

The Ontario Securities Commission

# OSC Bulletin

January 23, 2004

Volume 27, Issue 4

(2004), 27 OSCB

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

**The Ontario Securities Commission**

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Published under the authority of the Commission by:

**Carswell**  
One Corporate Plaza  
2075 Kennedy Road  
Toronto, Ontario  
M1T 3V4

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The OSC Bulletin is published weekly by Carswell, under the authority of the Ontario Securities Commission.

Subscriptions are available from Carswell at the price of \$549 per year.

Subscription prices include first class postage to Canadian addresses. Outside Canada, these airmail postage charges apply on a current subscription:

U.S.	\$175
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# Chapter 1

## Notices / News Releases

### 1.1 Notices

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

JANUARY 23, 2004

#### CURRENT PROCEEDINGS

#### BEFORE

#### ONTARIO SECURITIES COMMISSION

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

The Harry S. Bray Hearing Room  
Ontario Securities Commission  
Cadillac Fairview Tower  
Suite 1700, Box 55  
20 Queen Street West  
Toronto, Ontario  
M5H 3S8

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

### SCHEDULED OSC HEARINGS

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

s. 127

E. Cole in attendance for Staff

Panel: TBA

DATE : TBA

**Patrick Fraser Kenyon Pierrepont Lett, Milehouse Investment Management Limited, Pierrepont Trading Inc., BMO Nesbitt Burns Inc.\*, John Steven Hawkyard<sup>+</sup> and John Craig Dunn**

s. 127

K. Manarin in attendance for Staff

Panel: HLM/MTM/ST

\* BMO settled Sept. 23/02

+ April 29, 2003

March 8 & 9  
10am – 4pm

**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: PMM/MTM/PKB

May 2004

**Gregory Hyrniw and Walter Hyrniw**

s. 127

Y. Chisholm in attendance for Staff

Panel: TBA

**ADJOURNED SINE DIE**

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

**Global Privacy Management Trust and Robert  
Cranston**

**Philip Services Corporation**

**Robert Walter Harris**

**Andrew Keith Lech**

**S. B. McLaughlin**

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

**1.1.2 IDA Debt Market Regulation - Project Review of  
IDA Member Firms - Final Summary Report**

**INVESTMENT DEALERS ASSOCIATION OF CANADA**

**DEBT MARKET REGULATION PROJECT  
REVIEW OF IDA MEMBER FIRMS  
FINAL SUMMARY REPORT**

In December 2001, the Canadian Securities Administrators (CSA) and the Investment Dealers Association of Canada (IDA) began a joint review of the over-the-counter debt markets in Canada. As part of this review, the CSA and IDA retained Deloitte & Touche to conduct a survey of market participants. The survey asked market participants whether they thought the current regulation of debt market was sufficient and asked them to identify problems or issues in the trading practices of participants in the fixed income market. The report prepared by Deloitte & Touche (the Deloitte & Touche Report) was published on December 13, 2002<sup>1</sup>. Based on the findings of that report, the IDA, with input from CSA staff, developed examination programs and conducted reviews of selected dealers to look at the issues raised in the Deloitte & Touche Report.

The Commission is publishing the report summarizing the results of these reviews in Chapter 13 of this Bulletin.

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<sup>1</sup> (2002), 25 OSCB 8341.

**1.1.3 Notice of Commission Approval –  
Amendments to MFDA Policy No. 3 –  
Handling Client Complaints**

**THE MUTUAL FUND DEALERS ASSOCIATION (MFDA)  
NOTICE OF COMMISSION APPROVAL  
AMENDMENTS TO MFDA POLICY NO. 3 – HANDLING  
CLIENT COMPLAINTS**

The Ontario Securities Commission approved amendments to MFDA Policy No. 3 on handling client complaints. 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 amendments. The amendments to MFDA Policy No. 3 establish additional reporting requirements for MFDA Members or Approved Persons on customer complaints. The amendments also prohibit direct settlement between Approved Persons and clients made without the Member's knowledge. A copy and description of these amendments were published on July 11, 2003 at (2003) 26 OSCB 5414. A summary of the public comments received is contained in Chapter 13 of this Bulletin.

**1.1.4 Notice of Commission Approval –  
Amendments to MFDA Rule 5.3.1 –  
Delivery of Account Statement**

**THE MUTUAL FUND DEALERS ASSOCIATION (MFDA)  
NOTICE OF COMMISSION APPROVAL  
AMENDMENTS TO MFDA RULE 5.3.1 – DELIVERY OF  
ACCOUNT STATEMENT**

The Ontario Securities Commission approved amendments to MFDA Rule 5.3.1 regarding delivery of account statement. 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 amendments. The amendments to MFDA Rule 5.3.1 allow a MFDA Member operating in client name to rely on the trustee administering self-directed registered plans to send account statements under certain conditions. The amendments also permit a Member to rely on the affiliated fund manager to send the client account statements, when the Member is affiliated with a mutual fund manager and, in connection with a specific client account, is only selling the mutual fund securities of an issuer managed by the affiliated manager. A copy and description of these amendments were published on July 11, 2003 at (2003) 26 OSCB 5409. A summary of the public comments received and the final amendments to Rule 5.3.1 blacklined from the version published on July 11, 2003 are contained in Chapter 13 of this Bulletin.

**1.1.5 CSA Staff Notice 51-309 - National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities - Acceptance of Certain Foreign Professional Boards as a "Professional Organization"**

**CSA STAFF NOTICE 51-309**

**NATIONAL INSTRUMENT 51-101  
STANDARDS OF DISCLOSURE  
FOR OIL AND GAS ACTIVITIES**

**ACCEPTANCE OF CERTAIN FOREIGN  
PROFESSIONAL BOARDS  
AS A "PROFESSIONAL ORGANIZATION"**

**Introduction**

Pursuant to a Mutual Reliance Review System Decision Document dated January 6, 2004<sup>1</sup>, the Canadian Securities Administrators (CSA) have added the following professional boards in the United States (collectively, the Boards) to the list of accepted professional organizations for the purposes of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101):

*California*  
California Board for Professional Engineers and Land Surveyors,

*Colorado*  
State of Colorado Board of Registration for Professional Engineers and Professional Land Surveyors,

*Louisiana*  
Louisiana State Board of Registration for Professional Engineers and Land Surveyors,

*Oklahoma*  
Oklahoma State Board of Registration for Professional Engineers and Land Surveyors, and

*Texas*  
Texas Board of Professional Engineers.

**Accompanying Documents**

A comprehensive list of "professional organizations" accepted for the purposes of NI 51-101 accompanies this notice.

**Background**

NI 51-101 requires reporting issuers to appoint one or more qualified reserves evaluators or reserves auditors to report to its board of directors on its reserves data (section 3.2). To be "qualified", a reserves evaluator or reserves auditor

must possess appropriate professional qualifications and experience, and be a member in good standing of a "professional organization" (subsections 1.1(x) and (y)).

The definition of "professional organization" in subsection 1.1(w) has four elements:

- (w) "professional organization" means a self-regulatory organization of engineers, geologists, other geoscientists or other professionals whose professional practice includes *reserves evaluations* or *reserves audits*, that:
  - (i) admits members primarily on the basis of their educational qualifications;
  - (ii) requires its members to comply with the professional standards of competence and ethics prescribed by the organization that are relevant to the estimation, *evaluation*, *review* or *audit of reserves data*;
  - (iii) has disciplinary powers, including the power to suspend or expel a member; and
  - (iv) is either:
    - A. given authority or recognition by statute in a Canadian jurisdiction; or
    - B. accepted for this purpose by the *securities regulatory authority* or the *regulator*.

CSA staff reviewed relevant documentation concerning each Board's authority and recognition, membership requirements and disciplinary powers and concluded that:

- each Board has been given authority and recognition by its respective state legislation, and
- each Board's membership requirements satisfy the criteria set out in the definition of "professional organization" in paragraphs 1.1(w)(i), (ii) and (iii) of NI 51-101.

The CSA believe that acceptance of each of the Boards is not contrary to the public interest and will facilitate compliance with NI 51-101, by enabling reporting issuers that are active in the United States to continue the traditional, and acceptable, practice of engaging US professionals whose qualifications are consistent with the objectives of NI 51-101.

<sup>1</sup> MRRS Decision Document dated January 6, 2004 *In the Matter of ... National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities (NI 51-101) ... and ...[the professional boards named in this CSA notice].*



## Acceptance of Professional Organizations does not Supersede Requirements Governing Profession

Acceptance of the professional organizations by the CSA under NI 51-101 is only for the purposes of NI 51-101. The regulation of a profession in a jurisdiction, and any local requirements for or restrictions on professional membership, practice or proficiency, are not altered. Membership in a professional organization accepted for purposes of NI 51-101 does not by itself necessarily entitle a person to practise as a reserves evaluator or reserves auditor in another jurisdiction under the local laws governing the engineering, geological or other professions.

### Questions

Please refer questions to:

Jo-Anne Bund

Legal Counsel

Alberta Securities Commission

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e-mail: [joanne.bund@seccom.ab.ca](mailto:joanne.bund@seccom.ab.ca)

Fax: (403) 297-6156

Address: 4<sup>th</sup> Floor, 300 – 5<sup>th</sup> Avenue S.W.  
Calgary, Alberta T2P 3C4

**January 19, 2004.**

## NATIONAL INSTRUMENT 51-101 STANDARDS OF DISCLOSURE FOR OIL AND GAS ACTIVITIES

### PROFESSIONAL ORGANIZATIONS

*This list, revised January 6, 2004, supersedes the list of organizations set out in section 1.5(b) of Companion Policy 51-101CP.*

Each of the following organizations is a *professional organization* for the purposes of NI 51-101:

#### Canada

Association of Professional Engineers, Geologists and Geophysicists of Alberta (APEGGA)  
Association of Professional Engineers and Geoscientists of the Province of British Columbia (APEGBC)  
Association of Professional Engineers and Geoscientists of Saskatchewan (APEGS)  
Association of Professional Engineers and Geoscientists of Manitoba (APEGM)  
Association of Professional Geoscientists of Ontario (APGO)  
Professional Engineers of Ontario (PEO)  
Ordre des ingénieurs du Québec (OIQ)  
Ordre des Géologues du Québec (OGQ)  
Association of Professional Engineers of Prince Edward Island (APEPEI)  
Association of Professional Engineers and Geoscientists of New Brunswick (APEGNB)  
Association of Professional Engineers of Nova Scotia (APENS)  
Association of Professional Engineers and Geoscientists of Newfoundland (APEGN)  
Association of Professional Engineers of Yukon (APEY)  
Association of Professional Engineers, Geologists & Geophysicists of the Northwest Territories (NAPEGG) (representing the Northwest Territories and Nunavut Territory)

#### United States

California Board for Professional Engineers and Land Surveyors  
Louisiana State Board of Registration for Professional Engineers and Land Surveyors  
Oklahoma State Board of Registration for Professional Engineers and Land Surveyors  
State of Colorado Board of Registration for Professional Engineers and Professional Land Surveyors  
Texas Board of Professional Engineers

1.2 Notices of Hearing

1.2.1 Glen Harvey Harper - s. 127

**IN THE MATTER OF  
THE SECURITIES ACT,  
R.S.O. 1990, c. S.5, as amended**

**AND**

**GLEN HARVEY HARPER**

**NOTICE OF HEARING  
(Section 127)**

**TAKE NOTICE** that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127 of the Securities Act (the "Act") at the Commission's offices on the 17<sup>th</sup> floor, 20 Queen Street West, Toronto, Ontario, commencing on Friday, the 19<sup>th</sup> day of March, 2004 at 10:00 a.m., or as soon thereafter as the hearing can be held, to consider:

- (a) whether in the opinion of the Commission, it is in the public interest to make an order pursuant to section 127(1) clause 2 of the Act, that trading in any securities by Glen Harvey Harper cease permanently or for such period as may be specified by the Commission;
- (b) whether in the opinion of the Commission, it is in the public interest to make an order pursuant to section 127(1) clause 7 of the Act, that Glen Harvey Harper resign one or more positions that he holds as a director or officer of an issuer;
- (c) whether in the opinion of the Commission, it is in the public interest to make an order pursuant to section 127(1) clause 8 of the Act, that Glen Harvey Harper be prohibited from becoming or acting as a director or officer of any issuer; and
- (d) such further orders as the Commission may deem appropriate.

**BY REASON** of the allegations as set out in the attached Statement of Allegations made by Staff of the Commission dated January 12, 2004;

**AND TAKE FURTHER NOTICE THAT** any party to the proceedings may be represented by counsel at the hearing;

**AND TAKE FURTHER NOTICE THAT**, upon failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party and such party is not entitled to any further notice of the proceeding.

January 12, 2004.

"John Stevenson"

**IN THE MATTER OF  
THE SECURITIES ACT  
R.S.O. 1990, c.S.5, as amended**

**AND**

**GLEN HARVEY HARPER**

**STATEMENT OF ALLEGATIONS OF STAFF  
OF THE ONTARIO SECURITIES COMMISSION**

Further to a Notice of Hearing dated January 12, 2004, Staff of the Ontario Securities Commission (the "Commission") makes the following allegations:

**I. The Respondent**

1. Glen Harvey Harper ["Harper"] was a founder of Golden Rule Resources Inc. ["Golden Rule"]. In the period January 1997 to May 1997, and at other times, he was the President of Golden Rule and a member of the Board of Directors. During this period, Golden Rule was listed and posted for trading on the Toronto Stock Exchange.

**II. The Charges**

2. Pursuant to an information sworn on March 23, 1999 Harper was charged with the following offences:
  - (i) On or between the 3<sup>rd</sup> day of January, 1997 and the 6<sup>th</sup> day of March, 1997, at the City of Toronto, being a person in a special relationship with Golden Rule Resources Inc. ("Golden Rule"), a reporting issuer in the Province of Ontario listed and posted for trading on the Toronto Stock Exchange, did sell securities of Golden Rule, to wit: 227,600 shares for \$2,058,580 more or less, with the knowledge of a material fact with respect to Golden Rule that had not been generally disclosed contrary to ss.76(1) and 122(1)(c) of the *Securities Act*, R.S.O. 1990, c.S.5, as am.;

and further that,

- (ii) On or between the 14<sup>th</sup> day of March, 1997 and the 6<sup>th</sup> day of May, 1997, at the City of Toronto, being a person in a special relationship with Golden Rule, a reporting issuer in the Province of Ontario listed and posted for trading on the Toronto Stock Exchange, did sell securities of Golden Rule, to wit: 197,102 shares for \$1,983,889 more or less, with the knowledge of a material fact with respect to Golden Rule that had not been generally disclosed contrary to ss.76(1) and 122(1)(c) of the *Securities Act*, R.S.O. 1990, c.S.5, as am. (the "Act").

**III. The Conviction and Sentence**

3. On July 21, 2000, following a four week trial before Mr. Justice Patrick A. Sheppard of the Ontario Court of Justice, Toronto Region, Harper was found guilty as charged.
4. On September 18, 2000 Harper was sentenced by Mr. Justice Sheppard to a period of one year imprisonment for each offence to be served concurrently and to a total fine of \$3,951,672.
5. On January 7, 2002 Harper's appeal from conviction was dismissed by Mr. Justice Frank Roberts of the Superior Court of Justice (Toronto Region). Harper's appeal from sentence was allowed: the term of imprisonment was reduced to six months on each count concurrent; the fine was reduced to \$2 million. A cross-appeal as to sentence brought by the Commission was dismissed. No further appeal was sought by Harper.
6. The Commission sought leave to appeal the decision of Roberts J. respecting the sentence imposed (both the term of imprisonment and the fine). On January 21, 2002 the Commission's application for leave to appeal the sentence was granted, but only in respect of the fine portion of the sentence. Although Chief Justice McMurtry found that "in my view, the sentence that was imposed by the trial judge was within the appropriate range", leave to appeal the term of imprisonment was denied on the ground that the Court was "unable to come to the conclusion that it is essential in the public interest and for the due administration of justice that leave to appeal be granted with respect to the custodial portion of the sentence imposed" as is required for leave pursuant to s.131(2) of the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as am. (the "POA").
7. On October 31, 2003 the Court of Appeal for Ontario dismissed the Commission's appeal from sentence and declined to interfere with the fine of \$2 million imposed by the summary conviction appeal judge. The Court of Appeal noted that in addition to the fine, Harper was also required to pay a \$400,000 "surcharge" as prescribed by s.60.1 of the *POA*.

**IV. The Findings**

8. In finding Harper guilty of insider trading, Mr. Justice Sheppard made a number of findings of fact which are set out in the Court's 30 page Reasons for Judgement. None of these findings were disturbed by either the Summary Conviction Appeal Court or the Court of Appeal. All of these findings are relied upon by Staff in this proceeding. These findings were summarized by the learned trial judge, as follows:

This court has found that the evidence establishes beyond a reasonable doubt that Harper is guilty as charged. The evidence before the Court supports a finding that, by any geological or investor standard, the 800 soil samples and the 37 Teck samples were material facts, and that Harper had knowledge of those facts at a time that he admits he was trading in shares of Golden Rule. The Court rejects Harper's claim that he did not believe that the 800 soil samples and the 37 Teck samples were material facts, and has found on the evidence his alleged belief to be neither genuine, nor reasonable. The Court has found that the evidence establishes that rather than disclosing this material information to the public, Harper held it back from public view. Many appropriate moments to share the material information with the public were shown in the evidence. Instead of providing complete information, Harper disclosed only selected information that supported the stated Golden Rule proposition that Stenpad potentially hosted a multi-million ounce gold deposit. At the same time, Harper sold into the public market millions of dollars of Golden Rule shares for his own or his immediate family's personal gain.

**V. Conduct Contrary to the Public Interest**

9. As a result of Harper being found guilty of violating ss. 76(1) and 122 of the Act, Harper has engaged in conduct contrary to the public interest.
10. Staff reserves the right to make such other allegations as Staff may advise and the Commission may permit.

January 12, 2004.

1.3 News Releases

1.3.1 Notice of the Office of the Secretary in the Matter of Glen Harvey Harper

FOR IMMEDIATE RELEASE  
January 14, 2004

**NOTICE OF THE OFFICE OF THE SECRETARY**

**IN THE MATTER OF THE SECURITIES ACT,  
R.S.O. 1990, C. S.5, AS AMENDED  
- AND -  
GLEN HARVEY HARPER**

**TORONTO** – A Hearing in this matter is scheduled to commence on Friday, March 19, 2004 at 10:00 a.m., at the offices of the Commission, in the Large Hearing Room, 17<sup>th</sup> Floor, 20 Queen Street West, Toronto.

A copy of the Notice of Hearing and the Statement of Allegations is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

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

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

1.3.2 Be on the Alert for Boiler Room Tactics

FOR IMMEDIATE RELEASE  
January 15, 2004

**BE ON THE ALERT FOR BOILER ROOM TACTICS**

**TORONTO** – If you get an unsolicited telephone call about an investment opportunity, be alert to the signs of fraud, warns the Ontario Securities Commission. You might be a target of a boiler room operation.

Boiler room operations wear many disguises, and they are once again rearing their ugly head in Ontario. Boiler room operators hope to give you a false sense of security with promises of quick profits – but the only ones that profit are the scam artists, at your expense.

They may be located in the financial district near reputable firms, but their address may be nothing more than a rented space tucked away from the public eye. Rarely, if ever, are the offers they peddle to your benefit. Why would a complete stranger call to offer you a no-risk, high-return investment? It is too good to be true.

