be available is that the offeror or proponent of the business combination, as the case may be, engages in "reasonable inquiries" to determine whether various circumstances exist. In the Commission's view, if this requirement cannot be satisfied through receipt of representations of the parties directly involved or some other suitable method, the offeror or proponent of the transaction is not entitled to rely on this exemption.

~~2.9~~2.8 Connected Transactions

(1) "Connected transactions" is a defined term in the Rule, and reference is made to connected transactions in a number of parts of the Rule. For example, subparagraph 2(c) of section 5.5 of the Rule requires connected transactions to be aggregated, in certain circumstances, for the purpose of determining the availability of the formal valuation exemption for a related party transaction that is not larger than 25 per cent of the issuer's market capitalization. In other circumstances, it is possible for an issuer to rely on an exemption for each of two or more connected transactions. However, the Commission may intervene if it believes that a transaction is being carried out in stages or otherwise divided up for the purpose of avoiding the application of a provision of the Rule.

(2) One method of acquiring all the securities of an issuer is through a plan of arrangement or similar process comprised of a series of two or more interrelated steps. The series of steps is the "transaction" for the purposes of the definition of business combination. However, a related party transaction that is carried out in conjunction with a business combination, and that is not simply one of the procedural steps in implementing the acquisition of the affected securities in the business combination, is subject to the Rule's requirements for related party transactions. This applies where, for example, a related party buys some of the issuer's assets that the acquirer in the business combination does not want.

(3) An agreement, commitment or understanding that a security holder will tender to a formal bid or vote in favour of a transaction is not, in and of itself, a connected transaction to the bid or to the transaction for purposes of the Rule.

2.9 **Time of Agreement -** A number of provisions in the Rule refer to the time a business combination or related party transaction is agreed to. This should be interpreted as the time the issuer first makes a legally binding commitment to proceed with the transaction, subject to any conditions such as security holder approval. Where the issuer does not technically negotiate the transaction with another party, such as in the case of a share consolidation, the time the transaction is agreed to should be interpreted as the time at which the issuer's board of directors determines to proceed with the transaction, subject to any conditions.

2.10 **"Acquire the Issuer" -** In some definitions and elsewhere in the Rule, reference is made to a transaction in which a related party would "directly or indirectly acquire the issuer … through an amalgamation, arrangement or otherwise, whether alone or with joint actors". This refers to the acquisition of all of the issuer, not merely the acquisition of a control position. For example, a related party "acquires" an issuer when it acquires all of the securities of the issuer that it does not already own, even if that related party held a control position in the issuer prior to the transaction.

PART 3 MINORITY APPROVAL

3.1 **Meeting Requirement -** The definition of minority approval and subsections 4.2(2) and 5.3(2) of the Rule provide that minority approval, if required, must be obtained at a meeting of holders of affected securities. The issuer may be able

[13] Section 2.7 has been replaced with section 1.5 of the amended Rule, which is similar.

to demonstrate that holders of a majority of the securities that would be eligible to be voted at a meeting would vote in favour of the transaction under consideration. In this circumstance, the Director will consider granting an exemption under section 9.1 of the Rule from the requirement to hold a meeting, conditional on security holders being provided with disclosure similar to that which would be available to them if a meeting were held.

3.2 Second Step Business Combination Following an Unsolicited Take-over Bid - Section 8.2 of the Rule allows the votes attached to securities acquired under a formal bid to be included as votes in favour of a subsequent business combination in determining whether minority approval has been obtained if certain conditions are met. One of the conditions is that the security holder that tendered the securities in the bid not receive an advantage in connection with the bid, such as a collateral benefit, that was not available to other security holders. There may be circumstances where this condition could cause difficulty for an offeror who wishes to acquire all of an issuer through a business combination following a bid that was unsolicited by the issuer. For example, in order to establish that a benefit received by a tendering security holder is not a collateral benefit under the Rule, the offeror may need the cooperation of an independent committee of the offeree issuer during the bid. This cooperation may not be forthcoming if the bid is unfriendly. In this type of circumstance, the fact that the bid was unsolicited would normally be a factor the Director would take into account in considering whether exemptive relief should be granted to allow the securities to be voted.

3.3 Special Circumstances - As the purpose of the Rule is to ensure fair treatment of minority security holders, abusive minority tactics in a situation involving a minimal minority position may cause the Director to grant an exemption from the requirement to obtain minority approval. Where an issuer has more than one class of equity securities, exemptive relief may also be appropriate if the Rule's requirement of separate minority approval for each class could result in unfairness to security holders who are not interested parties, or if the policy objectives of the Rule would be accomplished by the exclusion of an interested party's votes in one or more, but not all, of the separate class votes.

PART 4 FORM 33 DISCLOSURE

4.1 Insider Bids - Form 33 Disclosure - Form 32 of the Regulation (the form for a take-over bid circular) requires for an insider bid, and subsection 2.2(2) of the Rule requires for a stock exchange insider bid, the disclosure required by Form 33 of the Regulation, appropriately modified. In the view of the Commission, Form 33 disclosure would generally include, in addition to Form 32 disclosure, disclosure for the following items, with necessary modifications, in the context of an insider bid:

1. Item 10 - Reasons for Bid
2. Item 14 - Acceptance of Bid
3. Item 15 - Benefits from Bid
4. Item 17 - Other Benefits to Insiders, Affiliates and Associates
5. Item 18 - Arrangements Between Issuer and Security Holder
6. Item 19 - Previous Purchases and Sales
7. Item 21 - Valuation
8. Item 24 - Previous Distribution
9. Item 25 - Dividend Policy
10. Item 26 - Tax Consequences
11. Item 27 - Expenses of Bid

4.2 Business Combinations and Related Party Transactions - Form 33 Disclosure - Paragraphs 4.2(3)(a) and 5.3(3)(a) of the Rule require in the information circulars for a business combination and a related party transaction, respectively, the disclosure required by Form 33 of the Regulation, to the extent applicable and with necessary modifications. In the view of the Commission, Form 33 disclosure would generally include disclosure for the following items, with necessary modifications, in the context of those transactions:

1. Item 5 - Consideration Offered
2. Item 10 - Reasons for Bid

3. Item 11 - Trading in Securities to be Acquired

4. Item 12 - Ownership of Securities of Issuer

5. Item 13 - Commitments to Acquire Securities of Issuer

6. Item 14 - Acceptance of Bid

7. Item 15 - Benefits from Bid

8. Item 16 - Material Changes in the Affairs of Issuer

9. Item 17 - Other Benefits to Insiders, Affiliates and Associates

10. Item 18 - Arrangements Between Issuer and Security Holder

11. Item 19 - Previous Purchases and Sales

12. Item 20 - Financial Statements

13. Item 21 - Valuation

14. Item 22 - Securities of Issuer to be Exchanged for Others

15. Item 23 - Approval of Bid

16. Item 24 - Previous Distribution

17. Item 25 - Dividend Policy

18. Item 26 - Tax Consequences

19. Item 27 - Expenses of Bid

20. Item 28 - Judicial Developments

21. Item 29 - Other Material Facts

22. Item 30 - Solicitations

PART 5 FORMAL VALUATIONS

5.1 General

(1) The Rule requires formal valuations in a number of circumstances. The Commission is of the view that a conclusory statement of opinion as to the value or range of values of the subject matter of a valuation does not by itself fulfil this requirement.

(2) The disclosure standards for formal valuations in By-laws 29.14 to 29.23 of the Investment Dealers Association of Canada and Appendix A to Standard No. 110 of the Canadian Institute of Chartered Business Valuators each generally represent a reasonable approach to meeting the applicable legal requirements. Specific disclosure standards, however, cannot be construed as a substitute for the professional judgment and responsibility of the valuator and, on occasion, additional disclosure may be necessary.

(3) An issuer that is required to obtain a formal valuation, or the offeree issuer in the case of an insider bid, should work in cooperation with the valuator to ensure that the requirements of the Rule are satisfied. At the valuator's request, the issuer should promptly furnish the valuator with access to the issuer's management and advisers, and to all material information in the issuer's possession relevant to the formal valuation. The valuator is expected to use that access to perform a comprehensive review and analysis of information on which the formal valuation is based. The valuator should form its own independent views of the reasonableness of this information, including any forecasts, projections or other measurements of the expected future performance of the enterprise, and of any of the assumptions on which it is based, and adjust the information accordingly.

(4) The disclosure in the valuation of the scope of review should include a description of any limitation on the scope of the review and the implications of the limitation on the valuator's conclusion. Scope limitations should not be imposed by the issuer, an interested party or the valuator, but should be limited to those beyond their control that arise solely as a result of unusual circumstances. In addition, it is inappropriate for any interested party to exercise or attempt to exercise any influence over a valuator.

(5) Subsection 2.3(2) of the Rule provides that in the context of an insider bid, an independent committee of the offeree issuer shall, and the offeror shall enable the independent committee to, determine who the valuator will be and supervise the preparation of the formal valuation. Although the subsection also requires the independent committee to use its best efforts to ensure that the valuation is completed and provided to the offeror in a timely manner, the Commission is aware that an independent committee could attempt to use the subsection to delay or impede an insider bid viewed by the committee as unfriendly. In a situation where an offeror is of the view that an independent committee is not acting in a timely manner in having the formal valuation prepared, the offeror may seek relief under section 9.1 of the Rule from the requirement that the offeror obtain a valuation.

(6) Similarly, in circumstances where an independent committee is of the view that a bid that has been announced will not actually be made or that the bid is not being made in good faith, the independent committee may apply for relief from the requirements of subsection 2.3(2) of the Rule.

(7) National Policy 48 – *Future-Oriented Financial Information* does not apply to a formal valuation for which financial forecasts and projections are relied on and disclosed.

5.2 Independent Valuators - While, except in certain prescribed situations, the Rule provides that it is a question of fact as to whether a valuator (which for the purposes of this section includes a person or company providing a liquidity opinion) is independent, situations have been identified in the past that raise serious concerns for the Commission. These situations, which are set out below, must be assessed for materiality by the board or committee responsible for choosing the valuator, and disclosed in the disclosure document for the transaction. In determining the independence of the valuator from an interested party, relevant factors may include whether

(a) the valuator or an affiliated entity of the valuator has a material financial interest in future business under an agreement, commitment or understanding involving the issuer, the interested party or an associated or affiliated entity of the issuer or interested party;

(b) during the 24 months before the valuator was first contacted for the purpose of the formal valuation or opinion, the valuator or an affiliated entity of the valuator

(i) had a material involvement in an evaluation, appraisal or review of the financial condition of the interested party, or an associated or affiliated entity of the interested party, other than the issuer,

(ii) had a material involvement in an evaluation, appraisal or review of the financial condition of the issuer, or an associated or an affiliated entity of the issuer, if the evaluation, appraisal or review was carried out at the direction or request of the interested party or paid for by the interested party, other than the issuer in the case of an issuer bid,

(iii) acted as a lead or co-lead underwriter of a distribution of securities by the interested party, or acted as a lead or co-lead underwriter of a distribution of securities by the issuer if the retention of the underwriter was carried out at the direction or request of the interested party or paid for by the interested party, other than the issuer in the case of an issuer bid,

(iv) had a material financial interest in a transaction involving the interested party, other than the issuer in the case of an issuer bid, or

(v) had a material financial interest in a transaction involving the issuer other than by virtue of performing the services referred to in subparagraphs (b)(ii) or (b)(iii); or

(c) the valuator or an affiliated entity of the valuator is

(i) a lead or co-lead lender or manager of a lending syndicate in respect of the transaction in question, or

(ii) a lender of a material amount of indebtedness in a situation where the interested party or the issuer is in financial difficulty, and the transaction would reasonably be expected to have the effect of materially enhancing the lender's position.

PART 6 ROLE OF DIRECTORS

6.1 Role of Directors

(1) Paragraphs 2.2(3)(d), 3.2(1)(e), 4.2(3)(e), 5.2(1)(e) and 5.3(3)(f) of the Rule require that the disclosure for the applicable transaction include a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer, including any materially contrary view or abstention by a director and any material disagreement between the board and the special committee.

(2) An issuer involved in any of the types of transactions regulated by the Rule should provide sufficient information to security holders to enable them to make an informed decision. Accordingly, the directors should disclose their reasonable beliefs as to the desirability or fairness of the proposed transaction and make useful recommendations regarding the transaction. A statement that the directors are unable to make or are not making a recommendation regarding the transaction, without detailed reasons, generally would be viewed as insufficient disclosure.

(3) In reaching a conclusion as to the fairness of a transaction, the directors should disclose in reasonable detail the material factors on which their beliefs regarding the transaction are based. Their disclosure should discuss fully the background of deliberations by the directors and any special committee, and any analysis of expert opinions obtained.

(4) The factors that are important in determining the fairness of a transaction to security holders and the weight to be given to those factors in a particular context will vary with the circumstances. Normally, the factors considered should include whether the transaction is subject to minority approval, whether the transaction has been reviewed and approved by a special committee and, if there has been a formal valuation, whether the consideration offered is fair in relation to the valuation conclusion arrived at through the application of the valuation methods considered relevant for the subject matter of the formal valuation. A statement that the directors have no reasonable belief as to the desirability or fairness of the transaction or that the transaction is fair in relation to values arrived at through the application of valuation methods considered relevant, without more, generally would be viewed as insufficient disclosure.

(5) The directors of an issuer involved in a transaction regulated by the Rule are generally in the best position to assess the formal valuation to be provided to security holders. Accordingly, the Commission is of the view that, in discharging their duty to security holders, the directors should consider the formal valuation and all prior valuations disclosed and discuss them fully in the applicable disclosure document.

(6) To safeguard against the potential for an unfair advantage for an interested party as a result of that party's conflict of interest or informational or other advantage in connection with the proposed transaction, it is good practice for negotiations for a transaction involving an interested party to be carried out by or reviewed and reported upon by a special committee of disinterested directors. Following this practice normally would assist in addressing the Commission's interest in maintaining capital markets that operate efficiently, fairly and with integrity. While the Rule only mandates an independent committee in limited circumstances, the Commission is of the view that it generally would be appropriate for issuers involved in a material transaction to which the Rule applies to constitute an independent committee of the board of directors for the transaction. Where a formal valuation is involved, the Commission also would encourage an independent committee to select the valuator, supervise the preparation of the valuation and review the disclosure regarding the valuation.

(7) A special committee should, in the Commission's view, include only directors who are independent from the interested party. While a special committee may invite non-independent board members and other persons possessing specialized knowledge to meet with, provide information to, and carry out instructions from, the committee, in the Commission's view non-independent persons should not be present at or participate in the decision-making deliberations of the special committee.

6.1.5 Request for Comment - Proposed National Instrument 31-101 – Requirements under the National Registration System and proposed National Policy 31-201 – National Registration System

REQUEST FOR COMMENT

PROPOSED *NATIONAL INSTRUMENT 31-101 – REQUIREMENTS UNDER THE NATIONAL REGISTRATION SYSTEM* AND PROPOSED *NATIONAL POLICY 31-201 – NATIONAL REGISTRATION SYSTEM*

Introduction

The Ontario Securities Commission, in conjunction with the other members of the Canadian Securities Administrators (**CSA**), is publishing for comment, proposed *National Instrument 31-101 – Requirements under the National Registration System* (**National Instrument**) as well as proposed *National Policy 31-201 – National Registration System* (**National Policy Statement**).

Substance and Purpose

The National Registration System (**NRS)** proposes that a firm filer or individual filer may register in any Canadian jurisdiction solely under the rules of its principal regulator. The principal regulator for a firm filer is determined by an analysis of connecting factors as set out in the National Policy Statement. For individual filers, the principal regulator is the regulator for the jurisdiction in which the individual filer's working office is located. The non-principal regulators are the regulators in the other jurisdictions where the firm or individual wishes to be registered.

The principal regulator will review the application for registration in accordance with its securities legislation requirements regarding suitability for registration (also known as fit and proper requirements). The non-principal regulators will rely on the principal regulator's review to accept or refuse the application. When the non-principal regulators opt in to the principal regulator's decision on registration, the filers will be exempt from the fit and proper requirements of the non-principal regulator. The filer will only have to satisfy the fit and proper requirements of the principal regulator.

The applicable conduct rules will be those of the jurisdiction in which the client is located. Guidance as to which rules will be considered conduct rules is set out in the National Policy. In the cases of registrants who are members of self-regulatory organizations (**SRO**) such as the Investment Dealers Association of Canada, the Mutual Fund Dealers Association, or the Montréal Exchange, the SRO requirements will likely be the applicable conduct requirements.

Summary of National Instrument and National Policy Statement

The NRS is an optional system which can only be used by registrants in the following three registration categories:

- investment dealers;
- mutual fund dealers;
- unrestricted advisers[1].

The National Instrument sets out the criteria for who are eligible to use the NRS.[2] Individual filers may only use the NRS when the sponsoring firm is eligible and has elected to use the NRS. Individual filers must reside in Canada, and firm filers must have an office located in Canada.