To gain your trust, the salesperson may boast of a business idea that sounds probable - perhaps a company in the medical industry with a new technological breakthrough for detecting cancer. The pitch is that with your investment, the company could go public on the stock exchange and make you more money. The scam artist may also try to play on your sympathies - he or she may know that cancer has taken the life of someone dear to you. Or perhaps they know that you are a busy professional, with extra income to invest, and little time to do your own research. Regardless of the background, the investment opportunity will be sold on the promise of quick profits.

If the offer is really such a great deal, there should be no need for a broker to cold call strangers to promote it. Ask yourself why they are calling you. To avoid becoming a victim of a boiler room, watch out for:

- Unsolicited phone calls. Don't be afraid to tell a salesperson not to call again, or to simply hang up.
- High pressure sales tactics and repeat callers. Take the time to research any investment opportunity and get a second opinion.
- Promises of high returns with no risk. Any investment that offers returns higher than the bank rate has risk. If you invest in a high-risk investment, you must be financially prepared to lose your money.
- Setups. With the first call, the scam artist may only try to gain your trust by offering information about the company and their alleged success. This is a setup for future calls, when you will be pressured to buy.

- Unregistered salespersons. Check the registration of the person offering you the investment. Call the OSC Contact Centre toll-free at 1-877-785-1555 to verify that they are registered, and what services they are registered to provide.

If you suspect a scam, try to collect as much information as possible about the caller, their name and the company's name, the investment, and the date and time of the call, and contact the Ontario Securities Commission at 1-877-785-1555. You can learn more about investment fraud and other investment topics on-line at [www.investorED.ca](http://www.investorED.ca).

**For Media Inquiries:** Perry Quinton  
Manager, Investor  
Communications  
416-593-2348

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

**1.3.3 Notice from the Office of the Secretary, OSC:  
Hearing Adjourned in the Matter of ATI  
Technologies Inc. et al.**

**FOR IMMEDIATE RELEASE  
January 20, 2004**

**NOTICE FROM THE OFFICE OF THE SECRETARY,  
OSC: HEARING ADJOURNED IN THE MATTER OF  
ATI TECHNOLOGIES INC. ET AL**

**TORONTO** – This matter has been adjourned to a date to be arranged by the Secretary of the Commission.

A Copy of the Order is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

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

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

**1.3.4 Notice from the Office of the Secretary, OSC in the Matter of Patrick Fraser Kenyon Pierrepont Lett, Milehouse Investment Management Limited and Pierrepont Trading Inc.**

**FOR IMMEDIATE RELEASE  
January 20, 2004**

**NOTICE FROM THE OFFICE OF THE SECRETARY, OSC**

**IN THE MATTER OF  
PATRICK FRASER KENYON PIERREPONT LETT,  
MILEHOUSE INVESTMENT MANAGEMENT LIMITED  
and PIERREPONT TRADING INC.**

**TORONTO** – In the Matter of Patrick Fraser Kenyon Pierrepont Lett, Milehouse Investment Management Limited and Pierrepont Trading Inc., the Panel has requested that counsel re-attend to make submissions on the following issues:

1. In the Amended Statement of Allegations, it is alleged that the Respondents, Patrick Lett and his companies, traded in securities without being registered contrary to section 25(1)(a) of the *Securities Act*. What are the “securities” Staff alleges were being traded? And
2. Having regard to submissions made in response to the first question above, was there “trading” by the Respondents and was such trading in Ontario?

Staff and Counsel for Lett, Milehouse and Pierrepont will appear before the Commission to make submissions on these issues on January 29, 2004 at 10:00 a.m.

A copy of the Amended Statement of Allegations is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca) or from the Commission, 20 Queen Street West, 19<sup>th</sup> Floor, Toronto, Ontario.

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

**For Media Inquiries:** Eric Pelletier  
Director, Communications  
416-595-8120

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

**1.3.5 Notice from the Office of the Secretary in the Matter of John Craig Dunn**

**FOR IMMEDIATE RELEASE  
January 20, 2004**

**NOTICE FROM THE OFFICE OF THE SECRETARY**

**IN THE MATTER OF  
JOHN CRAIG DUNN**

**TORONTO** – The hearing in the matter of John Craig Dunn scheduled to commence on Monday, January 19, 2004 at 10:00 a.m., has been adjourned to a date to be set by the Secretary to the Commission.

A copy of the Amended Statement of Allegations is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca) or from the Commission, 20 Queen Street West, 19<sup>th</sup> Floor, Toronto, Ontario.

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

**For Media Inquiries:** Eric Pelletier  
Director, Communications  
416-595-8120

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

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## Chapter 2

# Decisions, Orders and Rulings

## 2.1 Decisions

### 2.1.1 TD Asset Management Inc. - MRRS Decision

#### Headnote

Exemption from the requirement to deliver comparative annual financial statements to registered securityholders of certain mutual funds.

#### Statutes Cited

Securities Act (Ontario), R.S.O. 1990 c. S.5, as am., ss. 79 and 80(b)(iii).

**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 FUNDS LISTED IN SCHEDULE "A"**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, Ontario and Nova Scotia (the "Jurisdictions") has received an application (the "Application") from TD Asset Management Inc. (the "Manager"), the manager of the Funds (as defined herein), for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the requirement to deliver comparative annual financial statements to the securityholders of the mutual funds listed in Schedule "A" and the mutual funds hereinafter established and/or managed by the Manager (the "Funds") shall not apply unless securityholders have requested to receive them.

**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;

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

- (a) The Funds are either open-ended mutual fund trusts, separate classes of mutual fund corporations, or mutual fund corporations governed by the laws of Ontario.
- (b) The Manager is the manager of the Funds set out in Schedule "A". The Manager is registered as an investment counsel and portfolio manager or their equivalent in all provinces and territories of Canada other than Prince Edward Island, as a mutual fund dealer in Quebec, as a limited market dealer in Ontario, Newfoundland and Labrador, and as a commodity trading manager under the *Commodity Futures Act* (Ontario).
- (c) The Funds are reporting issuers in each Jurisdiction and are not in default of any requirements of Legislation.
- (d) Securities of the Funds listed in Schedule "A" are presently offered for sale on a continuous basis in provinces and territories of Canada pursuant to a simplified prospectus.
- (e) Each of the Funds is required to deliver annually, within 140 days of its financial year-end, to each holder of its securities ("Securityholders"), comparative financial statements in the prescribed form pursuant to the Legislation.
- (f) The Manager will send to Securityholders who hold securities of the Funds in client name (the "Direct Securityholders") in each year, a notice advising them that they will not receive the annual financial statements of the Funds for the year then ended unless they request same, and providing them with a request form to send back, by fax or prepaid mail, if they wish to receive the annual financial statements. The notice will advise the Direct Securityholders where annual financial statements can be found on the Internet (including on the SEDAR website) and downloaded. The Manager will send such financial statements to any Direct Securityholder who requests them

- in response to such notice or who subsequently requests them.
- (g) Securityholders who hold their securities in the Funds through a nominee will be dealt with pursuant to National Instrument 54-101.
  - (h) Securityholders will be able to access annual financial statements of the Funds either on the SEDAR website or on the website of the Manager: [www.tdassetmanagement.com](http://www.tdassetmanagement.com) or by calling the Manager's toll-free phone line.
  - (i) There would be substantial cost savings if the Funds are not required to print and mail annual financial statements to those Direct Securityholders who do not want them.
  - (j) The Canadian Securities Administrators ("CSA") have published for comment proposed National Instrument 81-106 ("NI 81-106") which, among other things, would permit a Fund not to deliver annual financial statements to those of its 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.
  - (k) NI 81-106 would also require a 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 Fund.

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

**AND WHEREAS** the Decision Makers are satisfied that making the Decision will not adversely affect the rule-making process with respect to proposed NI 81-106 and is consistent with National Instrument 54-101;

**THE DECISION** of the Decision Makers pursuant to the Legislation is that until NI 81-106 comes into force, the Funds shall not be required to deliver their comparative annual financial statements to their Direct Securityholders other than those Direct Securityholders who have requested to receive them provided that:

- (a) the Manager shall file on SEDAR, under the annual financial statements category, confirmation of mailing of the request forms that have been sent to the Direct Securityholders within 90 days of mailing the request forms;
- (b) the Manager shall file on SEDAR, under the annual financial statements category, information regarding the number and percentage of requests for annual financial statements made by the return of the request forms, on a province-by-province basis within 30 days after the end of each quarterly period beginning from the date of mailing the request forms and ending 12 months from the date of mailing;
- (c) the Manager shall record the number and a summary of complaints received from Direct Securityholders about not receiving the annual financial statements and shall file on SEDAR, under the annual financial statements category, this information within 30 days after the end of each quarterly period beginning from the date of mailing the request forms and ending 12 months from the date of mailing;
- (d) the Manager shall, if possible, measure the number of "hits" on the annual financial statements of the Funds on the [www.tdassetmanagement.com](http://www.tdassetmanagement.com) website and shall file on SEDAR, under the annual financial statements category, this information within 30 days after the end of each quarterly period beginning from the date of mailing the request forms and ending 12 months from the date of mailing; and
- (e) the Manager shall file on SEDAR, under the annual financial statements category, estimates of the annual cost savings resulting from the granting of this Decision within 90 days of mailing the request forms.
- (f) this decision shall terminate upon NI 81-106 coming into force.

December 16, 2003.

"Harold P. Hands"

"Robert W. Korthals"

**SCHEDULE "A"**

**THE FUNDS**

**TD MUTUAL FUNDS**

TD Canadian T-Bill Fund  
TD Canadian Money Market Fund  
TD Premium Money Market Fund  
TD U.S. Money Market Fund  
TD Short Term Bond Fund  
TD Mortgage Fund  
TD Canadian Bond Fund  
TD Real Return Bond Fund  
TD Global RSP Bond Fund  
TD High Yield Income Fund  
TD Income Advantage Portfolio  
TD Monthly Income Fund  
TD Balanced Fund  
TD Balanced Income Fund  
TD Balanced Growth Fund  
TD Global Asset Allocation Fund  
TD Dividend Income Fund  
TD Dividend Growth Fund  
TD Canadian Blue Chip Equity Fund  
TD Canadian Equity Fund  
TD Canadian Value Fund  
TD Canadian Small-Cap Equity Fund  
TD U.S. Blue Chip Equity Fund  
TD U.S. Blue Chip Equity RSP Fund  
TD U.S. Equity Fund  
TD AmeriGrowth RSP Fund  
TD Large-Cap Value Fund  
TD U.S. Mid-Cap Growth Fund  
TD U.S. Small-Cap Equity Fund  
TD Global Select Fund  
TD Global Select RSP Fund  
TD International Equity Fund  
TD International Growth Fund  
TD European Growth Fund  
TD European Growth RSP Fund  
TD Japanese Growth Fund  
TD Asian Growth Fund  
TD AsiaGrowth RSP Fund  
TD Emerging Markets Fund  
TD Emerging Markets RSP Fund  
TD Latin American Growth Fund  
TD Resource Fund  
TD Energy Fund  
TD Precious Metals Fund  
TD Entertainment & Communications Fund  
TD Entertainment & Communications RSP Fund  
TD Science & Technology Fund  
TD Science & Technology RSP Fund  
TD Health Sciences Fund  
TD Health Sciences RSP Fund  
TD Canadian Government Bond Index Fund  
TD Canadian Bond Index Fund  
TD Balanced Index Fund  
TD Canadian Index Fund  
TD Dow Jones Industrial Average Index Fund  
TD U.S. Index Fund  
TD U.S. RSP Index Fund  
TD Nasdaq RSP Index Fund

TD International Index Fund  
TD International RSP Index Fund  
TD European Index Fund  
TD Japanese Index Fund

**TD MANAGED ASSETS PROGRAM PORTFOLIOS**

TD Managed Income Portfolio  
TD Managed Income & Moderate Growth Portfolio  
TD Managed Balanced Growth Portfolio  
TD Managed Aggressive Growth Portfolio  
TD Managed Maximum Equity Growth Portfolio  
TD Managed Income RSP Portfolio  
TD Managed Income & Moderate Growth RSP Portfolio  
TD Managed Balanced Growth RSP Portfolio  
TD Managed Aggressive Growth RSP Portfolio  
TD Managed Maximum Equity Growth RSP Portfolio  
TD FundSmart Managed Income Portfolio  
TD FundSmart Managed Income & Moderate Growth Portfolio  
TD FundSmart Managed Balanced Growth Portfolio  
TD FundSmart Managed Aggressive Growth Portfolio  
TD FundSmart Managed Maximum Equity Growth Portfolio  
TD FundSmart Managed Income RSP Portfolio  
TD FundSmart Managed Income & Moderate Growth RSP Portfolio  
TD FundSmart Managed Balanced Growth RSP Portfolio  
TD FundSmart Managed Aggressive Growth RSP Portfolio  
TD FundSmart Managed Maximum Equity Growth RSP Portfolio  
TD Managed Index Income Portfolio  
TD Managed Index Income & Moderate Growth Portfolio  
TD Managed Index Balanced Growth Portfolio  
TD Managed Index Aggressive Growth Portfolio  
TD Managed Index Maximum Equity Growth Portfolio  
TD Managed Index Income RSP Portfolio  
TD Managed Index Income & Moderate Growth RSP Portfolio  
TD Managed Index Balanced Growth RSP Portfolio  
TD Managed Index Aggressive Growth RSP Portfolio  
TD Managed Index Maximum Equity Growth RSP Portfolio

**EMERALD POOLED FUNDS**

Emerald Canadian Short Term Investment Fund  
Emerald Canadian Bond Index Fund  
Emerald Global Government Bond Index Fund  
Emerald Balanced Fund  
Emerald Canadian Equity Index Fund  
Emerald U.S. Market Index Fund  
Emerald International Equity Index Fund

**2.1.2 INDEXPLUS 2 INCOME FUND - MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – closed-end investment trust exempt from prospectus requirements in connection with the sale of units repurchased from existing unit holders pursuant to market purchase programs and by way of redemption of units by unit holders – first trade in repurchased units deemed a distribution unless made in compliance with MI 45-102.

**Applicable Ontario Statutory Provisions**

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

**Multilateral Instrument Cited**

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

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

**AND**

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

**AND**

**IN THE MATTER OF  
INDEXPLUS 2 INCOME FUND  
MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador and Yukon (the “Jurisdictions”) has received an application from INDEXPLUS 2 INCOME FUND (the “Trust”) for a decision, pursuant to the securities legislation of the Jurisdictions (the “Legislation”), that the requirement contained in the Legislation to file and obtain a receipt for a preliminary prospectus and a final prospectus (the “Prospectus Requirements”) shall not apply to the distribution of units of the Trust (the “Units”) which have been repurchased by the Trust pursuant to the mandatory market purchase program, the discretionary market purchase program, or by way of redemption of Units at the request of holders thereof, nor to the first trade or resale of such repurchased Units (the “Repurchased Units”) which have been distributed by the Trust;

**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;

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

1. The Trust is an unincorporated closed-end investment trust established under the laws of the Province of Ontario by a declaration of trust dated as of October 30, 2003 (the “Declaration of Trust”).
2. The Trust is not considered to be a “mutual fund” as defined in the Legislation because the holders of Units (“Unitholders”) are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Trust as contemplated in the definition of “mutual fund” in the Legislation.
3. The Trust became a reporting issuer or the equivalent thereof in the Jurisdictions on October 31, 2003 upon obtaining a receipt for its final prospectus dated October 30, 2003 (the “Prospectus”). As of the date hereof, the Trust is not in default of any requirements under the Legislation.
4. Each Unit represents an equal, undivided beneficial interest in the net assets of the Trust and is redeemable at the net asset value of the Trust (“Net Asset Value”) per Unit on March 31st of each calendar year beginning in 2004.
5. Each whole Unit is entitled to one vote at all meetings of Unitholders and is entitled to participate equally with all other Units with respect to any and all distributions made by the Trust.
6. Middlefield INDEXPLUS 2 Management Limited (the “Manager”), which was incorporated pursuant to the *Business Corporations Act* (Ontario), is the manager and the trustee of the Trust.
7. The Units are listed and posted for trading on the Toronto Stock Exchange (the “TSX”) under the trading symbol “IDT.UN”. As at November 25, 2003, 7,000,000 Units were issued and outstanding.
8. In order to enhance liquidity and to provide market support for the Units, pursuant to the Declaration of Trust and the terms and conditions that attach to the Units, the Trust shall, subject to compliance with any applicable regulatory requirements, be obligated to purchase (the “Mandatory Purchase

Program”) any Units offered in the market on a business day at the then prevailing market price if, at any time after the closing of the Trust’s initial public offering pursuant to the Prospectus, the price at which Units are then offered for sale is less than 95% of the Net Asset Value per Unit as at the close of business in Toronto, Ontario on the immediately preceding business day, provided that:

- (a) the maximum number of Units that the Trust shall purchase in any three month period (commencing with the three month period that begins on the first day of the month following the month in which the closing of the Trust’s initial public offering occurs) will be 1.25% of the number of Units outstanding at the beginning of each such three month period; and
  - (b) the Trust shall not be required to purchase Units pursuant to the Mandatory Purchase Program if:
    - (i) the Manager reasonably believes that the Trust would be required to make an additional distribution in respect of the year to Unitholders of record on December 31 of such year in order that the Trust will generally not be liable to pay income tax after the making of such purchase;
    - (ii) in the opinion of the Manager, the Trust lacks the cash, debt capacity or resources in general to make such purchases; or
    - (iii) in the opinion of the Manager, the making of any such purchases by the Trust would adversely affect the ongoing activities of the Trust or the remaining Unitholders.
9. In addition, the Declaration of Trust provides that the Trust, subject to applicable regulatory requirements and limitations, shall have the right, but not the obligation, exercisable in its sole discretion, at any time, to purchase outstanding Units in the market at prevailing market prices (the “Discretionary Purchase Program”). Such discretionary purchases may be made through the facilities and under the rules of any exchange or market on which the Trust Units are listed (including the TSX) or as otherwise permitted by applicable securities laws.
10. Pursuant to the Declaration of Trust and subject to the Trust’s right to suspend redemptions, Units may be surrendered for redemption (the

“Redemption Program” and, together with the Mandatory Purchase Program and Discretionary Purchase Program, the “Programs”) by a Unitholder at any time in the month of March of each year commencing in 2004 to the Trust’s registrar and transfer agent, and each Unit properly surrendered for redemption by a Unitholder not later than 5:00 p.m. (Toronto time) on the fifth business day prior to March 31st of such year (the “Redemption Valuation Date”) will, subject to an investment dealer finding purchasers for Units properly surrendered for redemption upon the authorization of the Unitholder and at the direction of the Trust, be redeemed by the Trust pursuant to the Redemption Program for a price (the “Redemption Price”) equal to the Net Asset Value of the Trust divided by the number of Units then outstanding determined as of the applicable Redemption Valuation Date.

- 11. A Unitholder who has surrendered Units for redemption will be paid the Redemption Price for such Units by the tenth business day following the Redemption Valuation Date.
- 12. Purchases of Units made by the Trust under the Programs are exempt from the issuer bid requirements of the Legislation pursuant to exemptions contained therein.
- 13. The Trust desires to, and the Declaration of Trust provides that the Trust shall have the ability to, sell through one or more securities dealers Repurchased Units, in lieu of cancelling such Repurchased Units and subject to obtaining all necessary regulatory approvals.
- 14. In order to effect sales of Repurchased Units by the Trust, the Trust intends to sell, in its sole discretion and at its option, any Repurchased Units purchased by it under the Programs primarily through one or more securities dealers and through the facilities of the TSX (or such other exchange on which the Units are then listed).
- 15. Repurchased Units which the Trust does not sell within ten months of the purchase of such Repurchased Units will be cancelled by the Trust.
- 16. Prospective purchasers who subsequently acquire Repurchased Units will have equal access via SEDAR to the Prospectus as well as to all of the continuous disclosure documents of the Trust, which currently have been and which will in the future be, filed thereon.
- 17. Legislation in some of the Jurisdictions provides that a trade by or on behalf of an issuer in previously issued securities of that issuer that have been purchased by that issuer is a distribution subject to the Prospectus Requirements.

18. Legislation in some of the Jurisdictions provides that the first trade or resale of Repurchased Units acquired by a purchaser will be a distribution subject to the Prospectus Requirements unless such first trade is made in reliance on an exemption therefrom.
19. The Prospectus disclosed that the Trust may repurchase Units under the Mandatory Purchase Program, the Discretionary Purchase Program and the Redemption Program and, subject to receiving all necessary regulatory approvals, the Trust may arrange for one or more dealers to find purchasers for any Repurchased Units.

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

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

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

- (a) the Repurchased Units are sold by the Trust through the facilities of and in accordance with the regulations and policies of the TSX or the market on which the Units are then listed;
- (b) the Trust complies with the insider trading restrictions imposed by securities legislation with respect to the trades of Repurchased Units;
- (c) the Trust complies with the conditions of paragraphs 1 through 5 of subsection 2.8(2) of Multilateral Instrument 45-102 with respect to the sale of the Repurchased Units; and
- (d) the first trade or resale of Repurchased Units acquired by a purchaser from the Trust in a Jurisdiction shall be deemed a distribution or primary distribution to the public under the Legislation unless the conditions of paragraphs 2 through 5 of subsection 2.6(3) of Multilateral Instrument 45-102 are satisfied.

December 23, 2003.

"Robert W. Davis"                      "Theresa McLeod"

**2.1.3 AGF Funds Inc. - MRRS Decision**

**Headnote**

Investment by Top Funds in securities of Underlying Funds under an actively managed fund-of-fund structure exempted from the reporting requirements and self-dealing prohibitions of clauses 111(2)(b), 111(3) and clauses 117(1)(a) and (d).

**Statutes Cited**

Securities Act (Ontario), R.S.O. c. S.5, 111(2)(b), 111(3), 117(1)(a) and 117(1)(d).

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,  
ONTARIO, 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  
AGF FUNDS INC.  
("AGF")**

**AND**

**IN THE MATTER OF  
HARMONY CONSERVATIVE PORTFOLIO  
HARMONY BALANCED PORTFOLIO  
HARMONY RSP BALANCED PORTFOLIO  
HARMONY GROWTH PORTFOLIO  
HARMONY RSP GROWTH PORTFOLIO  
HARMONY AGGRESSIVE GROWTH PORTFOLIO  
HARMONY RSP AGGRESSIVE GROWTH PORTFOLIO  
HARMONY MAXIMUM GROWTH PORTFOLIO  
HARMONY RSP MAXIMUM GROWTH PORTFOLIO  
(THE "TOP FUNDS")**

**MRRS DECISION DOCUMENT**

**WHEREAS** the securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia, and Newfoundland and Labrador (the "Jurisdictions") has received an application from AGF as Manager of the Top Funds for a decision by each Decision Maker under the securities legislation of the Jurisdictions (the "Legislation") that the following provisions of the Legislation (the "Applicable Requirements") shall not apply to the Top Funds or AGF, in respect of the Top Funds' investments in securities of the Harmony Investment Pools (the "Underlying Funds"):

1. the restrictions contained in the Legislation that prohibit a mutual fund from knowingly making or holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial securityholder; and
2. the requirements contained in the Legislation that a management company or, in British Columbia, a mutual fund manager, file a report of every transaction of purchase or sale of securities between a mutual fund it manages and any related person or company and any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, a mutual fund is a joint participant with one or more of its related persons or companies.

**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;

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

1. The Top Funds will be open-end mutual fund trusts established under the laws of the Province of Ontario, and will be reporting issuers in each of the Jurisdictions. Units of the Top Funds will be qualified for distribution under a simplified prospectus and annual information form (the "Prospectus") filed in each of the Jurisdictions and will not be in default of any of the requirements of the Legislation.
2. The Underlying Funds are open-end mutual fund trusts established under the laws of the Province of Ontario, and are reporting issuers in each of the Jurisdictions. Units of the Underlying Funds are qualified for distribution under a simplified prospectus and annual information form filed in each of the Jurisdictions and are not in default of any of the requirements of the Legislation.
3. Some of the Underlying Funds (the "RSP Clone Funds") may have as an objective to limit their holdings in foreign property such that their units are not foreign property under Part XI of the *Income Tax Act* (Canada) (the "Tax Act"). Each RSP Clone Fund invests its assets directly and obtains exposure (through derivatives) in a specified foreign property mutual fund to link its performance to the specified fund.
4. The Manager is a corporation amalgamated under the laws of the Province of Ontario. The Manager's head office is located in Toronto,

Ontario. The Manager is the manager and trustee of the Top Funds and the Underlying Funds.

5. As part of its investment objective, each Top Fund will invest its assets (other than cash and cash equivalents) in Underlying Funds offered by AGF in the target weightings determined from time to time by a consultant retained by AGF.
6. A Top Fund's investment in Underlying Funds will be rebalanced to target weightings specified by the consultant retained by AGF.
7. The proposed fund-of-fund amendments to National Instrument 81-102 Mutual Funds ("NI 81-102") (the "Fund-of-Fund Amendments") will permit the investment objectives and strategies of the Top Funds. The Fund-of-Fund Amendments are expected to be in effect December 31, 2003.
8. Except to the extent evidenced by this Decision and specific approvals granted by the Decision Makers pursuant to NI 81-102, the investments by the Top Funds in the Underlying Funds will comply with the investment restrictions of the Legislation and NI 81-102.
9. In the absence of this Decision, the Top Funds would be prohibited from knowingly making or holding an investment in Underlying Funds in which the Top Funds, alone or together with one or more related mutual funds, is a substantial securityholder.
10. In the absence of this Decision, AGF would be required to file a report of every transaction of purchase or sale by the Top Funds of the securities of the Underlying Funds.
11. The Top Funds' investment in securities of the Underlying Funds will represent the business judgement of responsible persons uninfluenced by considerations other than the best interests of the Top Funds.

**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 Applicable Requirements shall not apply so as to prevent the Top Funds from making and holding investments in securities of the Underlying Funds, or require AGF to file a report relating to the purchase or sale of such securities;

**PROVIDED IN EACH CASE THAT:**

1. The Decision, as it relates to the jurisdiction of a Decision Maker, will terminate after the publication in final form of any legislation or rule of that Decision Maker dealing with matters in section 2.5 of NI 81-102.
  2. The Decision shall only apply if, at the time the Top Fund makes or holds an investment in the Underlying Funds, the following conditions are satisfied:
    - a) The Underlying Funds are subject to NI 81-102 and National Instrument 81-101 Mutual Fund Prospectus Disclosure (“NI 81-101”);
    - b) The securities of the Top Fund and the securities of the Underlying Funds are qualified for distribution in the local jurisdiction;
    - c) Except where the Underlying Fund is a RSP Clone Fund, at the time the Top Fund purchases securities of an Underlying Fund, the Underlying Fund does not hold more than 10% of the market value of its net assets in securities of other mutual funds;
    - d) The Top Fund shall disclose in its simplified prospectus under the “Fees and Expenses” section, that there are fees and expenses payable by the Underlying Funds in addition to the fees and expenses payable by the Top Funds;
    - e) No management fees or incentive fees are payable by the Top Fund that, to a reasonable person, would duplicate a fee payable by the Underlying Funds for the same service and this information is disclosed in the simplified prospectus of the Top Fund under the “Fees and Expenses” section;
    - f) No sales fees or redemption fees are payable by the Top Fund in relation to their purchases or redemptions of the securities of the Underlying Funds and this information is disclosed in the simplified prospectus of the Top Fund under the “Fees and Expenses” section;
    - g) No sales fees or redemption fees are payable by the Top Fund in relation to their purchases or redemptions of the securities of the Underlying Funds that, to a reasonable person, would duplicate a fee payable by an investor in the Top Fund and this information is disclosed in
- the simplified prospectus of the Top Fund under the “Fees and Expenses” section;
- h) With respect to the securities of the Underlying Funds, the Top Funds,
    1. shall not vote any of those securities;
    2. may, if the Manager so chooses, arrange for all of the securities it holds of the Underlying Funds to be voted by the beneficial holders of securities of the Top Funds; and
    3. shall disclose the above information in the simplified prospectus of the Top Fund under the “Organization and Management Details” section;
  - i) The Top Fund and the Underlying Funds must have dates for the calculation of net asset value that are compatible;
  - j) The Top Fund shall disclose in its simplified prospectus under the “Investment Strategies” section:
    1. whether the Top Fund intends to purchase securities of, or enter into specified derivative transactions for which the underlying interest is based on securities of, one or more Underlying Funds;
    2. that the Underlying Funds are managed by the Manager of the Top Fund;
    3. what percentage of net assets of the Top Fund is dedicated to the investment in the securities of, or the entering into of specified derivative transactions for which the underlying interest is based on the securities of, Underlying Funds; and
    4. the process or criteria used to select the Underlying Funds;
  - k) The Top Fund shall disclose in its simplified prospectus under the “Top Ten Holdings” section, a statement to the effect that the simplified prospectus and other information about the Underlying Funds are available on the internet at [www.sedar.com](http://www.sedar.com);
  - l) If more than 10% of the securities of the Underlying Funds are held by the Top



Fund, the Underlying Funds must disclose under the "Risks" section of their simplified prospectus, the percentage of securities held by the Top Fund as at a date within 30 days of the date of the simplified prospectus of the Top Fund. The Underlying Funds must also disclose the risks associated with a possible redemption requested by the Top Fund.

December 23, 2003.

"H. Lorne Morphy"

"Suresh Thakrar"

## 2.1.4 National Bank Financial Inc. and National Bank of Canada - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications – original decision, exempting applicants for the independent underwriting requirements, amended so that the applicants no longer need to present financial statements prepared by an independent auditor as set out in the original decision.

### Applicable Ontario Statutory Provisions

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

### Applicable Ontario Rules

National Instrument 33-105 – Underwriting Conflicts.

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

**AND**

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

**AND**

**IN THE MATTER OF  
NATIONAL BANK OF CANADA AND  
NATIONAL BANK FINANCIAL INC.**

**AMENDED 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 and Newfoundland (collectively, the "**Jurisdictions**") has received an application from National Bank Financial Inc. ("**NBF**") and National Bank of Canada (the "**Issuer**") (collectively, the "**Filer**") for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") to amend the Decision Document dated June 17, 2003 issued by the Decision Maker in the matter of the Filer pursuant to which the requirement contained in the Legislation regarding acting as an underwriter in connection with a distribution of securities of an issuer made by means of a prospectus where the issuer is a "related issuer" of the registrant (the "**Independent Underwriter Requirements**"), shall not apply to NBF in respect of the proposed distributions (the "**Offerings**") of an aggregate amount of up to \$500,000,000 of NBC Ex-Tra Total Return Notes (the "**Notes**") of the Issuer to be made under a short form shelf prospectus (the "**Prospectus**") and prospectus supplements (the

"**Prospectus Supplements**") expected to be filed with the Decision Maker in each of the Jurisdictions;

**AND WHEREAS** under the Mutual Reliance System for Exemptive Relief Applications (the "**System**"), the Commission des valeurs mobilières du Québec is the principal regulator for this application;

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

1. All of the facts contained in the Decision Document dated June 17, 2003 are true and complete with the exception of Paragraph 18;
2. Since the inception of the Issuer's External-Traders program (the "**Program**"), the financial statements of the Program have been prepared for internal purposes only and have never been remitted to Note holders. Note holders do not need to receive a copy of the financial statements, as they have no recourse against the assets of the Program. The Notes are a debt of the Issuer and do not entitle their holders to the underlying assets of the Program. The only relevant information to Note holders, in order for them to be able to determine the value of their Notes is the net asset value ("**NAV**") per Unit and the corresponding index value (the "**Index Value**").
3. The scope of the audit will not change with respect to the Index Value. As a result, the NAV per Unit and the Index Value will continue to be subject to a semi-annual audit by an independent auditor. Moreover, the auditors will issue a monthly review report of the Index Value.
4. Since the NAV per Unit and the Index Value will be subject to a semi-annual audit and since the Index Value will be subject to a monthly review by a firm of independent auditors, Note holders will be able to confirm the issuance price and the redemption price.

**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: paragraph 18 of the Decision Document dated June 17, 2003 is amended and replaced by the following:

"An independent auditor has been retained on behalf of Note holders to audit, on a semi-annual basis, the NAV per Unit, the management fees and the Index Value and to review, on a monthly basis, the Index Value."

December 12, 2003.

"Guy Lemoine"

"Jean-Marie Gagnon"

**2.1.5 Aronson+Johnson+Ortiz, L.P. - 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  
ARONSON+JOHNSON+ORTIZ, L.P.**

**DECISION**

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

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

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

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

1. The Applicant is a limited partnership incorporated under the laws of the State of Delaware in the United States of America. The Applicant is not a reporting issuer. The Applicant is seeking registration under the Act as an international adviser. The head office of the Applicant is located in Philadelphia, 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 will be 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 21, 2003.

“David M. Gilkes”

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

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

3. The Applicant has encountered difficulties in setting up a Canadian based bank account for purposes of fulfilling the EFT Requirement.
4. The Applicant confirms that it is not registered in another category to which the EFT Requirement applies and that Ontario is the only jurisdiction in which it is registered.
5. Staff of the Canadian Securities Administrators has indicated that, with respect to applications from international dealers and international advisers (or applicants in equivalent categories of registration) for relief from the EFT Requirement, it is prepared to recommend waiving the fee normally required to accompany applications for discretionary relief (the Application Fee).
6. For Ontario registrants, the requirement for payment of the Application Fee is set out in section 4.1 of Rule 13-502.

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

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

- A. makes acceptable alternative arrangements with CDS for the payment of NRD fees;
- B. pays its participation fee under the Act to the Commission by cheque, draft, money order or other acceptable means at the time of filing its application for annual renewal, which shall be no later than the first day of December in each year;
- C. pays any applicable activity fees, or other fees that the Act requires it to pay to the Commission, by cheque, draft, money order or other acceptable means at the appropriate time; and
- D. is not registered in any Jurisdiction in another category to which the EFT Requirement applies;

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

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

September 30, 2003.

“David M. Gilkes”

**2.1.7 D. E. Shaw & Co., L.P. - 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  
D. E. SHAW & CO., L.P.**

**DECISION**

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

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

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

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

1. The Applicant is a limited partnership incorporated under the laws of 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 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”

**2.1.8 Westminster Research Associates, 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  
WESTMINSTER RESEARCH ASSOCIATES, 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 Westminster Research Associates, 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 Rochdale Securities 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  
ROCHDALE SECURITIES 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 Rochdale Securities 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 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 2, 2003.

“David M. Gilkes”

**2.1.10 First Albany 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  
FIRST ALBANY 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 First Albany 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 New York in the United States of America. The Applicant is not a reporting issuer. The Applicant is registered under the Act as an international dealer. The head office of the Applicant is located in Albany, New York.
2. MI 31-102 requires that all registrants in Canada enrol with CDS Inc. (CDS) and use the national registration database (NRD) to complete certain registration filings. As part of the enrolment process, registrants are required to open an

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

3. The Applicant has encountered difficulties in setting up a Canadian based bank account for purposes of fulfilling the EFT Requirement.
4. The Applicant confirms that it is not registered in another category to which the EFT Requirement applies and that Ontario is the only jurisdiction in which it is registered.
5. Staff of the Canadian Securities Administrators has indicated that, with respect to applications from international dealers and international advisers (or applicants in equivalent categories of registration) for relief from the EFT Requirement, it is prepared to recommend waiving the fee normally required to accompany applications for discretionary relief (the Application Fee).
6. For Ontario registrants, the requirement for payment of the Application Fee is set out in section 4.1 of Rule 13-502.

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

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

- A. makes acceptable alternative arrangements with CDS for the payment of NRD fees;
- B. pays its participation fee under the Act to the Commission by cheque, draft, money order or other acceptable means at the time of filing its application for annual renewal, which shall be no later than the first day of December in each year;
- C. pays any applicable activity fees, or other fees that the Act requires it to pay to the Commission, by cheque, draft, money order or other acceptable means at the appropriate time; and
- D. is not registered in any Jurisdiction in another category to which the EFT Requirement applies;

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

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

September 30, 2003.

“David M. Gilkes”

**2.1.11 BNY Brokerage 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  
BNY BROKERAGE 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 BNY Brokerage 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”

**2.1.12 Equinox Capital Management, LLC  
- MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – 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 the Legislation waived in respect of this discretionary relief, subject to certain conditions.

**Ontario Securities Commission 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 LEGISLATION OF  
ONTARIO AND ALBERTA**

**AND**

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

**AND**

**IN THE MATTER OF  
EQUINOX CAPITAL MANAGEMENT, LLC**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (collectively, the Decision Makers) in each of the Provinces of Ontario and Alberta (the Jurisdictions) has received an application from the Applicant for a decision 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 fee requirement contemplated under the securities legislation of each of the Jurisdictions (the Legislation) in respect of this discretionary relief;

**AND WHEREAS** under the Mutual Reliance Review Systems 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 Applicant has represented to the Decision Makers that:

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 Legislation 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 it has applied for relief from the EFT Requirement in each 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).

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

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

**THE DECISION** of the Decision Makers pursuant to the Legislation is 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. makes acceptable alternative arrangements with the Decision Maker in each Jurisdiction for the payment of all other fees payable under the Legislation in that Jurisdiction by a registrant in its category of registration;
- C. is not registered in another category to which the EFT Requirement applies;

**PROVIDED THAT** the Applicant submits a similar application in any other 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 Decision Makers that the Application Fee will be waived in respect of the application for this Decision.

October 14, 2003.

“David M. Gilkes”

**2.1.13 Provident Investment Counsel, Inc.  
- MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – 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 the Legislation waived in respect of this discretionary relief, subject to certain conditions.

**Ontario Securities Commission 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 LEGISLATION OF  
ONTARIO AND MANITOBA**

**AND**

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

**AND**

**IN THE MATTER OF  
PROVIDENT INVESTMENT COUNSEL, INC.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (collectively, the Decision Makers) in each of the Provinces of Ontario and Manitoba (the Jurisdictions) has received an application from the Applicant for a decision 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 fee requirement contemplated under the securities legislation of each of the Jurisdictions (the Legislation) in respect of this discretionary relief;

**AND WHEREAS** under the Mutual Reliance Review Systems 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 Applicant has represented to the Decision Makers that:

1. The Applicant is incorporated under the laws of Massachusetts in the United States of America. The Applicant is not a reporting issuer. The Applicant is registered under the Legislation as an international adviser. The head office of the Applicant is located in Pasadena, 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 it has applied for relief from the EFT Requirement in each 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).

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

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

**THE DECISION** of the Decision Makers pursuant to the Legislation is 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. makes acceptable alternative arrangements with the Decision Maker in each Jurisdiction for the payment of all other fees payable under the Legislation in that Jurisdiction by a registrant in its category of registration;
- C. is not registered in another category to which the EFT Requirement applies;

**PROVIDED THAT** the Applicant submits a similar application in any other 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 Decision Makers that the Application Fee will be waived in respect of the application for this Decision.

October 22, 2003.

“David M. Gilkes”

## 2.1.14 Pyrford International PLC - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications – 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 the Legislation waived in respect of this discretionary relief, subject to certain conditions.