The National Instrument provides for an exemption from fit and proper requirements in the provinces and territories, other than the principal regulator, where an investment dealer, an unrestricted adviser, a mutual fund dealer as well as their officers and representatives apply for registration, provided they are registered in the jurisdiction of the principal regulator.[3]

A firm or individual filer can use NRS for initial registration in multiple jurisdictions or to add a jurisdiction if they are already registered in a jurisdiction.

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1 In Ontario this refers to firms registered in the categories of investment counsel and/or portfolio managers.

2 Section 2.2 NI 31-101

3 Section 3.1 NI 31-101

Operation of NRS

- When a firm files an application for initial registration in more than one jurisdiction or adds a jurisdiction, it only has to file its materials in the appropriate format with the principal regulator.
- An individual filer files his or her application for registration or approval in the jurisdiction in which his or her working office is located. The application for registration is made through the National Registration Database (**NRD)**.
- The principal regulator alone reviews applications for registration for all jurisdictions chosen by the filer, based on the principal regulator's fit and proper requirements.
- The principal regulator provides a recommendation regarding the granting of registration to the non-principal regulators.
- The non-principal regulators have five days from the receipt of the recommendation to opt in or opt out of the recommended decision.
- If the recommendation is refused, the application for registration is handled directly by the non-principal regulator for that jurisdiction[4].
- Once registered, the firm or individual filer has only to abide by the continuing fit and proper requirements (including notice filings and approvals) of the principal regulator.[5]

Role of SROs

SROs shall be considered principal regulators for the purpose of the application of the instrument, when an application is made in a jurisdiction where a delegation of authority to the SRO has been granted.

Changes to NRD

Staff are proposing to evaluate three key changes to be made to NRD for efficient implementation and application of the NRS system. These are: selection of principal regulator, opt in/opt out function, and unique designation of NRS submissions. In addition, Quebec is currently developing plans to participate in NRD .

Selection of Principal Regulator

Regulators need the ability to override the NRD choice of lead regulator and select the principal regulator which will allow submissions to non-principal jurisdictions to also be assigned to the principal regulator. When a new jurisdiction is added, the principal regulator will receive the submission and the new jurisdiction will receive the submission with an "opt in" or "opt out" button rather than approval. The non-principal regulator will do a detrimental information check on the applicant and provided that it is clear, will opt in to lead regulator's decision to grant registration. NRD needs to be changed to allow the selection of the principal regulator and to have all applications assigned to it as well as the non-principal regulators.

Opt In/Opt Out Button

The NRS is based on Mutual Reliance and the ability to opt in or opt out is key to the system. The current design of NRD does not allow for this selection. However, NRD does allow for lead jurisdictions to approve notices while non-lead jurisdictions just acknowledge. Similar functionality will be needed for multi-jurisdictional applications in which the principal regulator will have a button to approve applications and the non-principal regulators will have buttons to opt in or opt out of the decision to grant registration. NRD needs to be changed to have applications assigned to the principal regulator with the ability to approve while the non-principal regulators will either select opt in or opt out.

Identification of NRS Applications

The NRS will require the principal regulator to coordinate opting in or opting out of the recommendation. There will be turnaround time requirements and to meet these times NRS applications will have to be identified in some unique fashion, for example, using a different colour.

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[4] It is expected that this system will operate in a similar fashion to the MRRS for Prospectuses and that opt outs will be very rare.

[5] Section 3.1 NI 31-101

Authority under which the National Instrument and National Policy Statement are being Proposed

The Ontario Securities Commission has the authority to make the National Instrument and National Policy Statement under the following provisions under Section 143(1) of the *Securities Act* (Ontario):

1. Prescribing requirements in respect of applications for registration, and the renewal, amendment, expiration or surrender of registration and in respect of suspension, cancellation or reinstatement of registration.

7. Prescribing requirements in respect of the disclosure or furnishing of information to the public or the Commission by registrants or providing for exemptions from or varying the requirements under this Act in respect of the disclosure or furnishing of information to the public or the Commission by registrants.

8. Providing for exemptions from the registration requirements under this Act or for the removal of exemptions from those requirements.

Alternatives Considered

Consideration was given to developing a system without a National Instrument or National Policy Statement. The alternative allowed firms and individuals who are already registered to apply to another jurisdiction on the basis that such firm or individual was already registered. The non-principal jurisdictions would have to grant an exemption from their requirements either through a blanket ruling or on a case by case application. Since not every jurisdiction has the option of using a blanket ruling, it was determined that it would be more efficient and more conducive to consistency among regulators to have a National Instrument and National Policy Statement. Staff also believes that applicants would prefer to deal with only one regulator (the principal regulator) than to deal with many individual regulators.

Anticipated Costs and Benefits

The CSA expects the NRS to reduce the time spent by applicants to prepare and file forms because applicants will only have to file one set of documents with one regulator. In addition, there will be a reduction in compliance costs due to the fact that registrants will only have to meet one set of fit and proper requirements. There should also be a reduction in processing time by the regulators. Due to the introduction of the NRD system and additional processes during the initial phase of implementation, useful data on turnaround times is not available at this time. Instead the CSA is proposing to do an impact analysis upon implementation of the NRS.

NRD data will be gathered for a period of six months before and after the implementation of the NRS. The actual elapsed processing times will be observed and form the basis of time savings calculations for regulators from pre-implementation to post-implementation. The time savings will be converted to cost savings (benefit estimates) for the industry. We will provide a "report card" on the impact of NRS as part of the analysis.

Comments

Anyone interested may submit comments on the National Instrument and National Policy Statement.

Please send your comments in writing no later than March 30, 2004. If you do not send your comments by e-mail, a diskette or CD containing the submissions (in Windows format, Word) should also be forwarded.

Address your submission to all of the CSA member commissions below:

Commission des valeurs mobilières du Québec
Ontario Securities Commission
Alberta Securities Commission
British Columbia Securities Commission

It is not necessary to send your comments separately to all CSA member authorities. Please send them to the following people. CSA staff will ensure they are sent to the other CSA members.

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario M5H 3S8
E-mail: jstevenson@osc.gov.on.ca

Denise Brosseau, Secretary
Commission des valeurs mobilières du Québec
800 Square Victoria, 22nd Floor
Tour de la Bourse, P.O. Box 246
Montreal, Quebec H4Z 1G3
Fax: (514) 864-6381
E-mail: consultation-en-cours@cvmq.com

We are unable to keep comments confidential as securities legislation of certain provinces requires the publication of a summary of the written comments received during the consultation period.

Questions

Should you have any questions, please contact the following:

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6.1.6 Proposed National Instrument 31-101 — Requirements Under the National Registration System

PROPOSED NATIONAL INSTRUMENT 31-101 — REQUIREMENTS UNDER THE NATIONAL REGISTRATION SYSTEM

PART 1
DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS

In this instrument, unless the context otherwise requires,

“filer” means a firm filer or an individual filer;

“filing requirements” means the requirements, as they apply to registered individuals, non-registered individuals or registered firms, contained in the securities legislation of the jurisdictions in which a registrant is registered or in which a non-registered individual is approved, pursuant to which such registrant or non-registered individual must file, as and when required, documents and information with the securities regulatory authorities or regulators of such jurisdictions;

“firm filer” means a registered firm or a person or company submitting an application to become a registered firm;

“fit and proper requirements” means the requirements and prohibitions, as they apply to registered individuals, non-registered individuals or registered firms, contained in the securities legislation of the jurisdictions in which a registrant is registered or in which a non-registered individual is approved or reviewed, with a view to ensuring the suitability of a filer to be registered or to be approved as a non-registered individual, namely as regards the filer’s solvency, integrity and proficiency, but does not mean any requirement to pay fees in connection with a registration or approval;

“individual filer” means a registered individual, an individual submitting an application to become a registered individual or a non-registered individual submitting, or on whose behalf a sponsoring firm has submitted, an application for the approval of such individual as director, partner, officer, compliance officer, branch manager or substantial holder of the sponsoring firm;

“investment dealer” means a dealer registered in the categories referred to in Appendix A to this instrument under the heading “Investment Dealer”;

“MI 31-102” means Multilateral Instrument 31-102 National Registration Database, as amended, supplemented or replaced from time to time;

“MI 33-109” means Multilateral Instrument 33-109 Registration Information, as amended, supplemented or replaced from time to time;

“MRRS MOU” means the Memorandum of Understanding relating to the Mutual Reliance Review System signed as of October 14, 1999, as amended, supplemented or replaced from time to time;

“mutual fund dealer” means a dealer registered in the categories referred to in Appendix A to this instrument under the heading “Mutual Fund Dealer”;

“National Registration System” or “NRS” means the registration system implemented in each jurisdiction pursuant to the MRRS MOU, and as set out under this instrument and NP 31-201, to facilitate the registration or approval in more than one jurisdiction, or in jurisdictions other than the home jurisdiction, of investment dealers, mutual fund dealers, unrestricted advisers and the individuals associated therewith;

“NI 14-101” means National Instrument 14-101 Definitions, as amended, supplemented or replaced from time to time;

“non-principal regulator” means any securities regulatory authority or regulator with whom a filer is registered, approved or submitting an application under the NRS, other than the principal regulator;

“non-registered individual” means an individual who is a director, partner, officer or, in British Columbia, Alberta and Ontario only, substantial holder of a firm filer, but who is not registered to trade or advise on behalf of the firm filer;

“notice requirements” means the requirements, as they apply to registered individuals, non-registered individuals or registered firms, contained in the securities legislation of the jurisdictions in which a registrant is registered or in which

a non-registered individual is approved, pursuant to which such registrant or non-registered individual must notify, as and when required, the securities regulatory authorities or regulators of such jurisdictions of changes and events;

"NP 31-201" means National Policy 31-201 National Registration System, as amended, supplemented or replaced from time to time;

"NRS document" means the document issued by the principal regulator for an application made under the NRS that evidences that a decision on the application has been made by the principal regulator and the non-principal regulators that have opted into the NRS for that application, and that evidences the terms of such decision;

"principal regulator" means, for a filer, the securities regulatory authority or regulator determined or redesignated in accordance with NP 31-201;

"registered firm" means a person or company that is registered in at least one jurisdiction as an investment dealer, a mutual fund dealer or an unrestricted adviser;

"registered individual" means an individual that is registered in at least one jurisdiction to trade or advise on behalf of a registered firm;

"registrant" means a registered firm or registered individual;

"regulator" means, for the local jurisdiction, the person referred to in Appendix D of NI 14-101 opposite the name of the local jurisdiction and shall include, when the context so requires, any SRO to whom such person has delegated its duties and powers in connection with registration applications and any SRO whom such person has authorized to exercise its powers in connection with the same;

"securities legislation" means, for the local jurisdiction, the statute and other instruments referred to in Appendix B of NI 14-101 opposite the name of the local jurisdiction and, for Québec, also means the Act respecting the distribution of financial products and services (R.S.Q., c. D-9.2) and the regulations under that act;

"securities regulatory authority" means, for the local jurisdiction, the securities commission or similar regulatory authority referred to in Appendix C of NI 14-101 opposite the name of the local jurisdiction and shall include, when the context so requires, any SRO to whom such securities commission or similar regulatory authority has delegated its duties and powers in connection with registration applications and any SRO whom such securities commission or similar regulatory authority has authorized to exercise its powers in connection with the same, and, in Québec, also means the Bureau des services financiers or, once operational, the Agence nationale d'encadrement des services financiers;

"sponsoring firm" means,

(a) for a registered individual, the registered firm on whose behalf the individual trades or advises,

(b) for an individual submitting an application to become a registered individual, the registered firm, or the person or company submitting an application to become a registered firm, on whose behalf the individual proposes to trade or advise,

(c) for a non-registered individual of a registered firm, the registered firm, or

(d) for a non-registered individual of a person or company submitting an application to become a registered firm, the person or company that is submitting the application;

"substantial holder" means any individual who beneficially owns, whether directly or indirectly, or exercises control or direction over, ten percent or more of the voting securities of a registered firm; and

"unrestricted adviser" means an adviser registered in the categories referred to in Appendix A to this instrument under the heading "Unrestricted Adviser".

1.2 INTERPRETATION

(1) For the purposes of this instrument, the term "registration" shall include a renewal of registration, reinstatement of registration or amendment to registration, where appropriate.

(2) An SRO shall be considered a principal jurisdiction, for the purpose of the application of this instrument, when an application is made in a jurisdiction where a delegation of authority exists in favour of the SRO.

PART 2
APPLICATION AND ELIBIGILITY

2.1 APPLICATION OF THE NRS

The National Registration System must be used by

(a) a sponsoring firm submitting an application on behalf of a non-registered individual, or a non-registered individual submitting an application, as the case may be, for the approval of the individual as director, partner, officer, compliance officer, branch manager or substantial holder of the sponsoring firm, or

(b) an individual submitting an application for registration or reinstatement of registration or a registered individual submitting an application for renewal of registration or amendment to registration, to trade or advise on behalf of a registered firm or on behalf of a person or company applying to become a registered firm,

when the application is submitted in more than one jurisdiction or in a jurisdiction of a non-principal regulator and when the individual's sponsoring firm has elected to use the NRS, provided that such individual is eligible to use the NRS.

2.2 ELIGIBILITY

(1) For a firm filer to be eligible to use the NRS, the following conditions must be satisfied:

(a) the firm must have a business office located in Canada;

(b) the firm must be a registered firm, or be submitting an application to become a registered firm, in the jurisdiction of its principal regulator and in at least one other jurisdiction, in corresponding categories;

(c) the firm must have elected to use the NRS and must have submitted a completed Form 31-201F1.

(2) For an individual filer to be eligible to use the NRS, the following conditions must be satisfied:

(a) the individual filer must reside in Canada;

(b) with respect to an application for registration, the individual filer must be a registered individual, or be submitting an application to become a registered individual, in the jurisdiction of his or her principal regulator and in at least one other jurisdiction, in a corresponding category of registration;

(c) the individual filer's sponsoring firm must be eligible and have elected to use the NRS and must have submitted a completed Form 31-201F1.

PART 3
APPLICABLE REQUIREMENTS

3.1 EXEMPTIONS FROM NON-PRINCIPAL REGULATOR REQUIREMENTS

(1) A filer submitting an application under the NRS or electing to use the NRS is exempt from the fit and proper requirements, notice requirements and filing requirements applicable in the jurisdictions of the filer's non-principal regulators, provided that the filer satisfies the requirements applicable in the jurisdiction of the filer's principal regulator.

(2) A filer submitting an application under the NRS is also exempt from the requirement to hold a certificate of registration or to have received written notice of the registration prior to conducting registrable activities, applicable in the jurisdiction of each non-principal regulator that opts into the NRS in connection with that application, provided that the filer has received an NRS document from its principal regulator.

3.2 TEMPORARY EXEMPTION

Where the principal regulator of a registrant is changed in accordance with NP 31-201, the registrant is exempt from the fit and proper requirements applicable in the jurisdiction of the redesignated principal regulator for a period of six months following the effective date of the change of principal regulator, provided that the registrant continues to satisfy the fit and proper requirements applicable in the jurisdiction of its previous principal regulator during that period.

3.3 TERMINATION OF EXEMPTIONS

(1) The exemptions in subsection 3.1(1) and section 3.2 are no longer available to a registrant or non-registered individual that ceases to be eligible under the NRS or elects no longer to use the NRS.

(2) A filer shall cease to benefit from the exemption set forth in subsection 3.1(1) in any jurisdiction where a non-principal regulator of the filer opts out of the NRS on the filer's application, unless the non-principal regulator opts back in.

PART 4
TRANSITION

4.1 REGISTRATIONS OR APPROVALS OF INDIVIDUAL FILERS IN QUÉBEC

Individual filers whose principal regulator is a securities regulatory authority in Québec will not be exempt from the filing requirements contained in MI 33-109 and MI 31-102, unless similar requirements are adopted in Québec.

PART 5
EXEMPTION

5.1 EXEMPTION

The securities regulatory authorities or regulators may grant an exemption from this instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

PART 6
EFFECTIVE DATE

6.1 EFFECTIVE DATE

This instrument shall come into force on June 30, 2004.