### Ontario Securities Commission 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 LEGISLATION OF  
ONTARIO, MANITOBA AND ALBERTA**

AND

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

AND

**IN THE MATTER OF  
PYRFORD INTERNATIONAL PLC**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (collectively, the Decision Makers) in each of the Provinces of Ontario, Manitoba and Alberta (the Jurisdictions) has received an application from the Applicant for a decision 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 fee requirement contemplated under the securities legislation of each of the Jurisdictions (the Legislation) in respect of this discretionary relief;

**AND WHEREAS** under the Mutual Reliance Review Systems 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 Applicant has represented to the Decision Makers that:



1. The Applicant is incorporated under the laws of the United Kingdom. The Applicant is not a reporting issuer. The Applicant is registered under the Legislation in Ontario as an international adviser and has applied for registration as an international adviser under the Legislation in Manitoba and intends to apply for registration as an international adviser in Alberta upon approval of its registration in Manitoba. The head office of the Applicant is located in London, United Kingdom.
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 it has applied for relief from the EFT Requirement in each 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).

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

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

**THE DECISION** of the Decision Makers pursuant to the Legislation is 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. makes acceptable alternative arrangements with the Decision Maker in each Jurisdiction for the payment of all other fees payable under the Legislation

in that Jurisdiction by a registrant in its category of registration;

- C. is not registered in another category to which the EFT Requirement applies;

**PROVIDED THAT** the Applicant either submits a similar application in, or relies upon blanket relief granted in, any other 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 Decision Makers that the Application Fee will be waived in respect of the application for this Decision.

October 22, 2003.

“David M. Gilkes”

**2.1.15 Assante Asset Management Ltd.  
- MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – Extension of lapse date for mutual fund prospectus to allow new management additional time to review business and affairs of the Funds further to a change of control and reorganization of the Manager of the Funds.

**Statutes Cited**

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

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,  
MANITOBA, ONTARIO, QUEBEC, NEW BRUNSWICK,  
PRINCE EDWARD ISLAND, NOVA SCOTIA, AND  
NEWFOUNDLAND AND LABRADOR  
(collectively, the “Jurisdictions”)**

**AND**

**IN THE MATTER OF  
THE MUTUAL RELIANCE REVIEW SYSTEM  
FOR EXEMPTIVE RELIEF APPLICATIONS  
(the “System”)**

**AND**

**IN THE MATTER OF  
ASSANTE ASSET MANAGEMENT LTD.**

**AND**

**OPTIMA STRATEGY CASH MANAGEMENT POOL,  
OPTIMA STRATEGY SHORT TERM INCOME POOL,  
OPTIMA STRATEGY CANADIAN FIXED INCOME POOL,  
OPTIMA STRATEGY GLOBAL FIXED INCOME POOL,  
OPTIMA STRATEGY RSP GLOBAL  
FIXED INCOME POOL,  
OPTIMA STRATEGY CANADIAN  
EQUITY SMALL CAP POOL,  
OPTIMA STRATEGY CANADIAN EQUITY VALUE POOL,  
OPTIMA STRATEGY CANADIAN  
EQUITY GROWTH POOL,  
OPTIMA STRATEGY CANADIAN EQUITY  
DIVERSIFIED POOL,  
OPTIMA STRATEGY US EQUITY VALUE POOL,  
OPTIMA STRATEGY US EQUITY GROWTH POOL,  
OPTIMA STRATEGY US EQUITY DIVERSIFIED POOL,  
OPTIMA STRATEGY RSP US EQUITY  
DIVERSIFIED POOL,  
OPTIMA STRATEGY INTERNATIONAL  
EQUITY VALUE POOL,  
OPTIMA STRATEGY INTERNATIONAL  
EQUITY GROWTH POOL,  
OPTIMA STRATEGY INTERNATIONAL  
EQUITY DIVERSIFIED POOL,**

**OPTIMA STRATEGY RSP INTERNATIONAL  
EQUITY DIVERSIFIED POOL  
AND OPTIMA STRATEGY REAL ESTATE  
INVESTMENT POOL  
(collectively, the “Funds”)**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the “Decision Maker”) in each of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Prince Edward Island, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application (the “Application”) from Assante Asset Management Ltd. (the “Manager”) and the Funds for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the lapse date for the renewal of the simplified prospectus and annual information form of the Funds dated December 4, 2002 (the “Prospectus”) be extended to the time periods that would be applicable if the lapse date of the Prospectus was January 16, 2004.

**AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”) the Manitoba 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 Quebec Commission Notice 14-101;

**AND WHEREAS** it has been represented by the Manager to the Decision Makers that:

1. The Manager is a corporation established under the laws of Manitoba. The Manager is the manager, promoter and a distributor of the Funds.
2. The Funds are mutual fund trusts established under the laws of the Province of Ontario or under the laws of the Province of Manitoba.
3. The Funds are reporting issuers under the Legislation and are not in material default of any of the requirements of the Legislation or the regulations made thereunder.
4. Pursuant to the Legislation or the regulations made thereunder, the earliest lapse date for distribution of securities of the Funds pursuant to the Prospectus is December 4, 2003.
5. Since December 4, 2002, the date of the Prospectus, other than those changes for which amendments have been filed, no material change has occurred. Accordingly, the Prospectus represents accurate information regarding the Funds.
6. The extension requested will not affect the currency or accuracy of the information contained

in the Prospectus and accordingly will not be prejudicial to the public interest.

7. As a result of the acquisition on November 14, 2003 by CI Fund Management Inc. of Assante Corporation there has been an indirect change of control of the Manager. Because of the changes in ownership and the reorganization of the Manager, new management requires additional time to do a thorough and complete review of the business and affairs of the Funds.
8. In order to permit the new management sufficient time to complete their review of the Funds an extension of the lapse date is required.

**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 are of the opinion that it would not be prejudicial to the public interest to make the Decision;

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

**THE DECISION** of the Decision Makers under the Legislation is that the time limits provided by the Legislation as they apply to the distribution of securities under a Prospectus are hereby extended to the time periods that would be applicable if the lapse date for the distribution of securities under the Prospectus of the Funds was January 16, 2004 and receipts for the simplified prospectus and annual information form are obtained no later than 20 days after January 16, 2004.

December 16, 2003.

"R.B. Bouchard"

**2.1.16 Rabo Securities USA, 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  
RABO SECURITIES USA, 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 Rabo Securities USA, 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 has applied for registration 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 has applied for registration with the Commission as an international dealer and presently does not conduct securities business in Ontario.
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.

January 15, 2004.

“David M. Gilkes”

**2.1.17 RoyNat Canadian Diversified Fund Inc.  
- MRRS Decision**

**Headnote**

Exemption from section 2.1 of National Instrument 81-105 Mutual Fund Sales Practices granted to labour sponsored investment fund corporation to permit it to pay certain specified distribution costs out of fund assets.

**Rules Cited**

National Instrument 81-105 Mutual Fund Sales Practices.

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

**AND**

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

**AND**

**IN THE MATTER OF  
NATIONAL INSTRUMENT 81-105  
MUTUAL FUND SALES PRACTICES**

**AND**

**IN THE MATTER OF  
THE ROYNAT CANADIAN DIVERSIFIED FUND INC.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island (the "Jurisdictions") has received an application from RoyNat Canadian Diversified Fund Inc. (the "Fund") for a decision pursuant to section 9.1 of National Instrument 81-105 Mutual Fund Sales Practice ("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** 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**, the Fund represented to the Decision Makers as follows:

1. The Fund is a corporation incorporated under the *Canada Business Corporations Act* by Articles of Incorporation dated October 31, 2003.
2. The Fund will be registered as a labour sponsored investment fund corporation under the *Community Small Business Investment Funds Act* (Ontario), as amended (the "Ontario Act"), a labour-sponsored venture capital corporation under the *Income Tax Act* (Canada) (the "Federal Act"), as amended, a labour-sponsored venture-capital corporation under the *Equity Tax Credit Act* (Nova Scotia) and prescribed as a labour-sponsored venture capital corporation by regulation under the *New Brunswick Income Tax Act*.
3. The Fund is a mutual fund pursuant to the securities legislation of the Jurisdictions (the "Legislation"), and will distribute securities in the Jurisdictions under two prospectuses. The Fund has filed a preliminary prospectus in all provinces in Canada, except Québec, and will be filing a separate prospectus in Québec.
4. The Fund will become a reporting issuer or equivalent in the Jurisdictions that recognize this concept when its prospectuses are receipted in such Jurisdictions.
5. The Fund will invest in small and medium-sized eligible Canadian businesses with the objective of achieving long-term capital appreciation.
6. The Christian Labour Association of Canada, The International Federation of Professional and Technical Engineers – Local 160 (also known as The Society of Energy Professionals) and The International Federation of Professional and Technical Engineers – Local 164 are the sponsors of the Fund (the "Sponsors").
7. B.E.S.T. Capital Management Ltd., (the "Manager") provides management services to the Fund. The Sponsors formed and organized the Fund.
8. The authorized capital of the Fund consists of an unlimited number of Class A Shares, an unlimited number of Class B Shares and an unlimited number of Class C Shares as at the date hereof. The Sponsors of the Fund are the sole owners of the Class B Shares of the Fund. RoyNat Management Inc. (the "Private Equity Specialist") and its affiliates will be the sole owner of Class C Shares of the Fund.
9. The prospectus defines "Net Asset Value Per Share" when used in reference to Class A Shares and Class C Shares as being determined by subtracting the value of the liabilities of the Fund and the stated capital of the Class B Shares, from the value of the assets of the Fund and dividing the resulting amount by the total number of

- outstanding Class A Shares and Class C Shares at the date such value is determined (the "Net Asset Value Per Share").
10. As will be disclosed in the Fund's prospectuses, the Fund will pay the following distribution costs ("Distribution Costs"):
- (a) a sales commission in an amount of 6% of the original issue price of each Class A Share to the registered dealer selling the Class A Shares ("Sales Commission");
  - (b) a quarterly servicing commission equal to 0.5% annually of the aggregate Net Asset Value Per Share attributable to the Class A Shares held by clients of participating dealers; and
  - (c) the reimbursement of co-operative marketing expenses incurred by certain dealers in promoting sales of the Class A Shares, pursuant to co-operative marketing agreements the Fund enters into with such dealers from time to time.
11. The structural aspects of the Fund relating to the payment of commissions are consistent with the legislative requirements contemplated under the Ontario Act. Gross investment amounts will be paid to the Fund as opposed to, for example, first deducting a commission and remitting the net investment amount to the Fund, in order to ensure that the entire amount paid by an investor is eligible for applicable federal, and in the case of Ontario, New Brunswick and Nova Scotia, provincial tax credits which arise on the purchase of the Class A Shares of the Fund. Section 25(4) of the Ontario Act, for example, provides that the provincial tax credit is a defined percentage "of the amount received by the corporation as equity capital on the issue". Accordingly, the most tax efficient way for sales commissions to be financed is for the Fund to pay such expenses and amortize them in the manner described above.
12. For accounting purposes, the Fund will expense all Distribution Costs in the fiscal period when incurred.
13. Gross investment amounts will be contributed to the Fund in respect of each subscription. This is to ensure that the entire subscription amount contributed by the investor is counted for the purpose of the applicable federal and provincial tax credits in connection with the purchase of Class A Shares.
14. Due to the structure of the Fund, the most tax efficient way for the Distribution Costs to be financed is for the Fund to pay them directly.

15. As other labour sponsored investment funds have been granted this relief, requiring the Manager to pay the Distribution Costs would put the Fund at a permanent and serious competitive disadvantage with its competitors.
16. 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.
17. The payment of commissions on the sale of Class A Shares by the Fund is an event contemplated under the Ontario Act and the Federal Act.

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

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

**THE DECISION** of the Decision Makers under subsection 9.1(1) of NI 81-105 is that the Fund shall be exempt from section 2.1 of NI 81-105 to permit the Fund to pay the Distribution Costs, provided that:

- (a) Distribution Costs are otherwise permitted by, and paid in accordance with, NI 81-105;
- (b) the Fund will in its financial statements expense all Distribution Costs in the fiscal period when incurred;
- (c) the summary section of the prospectus will have full, true and plain disclosure explaining to investors that they pay the Sales Commission indirectly, as the Fund pays the Sales Commission using investors' subscription proceeds, and this summary section must be placed within the first 10 pages of the prospectuses; and
- (d) this Exemption shall cease to be operative with respect to the Decision Maker on the date that a rule or regulation replacing or amending section 2.1 of NI 81-105 comes into force.

December 18, 2003.

"Harold P. Hands"

"Robert W. Korthals"

**2.1.18 Algonquin Power Venture Fund Inc. - s. 9.1 of NI 81-105**

**Headnote**

Exemption from section 2.1 of National Instrument 81-105 Mutual Fund Sales Practices granted to labour sponsored investment fund corporation to permit it to pay certain specified distribution costs out of fund assets.

**Rules Cited**

National Instrument 81-105 Mutual Fund Sales Practices.

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

**AND**

**IN THE MATTER OF  
NATIONAL INSTRUMENT 81-105  
MUTUAL FUND SALES PRACTICES**

**AND**

**IN THE MATTER OF  
ALGONQUIN POWER VENTURE FUND INC.**

**DECISION DOCUMENT**

**WHEREAS** the Ontario Securities Commission (the "Commission") has received an application from Algonquin Power Venture 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 and the manager of the Fund to registered dealers shall not apply to the Fund;

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

1. The Fund is a corporation incorporated under the *Canada Business Corporations Act* by Articles of Incorporation dated October 23, 2003.
2. The Fund has applied for registration as a labour sponsored investment fund corporation under the *Community Small Business Investment Funds Act* (Ontario) (the "Ontario Act").
3. When so registered, the Fund will be a prescribed venture capital corporation and a prescribed labour sponsored venture capital corporation under the *Income Tax Act* (Canada) (the "Tax Act"). In addition to maintaining its registration under the Ontario Act, the Fund may become a registered labour sponsored venture capital corporation (an "LSVCC") as defined in the Tax Act.

4. The Fund filed a preliminary prospectus (the "Preliminary Prospectus") under Sedar Project No. 584425 in Ontario on October 30, 2003 in connection with the initial public offering of its Class A shares to the public in Ontario. The Fund will be a mutual fund pursuant to the securities legislation of Ontario.
5. The Fund will primarily invest in small and medium-sized eligible Canadian businesses engaged in the electrical power generation, distribution and infrastructure sector with the objective of achieving predictable yield and long-term capital appreciation.
6. The International Union of Allied, Novelty & Production Workers, Local 905 is the sponsor of the Fund (the "Sponsor"). The manager of the Fund is Algonquin Power Venture Management Inc. (the "Manager"). The Sponsor and the Manager formed and organized the Fund. The administrator of the Fund is anticipated to be Unisen Inc. and the custodian of certain of the Fund's property is CIBC Mellon Global Securities Services Company.
7. The authorized capital of the Fund consists of an unlimited number of Class A shares, an unlimited number of Class B shares and an unlimited number of Class C shares, of which no Class A shares, 100 Class B shares and 100 Class C shares are currently issued and outstanding. The Sponsor is the registered and beneficial owner all of the Class B shares. The Manager is the registered and beneficial owner of all of the Class C shares.
8. As is disclosed in the Preliminary Prospectus, the following distribution costs (collectively, the "Distribution Costs") will be paid in the manner set forth below:
  - (a) the Manager will pay a sales commission equal to 6% of the selling price of each Class A Share subscribed for pursuant to subscriptions procured by registered dealers (the "Sales Commission"). Sales Commissions payable by the Manager will not be charged to or amortized by the Fund;
  - (b) the Fund will pay to each registered dealer having clients holding Class A Shares a servicing commission (the "Servicing Commission") of 1/12 of 0.5% of the total net asset value of the Class A Shares held by clients of those registered dealers, calculated monthly but paid quarterly at the end of each quarter; and
  - (c) the Fund will pay the Manager for marketing support services, an annual fee of 0.50% of the net asset value of the

Fund. The Manager, may, at its option, retain a third-party marketing firm to assist in providing marketing support services and pay such marketing firm a portion or all of the annual marketing support services fee.

9. To reimburse the Manager for debt incurred to fund the payment of Sales Commissions, the Fund will pay the Manager a monthly distribution services fee equal to, in respect of any particular month, an amount equal to 0.092% of the original Class A Share issue price for such month.

10. The structural aspects of the Fund relating to the payment of commissions are consistent with the legislative requirements contemplated under the Ontario Act. Gross investment amounts will be paid to the Fund as opposed to, for example, first deducting a commission and remitting the net investment amount to the Fund, in order to ensure that the entire amount paid by an investor is eligible for applicable federal and Ontario tax credits which arise on the purchase of the Class A Shares of the Fund. Section 25(4) of the Ontario Act, for example, provides that the provincial tax credit is a defined percentage of the amount received by the corporation as equity capital on the issue. Accordingly, it is tax efficient for the Manager and the Fund to pay the Distribution Costs directly.

11. Gross investment amounts will be contributed to the Fund in respect of each subscription. This is to ensure that the entire subscription amount contributed by the investor is counted for the purpose of the applicable federal and provincial tax credits in connection with the purchase of Class A Shares.

12. 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 and the Manager will be compensation permitted to be paid to participating dealers under NI 81-105.

13. The payment of commissions on the sale of Class A Shares by the Manager is an event contemplated under the Ontario Act and the Tax Act.

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

**THE DECISION** of the Commission under section 9.1 of NI 81-105 is that the Fund shall be exempt from section 2.1 of NI 81-105 to permit the Fund to pay the Servicing Commission, provided that:

(a) The Servicing Commission is otherwise permitted by, and paid in accordance with, NI 81-105;

(b) the Fund, in its financial statements, will expense the Servicing Commission in the fiscal period when incurred;

(c) the summary section of the preliminary prospectus has full, true and plain disclosure explaining to investors that they pay the Servicing Commission indirectly, as the Fund pays the Servicing Commission. This summary section must be placed within the first 10 pages of the final prospectus; and

(d) this exemption 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 12, 2003.

“Robert W. Davis”

“Paul M. Moore”



**2.1.19 Financial 15 Split Corp. - MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Relief granted to an issuer from requirement to deliver annual financial statements and requirement to file an annual report where applicable. The annual financial statements covered a short operating period.

**Applicable Ontario Statutory Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am. s. 80(b)(iii).

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
THE PROVINCES OF  
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,  
MANITOBA, ONTARIO, QUEBEC, 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  
FINANCIAL 15 SPLIT CORP.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions") has received an application from Financial 15 Split Corp. (the "Issuer") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirement to deliver to its security holders the audited annual financial statements of the Issuer for the period ended November 30, 2003 and the requirement to prepare, file and deliver to its security holders an annual report, where applicable, for the year ended November 30, 2003 shall not apply to the Issuer;

**AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Applications (the "MRRS"), 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 was incorporated under the laws of the Province of Ontario on September 26, 2003 and has its principal office at 77 King Street West, Suite 4500, Toronto, Ontario, M5K 1K7. The fiscal year end of the Issuer is November 30.
2. The Issuer filed a final prospectus dated October 29, 2003 (the "Prospectus") with the securities regulatory authority in each of the provinces of Canada.
3. The authorized capital of the Issuer consists of an unlimited number of Preferred Shares, an unlimited number of Class A Shares and an unlimited number Class B Shares, of which 1,000 Class B Shares are issued and outstanding, having the attributes described in the Preliminary Prospectus. All of the Class B Shares, which are the only class of voting shares of the Issuer, are held by Quadravest Capital Management Inc. ("Quadravest") and are subject to an escrow agreement among Quadravest, The Royal Trust Company and the Issuer.
4. The principal undertaking of the Issuer is the holding of a portfolio of common shares (the "Portfolio Shares") of 15 Canadian and U.S. publicly listed financial services companies (the "Portfolio Companies"). As described in the Prospectus, the Issuer expects that the common shares of a particular Portfolio Company will generally represent no less than 4% and no more than 8% of the net asset value of the Issuer.
5. The Prospectus includes an audited statement of financial position of the Issuer as at October 29, 2003 and an unaudited pro forma statement of financial position prepared on the basis of the anticipated November 14, 2003 completion of the sale and issue of Preferred Shares and Class A Shares of the Issuer. As such, the financial position of the Issuer as at November 14, 2003 will be substantially reflected in the pro forma financial statements contained in the Prospectus.
6. The benefit to be derived by the security holders of the Issuer from receiving annual financial statements and an annual report, where applicable, for the fiscal year ended November 30, 2003 would be minimal in view of the short period from the expected date of the Prospectus to its fiscal year end and given the nature of the business carried on by the Issuer.
7. The expense to the Issuer in printing and delivering to its security holders the annual financial statements and in preparing, filing and sending to its security holders an annual report where applicable for the fiscal year ended November 30, 2003 would not be justified in view of the minimal benefit to be derived by the security holders from receiving such statements.