APPENDIX A

REGISTRATION CATEGORY CONCORDANCE

	INVESTMENT DEALER	MUTUAL FUND DEALER	UNRESTRICTED ADVISER
Alberta	Investment dealer	Mutual fund dealer	Investment counsel or portfolio manager
British Columbia	Investment dealer	Mutual fund dealer	Investment counsel or portfolio manager
Manitoba	Investment dealer	Mutual fund dealer	Investment counsel or portfolio manager
New Brunswick	Broker	Broker restricted to distributing securities of mutual funds approved for distribution in New Brunswick	Broker restricted to providing investment counseling and portfolio management services
Newfoundland & Labrador	Investment dealer	Mutual fund dealer	Investment counsel or portfolio manager
Nova Scotia	Investment dealer	Mutual fund dealer	Investment counsel or portfolio manager
Ontario	Investment dealer	Mutual fund dealer	Investment counsel or portfolio manager
Prince Edward Island	Investment dealer	Mutual fund dealer	Investment counsel or portfolio manager
Québec	Dealer with an unrestricted practice	Group savings plan firm	Adviser with an unrestricted practice
Saskatchewan	Investment dealer	Mutual fund dealer	Investment counsel or portfolio manager
Yukon	Broker	Broker	Broker
Northwest Territories	Broker	Broker	Broker
Nunavut	Broker	Broker	Broker

6.1.7 Proposed National Policy 31-201 – National Registration System

PROPOSED NATIONAL POLICY 31-201 – NATIONAL REGISTRATION SYSTEM

PART 1
DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS

In this policy, unless the context otherwise requires,

“application form” means, in respect of a firm filer, the form required under applicable securities legislation for an application to become a registered firm or Form 33-109F5, as the case may be, and, in respect of an individual filer, Form 33-109F4, Form 33-109F2 or Form 33-109F5, as the case may be;

“conduct rules” means the rules, as they apply to registered individuals, non-registered individuals or registered firms, contained in securities legislation of the jurisdictions in which a registrant is registered or in which a non-registered individual is approved or reviewed(we approve in Québec so I suggest that we had review simply), with a view to ensuring the proper conduct, namely as regards skill, care and diligence, of registrants and non-registered individuals towards clients, other registrants and regulators and, without limiting the generality of the foregoing, may include rules relating to

(a) the types of securities that may be traded or on which advice may be given,

(b) knowledge of clients, including identity, creditworthiness, reputation, investment needs and objectives and suitability of securities transactions,

(c) necessary human resources,

(d) supervision,

(e) compliance officers or branch managers,

(f) fair and honest treatment of clients,

(g) fair allocation of investment opportunities,

(h) prudent business practices,

(i) record-keeping,

(j) communications with clients,

(k) safe-keeping of assets,

(l) conflicts of interest,

(m) use of advertising,

(n) segregated and trust accounts, and

(o) general conduct of business activities so as to promote the best interests of clients and the integrity of the market;

“materials” means the materials identified in accordance with section 4.2

“NI 31-101” means National Instrument 31-101 Requirements under the National Registration System, as amended, supplemented or replaced from time to time;

“NP 12-201” means National Policy 12-201 Mutual Reliance Review System for Exemptive Relief Applications, as amended, supplemented or replaced from time to time;

"participating principal regulator" means the securities regulatory authorities and regulators of the jurisdictions identified in section 3.1; and

"working office" means the office of the sponsoring firm from which an individual filer primarily works or proposes to primarily work.

1.2 INTERPRETATION

(1) Unless otherwise defined herein or unless the context otherwise requires, terms used in this policy that are defined or interpreted in NI 31-101 or NI 14-101 have the meanings defined in those instruments.

(2) Without limiting the generality of the definition of "fit and proper requirements" contained in NI 31-101, the following are considered to be fit and proper requirements:

(a) employment conflicts and multiple-category registration,

(b) experience and completion of recognized industry courses,

(c) membership with self-regulatory organizations,

(d) minimum capital,

(e) bonding or insurance,

(f) participation in compensation or contingency funds,

(g) record-keeping systems,

(h) preparation of audited and unaudited financial statements, and

(i) jurisdiction of incorporation.

(3) In this policy, the terms "NRD", "NRD format" and "NRD website" have the meanings defined in MI 31-102.

(4) This policy should be read in conjunction with NI 31-101, which sets out specific requirements and exemptions in relation to the use of the NRS.

PART 2
OVERVIEW AND APPLICATION

2.1 OVERVIEW

(1) This policy describes the practical application of mutual reliance concepts set out in the MRRS MOU relating to the filing and review of registration applications and applications for approval or review of non-registered individuals.

(2) The National Registration System may be used by a person or company submitting an application for registration or reinstatement of registration, or by a registered firm submitting an application for renewal of registration or amendment to registration, in the categories of investment dealer, mutual fund dealer or unrestricted adviser, when the application is submitted in more than one jurisdiction or in a jurisdiction of a non-principal regulator, provided that such person, company or registered firm satisfies the eligibility criteria in NI 31-101.

(3) In accordance with NI 31-101, the National Registration System must (the use of "must" must be read with "in accordance") be used by individuals or their sponsoring firm when submitting a registration application or an application for approval in more than one jurisdiction or in a jurisdiction of a non-principal regulator if the individual's sponsoring firm has elected to use the NRS, provided that such individual satisfies the eligibility criteria under in NI 31-101.

2.2 ELIGIBILITY

NI 31-101 establishes certain conditions that must be satisfied in order for firm filers or individual filers to be eligible to use the NRS. These include having a business office or residence in Canada, being registered or submitting a registration application in the jurisdiction of the filer's principal regulator and, for firm filers, having elected to use the NRS or, for individual filers, having their sponsoring firm elect to use the NRS.

2.3 APPLICABLE REQUIREMENTS

(1) NI 31-101 provides exemptive relief so that filers who submit applications under the NRS will only have to satisfy or comply with, as the case may be, the fit and proper requirements, notice requirements and filing requirements applicable in the jurisdiction of the filer's principal regulator.

(2) Filers will continue to be subject to the conduct rules applicable in each jurisdiction where they are registered.

2.4 APPLICATIONS FOR EXEMPTIVE RELIEF

(1) If a filer requires exemptive relief from the fit and proper requirements, the notice requirements or the filing requirements in connection with its application, it only needs to obtain the relief from its principal regulator.

(2) If a filer requires exemptive relief from the conduct rules in connection with its application, the relief should be obtained from the securities regulatory authorities and regulators of all the jurisdictions in which the exemptive relief is required. If relief is required in more than one jurisdiction, filers are encouraged to use the procedures under NP 12-201.

PART 3
PRINCIPAL REGULATOR

3.1 PARTICIPATING PRINCIPAL REGULATORS

As of the effective date of this policy, the securities regulatory authorities or regulators of all jurisdictions have agreed to act as principal regulator for applications submitted under the NRS.

3.2 DETERMINATION OF PRINCIPAL REGULATOR

(1) It is the responsibility of the filer to determine its principal regulator.

(2) A filer submitting an application under the NRS or electing to use the NRS should determine its principal regulator in accordance with this section.

(3) The principal regulator for a firm filer is the securities regulatory authority or regulator of the jurisdiction with which the firm filer has the most significant connecting factors.

(4) The following are factors that should be considered by a firm filer when determining the jurisdiction with which it has significant connecting factors:

(a) head office;

(b) directing mind and management;

(c) operational headquarters;

(d) business offices;

(e) workforce; and

(f) clientele.

(5) Jurisdiction of incorporation under the business corporations act, or similar act, of a jurisdiction or having a registered office which is not also a significant business office in a jurisdiction are not in themselves significant connecting factors to the jurisdiction.

(6) The principal regulator for an individual filer is the securities regulatory authority or regulator of the jurisdiction in which the individual filer's working office is located.

(7) If a filer wishes to obtain confirmation of its determination of principal regulator, it may notify that regulator of its determination before submitting an application under the NRS.

The notice should include detailed information regarding the relevant (adding "significant" may be interpreted to apply one or two criteria. Using relevant means that all criteria must be used) connecting factors of the filer in making the

determination. The principal regulator, after considering the determination, which may include discussing the determination with other participating principal regulators, will respond to the filer's notice within ten business days.

3.3 NOTICE OF CHANGE

If the significant connecting factors of a firm filer change, if the individual filer changes working office or if the jurisdiction in which the working office of an individual filer is located changes, the filer should notify its principal regulator of such change by submitting a completed Form 31-201F2.

3.4 CHANGE OF PRINCIPAL REGULATOR

(1) The participating principal regulators may change the principal regulator determined by the filer in the following circumstances:

(a) the participating principal regulators believe that the determination of the principal regulator by the filer was not or is no longer appropriate in view of the particular relevant factors applicable to the filer;

(b) the participating principal regulators determine that changing the principal regulator of a filer would result in greater administrative and regulatory efficiencies in connection with the filer's registration or approval.

(2) If the participating principal regulators propose to change a filer's principal regulator, the principal regulator will notify the filer in writing of the proposed change and will identify the reasons for the proposed change.

3.5 EFFECT OF CHANGE OF PRINCIPAL REGULATOR

Unless otherwise consented to by the principal regulator and the redesignated principal regulator, a change of principal regulator pursuant to section 3.4 will take effect immediately. Requirements applicable to the filer will change accordingly, subject to the exemptions contained in section 3.2 of NI 31-101.

PART 4
FILING MATERIALS UNDER THE NRS

4.1 USE OF THE NRS

A firm filer uses the NRS or enables its individual filers to use the NRS by filing a completed Form 31-201F1 with its principal regulator and non-principal regulators.

4.2 MATERIALS TO BE FILED

(1) If a firm filer or an individual filer's sponsoring firm has elected to use the NRS, the filer should file all required materials in connection with its application under the securities legislation applicable in the jurisdiction of the principal regulator. Materials that would have normally been required in connection with the application under the securities legislation applicable in the jurisdictions of the non-principal regulators do not need to be filed.

(2) Materials that must be filed in NRD format through the NRD website in accordance with MI 31-102 and MI 33-109 should be filed concurrently with each of the principal regulator and the non-principal regulators with the applicable fees.

(3) Materials that cannot be filed in NRD format through the NRD website should be filed in paper format with the principal regulator only. Filers should also concurrently send in paper format to all non-principal regulators a letter describing the nature of the application and identifying the jurisdictions in which it is submitted, accompanied by copies of Form 31-201F1 and the application form, as well as the applicable fees.

4.3 SEQUENTIAL APPLICATIONS

(1) A registered firm seeking registration in one or more jurisdictions of non-principal regulators should submit its application with its principal regulator and the non-principal regulators in whose jurisdiction the firm is seeking further registration.

(2) The firm should submit a letter to its principal regulator, with a copy to the non-principal regulators in whose jurisdictions it is seeking further registration, describing the nature of the application and confirming that the information that it has submitted to its principal regulator in connection with its existing registration is accurate as at the date of the

sequential application. The registered firm is not required to submit a new application form or any other document which has been previously filed with the principal regulator and which would remain unchanged.

PART 5
REVIEW OF MATERIALS

5.1 REVIEW BY PRINCIPAL REGULATOR

(1) The principal regulator is responsible for reviewing all the materials filed pursuant to section 4.2 in accordance with the securities legislation and securities directions applicable in its jurisdiction and with its review procedures and those set forth under this policy and the MRRS MOU, together with the benefit of comments, if any, from the non-principal regulators.

(2) The principal regulator will be responsible for identifying and resolving all deficiencies relating to the filer's application and the submitted materials.

(3) The principal regulator for an application made by a firm filer will coordinate the review of the application with the principal regulators of the individual filers for whom the firm filer is the sponsoring firm that have submitted concurrent applications to ensure that issues are resolved so that NRS documents are issued concurrently.

5.2 REVIEW BY NON-PRINCIPAL REGULATORS

Within five business days of the receipt of the materials, non-principal regulators will notify the principal regulator of any material information they may have with respect to the filer that was not disclosed in the materials.

PART 6
REGISTRATION

6.1 DETERMINATION BY PRINCIPAL REGULATOR

After completing its review of the filer's application, but not before the end of the period referred to in section 5.2 or not before receiving notification by each non-principal regulator that it has completed its review (this may still be useful because the review may be completed before the end of the period in 5.2), as contemplated in section 5.2, and after considering the recommendation of its staff, the principal regulator will determine whether it will grant, refuse to grant or impose terms and conditions on the registration or approval sought. (report will be included in the MOU)

6.2 SUBMISSION OF PROPOSED NRS DOCUMENT AND REPORT TO NON-PRINCIPAL REGULATORS

After making the determination referred to in section 6.1, the principal regulator will submit to all non-principal regulators the NRS document that it proposes to issue, addressing:

(a) the completion of its review of the filer's application,

(b) whether the filer complies with all fit and proper requirements of the securities legislation applicable in the jurisdiction of the principal regulator,

(c) whether, in the opinion of the principal regulator, the filer is suitable for registration,

(d) the terms and conditions, if any, that the principal regulator proposes to impose, and

(e) the exemptive relief, if any, that the principal regulator is prepared to grant to the filer in connection with the fit and proper requirements, the filing requirements or the notice requirements.

6.3 DETERMINATION BY NON-PRINCIPAL REGULATORS

(1) Each non-principal regulator will have five business days from the receipt of the report and proposed NRS document referred to in section 6.2 or subsection 6.5(4), as the case may be, to confirm to the principal regulator whether it has made the same determination as the principal regulator and therefore opts into the NRS for that application or whether it is opting out.

(2) Non-principal regulators may, without opting out of the NRS, impose local terms and conditions to the registration or approval relating to conduct rules applicable in their jurisdiction.

(3) If a non-principal regulator intends to impose local terms and conditions on the filer's registration or approval, it will notify the filer of such terms and conditions and, if and as provided under the securities legislation applicable in the jurisdiction of the non-principal regulator, it will provide the filer with an opportunity to be heard with respect to the proposed terms and conditions.

6.4 POTENTIAL REFUSAL OF REGISTRATION OR IMPOSITION OF TERMS AND CONDITIONS

If, based on the information before it, the principal regulator is not prepared to grant the registration or approval sought, or if it is prepared to grant the registration or approval sought with certain terms and conditions, the principal regulator will, after the period referred to in subsection 6.1 has elapsed, notify the filer.

6.5 OPPORTUNITY TO BE HEARD

(1) If a filer has, under the securities legislation applicable in the jurisdiction of its principal regulator, the right to request the opportunity to appear and make submissions to the principal regulator as a result of a potential refusal of the registration or approval sought or as a result of the proposed terms and conditions to the registration or approval sought and if the filer exercises such right, the principal regulator will notify the non-principal regulators with whom the application was filed that the filer has made the request.

(2) The principal regulator may provide an opportunity to be heard, either solely, jointly or concurrently with other interested non-principal regulators in accordance with applicable securities legislation.

(3) The non-principal regulators with whom the filer's application was filed may make whatever arrangements they consider appropriate, including providing an opportunity to be heard contemporaneously with the same opportunity provided by the principal regulator, in accordance with applicable securities legislation.

(4) After a decision has been rendered following the opportunity to be heard, the principal regulator will submit to all non-principal regulators a newly proposed NRS document and report, if required.

PART 7
OPT OUT

7.1 OPT OUT

(1) A non-principal regulator electing to opt out of the NRS on any particular application will notify the filer, the principal regulator and other non-principal regulators within the time period prescribed by subsection 6.3(1) and will briefly indicate the reasons for opting out.

(2) A decision by a non-principal regulator to opt out of the NRS is not a decision on the merits of the application.

(3) A filer will deal directly with any non-principal regulator that has opted out of the NRS to resolve outstanding issues.

7.2 OPT BACK IN

If the filer and the non-principal regulator are able to resolve their outstanding issues before the principal regulator issues the final NRS document, the non-principal regulator may opt back into the NRS by notifying the principal regulator, all other non-principal regulators and the filer.

PART 8
NRS DOCUMENT

8.1 CONDITIONS FOR ISSUANCE OF NRS DOCUMENT

The principal regulator will issue an NRS document for an application submitted under the NRS if,

(a) all non-principal regulators have indicated whether they are opting in or out of the NRS with respect to the application,

(b) the principal regulator has determined that acceptable materials have been filed,

(c) the principal regulator has reviewed the materials submitted,

(d) where the registration or approval sought by the filer is to be granted, the principal regulator has determined that the requirements contained in the securities legislation applicable in the jurisdiction of the principal regulator to grant the registration or approval, with or without terms and conditions, have been satisfied, or where the registration or approval sought by the filer is to be refused, the principal regulator has determined that the requirements contained in the securities legislation applicable in the jurisdiction of the principal regulator to grant the registration or approval have not been satisfied, and

(e) where the registration or approval sought by an individual filer is to be granted, the individual filer's sponsoring firm is registered in all jurisdictions in which the individual filer is to be registered or approved.

8.2 EFFECT AND SUBSTANCE OF NRS DOCUMENT

(1) The NRS document evidences that a decision on the filer's application has been made by the principal regulator and the non-principal regulators that have opted into the NRS for the application.

(2) The NRS document will evidence the various terms and conditions, if any, imposed by the principal regulator and any non-principal regulator, as well as the relief from the fit and proper requirements, the notice requirements and the filing requirements granted by the principal regulator.

8.3 EFFECTIVE DATE OF NRS DOCUMENT

The decisions made by the principal regulator and the non-principal regulators with respect to a filer's application will have the same effective date as the NRS document.

8.4 LOCAL DECISION

Despite the issuance of the NRS document, certain non-principal regulators may concurrently issue their own decision documents in connection with a filer's application. It is not necessary for a filer to obtain a copy of any local decision document before commencing registrable activities.

PART 9
RENEWALS OF REGISTRATION

9.1 PARTICULARS WITH RESPECT TO RENEWALS OF REGISTRATION

(1) In certain jurisdictions, the securities legislation provides that a registration will expire after a certain period of time, while in other jurisdictions, the securities legislation provides that a registration is permanent unless revoked by the applicable securities regulatory authority or regulator, as the case may be. Registrations granted under the NRS are subject to the renewal requirements of the principal jurisdiction's securities legislation (we don't have renewals and no decision yet to change on that).

(2) A filer that has elected to use the NRS should submit its application for renewal of registration with its principal regulator even if the securities legislation applicable in the jurisdiction of the principal regulator does not require the filing of such an application.

PART 10
TRANSITION

10.1 REGISTRATIONS OR APPROVALS OF INDIVIDUAL FILERS IN QUÉBEC

Although Québec anticipates adopting MI 31-102 and MI 33-109, as of the effective date of this policy, the NRD will not be available for registrations or approvals of individual filers in Québec. Consequently, until such time as the NRD is available in Québec:

(a) all materials which have to be filed in NRD format in jurisdictions other than Québec shall be filed in paper format in Québec, and

individual filers whose principal regulator is a securities regulatory authority in Québec, in addition to complying with the requirements of securities legislation in Québec, will comply with the requirements of MI 33-109 and MI 31-102, in order to ensure the integrity of the NRD.

FORM 31-201F1

ELECTION TO USE NRS AND
DETERMINATION OF PRINCIPAL REGULATOR

This document applies to firms, salesperson being eligible if firm has elected

General Instructions

1. This form is to be used by every firm filer in connection with its election to use and to have its individual filers use the NRS for an application submitted in more than one jurisdiction or in a jurisdiction of a non-principal regulator.

2. This form should be filed in paper format with the firm filer's principal regulator when submitted in connection with an application, with a copy to each non-principal regulator of the filer.

3. If this form is not submitted with a firm filer's application, it should be submitted with the filer's principal regulator and non-principal regulators by e-mail at the following addresses: ● **[or through NRD]**

1. Identification of Filer

NRD # (if applicable): ___________________

Firm Name: ___________________________

2. Identification of Regulators

The undersigned firm is submitting an application or is registered in the following jurisdictions:

a) Jurisdiction of Principal Regulator: ____

b) Jurisdiction of Non-Principal Regulators: ____

____

3. Reasons for Designation of Principal Regulator

☐ Head Office

☐ Directing Mind and Management

☐ Operational Headquarters

☐ Business Offices

☐ Workforce

☐ Clientele

☐ Other (explain)

____

____

____

Notice of Collection and Use of Personal Information

The personal information required under this form is collected on behalf of and used by the securities regulatory authorities set out below for the administration and enforcement of certain provisions of the securities legislation in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon Territory, and Nunavut.

By submitting this information you consent to the collection by the securities regulatory authority of the personal information provided above, police records, records from other government or non-governmental regulatory authorities or self-regulatory organizations, credit records and employment records about you as may be necessary for the securities regulatory authority to complete its review of your continued fitness for registration, if applicable, in accordance with the legal authority of the securities regulatory authority for the duration of the period which you remain registered or approved by the securities regulatory authority. The sources the securities regulatory authority may contact include government and private bodies or agencies, individuals, corporations and other organizations.

If you have any questions about the collection and use of this information, you may contact the securities regulatory authority in any jurisdiction in which the required information is filed, at the address or telephone number provided in Schedule "A".

WARNING: It is an offence to submit information that, in a material respect and at the time and in the light of the circumstances in which it is submitted, is misleading or untrue.

Certification

I, the undersigned, certify that I understand the requirements and the Warning in this notice and that all statements of fact provided in this notice are true.

____
Date

____
Signature of authorized officer or partner

____
Firm Name

Schedule "A" — Notice of Collection and Use of Personal Information

Contact Information

Alberta
Alberta Securities Commission,
4th Floor, 300 B 5th Avenue S.W.
Calgary, AB T2P 3C4
Attention: Information Officer
Telephone: (403) 297-6454

British Columbia
British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, BC V7Y 1L2
Attention: Freedom of Information Officer
Telephone: (604) 899-6500 or (800) 373-6393 (in BC)

Manitoba
The Manitoba Securities Commission
1130-405 Broadway
Winnipeg, MB R3C 3L6
Attention: Director — Legal
Telephone: (204) 945-4508

New Brunswick
Securities Administration Branch
PO Box 5001
606, 133 Prince William Street
Saint John, NB E2L 4Y9
Attention: Deputy Administrator, Capital Markets
Telephone: (506) 658-3021

Newfoundland and Labrador
Securities Commission of Newfoundland and Labrador
P.O. Box 8700, 2nd Floor, West Block
Confederation Building
St. John's, NF A1B 4J6
Attention: Director of Securities
Tel: (709) 729-4189

Nova Scotia
Nova Scotia Securities Commission
2nd Floor, Joseph Howe Building
1690 Hollis Street
P.O. Box 458
Halifax, NS B3J 3J9
Attention: FOI Officer
Telephone: (902) 424-7768

Northwest Territories
Government of the Northwest Territories
P.O. Box 1320
Yellowknife, NWT X1A 2L9
Attention: Deputy Registrar of Securities
Telephone: (867) 920-8984

Nunavut
Legal Registries Division
Department of Justice
Government of Nunavut
P.O. Box 1000 Station 570
Iqaluit, NU X0A 0H0
Attention: Deputy Registrar of Securities
Telephone: (867) 975-6190

Ontario
Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Attention: FOI Coordinator
Telephone: (416) 593-8314

Prince Edward Island
Securities Registry
Office of the Attorney General B Consumer, Corporate and Insurance Services Division
P.O. Box 2000
Charlottetown, PE C1A 7N8
Attention: Deputy Registrar of Securities
Telephone: (902) 368-4569

Québec
Commission des valeurs mobilières du Québec
Stock Exchange Tower
P.O. Box 246, 22nd Floor
800 Victoria Square
Montréal, PQ H4Z 1G3
Attention: Responsable de l'accès à l'information
Telephone: (514) 940-2150 or
(800) 361-5072 (in Québec)

Saskatchewan
Saskatchewan Securities Commission
800 B1920 Broad Street
Regina, SK S4P 3V7
Attention: Director
Telephone: (306) 787-5842

Yukon
Department of Community Services Yukon
P.O. Box 2703
Whitehorse, YU Y1A 2C6
Attention: Registrar of Securities
Telephone: (867) 667-5225

FORM 31-201F2

NOTICE OF CHANGE OF FACTORS IN CONNECTION WITH THE DETERMINATION OF PRINCIPAL REGULATOR

[NTD: To be completed]

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
19-Dec-2003	4 Purchasers	1293551 Ontario Inc. - Convertible Debentures	703,125.00	1,500,000.00
15-Dec-2003	6 Purchasers	2005948 Ontario Limited - Shares	108,656.00	54.00
12-Dec-2003	Technican Pacific Industies Inc.	2032254 ONTARIO INC. - Note	2,000,000.00	1.00
08-Dec-2003	76 Purchasers	2034879 Ontario Limited - Units	5,000,000.00	20,000,000.00
19-Dec-2003	New Generation Biotech (Equity) Fund Inc.	2037357 Ontario Inc. - Units	1,400,000.00	4,000,000.00
19-Dec-2003	19 Purchasers	Acadian Gold Corporation - Units	231,380.00	724,000.00
29-Sep-2003	Scotia Cassels Investment Counsel Limited	Accenture Ltd. - Common Shares	42,000.00	2,000.00
10-Dec-2003	Elizabeth Ruby	Acuity Pooled Fixed Income Fund - Trust Units	87,063.00	6,263.00
10-Dec-2003	Elizabeth Ruby	Acuity Pooled High Income Fund - Trust Units	43,532.00	2,511.00
15-Dec-2003 to 22-Dec-2003	6 Purchasers	Acuity Pooled High Income Fund - Trust Units	754,217.00	41,705.00
15-Dec-2003 to 19-Dec-2003	3 Purchasers	Acuity Pooled Income Trust Fund - Trust Units	341,601.00	24,713.00
10-Dec-2003	Elizabeth Ruby	Acuity Pooled Income Trust Fund - Trust Units	43,762.00	3,235.00
19-Dec-2003	New Generation Biotech Equity Fund	Adherex Technologies Inc. - Rights	1.00	1.00
19-Dec-2003	14 Purchasers	Adherex Technologies Inc. - Units	7,661,992.00	21,891,406.00

15-Jan-2003	William & Kelly William Popyuk	Advanced Active Care Inc. - Limited Partnership Units	15,000.00	3.00
16-Dec-2003	10 Purchasers	African Gold Group, Inc. - Special Warrants	545,600.40	909,334.00
17-Dec-2003	23 Purchasers	AirIQ Inc. - Units	4,509,254.75	13,347,267.00
29-Dec-2003	Stan Bharti	Alexis Minerals Corporation - Flow-Through Shares	249,999.75	333,333.00
09-Dec-2003	1285922 Ontario Limited	Allegro Investment Corporation S.A. - Notes	7,400,000.00	740.00
19-Dec-2003	Newshore Capital Inc.	ALESCO Preferred Funding II, Ltd. - Note	33,492,500.00	1.00
19-Dec-2003	Newshore Captial Inc.	ALESCO Preferred Funding II, Ltd. - Preferred Shares	669,850.00	5,000,000.00
03-Dec-2003	Rosseau Limited Partnership	Arctic Star Diamond Corp. - Units	200,100.00	333,500.00
12-Dec-2003	6 Purchasers	Art Advanced Research Technologies Inc. - Common Shares	718,495.25	261,271.00
11-Dec-2003	6 Purchasers	Athlone Minerals Ltd. - Units	1,117,800.00	1,491,834.00
16-Dec-2003	4 Purchasers	Atna Resources Ltd. - Units	143,500.00	410,000.00
15-Dec-2003	6 Purchasers	Atsana Semiconductor Corp. - Convertible Debentures	514,966.21	6.00
24-Nov-2003	3 Purchasers	Aurcana Corporation - Units	49,000.00	490,000.00
19-Dec-2003	30 Purchasers	Aurelian Resources Corporation Ltd. - Units	4,921,749.75	2,187,444.00
22-Dec-2003	7 Purchasers	Avalon Resources Ltd. - Warrants	500,000.00	250,000.00
19-Dec-2003	The VenGrowth Advanced Life Sciences Fund Inc.	Axela Biosensors Inc. - Convertible Debenture	1,725,000.00	1.00
19-Dec-2003	Augen Limited Partnership 2003	Bard Ventures Ltd. - Units	300,000.00	1,666,667.00
15-Dec-2003	1131281 Ontario Inc.; 1224775 Ontario Inc.	Bayshore Wireless Inc. - Shares	125.00	125.00
19-Dec-2003	5 Purchasers	Bear Creek Energy Ltd. - Common Shares	3,003,740.00	594,800.00
19-Dec-2003	3 Purchasers	Birch Mountain Resources Ltd. - Common Shares	525,000.00	1,500,000.00
19-Dec-2003	COTW Holdings Ltd.	Blackstone Ventures Inc. - Units	9,800.00	28,000.00
16-Dec-2003	8 Purchasers	Blizzard Energy Inc. - Common Shares	6,024,000.00	7,530,000.00

19-Dec-2003	6 Purchasers	Blue Mountain Enegy Ltd. - Units	3,270,000.00	545,000.00
04-Dec-2003	22 Purchasers	Bolivar Gold Corp. - Convertible Debentures	10,500,000.00	10,500,000.00
08-Dec-2003	Endeavour Mining Capital Corp.	Bolivar Gold Corp. - Convertible Debenture	800,000.00	1.00
22-Dec-2003	4 Purchasers	Bow Valley Energy Ltd. - Common Shares	3,625,000.00	1,812,500.00
23-Dec-2003	4 Purchasers	Brigadier Gold Limited - Flow-Through Shares	59,150.00	169,000.00
18-Dec-2003	Canamerica Capital Corp. Simon Fallon	CanAlaska Ventures Ltd. - Flow-Through Shares	106,995.00	305,700.00
10-Dec-2003	10 Purchasers	Candente Resource Corp. - Units	798,559.65	7,660,533.00
19-Dec-2003	Waune Goreski	CareVest Blended Mortgage Investment Corporation - Preferred Shares	80,891.00	80,891.00
19-Dec-2003	Robin and John James	CareVest First Mortgage Investment Corporation - Preferred Shares	30,000.00	30,000.00
19-Dec-2003	6 Purchasers	Chalk Media Corp. - Units	142,000.00	785,000.00
19-Nov-2003	AGF Management Limited and Groundlayer Capital Inc.	Chicago Mercantile Exchange Holdings Inc. - Common Shares	335,000.00	5,000.00
12-Nov-2003	Goodman	China Resources Power Holdings Company Limited - N/A	2,262,640.00	800,000.00
17-Dec-2003	39 Purchasers	CMQ Resources Inc. - Special Warrants	5,040,000.00	11,200,000.00
12-Dec-2003	4 Purchasers	CNC Global Limited - Debentures	7,500,000.00	4.00
11-Dec-2003	Sheridan Platinum Group Limited;Sheldon Inwentash	Commander Resources Ltd. - Units	38,500.00	70,000.00
18-Dec-2003	19 Purchasers	Corona Gold Corporation - Common Shares	472,804.20	814,774.00
17-Dec-2003	10 Purchasers	Couche-Tard Financing Corp./ Couche-Tarde U.S. L.P. - Notes	25,250,000.00	10.00
11-Dec-2003	3 Purchasers	COSS Systems Inc. - Debentures	2,010,201.00	3.00
05-Dec-2003	10 Purchasers	Cranston, Gaskin, O'Reilly & Vernon - Units	88,425.73	6,802.00
05-Dec-2003	38 Purchasers	Cranston, Gaskin, O'Reilly & Vernon - Units	850,472.19	68,448.00
05-Dec-2003	477277 Ontario Ltd. ;Drago & Katrina Maradin	Cranston, Gaskin, O'Reilly & Vernon - Units	40,040.00	3,178.00

11-Dec-2003	Creststreet Resource Fund Limited	Creststreet Resource Fund Limited - Shares	1.00	843,900.00
10-Dec-2003	10 Purchasers	Crispin Energy Inc. - Common Shares	5,274,500.00	4,795,000.00
10-Dec-2003	Canada Dominion Resources Limited	Crowflight Minerals Inc. - Flow-Through Shares	478,755.00	638,340.00
12-Dec-2003	3 Purchasers	Deep Resources Ltd. - Common Shares	484,500.00	1,590,000.00
18-Dec-2003	6 Purchasers	Delphi Energy Corp. - Flow-Through Shares	2,250,160.00	1,022,800.00
12-Dec-2003	CMP 2003 Resource Limited Partnership	Diagem International Resource Corp. - Common Shares	1,999,999.00	5,714,285.00
11-Dec-2003	Salida Capital	Dominion Resources, Inc. - Notes	1,500,000.00	2.00
19-Dec-2003	6 Purchasers	Drumlin Energy Corp. - Flow-Through Shares	120,502.00	57,382.00
31-Mar-2003	14 Purchasers	Echo Power Generation Inc. - Common Shares	195,000.00	9,500,000.00
19-Dec-2003	14 Purchasers	Echo Power Generation Inc. - Common Shares	517,772.55	10,355,331.00
28-Nov-2003	12 Purchasers	Echo Power Generation Inc. - Common Shares	6,500.00	625,000.00
22-Dec-2003	12 Purchasers	Emgold Mining Corporation - Units	1,504,875.00	2,006,500.00
18-Dec-2003	3 Purchasers	Enerworks Inc. - Convertible Debentures	780,000.00	3.00
16-Dec-2003	18 Purchasers	European Gold Resources Inc. - Units	726,688.95	642,915.00
17-Dec-2003	Canada Dominion Resources LP X	Exall Resources Limited - Common Shares	599,999.75	1,714,285.00
17-Dec-2003	11 Purchasers	Exall Resources Limited - Common Shares	665,000.00	1,662,500.00
19-Dec-2003	5 Purchasers	Frontier Alternative Investment Management Limited Partnership - Limited Partnership Units	230,000.00	46.00
11-Dec-2003	4 Purchasers	Full Riches Investments Ltd. - Special Warrants	130,000.00	1,300,000.00
17-Dec-2003	8 Purchasers	Fund 321 Limited Partnership - Limited Partnership Units	20,000,000.00	20,000.00
19-Sep-2003	Devorah and Leonard Rosenthall	Galaxy Monthly Income Fund - Units	40,000.00	3,952.00
29-Aug-2003	NBCN ITF Estate of HD Brown	Galaxy Monthly Income Fund - Units	25,000.00	2,443.00