**AND WHEREAS** under the MRRS this 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 Issuer is exempt from the requirement to deliver to its security holders the audited annual financial statements of the Issuer for the year ended November 30, 2003 and is exempt from the requirement to prepare, file and deliver to its security holders an annual report, where applicable, for the period ended November 30, 2003, provided that once such annual financial statements have been filed by the Issuer, the Issuer sends a copy of such annual financial statements to any security holder of the Issuer who so requests.

December 10, 2003.

“Paul M. Moore”

“Mary Theresa McLeod”

## 2.1.20 Motapa Diamonds Inc. - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Exemption granted from requirement to file a technical report contained in part 4.2(1)4 of National Instrument 43-101 – Standards of Disclosure for Mineral Projects – issuer not a reporting issuer or public company in any country – issuer distributing securities to accredited investors only.

### Rules Cited

National Instrument 43-101 – Standards of Disclosure for Mineral Projects – ss. 4.2(1)4, 9.1.

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

**AND**

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

**AND**

**IN THE MATTER OF  
MOTAPA DIAMONDS INC.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the Canadian securities regulatory authority or regulator (each, a “Decision Maker”) in each of the Provinces of Alberta, British Columbia, Ontario and Québec (the “Jurisdictions”) has received an application from Motapa Diamonds Inc. (the “Corporation”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the Corporation be exempt from requirement contained in Part 4.2(1) 4 of National Instrument 43-101 (“NI 43-101”) to file a technical report in respect of an offering memorandum prepared in connection with a private placement of securities of the Corporation;

**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;

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

1. The Corporation is a corporation organized under the laws of New Brunswick and its head office is in Cape Town, South Africa.

2. The authorized capital of the Corporation consists of an unlimited number of common shares of which there were 1,092,320 common shares issued and outstanding as of November 18, 2003.
3. The Corporation is not a "reporting issuer" under the Legislation. It is a "closely-held issuer" or "private company", as applicable, under the Legislation. The Corporation is not a public company in any other country.
4. The Corporation is a mineral exploration company, with interests in a number of properties in Africa (the "Properties").
5. The Corporation intends to effect a private placement offering for proceeds between US \$4,250,000 and US \$10,000,000 on or around January 15, 2003 (the "Offering"). A portion of the proceeds from the Offering will be used to continue exploration on the Properties. The Corporation will only accept subscriptions to the Offering from accredited investors in the Provinces of Alberta, British Columbia and Ontario, as defined by the securities legislation of those jurisdictions ("Accredited Investors"), and from investors in the Province of Quebec that subscribe for a minimum of \$150,000 ("150K Investors").
6. The Corporation will provide the Accredited Investors and the 150K Investors with an offering memorandum (the "Offering Memorandum") in connection with the Offering, but is not required to do so under the Legislation. The scientific and technical disclosure contained in the Offering Memorandum regarding the Properties will be based upon information prepared by Dr. Norman Lock, RSG Global Principal Consultant – Diamonds. Dr. Lock is a fellow of the South African Institute of Mining and Metallurgy and otherwise meets the qualifications of a "qualified person" under NI 43-101.
7. The disclosure of the Properties contained in the Offering Memorandum will comply with the requirements of NI 43-101 except for the requirement contained in Part 4.2(1)4 of NI 43-101 that the Corporation file a technical report.

**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 Corporation is exempt from the requirement contained in Part 4.2(1)4 of NI 43-101 to file a technical report in connection with the Offering Memorandum provided that securities distributed in

Canada under the Offering are only distributed to Accredited Investors and 150K Investors.

January 19, 2004.

"Iva Vranic"

**2.1.21 MRF 2003 II Resource Limited Partnership  
- MRRS Decision**

**Headnote**

Issuer exempted from interim financial reporting requirements for first and third quarter of each financial year - issuer also exempted from requirements to file annual information forms and management's discussion and analysis - exemption terminates upon the occurrence of a material change in the business affairs of the issuer unless the Decision Makers are satisfied that the exemption should continue.

**Applicable Ontario Statutory Provisions**

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

**Applicable Ontario Rules**

OSC Rule 51-501- AIF and MD&A, (2000) 23 OSCB 8365, as am., ss. 1.2(2), 2.1(1), 3.1, 4.1(1), 4.3 and 5.1.

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

**AND**

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

**AND**

**IN THE MATTER OF  
MRF 2003 II RESOURCE LIMITED PARTNERSHIP  
MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application from MRF 2003 II Resource Limited Partnership (the "Partnership") for:

1. a decision under the securities legislation of each of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation to file and send to its securityholders (the "Limited Partners") its interim financial statements for each of the first and third quarters of each of the Partnership's fiscal years (the "First & Third Quarter Interim Financials"), shall not apply to the Partnership; and
2. a decision, in Ontario and Saskatchewan only, under the securities legislation of Ontario and Saskatchewan that the requirements to file and send to the Limited Partners, its:

- (a) annual information form (the "AIF");
- (b) annual management discussion and analysis of financial condition and results of operations (the "Annual MD&A"); and
- (c) interim management discussion and analysis of financial condition and results of operations (the "Interim MD&A"),

shall not apply to the Partnership.

**AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Application (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.

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

1. The Partnership is a limited partnership formed under the *Limited Partnerships Act* (Ontario) on January 9, 2003.
2. The Partnership was formed to invest in certain common shares ("Flow-Through Shares") of companies involved primarily in oil and gas, mining or renewable energy exploration and development ("Resource Companies").
3. The Partnership will enter into agreements ("Resource Agreements") with Resource Companies and under the terms of each Resource Agreement, the Partnership will subscribe for Flow-Through Shares of the Resource Company and the Resource Company will incur and renounce to the Partnership, in amounts equal to the subscription price of the Flow-Through Shares, expenditures in respect of resource exploration and development which qualify as Canadian exploration expense or as Canadian development expense which may be renounced as Canadian exploration expense to the Partnership.
4. On October 24, 2003, the Decision Makers, together with the securities regulatory authority or regulator for Manitoba, Quebec, New Brunswick, Prince Edward Island and the Yukon Territory (in which jurisdictions no legislative requirement exists to file first and third quarter interim financial statements), issued a receipt under the System for the prospectus of the Partnership dated October 24, 2003 (the "Prospectus") relating to an offering of up to 1,600,000 units of the Partnership (the "Partnership Units").
5. The Prospectus contained disclosure that the Partnership intends to apply for an order from the

- Decision Makers exempting it from the requirements to file and distribute financial statements of the Partnership in respect of the first and third quarters of each fiscal year of the Partnership and from the requirements to prepare an annual information form and interim and annual management discussion and analysis.
6. The Partnership Units will not be listed or quoted for trading on any stock exchange or market.
  7. At the time of purchase or transfer of Partnership Units, each purchaser or transferee consents to the application by the Partnership for an order from the Decision Makers exempting the Partnership from the requirements to file and distribute financial statements of the Partnership in respect of the first and third quarters of each fiscal year of the Partnership.
  8. On or about January 31, 2006, the Partnership will be liquidated and the Limited Partners will receive their pro rata share of the net assets of the Partnership. It is the current intention of the general partner of the Partnership that the Partnership enter into an agreement with Middlefield Mutual Funds Limited (the "Mutual Fund"), an open end mutual fund, whereby assets of the Partnership would be exchanged for shares of the Growth Class of the Mutual Fund. Upon dissolution, Limited Partners would then receive their pro rata share of the shares of the Growth Class of the Mutual Fund.
  9. Since its formation on January 9, 2003, the Partnership's activities primarily included (i) collecting the subscriptions from the Limited Partners, (ii) investing the available Partnership funds in Flow-Through Shares of Resource Companies, and (iii) incurring expenses to maintain the fund.
  10. Unless a material change takes place in the business and affairs of the Partnership, the Limited Partners will obtain adequate financial information concerning the Partnership from the semi-annual financial statements and the annual report containing audited financial statements of the Partnership together with the auditors' report thereon distributed to the Limited Partners. The Prospectus and the semi-annual financial statements provide sufficient background materials and the explanations necessary for a Limited Partner to understand the Partnership's business, its financial position and its future plans, including dissolution on January 31, 2006.
  11. Given the limited range of business activities to be conducted by the Partnership and the nature of the investment of the Limited Partners in the Partnership, the provision by the Partnership of the First and Third Quarter Interim Financials, the AIF, the Annual MD&A and the Interim MD&A will

not be of significant benefit to the Limited Partners and may impose a material financial burden on the Partnership.

12. It is disclosed in the Prospectus that the General Partner will apply on behalf of the Partnership for relief from the requirements to send to Limited Partners the First and Third Quarter Interim Financials and from the requirements to prepare the AIF, the Annual MD&A and the Interim MD&A.
13. Each of the Limited Partners has, by subscribing for the units offered by the Partnership in accordance with the Prospectus, agreed to the irrevocable power of attorney contained in Article XIX of the Amended and Restated Limited Partnership Agreement scheduled to the Prospectus and has thereby consented to the making of this application for the exemption requested herein.

**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 requirements contained in the Legislation to file and send to the Limited Partners its First & Third Quarter Interim Financials shall not apply to the Partnership provided that this exemption shall terminate upon the occurrence of a material change in the affairs of the Partnership unless the Partnership satisfies the Decision Makers that the exemptions should continue, which satisfaction shall be evidenced in writing.

January 20, 2004.

"Paul M. Moore" "Robert L. Shirriff

**THE FURTHER DECISION** of the securities regulatory authority or securities regulator in each of Ontario and Saskatchewan is that the requirements contained in the legislation of Ontario and Saskatchewan to file and send to its Limited Partners its AIF, Annual MD&A and Interim MD&A shall not apply to the Partnership provided that this exemption shall terminate upon the occurrence of a material change in the affairs of the Partnership unless the Partnership satisfies the Decision Makers that the exemptions should continue, which satisfaction shall be evidenced in writing.

January 20, 2004.

"Iva Vranic"

**2.1.22 Canadian Natural Resources Limited  
- MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications. 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.

**Applicable National Instrument**

National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities.

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,  
MANITOBA, ONTARIO, QUEBEC, 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  
CANADIAN NATURAL RESOURCES LIMITED  
MRRS DECISION DOCUMENT**

1. **WHEREAS** the local securities regulatory authority or regulator (the Decision Maker) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (the Jurisdictions) has received an application from Canadian Natural Resources Limited (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, 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* 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;
  - 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 United States 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 and elsewhere internationally;
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

(v) 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.

January 14, 2004.

“Glenda A. Campbell”

“Stephen R. Murison”

**2.1.23 Canadian Oil Sands Limited and Canadian Oil Sands Trust - MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Application – Exemption from sections 2.1 and 2.2 of NI 51-101 (the Annual Filing Requirements) granted to a wholly-owned subsidiary of another reporting issuer (the Trust) subject to certain conditions including compliance with the Annual Filing Requirements by the Trust.

**Applicable National Instrument**

National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities, s. 2.1 and s. 2.2.

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,  
MANITOBA, ONTARIO, QUEBEC, NEW BRUNSWICK,  
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  
CANADIAN OIL SANDS LIMITED AND  
CANADIAN OIL SANDS TRUST**

**MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (the Decision Maker) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia and Newfoundland and Labrador (the Jurisdictions) has received an application from Canadian Oil Sands Limited (the Corporation) and Canadian Oil Sands Trust (the Trust and, together with the Corporation, the Applicant) for a decision under the securities legislation of the Jurisdictions (the Legislation) that

- 1.1 the Corporation be exempted from sections 2.1 and 2.2 of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101) (the Annual Filing Requirements); and
- 1.2 in Québec, the Applicant be exempted from the requirements of 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* or Appendix 1 of Companion Policy 51-101CP;
4. AND WHEREAS the Applicant has represented to the Decision Makers as follows:
  - 4.1 The Trust is an unincorporated open-ended investment trust formed under the laws of the Province of Alberta pursuant to a trust indenture dated October 5, 1995, as amended (the Trust Indenture) and its trustee is Computershare Trust Company of Canada (Computershare).
  - 4.2 The Trust is a reporting issuer or the equivalent in each of the Jurisdictions.
  - 4.3 The entire beneficial interest in the Trust is held by the holders of its trust units (Units).
  - 4.4 The Units are participating equity securities of the Trust and currently trade on the TSX.
  - 4.5 As at the date hereof, the Trust has two wholly-owned subsidiary entities, namely the Corporation and Canadian Oil Sands Commercial Trust (CT). The Trust owns all of the issued and outstanding common shares of the Corporation and all of the ordinary units of Canadian Oil Sands Commercial Trust (CT).
  - 4.6 The Trust holds an aggregate 35.49% working interest in the Syncrude oil sands project near Fort McMurray, Alberta (the Syncrude Project) indirectly through the Corporation (which has a direct 31.74% interest) and CT (which has an indirect 3.75% interest).
  - 4.7 The Trust receives from CT a distribution on ordinary units and from the Corporation a net royalty (together, the Trust Royalties) in respect of the production of synthetic crude oil and associated products attributable to the subsidiaries' working interests in the Syncrude Project. After deducting the Trust's expenses, the Trust, in turn, distributes the Trust Royalties to its unitholders.
  - 4.8 All net revenues from the Corporation's 31.74% direct interest and from CT's 3.75% indirect interest in Syncrude flow to the Trust either as a Trust Royalty or as repayment of inter-company loans made by the Trust.
  - 4.9 The Trust, in its annual information form and other public disclosure, reports information concerning its reserves data based on its

- subsidiaries' working interest on a consolidated basis.
- 4.10 The Trust has no material assets other than its indirect interests in the Syncrude Project.
- 4.11 The Trust has no directors or officers.
- 4.12 The Corporation's head office is in Calgary, Alberta.
- 4.13 The Corporation has the following securities issued and outstanding:
- 4.13.1 common shares, all of which are held by the Trust,
- 4.13.2 preferred shares, all of which are held by CT,
- 4.13.3 USD \$300 million of 5.8% Senior Notes due 2013, USD \$70 million of 7.625% Senior Notes due 2007, USD \$250 million of 7.9% Senior Notes due 2021 and USD \$74 million of 8.2% Senior Notes due 2027 (collectively, the Senior Notes), which were sold on a private placement basis to purchasers in the United States pursuant to exemptions from the registration requirements of the United States *Securities Act of 1933*, and
- 4.13.4 CAD \$150 million of 5.75% unsecured medium term notes due 2008 (the Notes).
- 4.14 Pursuant to the terms of the Trust Indenture, the Corporation is the manager of the Trust and is therefore responsible for the management of the business and affairs of the Trust, including the provision of finance, legal, engineering, accounting, treasury and investor relations services. The Corporation is also the manager of CT.
- 4.15 The business of the Corporation is to oversee the Trust's indirect 35.49% working interest in the Syncrude Project through its role as the manager of both the Trust and CT. The Corporation itself currently holds 89.43% (31.74 / 35.49) of the Trust's indirect 35.49% interest in the Syncrude Project. The Corporation does not have any material operations that are independent of this role.
- 4.16 The Corporation became a reporting issuer or the equivalent in each of the Jurisdictions on March 27, 2003 upon the issuance of a receipt for a short form base shelf prospectus (the Shelf Prospectus) under National Instrument 44-102 *Shelf Distributions* (NI 44-102) relating to the sale of the Notes.
- 4.17 The Notes are issued under a trust indenture dated as of April 2, 2003 between the Corporation and Computershare (the Note Indenture).
- 4.18 Pursuant to a guarantee agreement (the Guarantee) dated as of April 2, 2003 between the Trust and Computershare, as trustee under the Note Indenture, any payments to be made by the Corporation as stipulated in the terms of the Notes or in an agreement governing the rights of the holders of Notes (Noteholders) will be fully and unconditionally guaranteed by the Trust, such that the Noteholders shall be entitled to receive payment thereof from the Trust within 15 days of any failure by the Corporation to make a payment as stipulated.
- 4.19 The Corporation is qualified under National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101) to file a prospectus in the form of a short form prospectus on the basis that the Notes are, pursuant to the Guarantee, guaranteed non-convertible debt securities as contemplated by Section 2.5 thereof.
- 4.20 In accordance with NI 44-101 and NI 44-102, the Shelf Prospectus provides disclosure about the consolidated business and operations of the Trust and incorporates by reference the required disclosure documents of the Trust.
- 4.21 The Shelf Prospectus provides disclosure with respect to the Trust's guarantee of the Notes. The certificate page of the Shelf Prospectus is signed on behalf of both the Corporation and the Trust (in its capacity as a credit supporter within the meaning of NI 44-101) by the chief executive officer and the chief financial officer of the Corporation and two directors of the Corporation (on behalf of the Board of Directors of the Corporation).
- 4.22 The Notes are not listed on any securities exchange.
- 4.23 In May, 2003, based on very similar representations:
- 4.23.1 the Decision Makers granted the Corporation relief from certain continuous disclosure requirements under the Legislation pertaining to financial statements, material change disclosure, proxy and proxy solicitation requirements, on conditions that include the filing by the Corporation of consolidated financial statements of the Trust; and
- 4.23.2 the Decision Makers in Ontario, Saskatchewan and Québec, granted the Corporation relief from

- requirements under the Legislation pertaining to annual information forms and management's discussion and analysis.
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 Makers 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 Corporation is exempt from the Annual Filing Requirements for so long as:
- 7.1.1 the Trust complies with the Annual Filing Requirements and in so doing the Trust
- (i) includes as a note in the statement filed in the form of Form 51-101F1 *Statement of Reserves Data and Other Oil and Gas Information*,
- (A) the percentage ownership that the Corporation directly holds of the Trust's interest in the Syncrude Project; and
- (B) a statement to the effect that the Corporation is relying on an exemption from the requirement to file information annually under NI 51-101 separately from the Trust;
- (ii) files a report in the form of Form 51-101F2 *Report on Reserves Data by Independent Qualified Reserves Evaluator or Auditor* executed by a qualified reserves evaluator or auditor who is independent of the Trust, the Corporation and CT; and
- (iii) except in British Columbia, files a report in the form of Form 51-101F3 *Report of Management and Directors on Oil and Gas Disclosure* executed by two senior officers and two directors of the Corporation;
- 7.1.2 in all disclosure to which NI 51-101 applies that is made by either the Corporation, or the Trust on behalf of the Corporation, that disclosure includes the note required in section 7.1.1(i);
- 7.1.3 concurrently with the filing of the statement and reports that the Trust files
- under section 2.1 of NI 51-101, the Corporation files on SEDAR
- (i) the same statement and reports that the Trust files under section 2.1 of NI 51-101; or
- (ii) a document
- (A) that indicates that the Corporation has been granted an exemption from filing information required annually by NI 51-101 separately from the Trust,
- (B) that indicates that the Trust has filed the statement and reports under section 2.1 of NI 51-101, and
- (C) that indicates where a copy of the filed information can be found for viewing on SEDAR by electronic means;
- 7.1.4 the Corporation disseminates, or causes the Trust to disseminate on the Corporation's behalf, a news release announcing the filing by the Corporation of the information set out in section 7.1.3 above, and indicating where a copy of the filed information can be found for viewing on SEDAR by electronic means;
- 7.1.5 if the Trust files a material change report to which section 6.1 of NI 51-101 applies, the Corporation files the same material change report;
- 7.1.6 the business of the Corporation continues to be the same as the Trust, in that the business of the Corporation continues to be the management and oversight, through ownership and control, of all of the material assets of the Trust, including, without limitation, the Trust's entire investment in the Syncrude Project;
- 7.1.7 the Trust remains a reporting issuer or the equivalent under the Legislation;
- 7.1.8 the Trust remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of the Corporation;
- 7.1.9 the Trust continues to fully and unconditionally guarantee the Notes as to the payments required to be made by the Corporation to the holders of the Notes;

7.1.10 the Corporation does not distribute additional securities other than

- (i) the Notes or other debt securities contemplated by section 7.1.11 below;
- (ii) to the Trust or to entities that are wholly-owned, directly or indirectly, by the Trust; or
- (iii) debt securities on a private placement basis pursuant to exemptions from the prospectus requirements of applicable securities legislation of the Jurisdictions; and

7.1.11 if the Corporation hereafter distributes additional debt securities (other than debt securities that are issued to the Trust or to entities that are wholly-owned, directly or indirectly, by the Trust or are distributed on a private placement basis pursuant to exemptions from the prospectus requirements of applicable securities legislation of the Jurisdictions) the Trust shall fully and unconditionally guarantee such debt securities as to the payments required to be made by the Corporation to the holders of such debt securities; and

7.2 in Québec, until NI 51-101 comes into force in Québec, the Applicant 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.