11-Dec-2003	5 Purchasers	General Minerals Corporation - Units	1,618,998.00	539,666.00
29-Dec-2003	MRF 2003 II Limited Partnership and Explorer Flow-Through Limited Partnership	Geocan Energy Inc. - Flow-Through Shares	1,000,060.00	645,200.00
30-Nov-2003	Sylvia Bastianon	Gladiator Limited Partnership - Limited Partnership Interest	150,000.00	3.00
09-Dec-2003	Griffths McBurney & Partners	GMP Securities Ltd. - Common Shares	243,000,000.00	18,000,000.00
11-Dec-2003	Ronald J. Steiner;Dan Morgan	Golden Valley Mines Ltd. - Flow-Through Shares	60,550.00	168,000.00
14-Nov-2003	5 Purchasers	Goldeye Explorations Limited - Units	235,000.00	1,175,000.00
01-Nov-2003	Royal Trust Corporation of Canada as Trustee for Labatt Brewing Company Limited Master Trust	Goldman Sachs Hedge Fund Portfolio II Plc - Shares	2,000,000.00	20,000.00
30-Nov-2003	9 Purchasers	Goldman Sachs Mutual Funds - Units	3,958,621.20	528,775.00
19-Dec-2003	7 Purchasers	Gulf International Minerals Ltd. - Units	1,745,000.00	3,490,000.00
09-May-2003 to 30-Nov-2003	64 Purchasers	Hillsdale Canadian Performance Equity Fund - Units	8,163,963.99	218,710.00
01-Dec-2002 to 30-Nov-2003	5 Purchasers	Hillsdale US Aggressive Hedged Equity Fund - Units	382,555.95	35,414.00
15-Dec-2003	8 Purchasers	Holmer Gold Mines Limited - Units	156,000.00	520,000.00
02-Dec-2003	Hugh Allan Latimer	Hornby Bay Exploration Limited - Special Warrants	10,000.00	10,000.00
23-Dec-2003	Axis Investment Fund Inc.	Hyla Cybernetics Corporation - Common Shares	300,000.00	300,000.00
23-Dec-2003	Axis Investment Fund Inc.	Hyla Cybernetics Corporation - Convertible Debenture	200,000.00	1.00
19-Dec-2003	9 Purchasers	Impact Energy Inc. - Flow-Through Shares	4,296,600.00	2,604,000.00
19-Dec-2003	Philip Schiedel	IMAGIN Diagnostics, Inc. - Common Shares	10,000.00	10,000.00
11-Dec-2003	David Ruskin;Nadia Waschuk	IMAGIN Diagnostics, Inc. - Common Shares	10,000.00	10,000.00
10-Dec-2003	Salida Capital and Polar Securities	Input/output, Inc. - Notes	275,293.00	2.00

16-Dec-2003	9 Purchasers	International Uranium Corporation - Common Shares	9,319,500.00	6,213,000.00
19-Dec-2003	3 Purchasers	Interpublic Group of Companies, Inc. (The) - Common Shares	2,035,744.00	450,000.00
04-Dec-2003	16 Purchasers	Intrepid Minerals Corporation - Units	1,316,250.00	2,025,000.00
19-Dec-2003	Brent Norrey	IQM Limited Partnership - Limited Partnership Units	10,000.00	10.00
29-Sep-2003	3 Purchasers	Journal Communications - Common Shares	450,000.00	30,000.00
05-Nov-2003	60 Purchasers	Jovian Capital Corporation - Common Shares	10,729,798.30	19,078,282.00
15-Dec-2003	Oakwest Corporation Limited	Jovian Capital Corporation - Convertible Debenture	3,500,000.00	1.00
23-Dec-2003	16 Purchasers	Ketch Resources Ltd. - Common Shares	8,295,000.00	850,000.00
16-Dec-2003	Sprott Asset Management Inc.	Kimber Resources Inc. - Units	79,100.00	113,000.00
03-Dec-2003	G.Oliver Investments Inc.	Kodiak Exploration Limited - Units	25,000.00	100,000.00
12-Dec-2003	3 Purchasers	Latham International, LP - Units	2,220,540.91	681.00
19-Dec-2003	Amaranth Resources Limited;K.J. Harrison & Partners Inc.	Livingston Energy Ltd. - Shares	2,800,000.00	2,800,000.00
26-Nov-2003	John Cameron	Locate Technologies Inc. - Common Shares	8,354.06	12,812.00
11-Dec-2003	Canada Pension Plan Investment Board	Macquarie Essential Assets Partnership - Limited Partnership Units	17,610,487.38	16,543,169.00
15-Dec-2003	7 Purchasers	Madison Grant Limited Partnership II - Units	9,595,000.00	10,000.00
12-Dec-2003	3 Purchasers	Magnesium Alloy Corporation - Units	777,680.48	5,913,920.00
28-Oct-2003	5 Purchasers	Masters Energy Inc. - Special Warrants	875,000.00	875,000.00
25-Nov-2003	H. Terence Hampson	Masters Energy Inc. - Special Warrants	200,000.00	200,000.00
11-Dec-2003	4 Purchasers	Maximum Throughput Inc. - Convertible Debentures	1,105,507.98	4.00
11-Dec-2003	4 Purchasers	Maximum Throughput Inc. - Shares	1.00	3,521,848.00

12-Dec-2003	15 Purchasers	MCK Mining Corp. - Special Warrants	503,750.00	5,037,500.00
18-Dec-2003	Suzanne Tremblay	Microsource Online, Inc. - Common Shares	6,000.00	1,000.00
11-Dec-2003	New Generation Biotech (Equity) Fund Inc.	Millenium Biologix Inc. - Convertible Debenture	2,000,000.00	1.00
09-Dec-2003	27 Purchasers	Minco Mining and Metals Corporation - Units	4,918,041.60	2,898,848.00
05-Dec-2003	Creststreet 2002 Limited Partnership	Mount Copper Wind Power Energy Inc. - Shares	46,010.00	44,630.00
04-Dec-2003	Creststreet 2002 Limited Partnership	Mount Copper Wind Power Energy Inc. - Shares	76,964.12	74,655.00
16-Dec-2003	MFC Global Investment Management	MPTest Holding Corporation - Shares	2,372,940.00	1,500,000.00
19-Dec-2003	Canadian Science and Technology Growth Fund Inc.	MultiCorpora R&D Inc. - Preferred Shares	1,500,000.00	5,769,231.00
17-Dec-2003	16 Purchasers	Murgor Resources Inc. - Flow-Through Shares	600,000.00	6,000,000.00
17-Dec-2003	18 Purchasers	Murgor Resources Inc. - Units	243,097.00	2,430,975.00
19-Dec-2003	8 Purchasers	Mustang Resoures Inc. - Shares	3,779,600.00	859,000.00
19-Dec-2003	45 Purchasers	Nevsun Resources Ltd. - Units	23,564,400.00	160,237,920.00
23-Dec-2003	The VenGrowth II Investment Fund Inc.;Business Development Bank of Canada	NewStep Networks Inc. - Preferred Shares	4,000,004.00	4,000,004.00
23-Dec-2003	The VenGrowth II Investment Fund Inc.;Business Development Bank of Canada	NewStep Networks Inc. - Shares	4.00	4,000,000.00
01-Aug-2003	Oliver Murray	NGRAIN (Canada) Corporation - Common Shares	100,000.50	66,667.00
16-Jun-2003	5 Purchasers	NGRAIN (Canada) Corporation - Common Shares	555,000.00	370,000.00
16-Dec-2003	Morrep 2001 Flow-Through Limited Partnership	Norrep II Fund Inc. - Shares	13,209,606.74	756,408.00
16-Dec-2003	9 Purchasers	North Atlantic Nickel Corp. - Units	4,486,350.00	1,631,400.00
24-Dec-2003	4 Purchasers	Odyssey Resources Limited - Units	144,799.00	482,663.00
24-Dec-2003	9 Purchasers	Olympia Energy Inc. - Flow-Through Shares	3,434,122.00	915,766.00
18-Dec-2003	Allan Lee	Online Hearing.com Inc. - Convertible Debenture	1,000.00	1.00

22-Dec-2003 30-Dec-2003	5 Purchasers	OntZinc Corporation - Flow-Through Shares	252,000.00	1,008,000.00
21-Nov-2003	JMM Trading LP	OnX Enterprise Solutions Inc. - Units	114,000.00	300,000.00
10-Dec-2003	OPGI Management GP Inc.	Oxford Properties Group Inc. - Shares	1,000.00	100.00
08-Dec-2003	22 Purchasers	Ozz Corporation - Common Shares	1,281,922.59	2,465,228.00
15-Dec-2003	Wayne Bennan;Howard Kerbel	Ozz Corporation - Units	265,930.00	2,659,300.00
12-Dec-2003	BMO Capital Corporation	P L Foods Ltd. - Common Shares	1.00	56,756.00
11-Dec-2003	9 Purchasers	Patent Enforcement and Royalties Ltd. - Convertible Debentures	200,000.00	500,000.00
03-Oct-2003 to 03-Dec-2003	4 Purchasers	Perennial Investment Group Inc. - Common Shares	800,000.00	316.00
16-Dec-2003	12 Purchasers	PGM Ventures Corporation - Units	656,250.00	1,193,181.00
19-Dec-2003	Canadian Imperial Bank of Commerce	Preferred Securities Fund - Units	117,587,450.00	5,000,000.00
19-Dec-2003	3 Purchasers	Pure Gold Minerals Inc. - Units	141,100.00	1,310,000.00
19-Dec-2003	11 Purchasers	Rally Energy Corp. - Common Shares	1,704,899.70	2,435,571.00
16-Dec-2003	6 Purchasers	Ranchgate Energy Inc. - Units	858,160.00	357,566.00
18-Dec-2003	6 Purchasers	Raven Energy Ltd. - Common Shares	3,080,000.00	1,925,000.00
16-Dec-2003	15 Purchasers	Red Lake Resources Inc. - Units	256,150.00	1,741,000.00
08-Dec-2003	John Robinson	RJK Explorations Ltd. - Units	60,000.00	400,000.00
24-Dec-2003	Joe Mihelcic	RJK Explorations Ltd. - Units	150,000.00	1,000,000.00
02-Dec-2003	Latinvest Capital Limited	RNC Gold Inc. - Common Shares	66,000,000.00	33,000.00
08-Dec-2003	John Barrett	ROXMARK MINES LIMITED - Common Shares	300,000.00	3,000,000.00
11-Dec-2003	Phil Cunningham	ROXMARK MINES LIMITED - Common Shares	100,000.00	2,500,000.00
17-Dec-2003	Canada Dominion Resources Limited Partnership XII	Sharon Energy Ltd. - Shares	500,000.00	1,250,000.00
18-Dec-2003	Jeff Watts and Donald J. Page	Shift Networks Inc. - Convertible Debentures	20,000.00	2.00

18-Dec-2003	3 Purchasers	Shoppers Drug Mart Corporation - Common Shares	138,600,000.00	4,950,000.00
23-Dec-2003	4 Purchasers	Sidetrack Technologies Inc. - Units	51,250.00	7,510.00
14-Nov-2003	Credit Risk Advisors	Silgan Holdings Inc. – Note	500,000.00	1.00
19-Dec-2003	3 Purchasers	Silver Lake Partners II, L.P - Limited Liability Interest	26,794,000.00	3.00
18-Dec-2003	Genevest Inc.	SilverCrest Mines Inc. - Units	312,500.00	250,000.00
18-Dec-2003	3 Purchasers	Sino Gold Limited - Shares	581,759.85	273,453.00
24-Dec-2003	27 Purchasers	Skye Resources Inc. - Units	6,000,000.00	3,000,000.00
10-Dec-2003	27 Purchasers	South American Gold and Copper Company Limited - Units	2,323,650.18	29,506,669.00
16-Dec-2003	11 Purchasers	Southern Cross Resources Inc. - Common Shares	4,170,405.00	4,328,800.00
22-Dec-2003	3 Purchasers	Stanton Alpha Strategies LP - Limited Partnership Units	800,000.00	800.00
24-Dec-2003	39 Purchasers	Stingray Resources Inc. - Units	1,095,500.00	1,095,500.00
18-Dec-2003	5 Purchasers	Stratabound Minerals Corp. - Common Shares	61,500.00	246,000.00
17-Dec-2003	4 Purchasers	StrataFLEX Corporation - Preferred Shares	750,000.00	3,215,062.00
15-Dec-2003	Andrew Sheiner	St. Lawrence Trading Inc. - Common Shares	604,647.49	844.00
19-Dec-2003	3 Purchasers	Symbium Corporation - Shares	6,750,000.23	9,917,720.00
11-Dec-2003	Kerry Smith	Tajzha Ventures Ltd. - Units	9,000.00	45,000.00
10-Dec-2003	5 Purchasers	The OAL 2003(2) Limited Partnership - Limited Partnership Units	700,000.00	25.00
19-Dec-2003 to 22-Dec-2003	6 Purchasers	TIR Systems Ltd. - Common Shares	4,629,951.00	1,322,843.00
22-Dec-2003	42 Purchasers	Tm Bioscience Corporation - Units	12,000,000.00	375,000,000.00
03-Dec-2003	Canada Pension Plan Investment Board	TPG Partners IV, L.P. - Limited Partnership Unit	100,000,000.00	1.00
16-Dec-2003 to 24-Dec-2003	EquiGenesis 2003 Preferred Investment LP	Trafalgar 2003 Limited - Rights	12,384,060.00	12,384,060.00
30-Dec-2003	EquiGenesis 2003 Preferred Investment LP	Trafalgar 2003 Limited - Rights	9,465,660.00	9,465,660.00

14-Nov-2003	11 Purchasers	Tres-or Resources Ltd. - Units	154,000.00	616,000.00
19-Dec-2003	3 Purchasers	Trillium Therapeutics Inc. - Preferred Shares	3,770,000.00	32,556,400.00
16-Dec-2003	3 Purchasers	TTL 2003 Limited - Rights	19,314,404.00	19,314,404.00
23-Dec-2003 to 30-Dec-2003	4 Purchasers	TTL 2003 Limited - Rights	16,836,633.00	16,836,633.00
18-Dec-2003	16 Purchasers	UEX Corporation - Flow-Through Shares	385,000.00	1,540,000.00
04-Nov-2003	RBC Dominion Securities Inc.	United Mexican States - Notes	6,851,228.00	2.00
18-Dec-2003	John Chisholm	ValGold Resources Ltd. - Common Shares	10,200.00	17,000.00
04-Dec-2003	Morris Werbin	Versatile Mobile Systems (Canada) Inc. - Units	17,500.00	50,000.00
18-Dec-2003	6 Purchasers	Virtek Vision International Inc. - Common Shares	2,752,500.00	3,670,000.00
16-Dec-2003	Sheldon Davis	Wave Exploration Corp. - Units	3,000.00	20,000.00
22-Dec-2003	10 Purchasers	Weda Bay Minerals Inc. - Units	879,999.60	733,333.00
18-Dec-2003	20 Purchasers	Western Financial Group Inc. - Units	2,126,694.70	861,010.00
19-Dec-2003	9 Purchasers	Western Keltic Mines Inc. - Units	527,999.00	1,759,996.00
15-Dec-2003	17 Purchasers	Western Silver Corporation - Common Shares	7,317,250.00	1,420,825.00
30-Dec-2003	4 Purchasers	Western Warrior Resources Ltd. - Units	524,992.00	1,193,163.00
01-Sep-2003	David and Lori Hallett	Westmont Investment Management Inc. - Units	150,000.00	150.00
03-Dec-2003	29 Purchasers	WGI Heavy Minerals, Incorporated - Special Warrants	21,892,045.00	2,062,840.00
05-Dec-2003	139 Purchasers	Yangarra Resources Inc. -	3,500,000.00	3,500,000.00
15-Dec-2003	18 Purchasers	YM BioSciences Inc. Common Shares	7,249,989.25	10,895,658
28-Jun-2003	40 Purchasers	Zaruma Resources Inc. - Units	2,240,000.00	8,000,000.00
21-Jan-2003	11 Purchasers	Zaruma Resources Inc. - Units	690,000.00	158,700.00
15-Aug-2003	11 Purchasers	Zaruma Resources Inc. - Units	900,000.00	4,500,000.00
12-Dec-2003	17 Purchasers	Zaruma Resources Inc. - Units	1,000,000.00	20,000,000.00

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
Larry Melnick	Champion Natural Health.com Inc. - Shares	1,335.00
Peter C.Briant	Consolidated Care Point Medical Centres Ltd. - Common Shares	1,500,000.00
A. Murray Sinclair	Coubran Resources Ltd. - Common Shares	250,000.00
Exploration Capital Partners 2000 Limited Partnership	General Minerals Corporation - Common Shares	825,000.00
Victor D'Souza	Imperial Plastech Inc. - Common Shares	3,413,233.00
Resource Capital Fund L.P.	Southern Cross Resources Inc. - Common Shares	2,324,919.00
Sabre Energy Ltd.	Sustainable Energy Technologies Ltd. - Common Shares	4,186,966.00
Philip R. Small	Tele-FIND Technologies Corp - Common Shares	500,000.00
James R. Shields	WFI Industries Ltd. - Common Shares	300,000.00

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
Hot House Growers Income Fund	12/15/03

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Hemosol Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated December 30, 2003
Mutual Reliance Review System Receipt dated December 31, 2003
Offering Price and Description:
Up to $5,881,350.00.00 - up to 7,841,800 Common Shares and up to 3,920,900 Common Share Purchase Warrants issuable on exercise of outstanding Special Warrants Price: $.75 per Special Warrant
Underwriter(s) or Distributor(s):
Loewen, Ondaatje, McCutcheon Limited
Promoter(s):
-
Project #602853

Issuer Name:
McVicar Resources Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated December 23, 2003
Mutual Reliance Review System Receipt dated December 30, 2003
Offering Price and Description:
$0.75 per Unit
Minimum of $1,500,000 and Maximum of $3,225,000
Minimum of 2,000,000 and Maximum of $4,300,000 Units by way of a New Issue
AND
2,300,000 Common Shares
by way of a Dividend-in-Kind
AND
AGENT'S OPTION
Underwriter(s) or Distributor(s):
Kingsale Capital Markets Inc.
Promoter(s):
Gang Chai
Project #601930

Issuer Name:
Patch Safety Services Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Prospectus dated December 29, 2003
Mutual Reliance Review System Receipt dated December 29, 2003
Offering Price and Description:
22,353,505 Common Shares Issuable Upon the Exercise of Previously Issued Special Warrants
Underwriter(s) or Distributor(s):
Jennings Capital Inc.
Promoter(s):
-
Project #602457

Issuer Name:
Providence Diamond Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Prospectus dated December 19, 2003
Mutual Reliance Review System Receipt dated December 29, 2003
Offering Price and Description:
6,300,000 COMMON SHARES AND 400,000 WARRANTS ISSUABLE UPON THE EXERCISE
OF 6,300,000 PREVIOUSLY ISSUED SPECIAL WARRANTS
Underwriter(s) or Distributor(s):
-
Promoter(s):
Christopher Grove
Project #601689

Issuer Name:
Quorum Expansion Capital Fund Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated December 29, 2003
Mutual Reliance Review System Receipt dated December 29, 2003
Offering Price and Description:
Class A Shares
Underwriter(s) or Distributor(s):
Dundee Securities Corporation
Dundee Securities Corporation
Promoter(s):
Quorum Expansion Capital Management Inc.
HHCWU Sponsor Corp.
Project #602310

Issuer Name:
Radiant Money Market Portfolio
Radiant All Income Portfolio
Radiant All Equity RSP Portfolio
Radiant All Equity Portfolio
Radiant Maximum Growth RSP Portfolio
Radiant Maximum Growth Portfolio
Radiant Growth RSP Portfolio
Radiant Growth Portfolio
Radiant Balanced Portfolio
Radiant Conservative Portfolio
Radiant Defensive Portfolio
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated December 29, 2003
Mutual Reliance Review System Receipt dated January 5, 2004
Offering Price and Description:
Series A Units
Underwriter(s) or Distributor(s):
Goodman & Company, Investment Counsel Ltd.
Goodman & Company, Investment Counsel Ltd.
Promoter(s):
Goodman & Company, Investment Counsel Ltd.
Project #602635

Issuer Name:
Skylon Growth & Income Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated December 24, 2003
Mutual Reliance Review System Receipt dated December 31, 2003
Offering Price and Description:
Maximum $ * (* Units)
Price: $10.00 per Unit
(Minimum Purchase: 100)
Underwriter(s) or Distributor(s):
TD Securities Inc.
Promoter(s):
Skylon Advisors Inc.
Project #602544

Issuer Name:
The Millennium BullionFund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated December 23, 2003
Mutual Reliance Review System Receipt dated December 29, 2003
Offering Price and Description:
Class F and I Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Bullion Management Services Inc.
Project #602158

Issuer Name:
AIM Trimark Core Canadian Balanced Class
AIM Trimark Core Canadian Equity Class
AIM Trimark Core Global Equity Class
AIM Trimark RSP Core Global Equity Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated December 23, 2003 to Final Simplified Prospectuses and Annual Information Forms dated August 15, 2003
Mutual Reliance Review System Receipt dated December 30, 2003
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
AIM Funds Management Inc.
Promoter(s):
AIM Funds Management Inc.
Project #555643

Issuer Name:
Crescent Point Energy Trust
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated December 29, 2003
Mutual Reliance Review System Receipt dated December 31, 2003
Offering Price and Description:
$60,562,500.00 - 4,750,000 Trust Units @$12.75 per 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

Issuer Name:
Dynamic Venture Opportunities Fund Ltd.
Type and Date:
Final Prospectus dated December 23, 2003
Receipted on the December 29, 2003
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Dynamic Mutual Funds Ltd.
Promoter(s):
-
Project #591676

Issuer Name:
E2 Venture Fund Inc.
Type and Date:
Amendment #1 dated December 23, 2003 to Final Prospectus dated January 3, 2003
Receipted on December 29, 2003
Offering Price and Description:
Mutual Fund Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
CFPA Sponsor Inc.
Triax Management Services Inc.
Project #499950

Issuer Name:
E2 Venture Fund Inc.
Type and Date:
Final Prospectus dated December 30, 2003
Receipted on January 5, 2004
Offering Price and Description:
Class A Shares, Series I, Class A Shares, Series II, and Class A Shares, Series III
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #594971

Issuer Name:
Ford Credit Canada Limited
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated December 23, 2003 to Final Short Form Shelf Prospectus dated December 6, 2002
Mutual Reliance Review System Receipt dated December 29, 2003
Offering Price and Description:
DEBT SECURITIES (Unsecured) Unconditionally guaranteed as to payment of principal, premium, if any, and interest, if any, by FORD MOTOR CREDIT COMPANY
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #485328

Issuer Name:
Frontiers Canadian Short Term Income Pool
Frontiers Canadian Fixed Income Pool
Frontiers Canadian Monthly Income Pool
Frontiers Canadian Equity Pool
Frontiers U.S. Equity Pool
Frontiers U.S. Equity RSP Pool
Frontiers International Equity Pool
Frontiers International Equity RSP Pool
Frontiers Emerging Markets Equity Pool
Frontiers Global Bond Pool
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated January 5, 2004
Mutual Reliance Review System Receipt dated January 6, 2004
Offering Price and Description:
Class A and Class F Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
CIBC Asset Management Inc.
Project #597645

Issuer Name:
New Generation Biotech (Equity) Fund Inc.
Type and Date:
Amendment #1 dated December 23, 2003 to Final Prospectus dated December 27, 2002
Receipted on December 29, 2003
Offering Price and Description:
Mutual Fund Net Asset Value
Underwriter(s) or Distributor(s):
TD Securities Inc.
Promoter(s):
TCU Sponsor Inc.
NGB Management Inc.
Project #498621

Issuer Name:
New Generation Biotech (Equity) Fund Inc.
Type and Date:
Final Prospectus dated December 29, 2003
Receipted on January 5, 2004
Offering Price and Description:
Class A Shares, Series I, Class A Shares, Series II, Class A Shares, Series III
Underwriter(s) or Distributor(s):
TD Securities Inc.
Promoter(s):
-
Project #593601

Issuer Name:
Putnam Canadian Balanced Fund
Putnam Canadian Bond Fund
Putnam Canadian Equity Fund
Putnam Canadian Money Market Fund
Putnam Global Equity Fund
Putnam U.S. Value Fund
Putnam U.S. Voyager Fund
Putnam International Equity Fund
Principal Regulator - Ontario
Type and Date:
Amended and Restated Annual Information Forms dated November 28, 2003 to the Amending and Restating Annual Information Forms dated March 13, 2003
Mutual Reliance Review System Receipt dated December 30, 2003
Offering Price and Description:
Class A Units (SC and DSC options) and Class D Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Putnam Investments Inc.
Project #513253

Issuer Name:
QSA US Value 50 Cdn$ Fund
(formerly QSA e-business Fund)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated December 23, 2003 to Final Simplified Prospectuses and Annual Information Forms dated May 23, 2003
Mutual Reliance Review System Receipt dated January 5, 2004
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Acker Finley Asset Management Inc.
Promoter(s):
Acker Finley Inc.
Project #530453

Issuer Name:
Return on Innovation Fund Inc.
Type and Date:
Final Prospectus dated December 18, 2003
Receipted on December 29, 2003
Offering Price and Description:
Class A Shares, Series I, II and III
Underwriter(s) or Distributor(s):
-
Promoter(s):
ACTRA Toronto Sponsor Inc.
Innovation Management Ltd.
Project #587416

Issuer Name:
Triax Growth Fund Inc.
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated December 23, 2003
Mutual Reliance Review System Receipt dated January 2, 2004
Offering Price and Description:
Class A Shares, Series I, Class A Shares, Series II and Class A Shares, Series III
Underwriter(s) or Distributor(s):
Triax Growth Fund Inc.
Promoter(s):
CFPA Sponsor Inc.
Triax Capital Management Inc.
Project #588446

Issuer Name:
Triax Growth Fund Inc.
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated December 23, 2003 to Final Prospectus dated December 13, 2002
Mutual Reliance Review System Receipt dated December 30, 2003
Offering Price and Description:
Mutual Fund Net Asset Value
Underwriter(s) or Distributor(s):
Triax Growth Fund Inc.
Promoter(s):
Triax Capital Management Inc.
CFPA Sponsor Inc.
Project #493057

Issuer Name:
AIM Canada Money Market Fund
AIM Short-Term Income Class
AIM Canadian Balanced Fund
AIM Canada Income Class
AIM Canadian First Class
AIM Canadian Premier Fund
AIM Canadian Premier Class
AIM American Mid Cap Growth Class
AIM American Aggressive Growth Fund
AIM International Growth Class
AIM Global Theme Class
AIM Global Financial Services Class
AIM Global Health Sciences Fund
AIM Global Health Sciences Class
AIM Global Technology Fund
AIM Global Technology Class
AIM RSP Global Theme Fund
AIM RSP International Growth Fund
AIM RSP Global Financial Services Fund
AIM RSP Global Health Sciences Fund
AIM RSP Global Technology Fund
Principal Regulator - Ontario
Type and Date:
Amendment #3 dated December 23, 2003 to Final Simplified Prospectuses and Annual Information Forms dated August 15, 2003
Mutual Reliance Review System Receipt dated December 30, 2003
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
AIM Funds Management Inc.
AIM Funds Management Inc.
AIM Funds Group Canada Inc.
Promoter(s):
AIM Funds Management Inc.
Project #555579

Issuer Name:
Venture Partners Balanced Fund Inc.
Venture Partners Equity Fund Inc.
Type and Date:
Amendment #1 dated December 23, 2003 to Final Prospectus dated December 18, 2002
Receipted on December 30, 2003
Offering Price and Description:
Mutual Fund Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
CFPA Sponsor Inc.
Triax-Covington Corporation
Project #490208

Issuer Name:
Venture Partners Equity Fund Inc.
Type and Date:
Final Prospectus dated December 29, 2003
Receipted on December 30, 2003
Offering Price and Description:
Class A Shares, Series I; Class A Shares, Series II; and Class A shares, Series III
Underwriter(s) or Distributor(s):
-
Promoter(s):
CFPA Sponsor Inc.
Triax-Covington Corporation
Project #589926

Issuer Name:
Venturelink Brighter Future (Equity) Fund Inc.
Venturelink Financial Services Innovation Fund Inc.
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated December 12, 2003 to Final Prospectus dated December 16, 2002
Mutual Reliance Review System Receipt dated December 30, 2003
Offering Price and Description:
Class A Shares, Series I and II
Underwriter(s) or Distributor(s):
-
Promoter(s):
CFPA Sponsor Inc.
Skylon Funds Management Inc.
Project #493139

Issuer Name:
Venturelink Brighter Future (Equity) Fund Inc.
Venturelink Financial Services Innovation Fund Inc.
Principal Regulator - Ontario
Type and Date:
Final Prospectuses dated December 24, 2003
Mutual Reliance Review System Receipt dated December 31, 2003
Offering Price and Description:
Class A Shares, Series I; Class A Shares, Series II; Class A Shares, Series III; and Class A Shares, Series IV
Underwriter(s) or Distributor(s):
-
Promoter(s):
CFPA Sponsor Inc.
2034792 Ontario Inc.
Project #588959

Issuer Name:
VentureLink Diversified Income Fund Inc.
Type and Date:
Final Prospectus dated December 24, 2003
Receipted on December 31, 2003
Offering Price and Description:
Class A Shares, Series I; Class A Shares, Series II; Class A Shares, Series III
Underwriter(s) or Distributor(s):
Skylon Funds Management Inc.
Promoter(s):
-
Project #589228

Issuer Name:
VentureLink Fund Inc.
Type and Date:
Final Prospectus dated December 24, 2003
Receipted on December 31, 2003
Offering Price and Description:
Class A Shares, Series I; Class A Shares, Series II; Class A Shares, Series III; and Class A Shares, Series IV
Underwriter(s) or Distributor(s):
-
Promoter(s):
CFPA Sponsor Inc.
2034792 Ontario Inc.
Project #589146

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Wellington West Financial Services Inc.	Mutual Fund Dealer	January 2, 2004
New Registration	NWQ Investment Management Company, LLC	International Adviser – Investment Counsel & Portfolio Manager	January 2, 2004
New Registration	PowerOne Capital Markets Limited	Market Dealer	January 2, 2004
New Registration	Wachovia Capital Markets, LLC	International Dealer	January 1, 2004
New Registration	Edenview Financial Inc.	Limited Market Dealer	January 2, 2004
New Registration	Dan Hallett and Associates Inc.	Investment Counsel	January 2, 2004
Change of category	Soundvest Capital Management Ltd.	From: Investment Counsel & Portfolio Manager To: Limited Market Dealer, Investment Counsel & Portfolio Manager	December 23, 2003

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 Proposed Amendments to IDA Regulation 1300, Managed Accounts

INVESTMENT DEALERS ASSOCIATOIN OF CANADA PROPOSED AMENDMENTS TO IDA REGULATION 1300 REGARDING MANAGED ACCOUNTS

(The blacklines reflect revisions to the proposed amendments to IDA Regulation 1300 submitted on October 26, 2001.)

Discretionary and Managed Accounts

1300.3. In this Regulation 1300 unless the context otherwise requires, the expression:

"associate portfolio manager" means any partner, director, officer or employee of a Member designated by the Member and approved pursuant to this Regulation to manage managed accounts under the supervision of an approved portfolio manager or futures contracts portfolio manager;

"discretionary account" means an account of a customer other than a managed account in respect of which a Member or any person acting on behalf of the Member exercises any discretionary authority in trading by or for such account, provided that an account shall not be considered to be a discretionary account for the sole reason that discretion is exercised as to the price at which or time when an order given by a customer for the purchase or sale of a definite amount of a specified security, option, futures contract or futures contract option shall be executed;

"futures contracts managed account" means a managed account which includes only investments in commodity futures contracts or commodity futures contract options;;

"futures contracts portfolio manager" means any partner, director, officer or employee of a Member designated by the Member and approved pursuant to this Regulation to make investment decisions for futures contracts managed accounts only;

"investment" includes a commodity futures contract and a commodity futures contract option;

"managed account" means any account solicited by a Member or any partner, director, officer or registered representative of a Member, in which the investment decisions are made on a continuing basis by the Member or by a third party hired by the Member;"

"portfolio manager" means any partner, director, officer or employee of a Member designated by the Member and approved pursuant to this Regulation to make investment decisions for managed accounts;

"responsible person" means every individual who is a partner, director, officer, employee or agent of any Member ~~if such individual~~ who:

(a) exercises discretionary authority over the account of a client or approves discretionary orders for an account when exercising such discretion or giving such approval pursuant to Regulation 1300.4, or

(b) participates in the formulation of, or has access prior to implementation of, investment decisions made on behalf of or advice given to a managed account,

but shall not include a sub-adviser under Regulation 1300.7(a)(ii). ~~participates in the formulation of, or has access prior to implementation of, investment decisions made on behalf of or advice given to the managed account but shall not include a sub-adviser under Regulation 1300.9(a)(ii);~~

1300.4. No person, other than a partner, director, officer or registered representative (other than a registered representative (mutual funds) or (non-retail)) who has been approved as such pursuant to the applicable By-laws of the Association, shall effect trades for a customer in a discretionary account and any such permitted trades shall only be effected if:

(a) the prior written authorization has been given by the customer to the Member and accepted by the Member in compliance with Regulation 1300.5; and

(b) the account has been specifically approved and accepted in writing as a discretionary account by the designated director, partner, officer, branch manager, futures contract principal or futures contract options principal, as the case may be, who authorized the opening of the account,

and provided that any such person permitted to effect discretionary trades shall have actively dealt in, advised in respect of or performed analysis with respect to the securities or commodity futures contracts or options which are to be traded on a discretionary basis for a period of two years.