January 12, 2004.

“Glenda A. Campbell”

“Stephen R. Murison”

**2.1.24 Caterpillar Financial Services Corporation and Caterpillar Financial Services Limited - MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemption Relief Applications - Subsidiary of U.S. corporation where U.S. parent is credit supporter exempt from AIF Requirements – Subsidiary further exempt from eligibility requirement, GAAP reconciliation requirements, and prospectus requirements of NI 44-101; Subsidiary further exempt from continuous disclosure requirements and insider reporting requirements - Relief subject to conditions.

**Ontario Statutory Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 75, 80(b)(iii), 77, 78, 107, 108, 109 and 121(2)(a)(ii).

**National Instruments Cited**

National Instrument 44-101 Short Form Prospectus Distributions.  
National Instrument 44-102 Shelf Distributions.  
National Instrument 71-101 Multijurisdictional Disclosure System.

**Ontario Rules Cited**

Rule 51-501 AIF and MD&A.

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

**AND**

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

**AND**

**IN THE MATTER OF  
CATERPILLAR FINANCIAL SERVICES  
CORPORATION AND  
CATERPILLAR FINANCIAL SERVICES LIMITED**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Prince Edward Island, Nova Scotia, and Newfoundland and Labrador (the “Jurisdictions”) has received an application (the “Application”) from Caterpillar Financial Services Corporation (“Caterpillar Financial”) and its subsidiary

Caterpillar Financial Services Limited (the "Issuer", and together with Caterpillar Financial, the "Filer") for decisions under the securities legislation of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation:

- a) that, under National Instrument 44-101 ("NI 44-101") and National Instrument 44-102 ("NI 44-102"), a person or company guaranteeing non-convertible debt issued by an issuer be a reporting issuer with a 12-month reporting history in a Canadian province or territory and have a current annual information form (the "Eligibility Requirement") in order to permit the Issuer to issue non-convertible debt securities, in particular medium term notes (the "Notes") with an Approved Rating (as such term is defined in NI 44-101) which will be fully and unconditionally guaranteed by Caterpillar Financial;
- b) that, under NI 44-101, a short form prospectus filed by the Issuer include a reconciliation to Canadian generally accepted accounting principles ("GAAP") of the consolidated financial statements of Caterpillar Financial included in or incorporated by reference into such prospectus which have been prepared in accordance with foreign GAAP and that, where such financial statements are audited in accordance with foreign generally accepted auditing standards ("GAAS"), the Issuer provide a statement by the auditor disclosing any material differences in the auditor's report and confirming that the auditing standards of the foreign jurisdiction are substantially similar to Canadian GAAS (collectively, the "Reconciliation Requirements");
- c) that,
  - i) the Issuer file with the Decision Makers and send, where applicable, to its security holders audited annual financial statements and annual reports, including without limitation, management's discussion and analysis thereon (the "Annual Financial Statement Requirements"),
  - ii) the Issuer file with the Decision Makers and send, where applicable, to its security holders unaudited interim financial statements, including without limitation, management's discussion and

analysis thereon (the "Interim Financial Statement Requirements"),

- iii) the Issuer issue and file with the Decision Makers press releases and file with the Decision Makers material change reports (together, the "Material Change Requirements"), and
- iv) the Issuer comply with the proxy and proxy solicitation requirements, including filing with the Decision Makers an information circular or report in lieu thereof (the "Proxy Requirements", and collectively with the Annual Financial Statement Requirements, the Interim Financial Statement Requirements, the Material Change Requirements, and the Proxy Requirements, the "Continuous Disclosure Requirements");
- d) that the Issuer have a current annual information form and file renewal annual information forms with the Decision Makers under NI 44-101 and under the legislation of Ontario, Quebec and Saskatchewan (the "AIF Requirements")
- e) that Insiders of the Issuer file with the Decision Makers insider reports (the "Insider Reporting Requirement"); and
- f) that a short form prospectus include the information set forth in items 7, 12.1(1), 12.2, and 13.1(1)2 of Form 44-101F3 (the "Prospectus Requirements");

shall not apply;

**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*;

**AND WHEREAS** the Issuer and Caterpillar Financial have represented to the Decision Makers that:

1. Caterpillar Financial was incorporated under the laws of the State of Delaware in 1981 and is not a reporting issuer or the equivalent in any of the Jurisdictions.

2. Caterpillar Financial has been a reporting company under the United States Securities Exchange Act of 1934, as amended (the "1934 Act") since 1994 with respect to its debt securities. Caterpillar Financial has filed with the United States Securities and Exchange Commission (the "SEC") all filings required to be made with the SEC under sections 13 and 15(d) of the 1934 Act since it first became a reporting company.
3. As at December 31, 2002, Caterpillar Financial had approximately US\$9.952 billion in notes and debentures outstanding. All of Caterpillar Financial's outstanding long-term debt is rated "A" by Standard & Poor's and "A2" by Moody's Investors Service.
4. The common stock in the capital of Caterpillar Financial is owned by Caterpillar Inc. ("Caterpillar"), a publicly owned Delaware corporation.
5. Caterpillar Financial provides retail financing choices to customers of Caterpillar and its subsidiaries and to dealers world-wide for Caterpillar and non-competitive related equipment. Caterpillar Financial also provides wholesale financing to Caterpillar dealers and purchases short-term dealer receivables from Caterpillar. Caterpillar Financial's total assets at December 31, 2002 were US\$17.105 billion and its net profit for the year ended December 31, 2002 was US\$193 million.
6. The registered and principal office of the Issuer is in Ontario.
7. The Issuer was incorporated under the *Business Corporations Act* (Ontario) on December 12, 1985, and is an indirect wholly-owned subsidiary of Caterpillar Financial.
8. The Issuer is a direct wholly-owned finance subsidiary of Caterpillar Financial Nova Scotia Corporation ("Caterpillar Nova Scotia"), which is a direct wholly-owned subsidiary of Caterpillar Financial. Caterpillar Financial has no present intention of commencing any operations out of Caterpillar Nova Scotia or to sell any of its interest in the shares of Caterpillar Nova Scotia. The Issuer provides retail and wholesale financing of Caterpillar earthmoving, construction, and materials handling machinery, compact construction equipment and engines sold in Canada. The equipment financed or used as collateral is generally insured against physical damage.
9. The Issuer became a reporting issuer or its equivalent in the Jurisdictions by virtue of it filing a short form shelf prospectus dated July 17, 2001 (the "2001 Prospectus") in each of the Jurisdictions in connection with the establishment of the prior offering of Notes (the "2001 Offering").
10. In connection with the establishment of the 2001 Offering, the Filer obtained a decision document entitled *In the Matter of Caterpillar Financial Services Corporation and Caterpillar Financial Services Limited*, dated June 8, 2001 (the "Previous Decision"), in which the Decision Makers granted relief, substantially similar to that granted herein, from the Eligibility Requirement, the Reconciliation Requirements, the Continuous Disclosure Requirements, and the AIF Requirements, as applicable, in connection with the 2001 Offering.
11. In reliance on the Previous Decision, the Issuer filed and received a receipt for the 2001 Prospectus in each of the Jurisdictions for Notes in an aggregate principal amount of up to CDN\$750,000,000 (or the equivalent in other currencies). Notes in an aggregate principal amount of CDN\$725,000,000 were offered under the 2001 Prospectus. The 2001 Prospectus lapsed on August 17, 2003 in all Jurisdictions but New Brunswick, where it lapsed on July 17, 2003.
12. The Issuer proposes to establish a new program to raise up to CDN\$750,000,000 (or the equivalent in other currencies) in Canada through its issuance of non-convertible Notes by short form shelf prospectus from time to time over a 25-month period (the "Proposed Offering") and may in the future issue non-convertible Notes by filing additional short form shelf prospectuses in each of the Jurisdictions (a "Future Offering", and together with the Proposed Offering, "Offerings" and each, an "Offering").
13. The Notes will be fully and unconditionally guaranteed by Caterpillar Financial as to payment of principal, interest and all other amounts due thereunder and the holders will be entitled to receive payment from Caterpillar Financial within 15 days of failure by the Issuer to make any such payment.
14. It is expected by the Issuer that the Notes offered pursuant to an Offering will receive an Approved Rating.
15. It is possible that, following or concurrent with an Offering, the Issuer would from time to time access the Canadian debt capital markets other than by way of an Offering, subject to conditions set out in this Decision.
16. Caterpillar Financial satisfies all the criteria set forth in paragraph 3.1(a) of National Instrument 71-101 ("NI 71-101") and is eligible to use the multi-jurisdictional disclosure system ("MJDS") (as set out in NI 71-101) for the purpose of distributing approved rating non-convertible

debt in Canada based on compliance with United States prospectus requirements with certain additional Canadian disclosure.

17. Except for the fact that the Issuer is not incorporated under United States law, an Offering would comply with the alternative eligibility criteria for offerings of non-convertible debt having an approved rating under the MJDS as set forth in paragraphs 3.1 and 3.2 of NI 71-101.

18. The Issuer is ineligible to issue Notes by way of a prospectus in the form of a short form prospectus under NI 44-101 for an Offering as Caterpillar Financial, the guarantor of the securities to be issued in an Offering, does not satisfy the Eligibility Requirement.

**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 Maker in each of Ontario, Québec and Saskatchewan is that the AIF Requirements shall not apply to the Issuer, so long as the Issuer and Caterpillar Financial comply with all of the requirements of each of the two Decisions below.

January 16, 2004.

"Charlie MacCready"

**THE DECISION** of the Decision Makers under the Legislation is that the Eligibility Requirement, the Reconciliation Requirements and the Prospectus Requirements shall not apply to an Offering so long as:

- a) The Issuer complies with all of the other requirements of NI 44-101, except as varied in the Decision or as permitted by NI 44-102;
- b) prior to the filing of a preliminary short form prospectus for an Offering (a "Prospectus"), Caterpillar Financial has filed with the Decision Makers, in electronic format under the Issuer's SEDAR profile, the following documents that Caterpillar Financial has filed under sections 13 and 15(d) of the 1934 Act since its last fiscal year-end:
  - i) Caterpillar Financial's then most recent annual report filed on Form 10-K or an equivalent form ("Form 10-K"),

- ii) all of Caterpillar Financial's quarterly reports filed on Form 10-Q or an equivalent form ("Form 10-Q") for the then most recently completed fiscal quarter, and

- iii) any current reports of Caterpillar Financial filed on Form 8-K or an equivalent form ("Form 8-K") during the then current fiscal year;

- c) the Prospectus is prepared pursuant to the procedures contained in NI 44-101 and complies with the requirements set out in Form 44-101F3;

- i) with the disclosure required by item 12.1(1) of Form 44-101F3 being addressed by incorporating by reference the then most recent annual report on Form 10-K of Caterpillar Financial filed with the SEC, all quarterly reports on Form 10-Q and current reports on Form 8-K of Caterpillar Financial filed with the SEC in respect of the financial year following the year that is the subject of Caterpillar Financial's most recently filed annual report on Form 10-K, and any material change reports filed by the Issuer,

- ii) with the disclosure required by item 12.2 of Form 44-101F3 being addressed by incorporating by reference the following documents filed with the SEC or the Decision Makers, as applicable, subsequent to the date of the particular prospectus but prior to the termination of the particular Offering:

- (A) any annual report on Form 10-K of Caterpillar Financial filed with the SEC,

- (B) any quarterly report on Form 10-Q and current report on Form 8-K of Caterpillar Financial filed with the SEC,

- (C) any annual comparative selected financial information of the Issuer filed with the



- Decision Makers in the manner specified in paragraph (k) of the Further Decision below,
- (D) any interim comparative selected financial information of the Issuer filed with the Decision Makers in the manner specified in paragraph (l) of the Further Decision below, and
  - (E) any material change reports filed by the Issuer,
- iii) with the summary financial information disclosure required by item 13.1(1)2 of Form 44-101F3 in respect of the Issuer being addressed in the manner specified in paragraphs (k) and (l) of the Further Decision below, and
  - iv) with the disclosure required by item 7 of Form 44-101F3 being addressed by disclosure with respect to Caterpillar Financial in accordance with United States requirements;
- d) the Prospectus includes or incorporates by reference all material disclosure concerning the Issuer and Caterpillar Financial;
  - e) the Prospectus incorporates by reference disclosure made in Caterpillar Financial's then most recent Form 10-K (as filed under the 1934 Act) together with all Form 10-Qs for the then most recently completed fiscal quarter and any current reports on Form 8-Ks filed under the 1934 Act in respect of the financial year following the year that is the subject of Caterpillar Financial's then most recently filed Form 10-K and incorporates by reference any documents of the foregoing type filed after the date of the Prospectus and prior to termination of the particular Offering and states that purchasers of Notes will not receive separate continuous disclosure information regarding the Issuer;
  - f) Caterpillar Financial continues to fully and unconditionally guarantee the payments to be made by the Issuer as
- g) the Notes have an Approved Rating (as defined in NI 44-101);
  - h) Caterpillar Financial signs each Prospectus as credit supporter and promoter;
  - i) Caterpillar Financial remains the direct or indirect beneficial owner of all the issued and outstanding voting securities of the Issuer;
  - j) Caterpillar Financial continues to satisfy the criteria set forth in paragraph 3.1 of NI 71-101 (or any successor provision) and remains eligible to use MJDS (or any successor instrument) for the purpose of distributing approved rating non-convertible debt in Canada based on compliance with United States prospectus requirements with certain additional Canadian disclosure;
  - k) Caterpillar Financial undertakes to file with the Decision Makers, in electronic format under the Issuer's SEDAR profile, the following documents that it files under sections 13 and 15(d) of the 1934 Act: Caterpillar Financial's annual report on Form 10-K, all quarterly reports on Form 10-Q and any current reports on Form 8-K until such time as the Notes are no longer outstanding; and
  - l) The consolidated annual and interim financial statements of Caterpillar Financial that will be included or incorporated by reference in any Prospectus will be prepared in conformity with generally accepted accounting principles in the United States that the SEC has identified as having substantial authoritative support, as supplemented by Regulation S-X and Regulation S-B under the 1934 Act ("US GAAP"), and, in the case of audited consolidated annual financial statements will be audited in accordance with generally accepted auditing standards in the United States as supplemented by the SEC's rules on auditor independence ("US GAAS").
- January 16, 2004.  
"Charlie MacCready"

**THE FURTHER DECISION** of the Decision Makers under the Legislation is that, in connection with an Offering, the Annual Financial Statement Requirements, the Interim Financial Statement Requirements, the Material Change Requirements, the Proxy Requirements and the Insider Reporting Requirements shall not apply to the Issuer, so long as:

- a) Caterpillar Financial files with each of the Decision Makers, in electronic format under the Issuer's SEDAR profile, copies of the following documents filed by it with the SEC under sections 13 and 15(d) of the 1934 Act, on the same day on which they are filed with the SEC, or as soon as practicable thereafter: annual reports on Form 10-K, quarterly reports on Form 10-Q, any current reports on Form 8-K, and any proxy materials relating to any meeting of Caterpillar Financial's noteholders filed by it with the SEC under section 14 of the 1934 Act;
- b) the documents referred to in paragraph (a) above are provided to holders of Notes whose last address as shown on the books of the Issuer is in Canada in the manner, at the time and only if required by applicable United States law;
- c) insiders of the Issuer file with the SEC on a timely basis the reports, if any, required to be filed with the SEC pursuant to section 16(a) of the 1934 Act and the rules and regulations thereunder;
- d) Caterpillar Financial remains the direct or indirect beneficial owner of all the issued and outstanding voting securities of the Issuer;
- e) Caterpillar Financial maintains a class of securities registered pursuant to section 12 of the 1934 Act;
- f) Caterpillar Financial forthwith issues in each Jurisdiction and the Issuer files with the Decision Makers, any press release that discloses material information and which is required to be issued in connection with the Form 8-K requirements applicable to Caterpillar Financial;
- g) if there is a material change in respect of the business, operations or capital of the Issuer that is not a material change in respect of Caterpillar Financial, the Issuer will comply with the requirements of the Legislation to issue a press release and file a material change report notwithstanding that the change may not

be a material change in respect of Caterpillar Financial;

- h) Caterpillar Financial continues to fully and unconditionally guarantee the payments to be made by the Issuer as stipulated in the terms of the Notes or in an agreement governing the rights of holders of the Notes such that the holder of the Notes is entitled to receive payment from Caterpillar Financial within 15 days of any failure by the Issuer to make a payment as stipulated;
- i) the Issuer does not issue additional securities other than the Notes issued pursuant to an Offering (or any Notes which hereinafter may be issued), debt securities ranking *pari passu* to the Notes, any debentures issued in connection with the security granted by the Issuer to the holders of Notes or debt ranking *pari passu* with the Notes, and those securities currently issued and outstanding, other than to Caterpillar Financial or to wholly owned subsidiaries of Caterpillar Financial;
- j) if Notes or debt securities ranking *pari passu* with the Notes are hereinafter issued by the Issuer, Caterpillar Financial shall fully and unconditionally guarantee such Notes or debt securities as to the payments required to be made by the Issuer to holders of such Notes or debt securities;
- k) the Issuer files, in electronic format, annual comparative selected financial information for its then most recently completed financial year and the financial year immediately preceding such financial year, prepared in accordance with Canadian GAAP and accompanied by a specified procedures report of the auditors to the Issuer. The Issuer's annual comparative selected financial information shall define and include the following line items:
  - i) total revenues;
  - ii) income/loss from continuing operations (if applicable), income/loss from discontinued operations (if applicable) and net income/loss;
  - iii) finance receivables, together with a descriptive note on the dollar amount of the allowance for credit losses;

**Decisions, Orders and Rulings**

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- iv) total assets;
  - v) commercial paper;
  - vi) term debt;
  - vii) all other liabilities; and
  - viii) total shareholders' equity;
- l) the Issuer files, in electronic format, interim comparative selected financial information for its then most recently completed interim period and the corresponding interim period in the previous financial year, prepared in accordance with Canadian GAAP. The Issuer's interim comparative selected financial information shall define and include the following line items:
- i) total revenues;
  - ii) income/loss from continuing operations (if applicable), income/loss from discontinued operations (if applicable) and net income/loss;
  - iii) finance receivables, together with a descriptive note on the dollar amount of the allowance for credit losses;
  - iv) total assets;
  - v) commercial paper;
  - vi) term debt;
  - vii) all other liabilities; and
  - viii) total shareholders' equity;
- m) such filings as are referred to in (k) and (l) above are to be made within the time limits required by the Legislation in respect of such financial information;
- n) Caterpillar Financial continues to comply with the requirements of the 1934 Act and the rules and regulations made thereunder relating to proxy statements, proxies and proxy solicitations in connection with any meetings of its noteholders (if any);
- o) Any consolidated annual and interim financial statements of Caterpillar Financial that will be filed separately or in another document with the Decision Makers in accordance with paragraph (a) above will be prepared in conformity with
- p) Caterpillar Financial continues to satisfy the criteria set forth in paragraph 3.1 of NI 71-101 (or any successor provision) and remains eligible to use MJDS (or any successor instrument) for the purpose of distributing approved rating non-convertible debt in Canada based on compliance with United States prospectus requirements with certain additional Canadian disclosure; and
- q) all filing fees that would otherwise be payable by the Issuer in connection with the Continuous Disclosure Requirements, or in connection with the Issuer's participation as a reporting issuer in any Jurisdiction, are paid.