1300.5. The prior written authorization provided for by clause (a) of Regulation 1300.4 shall:

(a) define the extent of the discretionary authority which has been given to the Member;

(b) except for a managed account, have a term of no more than twelve months, unless the Member has satisfied the Vice-President, Financial Compliance that a longer term is appropriate and the customer is aware of such longer term;

(c) except for a managed account, only be renewable in writing;

(d) only be terminated by the customer by notice in writing, which notice shall be effective on receipt by the Member except with respect to transactions entered into prior to such receipt; and

(e) only be terminated by the Member by notice in writing, which notice shall be effective not less than 30 days from the date of mailing the notice to the customer by pre-paid ordinary mail at the customer's last address appearing in the records of the Member.

1300.6. In addition to any other account supervision requirements under the By-laws and Regulations, the designated partner, director, officer, branch manager, futures contract principal or futures contract options principal, as the case may be, with respect to each discretionary account (other than a managed account) shall review at least monthly the financial performance of each account including a review to determine whether any person permitted to effect trades for such account in accordance with Regulation 1300.4 should continue to do so. The duties of the designated partner, director, officer, branch manager, futures contract principal or futures contract options principal hereunder may not be delegated to any other person.

1300.7. No Member or any person acting on its behalf, shall exercise any discretionary authority with respect to a managed account unless:

(a) the individual who is responsible for the management of such account is:

(i) a partner, director, officer, employee or agent of the Member who has been approved by the Association as a portfolio manager or associate portfolio manager; or

(ii) a sub-adviser with which the Member has entered into a written sub-adviser agreement, provided that

A. the sub-adviser is an individual or firm registered in the jurisdiction in which it resides, in a category of registration that permits the person or company to provide discretionary portfolio management services or as a broker or investment dealer active as a portfolio manager;

B. the Member has determined that the sub-adviser is subject to legislation or regulations containing conflict of interest provisions at least equivalent to Regulations 1300.18 and 1300.19 or has entered into an agreement with the sub-adviser that the sub-adviser will comply with Regulations 1300.18 and 1300. 19.

(b) prior authorization has been given by the customer to the Member in accordance with Regulation 1300.8 and recorded in a manner acceptable to the Association;

(c) the account has been specifically approved and accepted as a managed account by a partner, director, officer or, in the case of a branch office, a branch manager, in a manner acceptable to the Association

(d) the Member has provided to the accountholder a copy of its policy ensuring fair allocation of investment opportunities.

1300.8. The prior written authorization provided for by clause (b) of Regulation 1300.7 shall:

(a) describe the investment objectives and risk tolerance of the customer with respect to the managed account or accounts;

(b) where permitted by the Member, describe any constraints imposed by customer on investments to be made in the managed account or accounts;

(c) only be terminated by the customer by notice in writing, which notice shall be effective on receipt by the Member except with respect to transactions entered into prior to such receipt; and

(d) only be terminated by the Member by notice in writing, which notice shall be effective not less than 30 days from the date of mailing the notice to the customer by pre-paid ordinary mail at the customer's last address appearing in the records of the Member."

1300.9. Application for approval as a portfolio manager shall be made to the Association and may be granted where the applicant:

(a) has satisfied the applicable proficiency requirements outlined in Part I of Policy No. 6; or

(b) has within the past ~~five~~ three years held registration under Canadian securities legislation as a portfolio manager, investment counsel or any equivalent registration category;

(c) is a partner, director, officer, employee or agent of a Member; and

(d) makes an application for approval in such form as the Board of Directors may from time to time prescribe.

1300.10. Application for designation and approval as an associate portfolio manager shall be made to the Association and may be granted where the applicant:

(a) has satisfied the applicable proficiency requirements outlined in Part I of Policy No. 6;

(b) is a partner, director, officer, employee or agent of a Member; and

(c) makes an application for approval in such form as the Board of Directors may from time to time prescribe.

1300.11 Approval as a portfolio manager or associate portfolio manager shall constitute approval to trade and advise in securities provided that a portfolio manager or associate portfolio manager shall not trade or advise in options, commodities or commodities futures contracts unless such person is approved to trade or advise in options, commodities or commodities futures contracts, as the case may be.

1300.12. Application for approval as a futures contracts portfolio manager shall be made to the Association and may be granted where the applicant:

(a) has satisfied the applicable proficiency requirements outlined in Part I of Policy No. 6; or

(b) has within the past ~~five~~ three years held registration under Canadian securities or commodity futures legislation as a portfolio manager, investment counsel or any equivalent registration category with respect to futures contracts;

(c) is a partner, director, officer, employee or agent of a Member; and

(d) makes an application for approval in such form as the Board of Directors may from time to time prescribe.

1300.13. Application for approval as an associate portfolio manager with discretionary authority with respect to futures contracts managed accounts shall be made to the Association and may be granted where the applicant:

(a) has satisfied the applicable proficiency requirements outlined in Part I of Policy No. 6;

(b) is a partner, director, officer, employee or agent of a Member;

(c) makes an application for approval in such form as the Board of Directors may from time to time prescribe.

1300.14. Approval as a futures contracts portfolio manager or associate futures contracts portfolio manager shall constitute approval to trade and advise in futures contracts and futures contracts options.

1300.15. Each Member that has managed accounts or futures contracts managed accounts shall establish and maintain a system acceptable to the Association to supervise the activities of those responsible for the management of such accounts under Regulation 1300.7. Such system should be reasonably designed to achieve compliance with the By-laws, Regulations, Forms and Policies of the Association. A Member firm's supervisory system shall provide, at a minimum, for the following:

(a) the establishment and maintenance of written procedures, including:

(i) procedures designed to disclose when a responsible person has contravened Regulations 1300.18 or 1300.19;

(ii) procedures to ensure fairness in the allocation of investment

opportunities among its managed accounts;

(b) the designation of one or more partners, directors, officers or futures contracts principals, as the case may be, specifically responsible for the supervision of managed accounts. The tasks of this Regulation may be delegated by the persons designated to other persons who have the qualifications to perform them; however, pursuant to Policy 2, responsibility for the tasks may not be delegated;

(c) in addition to any other account supervision requirements under the By-laws and Regulations, a review by the person designated under subsection (b) with respect to each managed account, to be conducted at least quarterly, to ensure that the investment objectives of the client are being diligently pursued and that the managed account or futures contracts managed account is being conducted in accordance with the Regulations. The review may be conducted at an aggregate level for managed accounts for which key investment decisions are made centrally and applied across a number of managed accounts, subject to minor variations to allow for client-directed constraints and the timing of client cash flows into the managed account.

(d) the establishment of a managed account committee, which shall include at a minimum one person responsible for the supervision of such accounts, that shall review the supervisory system procedures established by the Member and recommend to senior management the appropriate action that will achieve the Member's compliance with applicable securities legislation and with the By-laws, Regulations, Forms and Policies of the Association. Such review shall be completed at least annually.

1300.16. The Member may charge a client directly for services rendered to a managed account but, except with the written agreement of the client, such charge shall not be based on the volume or value of transactions initiated for the account or be contingent upon profits or performance.

1300.17. Remuneration paid to an associate portfolio manager, portfolio manager, or futures contracts portfolio manager for managing an account must not be computed in terms of the value or volume of transactions in the account.

1300.18. No Member or responsible person shall trade for his or her or the Member's own account, or knowingly permit or arrange for any associate or affiliate to trade, in reliance upon information as to trades made or to be made for any discretionary or managed account.

1300.19. ~~The Member shall not~~No Member or responsible person shall, without the written consent of the client, knowingly cause any managed account to:

(a) invest in the securities of, or a futures contract or option that is based on the securities of, the Member or an issuer that is related or connected to the Member;

(b) invest in the securities of any issuer, or a futures contract or option that is based on the securities of an issuer, of which a responsible person is an officer or director, and no such investment shall be made even with the written consent of the client unless such office or directorship shall have been disclosed to the client;

(c) invest in new or secondary issues underwritten by the Member;

(d) purchase or sell the securities of any issuer, or a futures contract or option that is based on the securities of an issuer, from or to the account of a responsible person, or from or to the account of an associate of a responsible person; or

(e) make a loan to a responsible person or to an associate of a responsible person.

A Member or related company or a partner, director, officer, employee or associate of either of them shall be deemed not to have breached any provision of this Regulation 1300.18 in connection with any trade or activity if conducted in compliance with any securities legislation or rule, policy, directive or order of any securities commission which specifically applies to the trade or activity.

1300.20. Where investment decisions are made centrally and applied across a number of managed accounts, By-law 29.3A shall not apply with regard to managed accounts of partners, directors, officers, registered persons, employees or agents of the Member that participate on the same basis as client accounts in the implementation of such decisions.

1300.21. Except as specifically permitted in the By-laws, Regulations or Rulings, no Member shall charge a customer a fee that is contingent upon the profit or performance of the customer's account.

13.1.2 Summary of Public Comments Respecting Proposed Amendment to MFDA Rule 1.1.1(a) (Business Structures) and Response of the MFDA

SUMMARY OF PUBLIC COMMENTS RESPECTING PROPOSED AMENDMENT TO MFDA RULE 1.1.1(A) (BUSINESS STRUCTURES) AND RESPONSE OF THE MFDA

On July 11, 2003, the Ontario Securities Commission published for public comment the proposed amendment to MFDA Rule 1.1.1(a) - Business Structures (the "**Proposed Amendment**"). The MFDA proposal was published in Volume 28, Issue 26 of the Ontario Securities Commission Bulletin, dated July 11, 2003.

The public comment period expired on August 11, 2003.

One submission was received during the public comment period from Royal Mutual Funds Inc.

Copies of comment submissions may be viewed at the offices of the MFDA, 121 King Street West, Suite 1600, Toronto, Ontario by contacting Laurie Gillett, Corporate Secretary and Membership Services Manager, (416) 943-5827.

Royal Mutual Funds Inc. expressed support for the Proposed Amendment as drafted, which would allow Approved Persons to continue to engage in securities related business as an employee of a bank as permitted by the Bank Act and applicable securities legislation for the account of, and through the facilities of the bank, rather than the Member.

September 19, 2003.

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Chapter 25

Other Information

25.1 Exemptions

25.1.1 National Bank Financial Inc. and National Bank Financial Ltd. - para. 2.1(2) of OSC Rule 31-502

Headnote

Previously extra-provincially registered salespersons of the Applicants are exempt from the post registration proficiency requirements under paragraph 2.1(2) of Rule 31-502 Proficiency Requirements for Registrants, subject to conditions.

Rules Cited

Ontario Securities Commission Rule 31-502 Proficiency Requirements for Registrants, s. 2.1(2) and s. 4.1.

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

AND

IN THE MATTER OF
NATIONAL BANK FINANCIAL INC. AND
NATIONAL BANK FINANCIAL LTD.

EXEMPTION ORDER
(Rule 31-502)

WHEREAS National Bank Financial Inc. (**NBFI**) and National Bank Financial Ltd. (**NBFL**) (the **Applicants)** have applied for an exemption pursuant to section 4.1 of Ontario Securities Commission Rule 31-502 – *Proficiency Requirements for Registrants* (the **OSC Proficiency Rule**) from the provisions of paragraph 2.1(2) of the OSC Proficiency Rule (the **OSC Requirement**).

AND WHEREAS, the OSC Requirement provides that the registration of a salesperson is suspended on the last day of the thirtieth month after the date registration as a salesperson was granted to that salesperson unless the salesperson has completed the Professional Financial Planning Course (the **PFP Course**) or the first course of the Canadian Investment Management Program (the **CIM Program**) and has delivered the prescribed notice to the Director of the Ontario Securities Commission;

AND WHEREAS unless otherwise defined or the context otherwise requires, terms used herein have the meaning set out in Ontario Securities Commission Rule 14-501 – *Definitions*;

AND WHEREAS the Director has considered the application and the recommendation of staff of the Ontario Securities Commission;

AND WHEREAS the Applicants have represented to the Director that:

1. NBFI is registered under the Act as a dealer in the category of investment dealer. NBFI is a member of the Investment Dealers Association of Canada (the **IDA**) and the Bourse de Montréal Inc., and is a participating organization of the Toronto Stock Exchange;

2. NBFL is registered under the Act as a dealer in the category of investment dealer and is a member of the IDA;

3. The requirement of the IDA that a registered representative (a **Salesperson**) of an investment dealer that is a member of the IDA (a **Dealer)** complete the first course of the CIM Program within thirty months of registration (the **IDA Requirement**) first became effective on January 1, 1994 (the **IDA Effective Date**);

4. Salespersons who were registered to trade on behalf of a Dealer in a jurisdiction immediately prior to the IDA Effective Date are exempt from the IDA Requirement;

5. The OSC Proficiency Rule which became effective on August 17, 2000 (the **Rule Effective Date**) adopted and expanded the IDA Requirement, but did not exempt Salespersons who were registered to trade on behalf of a Dealer in another jurisdiction prior to the IDA Effective Date from the OSC Requirement; and

6. Salespersons of the Applicants who have been registered to trade on behalf of a Dealer under the securities legislation of a jurisdiction other than Ontario immediately prior to the IDA Effective Date and who were first registered to trade on behalf of a Dealer under the Act after the Rule Effective Date are subject to the OSC Requirement;

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

NOW THEREFORE, pursuant to section 4.1 of the OSC Proficiency Rule, Salespersons of the Applicants are not subject to the OSC Requirement;

PROVIDED THAT:

(A) immediately prior to the IDA Effective Date, the particular Salesperson was registered under the securities legislation of one or more jurisdictions other than Ontario as a salesperson of a Dealer that was then registered under such legislation as an investment dealer (or the equivalent) and the registration of the Salesperson was not specifically restricted to the sale of mutual funds or non-retail trades; and

(B) after the IDA Effective Date, that Salesperson was either registered to trade on behalf of a Dealer continuously in one or more jurisdictions other than Ontario, or any period after the IDA Effective Date in which the Salesperson's registration to trade on behalf of a Dealer was suspended or in which the Salesperson was not so registered does not exceed three years.

November 28, 2003.

"David Gilkes"

25.1.2 AIM Funds Management Inc. - s. 6.1 of OSC Rule 13-502

Headnote

Item E(1) of Appendix C of OSC Rule 13-502 Fees – exemption for pooled funds from paying an activity fee of $5,500 in connection with an application brought under section 147 of the Act, provided an activity fee be paid on the basis that the application be treated as an application for other regulatory relief under item E(3) of Appendix C of the Rule.

Rules Cited

Ontario Securities Commission Rule 13-502, Fees, (2003) 26 OSCB 891.
Securities Act, R.S.O. 1990, c. S.5 as am., ss. 77(2) and ss. 78(1).
National Instrument 13-101 – System for Electronic Document Analysis and Retrieval (SEDAR), s. 2.1(1)1.

BY FAX

December 19, 2003

Borden Ladner Gervais LLP
Scotia Plaza
40 King Street West
Toronto, Ontario
M5H 3Y4

Attention: Messrs. Scott McEvoy/Adam Segal

Dear Sirs:

Re: AIM Funds Management Inc., carrying on business as AIM Trimark Investments ("AIM Trimark")
INVESCO Structured Core U.S. Equity Fund, and
INVESCO International Equity Fund (the "Existing Pooled Funds")
Application for Exemptive Relief under 6.1 of OSC Rule 13-502 Fees (the "Rule" or "Rule 13-502")
Application No.995/03

By letter dated December 5, 2003 (the "Application"), you applied on behalf of AIM Trimark, the manager of certain pooled funds listed in the Application (the "Existing Pooled Funds") and other pooled funds managed by AIM Trimark from time to time (collectively with the Existing Pooled Funds, the "Pooled Funds"), to the Ontario Securities Commission (the "Commission") under section 147 of the Securities Act Ontario (the "Act") for relief from subsections 77(2) and 78(1) of the Act, which requires every mutual fund in Ontario to file interim and comparative annual financial statements (the "Financial Statements") with the Commission.

By same date and cover, you additionally applied to the securities regulatory authority in Ontario (the "Decision

Maker") on behalf of AIM Trimark for an exemption, pursuant to subsection 6.1 of Rule 13-502, from the requirement to pay an activity fee of $5,500 in connection with the Application in accordance with item E(1) of Appendix C of the Rule, on the condition that fees be paid on the basis that the Application be treated as an application for other regulatory relief under item E(3) of Appendix C of Rule 13-502, and from the requirement to pay an activity fee of $1,500 in connection with the latter relief (the "Fees Exemption").

Item E of Appendix C of Rule 13-502 specifies the activity fee applicable for applications for discretionary relief. Item E(1) specifies that applications under section 147 of the Act pay an activity fee of $5,500, whereas item E(3) specifies that applications for other regulatory relief pay an activity fee of $1,500.

From our review of the Application and other information communicated to staff, we understand the relevant facts and representations to be as follows:

1. AIM Trimark is a corporation existing under the laws of Ontario with its head office in Toronto, Ontario. AIM Trimark is, or will be the manager of the Pooled Funds. AIM Trimark is registered under the Act as an adviser in the categories of investment counsel, portfolio manager and a limited market dealer and under the *Commodity Futures Act* (Ontario) in the category of commodity trading manager.

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

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

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

5. In the Application, AIM Trimark and the Pooled Funds have requested under section 147 of the Act relief from filing the Financial Statements with the Commission. The activity fee associated with the Application is $5,500 in accordance with item E(1) of Appendix C of Rule 13-502.

6. If AIM Trimark and the Pooled Funds had, as an alternative to the Application, sought an exemption from the requirement to file the Financial Statements via SEDAR, the activity fee for that application would be $1,500 in accordance with item E(3) of Appendix C of Rule 13-502.

7. If the Pooled Funds were reporting issuers seeking the same relief as requested in the Application, such relief could be sought under section 80 of the Act, rather than under section 147 of the Act, and the activity fee for that application would be $1,500 in accordance with item E(3) of Appendix C of Rule 13-502.

Decision

This letter confirms that, based on the information provided in the Application, other communications to staff, and the facts and representations above, and for the purposes described in the Application, the Decision Maker hereby exempts AIM Trimark and the Pooled Funds from

i) paying an activity fee of $5,500 in connection with the Application, provided that AIM Trimark and the Pooled Funds pay an activity fee on the basis that the Application be treated as an application for other regulatory relief under item E(3) of Appendix C to Rule 13-502, and

ii) paying an activity fee of $1,500 in connection with the Fees Exemption application under item E(3) of Appendix C to Rule 13-502.

"Leslie Byberg"

25.1.3 Altruista Fund Inc. - s. 9.1 of NI 81-105

Headnote

Exemption granted to labour sponsored investment fund corporation to permit it to pay certain specified distribution costs out of fund assets contrary to section 2.1 of National Instrument 81-105 Mutual Fund Sales Practices. Exemption granted on the condition that the distribution costs so paid are permitted by, and otherwise paid in accordance with the National Instrument, and that the distribution costs are included in the fund's calculation of its management expense ratio.

Statutes Cited

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

Rules Cited

National Instrument 81-105 Mutual Fund Sales Practices.

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

AND

IN THE MATTER OF
NATIONAL INSTRUMENT 81-105
MUTUAL FUND SALES PRACTICES

AND

IN THE MATTER OF
ALTRUISTA FUND INC.

EXEMPTION
(Section 9.1 of NI 81-105)

WHEREAS Altruista Fund Inc. (the Fund) has made an application with the Ontario Securities Commission (the Commission) for an exemption pursuant to section 9.1 of National Instrument 81-105 – Mutual Fund sales Practices (NI 81-105) from section 2.1 of NI 81-105 to permit the Fund to make certain distribution costs payments to registered dealers;

AND WHEREAS the Commission has considered the Application and the recommendation of staff of the Commission;

AND WHEREAS the Fund has represented to the Commission as follows:

1. The Fund is a corporation incorporated under the *Business Corporations Act* (Ontario). The Fund is registered as a labour sponsored investment fund corporation under the *Community Small Business Investment Funds Act* (Ontario).

2. The Fund is a mutual fund as defined in Act. The Fund has filed a preliminary prospectus dated November 7, 2003 (the Preliminary Prospectus) in the Province of Ontario in connection with the proposed offering to the public of Class A shares in the capital of the Fund (Class A Shares).

3. The authorized capital of the Fund consists of an unlimited number of Class A Shares, of which none are currently issued and outstanding as of the date hereof, an unlimited number of Class B shares in the capital of the Fund (Class B Shares), all of which issued and outstanding Class B Shares are owned by the Christian Labour Association of Canada as of the date hereof, and an unlimited number of Class C shares issuable in series, of which none are issued and outstanding.

4. Altruista Inc., the manager of the Fund (the Manager), formed and organized the Fund. The Manager will, commencing March 1, 2004, be paid an annual management fee by the Fund of 1.0% of the net asset value of the Fund, calculated and paid monthly in arrears.

5. The Fund proposes to pay directly to registered dealers certain costs associated with the distribution of its Class A Shares. These costs include:

   (a) a sales commission of up to 6.0% of the selling price for each Class A Share subscribed for (the Sales Commission), and

   (b) a monthly service fee of up to 1/12 of 0.5% of the total net asset value of the Class A Shares held by the clients of the dealer (the Service Fees).

6. The Fund may also pay for the reimbursement of co-operative marketing expenses (the Co-op Expenses) incurred by registered dealers in promoting sales of the Class A Shares, pursuant to co-operative marketing agreements the Fund may enter into with such dealers.

7. All of the costs associated with the distribution of the Class A Shares, including, among other things, the Sales Commission, the Service Fees and the Co-Op Expenses are fully disclosed in the Preliminary Prospectus. The Sales Commission, the Service Fees and the Co-Op Expenses are collectively referred to as the "Distribution Costs".

8. Due to the structure of the Fund, the most practical and tax efficient way for the Distribution Costs to be financed is for the Fund to pay them directly. To ensure that the entire subscription price paid by a subscriber for Class A Shares is taken into account for the purpose of determining applicable federal and provincial tax credits, the gross investment amount for Class A Shares will be paid to the Fund in respect of subscriptions received, as opposed, for example, to the net

amount obtained after deducting the Sales Commission from the subscription price.

9. The Manager is the only member of the organization of the Fund, other than the Fund itself, available to pay the Distribution Costs. Without the requested discretionary relief, the Manager would be obliged to finance the Distribution Costs through borrowing.

10. Any loans taken by the Manager to finance the Distribution Costs would result in an increased management fee chargeable to the Fund of an amount equal to the borrowing costs incurred by the Manager to pay the Distribution Costs plus an amount required to compensate the Manager for any risks associated with fluctuations in the net asset value of the Fund. Requiring compliance with Section 2.1 of NI 81-105 would cause management expenses of the Fund to increase above those contemplated in the Preliminary Prospectus.

11. The Fund undertakes to comply with all other provisions of NI 81-105. In particular, the Fund undertakes that all Distribution Costs paid by it will be compensation permitted to be paid to participating dealers under NI 81-105. All accounting for the Distribution Costs will be made in accordance with Canadian GAAP.

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

NOW THEREFORE pursuant to section 9.1 of NI 81-105, the Commission hereby exempts the Fund from section 2.1 of NI 81-105 to permit the fund to pay the Distribution Costs, provided that:

(a) the Distribution Costs are otherwise permitted by, and paid in accordance with, NI 81-105;

(b) the summary section of the final prospectus has full, true and plain disclosure explaining to investors that they pay the Distribution Costs indirectly, and the Fund pays the Sales Commissions using investors' subscription proceeds and this summary section must be placed within the first 10 pages of the final prospectus;

(c) the Distribution Costs are being included in the Fund's calculation of its management expense ratio; and

(d) this Exemption shall cease to be operative with respect to the Decision Maker on the date that a rule replacing or amending section 2.1 of NI 81-105 comes into force.

December 30, 2003.

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

25.1.4 Lawrence Enterprise Fund Inc. - s. 9.1 of NI 81-105

Headnote

Exemption granted to labour sponsored investment fund corporation to permit it to pay certain specified distribution costs out of fund assets contrary to section 2.1 of National Instrument 81-105 Mutual Fund Sales Practices. Exemption granted on the condition that the distribution costs so paid are permitted by, and otherwise paid in accordance with the National Instrument.

Statutes Cited

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

Rules Cited

National Instrument 81-105 Mutual Fund Sales Practices.

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

AND

IN THE MATTER OF NATIONAL INSTRUMENT 81-105 MUTUAL FUND SALES PRACTICES

AND

IN THE MATTER OF LAWRENCE ENTERPRISE FUND INC.

EXEMPTION

WHEREAS the Ontario Securities Commission (the Commission) has received an application (the Application) from Lawrence Enterprise Fund Inc. (the Fund) for a decision pursuant to section 9.1 of National Instrument 81-105 Mutual Fund Sales Practices (NI 81-105) that the prohibition contained in section 2.1 of NI 81-105 against the making of certain payments by the Fund to participating dealers shall not apply to the Fund;

AND WHEREAS the Commission has considered the Application and the recommendation of the staff of the Commission;

AND WHEREAS the Fund and Lawrence Asset Management Inc. (the Manager) have represented to the Commission as follows:

1. The Fund is a corporation formed under the laws of Canada on October 31, 2001 and is a mutual fund as defined in the legislation under the Act. The Fund is a reporting issuer under the Act.

2. The Fund is registered as a labour sponsored investment fund corporation under the *Community Small Business Investment Funds Act* (Ontario), as amended, as a labour-sponsored venture capital corporation under the *Equity Tax Credit Act* (Nova Scotia), and as a labour-sponsored venture capital corporation under the *Income Tax Act* (Canada), as amended.

3. The authorized capital of the Fund has consisted of an unlimited number of two series of Class A Shares, designated as Class A Shares, Series I and Class A Shares, Series II and 25,000 Class B Shares. All of the issued and outstanding Class B Shares are owned by the sponsor of the Fund, Canadian Air Traffic Control Association, Local 5454.

4. As of December 31, 2003, the Fund intends to cease distribution of the Class A, Series I Shares and Class A, Series II Shares. The Fund has filed articles of amendment designating two new series of Class A Shares, the Class A Shares, Series III and Class A Shares, Series IV (the New Class A Shares). The Fund has filed a prospectus with the Commission in respect of the New Class A Shares (the Prospectus), and anticipates obtaining a final receipt therefore by December 31, 2003.

5. The Fund has retained the Manager to act as manager of the Fund.

6. The Manager is a subsidiary of Lawrence & Company Inc. The Fund and the Manager have retained Lawrence & Company Inc. to assist in screening and evaluating investment opportunities of the Fund.

7. The administrator is Mavrix Fund Management Inc. The fund administrator is responsible for providing administration and client services, shareholder reporting and transfer agency services to the Fund.

8. The Fund is a mutual fund which makes investments in small and medium-sized Canadian businesses which are eligible investments for the Fund under the Ontario Act.

9. The New Class A Shares of the Fund will be distributed in the Province of Ontario following receipt of a receipt for the final prospectus.

10. Section 2.1 of NI 81-105 prohibits the Fund, in connection with the distribution of its securities, from making payments or providing benefits to dealers participating in the distribution of its securities, including the payment of service fees to, or the reimbursements of costs or expenses incurred or to be incurred by, such dealers.

11. There is no direct sales charge payable by investors on the purchase of New Class A Shares. However, the Fund and the Manager propose to pay directly to participating dealers certain costs

associated with the distribution of the New Class A Shares. These costs are:

(a) with respect to the distribution of Class A Shares, Series III:

(i) a commission of 6% of the original issue price (the "6% Sales Commission"), paid by the Manager;

(ii) an amount equal to 4% of the original issue price of the Class A Shares, Series III as a long-term prepayment of service fees for eight years from the date of issue of the shares, paid by the Manager; and

(iii) a service fee (the "Service Fee") after the eighth anniversary of the date of the issue of the shares of 0.50% annually of the net asset value of the Class A Shares, Series III held by clients of the sales representatives of the dealers, paid by the Fund; and

(b) with respect to the distribution of Class A Shares, Series IV:

(i) a 6% Sales Commission, paid by the Manager; and

(ii) a Service Fee equal to 0.50% annually of the net asset value of the Class A Shares, Series IV held by clients of the sales representatives of the dealers, paid by the Fund.

12. In addition, the Fund may also enter into co-operative marketing programs with certain registered dealers providing for the reimbursement by the Fund of certain expenses (the "Co-op Expenses") incurred by such dealers in promoting sales of New Class A Shares.

13. Payments of the distribution costs described in representations 11 and 12 are permitted under NI 81-105, except for the Service Fees with respect to the Class A Shares, Series III and Series IV, and the Co-op Expenses.

AND WHEREAS the Commission is satisfied that to do so would not be prejudicial to the public interest;

NOW THEREFORE, pursuant to section 9.1 of NI 81-105, the Commission hereby exempts the Fund from section 2.1 of NI 81-105 to permit the Fund to pay the Service Fees with respect to Class A Shares, Series III and Series IV, and the Co-op Expenses, provided that:

(a) the Services Fees with respect to the Class A Shares, Series III and Series IV, and the Co-op Expenses are otherwise permitted by, and paid in accordance with, NI 81-105;

(b) the Fund will in its financial statements expense the Service Fees with respect to Class A Shares, Series III and Series IV, and the Co-op Expenses in the fiscal period when incurred; and

(c) this Exemption shall cease to be operative with respect to the Commission on the date that a rule replacing or amending section 2.1 of NI 81-105 comes into force.

December 30, 2003.

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

25.2 Approvals

25.2.1 SoundVest Capital Management Ltd. - cl. 213(3)(b) of the LTCA

Headnote

Clause 213(3)(b) of the Loan and Trust Corporations Act. Application by Manager to act as trustee of a mutual fund.

Statutes Cited

Loan and Trust Corporations Act, R.S.O. 1990, c. L.25, as am., clause 213(3)(b).

December 22, 2003.

Kelly Howard Santini LLP

Attention: Kelly L. Sample

Dear Sirs/Mesdames:

Re: SoundVest Capital Management Ltd. (the "Applicant")
Application pursuant to clause 213(3)(b) of the Loan and Trust Corporations Act (Ontario) for approval to act as trustee
Application # 932/03

Further to an application (the "Application") dated November 21, 2003 filed on behalf of the Applicant, and based on the facts set out in the Application, pursuant to the authority conferred on the Ontario Securities Commission (the "Commission") in clause 213(3)(b) of the *Loan and Trust Corporations Act, 1987* (Ontario), the Commission approves the proposal that the Applicant act as trustee of SoundVest Portfolio Fund.

Yours truly,

"Harold P. Hands" "Suresh Thakrar"

25.3 Consents

25.3.1 Trizec Hahn Corporation - cl. 4(b) of O. Reg. 289/00

Headnote

Consent given to OBCA corporation to continue under the NBBCA.

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., ss. 181, 185 Securities Act, R.S.O. 1990, c. S.5, as am.

Regulations Cited

O. Regulation 289/00, as am., s. 4(b).
R.R.O. 1990, Reg. 1015, as am.

IN THE MATTER OF THE REGULATION MADE UNDER THE BUSINESS CORPORATIONS ACT, R.S.O. 1990, C. B.16, AS AMENDED (the "OBCA") R.R.O. 1990, REGULATION 289/00 (the "Regulation")

AND

IN THE MATTER OF TRIZEC HAHN CORPORATION

CONSENT (Clause 4(b) of the Regulation)

UPON the application (the "Application") of Trizec Hahn Corporation (the "Company") to the Ontario Securities Commission (the "Commission") requesting a consent from the Commission to continue into another jurisdiction pursuant to clause 4(b) of the Regulation;

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

AND UPON the Company having represented to the Commission that:

1. The Company is proposing to submit an application to the Director under the OBCA for authorization to continue into the Province of New Brunswick pursuant to section 181 of the OBCA (the "Application for Continuance").

2. Pursuant to clause 4(b) of the Regulation, where a corporation is an offering corporation under the OBCA, the Application for Continuance must be accompanied by a consent from the Commission.

3. The Company is an offering corporation under the OBCA and is a reporting issuer under the *Securities Act* (Ontario) (the "Act").

4. The Company is not in default of any of the provisions of the Act or the regulation made under the Act.

5. The Company is not a party to any proceeding or to the best of its knowledge, information and belief, pending proceeding under the Act.

6. The Company presently intends to remain a reporting issuer in the Province of Ontario.

7. The continuance under the laws of the Province of New Brunswick was voted on and duly approved by a special resolution of the shareholders of the Company on December 10, 2003.

8. The continuance under the laws of the Province of New Brunswick has been proposed so that the Company may conduct its affairs in accordance with the *Business Corporations Act* (New Brunswick) (the "NBBCA"). In particular, the Company is seeking to continue under the laws of the Province of New Brunswick in order to amalgamate with the two of its wholly-owned subsidiaries. TrizecHahn Holdings Ltd. and TrizecHahn Office Properties Ltd. (the “Subsidiaries”), both of which are corporations existing under the laws of the Province of New Brunswick.

9. It has been determined by the Company that it would be more efficient for it to continue under the laws of the Province of New Brunswick than for both of the Subsidiaries to continue under the laws of the Province of Ontario.

10. The amalgamation of the Company and the Subsidiaries is part of a larger corporate reorganization which involves the amalgamation of several affiliates of the Company for the purposes of simplifying the corporate structure of the ultimate parent company Trizec Canada Inc.

11. The material rights, duties and obligations of a corporation incorporated under the NBBCA are substantially similar to those under the OBCA.

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

THE COMMISSION HEREBY CONSENTS to the continuance of Trizec Hahn Corporation as a corporation under the laws of the Province of New Brunswick.

December 23, 2003.

“Harold P. Hands” “Suresh Thakrar”

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