January 16, 2004.

"Robert L. Shirriff"

"H. Lorne Morphy"

**2.1.25 California Board for Professional Engineers and Land Surveyors et al. - MRRS Decision**

**Headnote**

Mutual Reliance Review System: Acceptance as a "professional organization" under NI 51-101 of professional boards for engineers in the states of California, Louisiana, Oklahoma, Colorado and Texas.

**Applicable National Instrument**

National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities – section 1.1(w)iv)B).

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

**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  
THE MUTUAL RELIANCE REVIEW SYSTEM  
FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF  
THE PROFESSIONAL BOARDS  
(THE BOARDS)  
LISTED IN SCHEDULE A TO THIS  
MRRS DECISION DOCUMENT**

**MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (the Decision Maker) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, Newfoundland and Labrador, Yukon, Northwest Territories, and Nunavut (the Jurisdictions) has received the recommendation of the Canadian Securities Administrators staff committee responsible for NI 51-101 that the Decision Maker accept each of the Boards as a "professional organization" pursuant to section 1.1(w)(iv)(B) of NI 51-101;
2. AND WHEREAS the Decision Makers agree that 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*, in Québec Commission Notice 14-101 or in Appendix 1 of Companion Policy 51-101CP;
4. AND WHEREAS each of the Boards has provided copies of the following documents (the Documents):
  - 4.1 legislation that gives the Board statutory authority or recognition and that regulates the Board, and
  - 4.2 rules or regulations pertaining to membership, professional conduct and disciplinary powers.
5. AND WHEREAS the Documents establish that each of the Boards:
  - 5.1 admits members primarily on the basis of their educational qualifications;
  - 5.2 requires its members to comply with the professional standards of competence and ethics prescribed by the Board that are relevant to the estimation, evaluation, review or audit of reserves data;
  - 5.3 has disciplinary powers, including the power to suspend or expel a member, and
  - 5.4 has been given authority and recognition by its respective state legislation;
6. AND WHEREAS this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the 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 the Legislation is that each of the Boards is accepted as a "professional organization" under NI 51-101 for so long as the respective Board continues to
  - 8.1 admit members primarily on the basis of their educational qualifications;
  - 8.2 require its members to comply with the professional standards of competence and ethics prescribed by the Board that are relevant to the estimation, evaluation, review or audit of reserves data;
  - 8.3 have disciplinary powers, including the power to suspend or expel a member; and

8.4 be given authority and recognition by its  
respective state legislation.

January 6, 2004.

“Stephen P. Sibold”

“Stephen R. Murison”

**Schedule A**

**PROFESSIONAL BOARDS**

California Board for Professional Engineers and Land Surveyors,

Louisiana State Board of Registration for Professional Engineers and Land Surveyors,

Oklahoma State Board of Registration for Professional Engineers and Land Surveyors,

State of Colorado Board of Registration for Professional Engineers and Professional Land Surveyors, and

Texas Board of Professional Engineers

2.2 Orders

2.2.1 Kingwest and Company - 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  
KINGWEST AND COMPANY**

**AND**

**KINGWEST U.S. EQUITY PORTFOLIO  
KINGWEST AVENUE PORTFOLIO  
(the "Existing Pooled Funds")**

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

**UPON** the application (the "Application") of Kingwest and Company ("Kingwest"), the manager of the Existing Pooled Funds and other mutual funds established and managed by Kingwest 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** Kingwest having represented to the Commission as follows:

1. Kingwest is a partnership organized under the laws of the Province of Ontario with its head office in Toronto, Ontario. Kingwest is a member of the Investment Dealers Association of Canada and is registered with the Commission as a broker and a

dealer in the category of investment dealer (equities, options and managed accounts). Kingwest is, or will be, the manager of the Pooled Funds.

2. Each of the Pooled Funds is, or will be, an open-end mutual fund trust established under the laws of the Province of Ontario. The Pooled Funds are not and will not be reporting issuers in Ontario. Units of the Pooled Funds are, or will be, distributed in certain provinces of Canada without a prospectus pursuant to exemptions from the prospectus delivery requirements of applicable securities legislation.
3. The Pooled Funds are an administratively efficient construction that is designed to permit Kingwest to build larger investment models rather than reproduce those same models in individual segregated accounts.
4. Each of the Pooled Funds is considered to be a "mutual fund in Ontario" as defined in section 1(1) of the Act and is thus required to file interim financial statements under section 77(2) of the Act and comparative financial statements under section 78(1) of the Act (collectively, the "Financial Statements").
5. While the Pooled Funds are structured as mutual funds, they are not public mutual funds. The Pooled Funds are not reporting issuers and are not sold to the general public.
6. Unitholders of the Pooled Funds ("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 regulations or rules made thereunder (the "Regulations").
7. Section 2.1(1)1 of National Instrument 13-101 – System for Electronic Document Analysis and Retrieval (SEDAR) requires that every issuer required to file a document under securities legislation makes 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 subsection 147 of the Act that the Pooled Funds be exempted from the requirements in subsection 77(2) and 78(1) of the Act to file the Financial Statements to the Commission, provided:

- (a) The Pooled Funds will prepare and deliver to the Unitholders of the Pooled Funds the Financial Statements, in the form and for the periods required under

the Act and the Regulations, as if the Financial Statements are required to be filed with the Commission;

- (b) Kingwest will retain the Financial Statements indefinitely;
- (c) Kingwest 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) Kingwest 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 Funds will be notified that the Funds are exempted from the requirements in sections 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 sections 77(2) and 78(1) of the Act.

January 13, 2004.

“Paul M. Moore”

“H. Lorne Morphy”

## 2.2.2 CINAR Corporation - s. 144

### Headnote

Section 144 – variation of cease trade order to permit certain trades of securities pursuant to a corporate arrangement pursuant to section 192 of the CBCA.

### Applicable Ontario Statutory Provision

Securities Act, R.S.O., c. S.5, as am., ss. 127 and 144.

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

**AND**

**IN THE MATTER OF  
CINAR CORPORATION**

**ORDER  
(Section 144)**

**WHEREAS** the securities of CINAR Corporation (**CINAR**) are subject to a temporary order issued by the Manager, Corporate Finance, (the **Manager**) on behalf of the Ontario Securities Commission (the **Commission**) pursuant to paragraph 2 of subsection 127(1) and subsection 127(5) of the Act, dated June 20, 2000 and as extended by a further order issued by the Manager dated June 30, 2000 pursuant to subsection 127(8) of the Act (collectively, the **Cease Trade Order**) directing that all trading in the securities of CINAR cease until the Cease Trade Order is revoked by a further order of revocation;

**AND WHEREAS** CINAR has applied to the Commission pursuant to section 144 of the Act (the **Application**) for a variation of the Cease Trade Order;

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

1. CINAR is a corporation incorporated under the *Canada Business Corporations Act* (the **CBCA**) and is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland and Labrador (the **Reporting Jurisdictions**). CINAR is not a reporting issuer in any Canadian jurisdiction other than the Reporting Jurisdictions. CINAR's head office is located at 1055 René-Lévesque Blvd East, Montreal, Québec.
2. CINAR is an integrated entertainment and education company that develops, produces, markets and distributes high-quality, non-violent programming and supplemental education products for children, families and educators world-wide.
3. The authorized share capital of CINAR consists of an unlimited number of Variable Multiple Voting

Shares (the **Multiple Voting Shares**), an unlimited number of Limited Voting Shares (the **Limited Voting Shares**) and an unlimited number of Preferred Shares, of which 5,233,402 Multiple Voting Shares and 34,735,998 Limited Voting Shares and no Preferred Shares were issued and outstanding as of November 30, 2003, (such outstanding shares collectively referred to as the **CINAR Shares**).

4. The CINAR Shares were listed on the Toronto Stock Exchange (**TSX**) and quoted on the Nasdaq National Market (**Nasdaq**). The TSX and Nasdaq halted trading in the CINAR Shares in March 2000. As at the close of business on August 30, 2001, the TSX de-listed the CINAR Shares as a result of CINAR's failure to meet its listing requirements. Nasdaq also de-listed the CINAR Shares effective on August 2, 2000.
5. In the United States, the CINAR Shares trade only on the over-the-counter Pink Sheets Market. No securities of CINAR are traded on a marketplace (as defined in National Instrument 21-101 *Marketplace Operation*) (a **Marketplace**) in Canada.
6. The Cease Trade Order was issued due to the failure of CINAR to file current financial statements under Part XVIII of the Act.
7. Securities of CINAR are currently also subject to cease trade orders issued by the securities regulatory authorities in the provinces of Quebec, Manitoba, Saskatchewan, Alberta and British Columbia. CINAR has applied for variations of these cease trade orders to permit the completion of the Arrangement (as defined below).
8. CINAR is applying for a variation of the Cease Trade Order to permit the completion of the Arrangement. Following the completion of the Arrangement, securities of the corporation (**Amalco**) formed by the amalgamation of CINAR and 4113683 Canada Inc. (**Newco**) will remain subject to the Cease Trade Order, unless revoked by a further order of revocation.
9. CINAR remains in default of certain continuous disclosure obligations under Ontario securities law in addition to the failure to file comparative audited annual financial statements for the financial years ended November 30, 1999 and November 30, 2000. Specifically, pursuant to Ontario Securities Commission Rule 51-501, CINAR is required to send its annual MD&A (as such term is defined in such Rule) to all its securityholders to whom it sends its annual audited financial statements and is required to file interim MD&A concurrently with the filing of its interim financial statements and to send interim MD&A to all its securityholders to whom it sends its interim financial statements. Such annual MD&A must be prepared in accordance with Form 44-101F2 as prescribed by National Instrument 44-101. The MD&A included in CINAR's annual report for the fiscal year ended November 30, 2002 does not comply with the requirements of Form 44-101F2. CINAR has not filed or sent to its securityholders interim MD&A since Ontario Securities Commission Rule 51-501 came into force on January 1, 2001. Furthermore, CINAR has not filed an Annual Information Form for the fiscal years ended November 30, 2002 and November 30, 2001.
10. On October 30, 2003, CINAR and Newco entered into an agreement (the **Arrangement Agreement**) setting out the terms of an arrangement (the **Arrangement**) pursuant to section 192 of the CBCA involving the purchase by Newco of all of the issued and outstanding shares of CINAR followed by the amalgamation of Newco and CINAR subject to receiving all required approvals and the satisfaction of certain other conditions. Newco is a wholly owned subsidiary of 3918203 Canada Inc. 3918203 Canada Inc. is a private company with a small number of direct or indirect investors that will include Michael Hirsh, Toper Taylor and TD Capital Canadian Private Equity Partners Fund.
11. CINAR is currently a party to certain litigation (the **Specified Litigation**). Under the Arrangement Agreement, Newco has agreed that an amount equal to the net amount received by CINAR as plaintiff in the Specified Litigation after deducting certain amounts and expenses specified in the Arrangement Agreement (the **Net Litigation Proceeds**), less an amount of \$400,000, is to be distributed to the shareholders of CINAR if all the Specified Litigation is settled prior to the fifth business day prior to the date of the meeting of the holders of CINAR Shares called to approve the Arrangement (the **Settlement Deadline**) and certain other conditions specified in the Arrangement Agreement are met.
12. The Arrangement Agreement provides that the consideration for the acquisition of all the CINAR Shares by Newco shall be (a) US\$3.60 per share; (b) the Net Litigation Proceeds, less an amount of \$400,000, if all the Specified Litigation is settled prior to the Settlement Deadline and all of the conditions for the distribution of the Net Litigation Proceeds have been met prior to the Settlement Deadline; and (c) in the event that any of the conditions for the distribution of the Net Litigation Proceeds have not been met prior to the Settlement Deadline, one contingent cash entitlement (**CCE**) will be created and allocated by 3918203 Canada Inc. for each CINAR Share entitling the recipients thereof to receive a *pro rata* share of 70% of the Net Litigation Proceeds.
13. As soon as practicable, Amalco will make an application to be deemed to cease to be a



reporting issuer in each of the Reporting Jurisdictions. Following the completion of the Arrangement, all of the outstanding securities of Amalco will be beneficially owned by 3918203 Canada Inc. and no securities of Amalco will be traded on a Marketplace.

14. The Arrangement is subject to, among other things, approval by the holders of two-thirds of the Multiple Voting Shares and Limited Voting Shares, with each class voting separately, as well as court approval and required regulatory approvals in Canada and the United States. Pursuant to the interim order of the Superior Court of Quebec in respect of the Arrangement, CINAR's shareholders will be granted a right of dissent from the arrangement resolution.
15. The Board of Directors of CINAR has unanimously determined that the Arrangement is in the best interests of CINAR and has unanimously approved the Arrangement Agreement and will recommend that shareholders of CINAR vote in favour of the Arrangement.
16. Each CINAR shareholder will receive a management proxy circular (the **Proxy Circular**) describing in detail the particulars of the Arrangement. The Proxy Circular will include sufficient information for a holder of CINAR Shares to form a reasoned judgment on the Arrangement and to assess the adequacy of the consideration being offered for the CINAR Shares.
17. If the Specified Litigation is not settled before the Proxy Circular is mailed, the Proxy Circular will disclose that the CCEs may be created and prospectus level disclosure (other than financial statements) regarding the CCEs will be included in the Proxy Circular. The relevant disclosure will focus mainly on the structure of the CCEs including a description of the Specified Litigation, an explanation of the formula to be used to calculate the Net Litigation Proceeds, details of the procedures to be followed to determine and distribute the Net Litigation Proceeds and disclosure related to the measures to be taken to segregate and safeguard any Net Litigation Proceeds pending their distribution to former CINAR shareholders. No financial statements are intended to be included in the Proxy Circular. In addition, since the entity granting the CCEs is a newly formed corporation without any material assets or liabilities which may not yet be identified at the time that the Proxy Circular is required to be mailed, disclosure specific to the grantor of the CCEs that does not constitute material facts relating to the CCEs, will not be included in the Proxy Circular.
18. CINAR's financial adviser, Merrill Lynch, Pierce, Fenner & Smith Incorporated, has provided to CINAR's Board of Directors a fairness opinion

(the **Fairness Opinion**) whereby Merrill Lynch, Pierce, Fenner & Smith Incorporated, stated that based upon and subject to the various considerations set forth in the Fairness Opinion, the aggregate consideration agreed to be paid by Newco for the CINAR Shares is fair from a financial point of view to CINAR's shareholders.

19. The majority shareholders of the Multiple Voting Shares, Micheline Charest, Ronald Weinberg and certain holding companies they control (the **Principal Shareholders**), have entered into a voting support agreement with Newco pursuant to which the Principal Shareholders have undertaken, *inter alia*, to vote or cause to be voted all their shares of CINAR in favour of the Arrangement.

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

**AND UPON** the Director 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 Order be and is hereby varied solely to permit:

- (i) the transfer of the CINAR Shares to Newco;
- (ii) the cancellation of CINAR Shares in connection with the amalgamation of Newco and CINAR; and
- (iii) all other acts in furtherance of the Arrangement that may be considered to fall within the definition of a "trade" within the meaning of the Act.

January 9, 2004.

"Charlie MacCready"

**2.2.3 ATI Technologies Inc. et al. - Rule 2 of the OSC Rules of Practice**

**IN THE MATTER OF  
THE SECURITIES ACT R.S.O. 1990, c.S.5,  
as amended**

**AND**

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

**ORDER  
(Rule 2 of the Ontario Securities Commission  
Rules of Practice)**

**WHEREAS** on January 16, 2003, Staff filed a Statement of Allegation respecting the Respondents;

**AND WHEREAS** on January 16, 2003, the Commission issued a Notice of Hearing respecting the Respondents;

**AND WHEREAS** on September 4, 2003, this matter was set for a hearing from February 19, 2004 to March 10, 2004;

**AND WHEREAS** a pre-hearing conference was held on January 6, 2004;

**AND WHEREAS** all the parties request that the matter presently set for hearing be adjourned;

**AND WHEREAS** certain Respondents intend to bring preliminary motions; and

**AND UPON** hearing submissions from Counsel for Staff and Counsel for the Respondents.

**IT IS HEREBY ORDERED THAT:**

- (a) the hearing scheduled for February 19, 2004 to March 10, 2004 is adjourned to a date to be arranged by the Secretary of the Commission; and
- (b) the hearing of the preliminary motions of the Respondents are to be scheduled by the Secretary of the Commission during the time previously scheduled for the hearing.

January 16, 2004.

“Wendell S. Wigle”

**2.3 Rulings**

**2.3.1 Norshield Asset Management (Canada) Ltd.  
- ss. 74(1)**

**Headnote**

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

**Ontario Statutes**

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

**Rules Cited**

Proposed Rule 91-504 – Over-The-Counter Derivatives (2000), 23 OSCB 51.

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

**AND**

**IN THE MATTER OF  
NORSHIELD ASSET MANAGEMENT (CANADA) LTD.**

**RULING  
(Section 74(1))**

**UPON** the application (the "Application") of Norshield Asset Management (Canada) Ltd. (the "Manager") to the Ontario Securities Commission (the "Commission") for a decision pursuant to section 74(1) of *Securities Act* (Ontario) (the "Act") that the dealer registration requirement of section 25 of the Act and the prospectus requirement of section 53 of the Act not apply in connection with the Equity Swap Transaction (defined below);

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

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

1. The Fund is an open-ended investment trust to be organized under the laws of the Province of Ontario pursuant to a trust agreement between the Manager and Computershare Trust Company of Canada as trustee;
2. the Fund's primary objective is to mirror (as nearly as practicable), the performance of the Olympus Univest Ltd. (the "Reference Fund") while at the same time not constituting foreign property for purposes of Canadian income tax legislation. The Reference Fund is an open-ended investment company and hedge fund organized with limited liability and unlimited duration under the laws of

The Commonwealth of the Bahamas. The primary objective of the Reference Fund is to focus on preservation of capital in combination with yield enhancing features of alternative investment strategies;

3. the Manager is a corporation incorporated under the laws of Canada and is registered as an advisor under the Act in the categories of investment counsel and portfolio manager, and under the *Commodity Futures Act* in the categories of commodity trading counsel and commodity trading manager;
4. to achieve the Fund's investment objectives, the Fund proposes from time to time to enter into one or more equity swap transactions (collectively, the "Equity Swap Transaction") to provide the Fund with the economic return of an investment in the Reference Fund. The Equity Swap Transaction will be undertaken pursuant to one or more confirmations under an ISDA master agreement between the Fund and a Canadian chartered bank; and
5. it is unclear whether the Equity Swap Transaction constitutes one or more securities or involves any trades in securities;

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

**IT IS THE DECISION** of the Commission, pursuant to section 74(1) of the Act, that the Equity Swap Transaction shall be exempt from the dealer registration and prospectus requirements under the Act.

January 13, 2004.

"Paul Moore"

"Lorne Morphy"

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## 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	09 Jan 04	
Saturn (Solutions) Inc.	30 Dec 03	09 Jan 04	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		

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## Chapter 7

# Insider Reporting

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

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

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

## Chapter 8

# Notice of Exempt Financings

### Exempt Financings

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

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

<u>Transaction Date</u>	<u>Purchaser</u>	<u>Security</u>	<u>Total Purchase Price (\$)</u>	<u>Number of Securities</u>
31-Dec-2003	3 Purchasers	2038158 Ontario Inc. - Common Shares	5,100,000.00	5,100,000.00
01-Dec-2003	Mr. Alexander Dekker &/or Maria Dekker	ABC American -Value Fund - Units	150,000.00	18,262.00
01-Jan-2004	5 Purchasers	ABC American – Value Fund – Units	850,000.00	106,017.00
01-Jan-2004	Ian & Elaine Lurie;Norman Iscove & Anita Wagm	ABC Fully-Managed Fund - Units	300,000.00	32,318.00
01-Dec-2003	Mr. Paul Fryer Mr. & Mrs.Hans Wasmeier & Leslie McLe	ABC Fully-Managed Fund - Units	325,402.94	34,915.00
01-Jan-2004	18 Purchasers	ABC Fundamental - Value Fund - Units	3,212,829.15	190,670.00
01-Dec-2003	Robert & Maureen Chislett Mr. & Mrs.Jeff & Leigh Sorel Wortsman	ABC Fundamental - Value Fund - Units	300,000.00	17,880.00
02-Jan-2004 07-Jan-2004	4 Purchasers	Acuity Pooled Canadian Small Cap Fund - Trust Units	132,898.00	7,828.00
02-Jan-2004	Nelson Kaiburn Pau	Acuity Pooled Core Canadian Equity Fund - Trust Units	50,000.00	3,178.00
05-Jan-2004 07-Jan-2004	5 Purchasers	Acuity Pooled Growth and Income Fund - Trust Units	389,290.00	38,932.00
05-Jan-2004 07-Jan-2004	8 Purchasers	Acuity Pooled High Income Fund - Trust Units	1,020,756.00	57,688.00
02-Jan-2004 05-Jan-2004	Jacques Ferron and Albert Ferro	Acuity Pooled Income Trust Fund - Trust Units	112,741.00	8,099.00
30-Dec-2003	MineralFields 2003 Limited Partnership;MineralFields B.C. 2003 Limited Partnership	Alpha Gold Corp - Units	600,000.00	909,090.00



**Notice of Exempt Financings**

13-Jan-2004	2038933 Ontario Inc. and Green Financial	Alternavest Capital Corporation - Common Shares	200,000.00	200,000.00
31-Dec-2003	Michael G. Fowler	Amarc Resources Ltd. - Units	5,000.00	16,667.00
31-Dec-2003	Augen Limited Partnership 2003; Jack Wallace	Amarc Resources Ltd. - Units	577,500.00	1,050,000.00
22-Dec-2003	Augen Limited Partnership 2003	AMADOR GOLD CORP. - Flow-Through Shares	40,000.00	400,000.00
30-Dec-2003	Augen Limited Partnership 2003; George E. Patton	Atac Resources Ltd. - Units	216,000.00	936,000.00
09-Jan-2004	9 Purchasers	Avalon Ventures Ltd. - Flow-Through Shares	265,000.00	1,060,000.00
31-Dec-2003	The Canadian Consultants Bureau Inc.	Axion Power Corporation - Notes	100,000.00	1.00
31-Dec-2003	3 Purchasers	Axion Power Corporation - Notes	150,000.00	3.00
18-Dec-2003	18 Purchasers	Azure Resources Corp. - Flow-Through Shares	432,749.85	1,608,333.00
31-Dec-2003	29 Purchasers	Beaufield Consolidated Resources Inc. - Units	494,000.00	247.00
30-Dec-2003	9 Purchasers	Biogan International, Inc. - Special Warrants	269,464.00	6,909,339.00
18-Dec-2003	5 Purchasers	Bolder Opportunities I Limited Partnership - Limited Partnership Units	1,575,000.00	1,575.00
31-Dec-2003	John Wesley Pipe	Buck Lake Ventures Ltd. - Units	10,000.00	100,000.00
21-Dec-2003	James McMillan	Bulldog Technologies Inc. - Common Shares	22,000.00	12,500.00
23-Dec-2003	8 Purchasers	C1 Energy Ltd. - Shares	2,112,450.00	3,232,500.00
05-Jan-2004 07-Jan-2004	27 Purchasers	Caledonia Mining Corporation - Common Share Purchase Warrant	215,820.00	564,000.00
27-Nov-2003 31-Dec-2003	20 Purchasers	Caledonia Mining Corporation - Shares	1,728,991.48	5,776,796.00
19-Dec-2003	ARC Energy Venture Fund 3	Canadian Renewable Energy Corporation - Shares	500,000.00	1,000,000.00
30-Dec-2003	MineralFields 2003 II Limited	Canarc Resource Corp. - Units	105,000.00	100,000.00
31-Dec-2003	6 Purchasers	Candente Resource Corp. - Units	150,000.00	125,000.00
24-Dec-2003	Graham B. Baldwin	Cangold Limited - Units	25,600.00	80,000.00
31-Dec-2003	Canadian Medical Protective Association	Capital International Private Equity Fund IV, L.P. - Limited Partnership Interest	12,924,000.00	1.00

**Notice of Exempt Financings**

30-Dec-2003	Augen Limited Partnership 2003;George E. Patton	Cash Minerals Ltd. - Units	246,000.00	820,000.00
07-Jan-2003	Sheldon Inwentash	Castleworth Ventures Inc. - Units	45,000.00	75,000.00
31-Dec-2003	Tim Price and Peter Cozzi	Cellbucks Payments Limited Partnership - Units	200,000.00	20.00
16-Dec-2003	6 Purchasers	Coast Mountain Power Corp. - Units	75,976.00	43,415.00
31-Dec-2003	4 Purchasers	Conquest Resources Limited - Units	76,590.00	347,000.00
31-Dec-2003	Michael G.Fowler	Continental Minerals Corporation - Units	5,000.00	10,000.00
12-Jan-2003	First Associates Investments Inc.	Crystallex International Corporation - Common Shares	340,794.00	96,800.00
09-Jan-2004	4 Purchasers	CSK Auto, Inc. - Notes	1,906,650.00	4.00
23-Dec-2003	J.L.Albright III Venture Fund	Cube Route Inc. - Common Shares	2,000,000.00	3,255,120.00
31-Dec-2003	9 Purchasers	Cusac Gold Mines Ltd. - Units	234,175.00	670,500.00
11-Apr-2003 06-Jun-2003	Kodak Canada Inc. and Bodejo Investments Ltd.	Deans Knight Bond Fund - Trust Units	12,250,000.00	26,075.00
28-Feb-2003 16-May-2003	Jean E. Nishimura and Suoutham Inc.	Deans Knight Equity Growth Fund - Trust Units	2,004,119.00	1,515.00
31-Dec-2003	5 Purchasers	Diadem Resources Ltd. - Flow-Through Shares	345,000.00	3,450,000.00
31-Dec-2003	4 Purchasers	Diadem Resources Ltd. - Units	70,950.00	709,500.00
31-Dec-2003	Winston C.K. Woo	Dragon Heart Energy Inc. - Flow-Through Shares	10,000.00	25,000.00
18-Dec-2003	Credit Union Central of Saskatchewan	DR Residential Mortgage Trust - Units	3,000,000.00	3,000,000.00
14-Jan-2004	4 Purchasers	East West Resource Corporation - Units	40,000.00	400,000.00
31-Dec-2003	3 Purchasers	Ecstall Mining Corporation - Units	250,000.00	1,437,500.00
08-Jan-2004	5 Purchasers	Elizabeth Arden Inc. - Notes	3,200,500.00	5.00
31-Dec-2003	10 Purchasers	Energy Smart General Partnership - Units	380,000.00	380.00
29-Dec-2003	Geoff Martin	Energy Visions Inc. - Warrants	10,000.00	5,000.00
23-Dec-2003	11 Purchaser	European Minerals Corporation - Units	747,795.00	706,000.00
05-Jan-2004	29 Purchasers	Euston Capital Corp. - Common Shares	70,200.00	23,400.00

**Notice of Exempt Financings**

29-Dec-2003	Schreter Enterprises Inc.;Bill A. Duffy	Excalibur Limited Partnership - Limited Partnership Units	550,268.00	2.00
31-Dec-2003	The Manufactures Life Insurance Company and Ontario Teachers' Pension Plan Board	Falls Management Company - Notes	31,000,000.00	1.00
31-Dec-2003	7 Purchasers	Farallon Resources Ltd. - Units	613,000.00	1,613,158.00
03-Jan-2003 14-Nov-2003	31 Purchasers	Friedberg Global-Macro Hedge Fund - Limited Partnership Units	5,969,978.24	371,945.00
31-Dec-2003	6 Purchasers	Geodex Minerals Ltd. - Flow-Through Shares	500,000.00	2,500,000.00
31-Dec-2003	3 Purchasers	GLR Resources Inc. - Units	700,000.00	1,000,000.00
01-Jan-2003 12-Jan-2004	33 Purchasers	Goodwood Fund - Units	1,907,348.00	198,531.00
31-Dec-2003	10 Purchasers	Hawk Precious Minerals Inc. - Special Warrants	354,500.00	220,034.00
01-Jan-2003 11-Jan-2003	6 Purchasers	Hillery & Associates, L.P. - Units	1,583,637.00	1,004.00
14-Dec-2003	8 Purchasers	Holmer Gold Mines Limited Units	156,000.00	520,000.00
13-Jan-2004	Allan MacIvor	Hornby Bay Exploration Limited - Special Warrants	12,000.00	12,000.00
20-Dec-2002 30-Dec-2003	19 Purchasers	Huron Gas & Oil Ltd. - Flow-Through Shares	679,240.60	193,468.00
31-Dec-2003	3 Purchasers	IDx Inc. - Debentures	3,925,000.00	3.00
31-Dec-2003	3 Purchasers	IDx Inc. - Preferred Shares	30.00	192,500.00
31-Dec-2003	4 Purchasers	IDx Inc. - Shares	2,000.03	395,500.00
02-Jan-2003	Canadian Medial Protective Association	Imperial Capital Acquisition Fund III (Institutional) 2 Limited Partnership - Limited Partnership Units	110,000.00	110,000.00
09-Jan-2003	Kensington Fund of Funds;L.P.	Imperial Capital Acquisition Fund III (Institutional) 3 Limited Partnership - Limited Partnership Units	55,000.00	55,000.00
31-Dec-2003	6 Purchasers	Inspiration Mining Corporation - Special Warrants	53,400.00	178,000.00
31-Dec-2003	6 Purchasers	JML Resources Ltd. - Flow-Through Shares	137,500.00	550,000.00
30-Dec-2003	Peter & Dixie Lee Birnie	J.C. Clark Preservation Trust - Units	59,275.00	741.00
30-Dec-2003	Stephen Kelly	J.C. Clark Statistical Arbitrage Fund - Units	50,000.00	500.00

**Notice of Exempt Financings**

07-Jan-2004	Robert Leslie	KBSH Bond Fund - Units	45,000.00	1,713.00
24-Dec-2003	Duncan and Linda McEwan	KBSH Enhanced Income Fund - Units	84,697.09	8,343.00
07-Jan-2004	Robert Leslie	KBSH Private - Balanced Fund - Units	151,670.00	16,854.00
24-Dec-2003	Duncan and Linda MCEwan	KBSH Private - Canadian Equity - Units	145,195.01	10,255.00
24-Dec-2003	Duncan and Linda McEwan	KBSH Private - European - Units	60,497.92	6,672.00
09-Jan-2004	Duncan and Linda McWan	KBSH Private - Fixed Income Fund - Units	181,000.00	17,415.00
24-Dec-2003	Duncn and Linda McEwan	KBSH Private - Money Market - Units	362,987.53	36,299.00
24-Dec-2003	Duncan and Linda McEwan	KBSH Private - Pacific Basin Fund - Units	120,995.84	9,220.00
24-Dec-2003	Duncan and Linda McEwan	KBSH Private - Special Equity - Units	72,597.50	5,025.00
24-Dec-2003	Dunacan and Linda McEwan	KBSH Private - U.S. Equity Fund - Units	362,987.52	29,260.00
31-Dec-2003	9 Purchasers	King's Bay Gold Corporation - Units	195,999.25	293,845.00
31-Dec-2003	James Kabrajee and Katherine Fitzwilliam	Kingwest Avenue Portfolio - Units	70,000.00	3,369.00
29-Dec-2003	4 Purchasers	Klondike Gold Corp. - Units	110,000.00	1,000,000.00
31-Dec-2003	William David Oliver	La Mancha Resources Inc. - Units	11,000.00	10,000.00
30-Dec-2003	27 Purchasers	Lateegra Resources Corp. - Units	669,750.00	2,799,000.00
09-Jan-2004	12 Purchasers	LMS Medical Systems Ltd. - Convertible Debentures	204,500.00	1.00
31-Dec-2003	71 Purchasers	Madison Grant Limited Partnership III - Units	12,000,000.00	12,000.00
31-Dec-2003	5 Purchasers	Madison Grant Limited Partnership V - Units	1,000,000.00	1,000.00
31-Dec-2003	11 Purchasers	Maple Key + Limited Partnership - Limited Partnership Units	3,010,000.00	3,010,000.00
03-Mar-2003 01-Sep-2003	7 Purchasers	Marret High Yield Hedge Limited Partnership - Units	1,825,000.00	290,515.00
31-Dec-2002 29-Oct-2003	7 Purchasers	Marvin & Palmer International Equity Fund - Units	16,232,628.00	2,317,573.00
02-Jan-2004	4 Purchasers	MCAN Performance Strategies - Limited Partnership Units	650,000.00	10,562.00

**Notice of Exempt Financings**

08-Jan-2004	Wally Speckert	Microsource Online, Inc. - Common Shares	6,000.00	1,000.00
07-Jan-2004	Pacific Canada Resources Inc.	Minco Mining and Metals Corporation - Convertible Debentures	201,412.00	1.00
19-Dec-2003	10 Purchasers	New Bullet Group Inc. - Common Shares	284,400.00	790,000.00
29-Dec-2003	Andrew Redmond;Sprott Asset Management Inc.	New Guinea Gold Corporation - Units	302,600.00	756,500.00
12-Dec-2003	Galileo Equity Management Inc.;Dynamic Power Small Cap Fund	Pacific Minerals Inc. - Units	2,329,000.00	1,450,000.00
30-Dec-2003	51 Purchasers	Pan-Global Ventures Ltd. - Common Shares	4,915,997.00	3,277,331.00
15-Jan-2004	5 Purchasers	Patrician Diamonds Inc. - Units	70,000.00	280,000.00
15-Dec-2003	7 Purchasers	Phoenix Matachewan Mines Inc. - Units	157,500.00	837,500.00
29-Dec-2003	Hall Tingley and Gordon Reid	Photon Control Inc. - Units	90,000.00	300,000.00
24-Dec-2004	Venture Partners Equity Fund Inc.	Platespin Ltd. - Notes	145,000.00	10.00
31-Dec-2003	John Lydall TD Asset Management Inc Gordon Bub	Polaris Minerals Corporation - Common Shares	330,000.00	120,000.00
29-Dec-2003	5 Purchasers	Resin Systems Inc. - Units	508,000.00	635,000.00
24-Dec-2003	4 Purchasers	Rimron Resources Inc. - Common Shares	142,500.00	3,000.00
29-Dec-2003	MRF 2003 II Resource Limited Partnership	Rimron Resources Inc. - Common Shares	577,500.00	21,000.00
29-Dec-2003	Explorer Flow-Through Limited Partnership	Rimron Resources Inc. - Common Shares	420,000.00	21,000.00
13-Jan-2004	3 Purchasers	Roycom (6) Property Fund Ltd. - Common Shares	36,000,000.00	36,000,000.00
23-Dec-2003	31 Purchasers	Sabina Resources Limited - Flow-Through Shares	2,586,925.00	2,249,500.00
31-Dec-2003	44 Purchasers	Shore Gold Inc. - Units	662,500.00	1,012,016.00
01-Dec-2003	Loewen;Ondaatje; McCutcheon Limited	Spectral Diagnostics Inc. - Units	150,132.00	50,044.00
01-Jan-2004	6 Purchasers	Stacey Investment Limited Partnership - Limited Partnership Units	1,000,074.00	33,993.00
13-Jan-2004	4 Purchasers	Strateco Resources Inc. - Units	52,500.00	350,000.00

**Notice of Exempt Financings**

30-Dec-2003	Augen Limited Partnership 2003	Strategic Metals Ltd. - Units	267,999.90	893,333.00
30-Dec-2003	Peter Chandler	Strongbow Resources Inc. - Flow-Through Shares	60,060.00	85,800.00
31-Dec-2003	6 Purchasers	St. Genevieve Resources Ltd. - Special Warrants	1,100,000.00	11,000,000.00
31-Dec-2003	Thomas V. Milroy	Taseko Mines Limited - Shares	150,000.00	69,767.00
31-Dec-2003	Interward Capital Corporation;Michael G. Fowler	Taseko Mines Limited - Units	77,000.00	128,333.00
31-Dec-2003	22 Purchasers	Temagami Forest Products Inc. - Shares	710,070.00	7,100.00
31-Dec-2003	48 Purchasers	Tesoro Energy Corp. - Common Shares	5,724,000.00	57,240,000.00
31-Dec-2003	8 Purchasers	Triton Global Business Services Inc. - Common Shares	180,648.00	79,107.00
30-Dec-2003	36 Purchasers	True North Gems Inc. - Flow-Through Shares	1,235,640.00	1,176,800.00
30-Dec-2003	6 Purchasers	User Friendly Media Inc. - Common Shares	31,250.00	625,000.00
30-Dec-2003	3 Purchasers	Viva Source Corp. - Special Warrants	27,000.00	67,500.00
30-Dec-2003	12 Purchasers	Wesdome Gold Mines Inc. - Units	3,814,000.00	3,178,333.00
29-Dec-2003	4 Purchasers	Wesdome Gold Mines Inc. - Units	4,620,000.00	4,200,000.00
09-Dec-2003	19 Purchasers	Workstream Inc. - Common Shares	4,040,766.00	1,930,500.00

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

<u>Transaction Date</u>	<u>Seller</u>	<u>Security</u>	<u>Total Selling Price</u>	<u>Number of Securities</u>
23-Dec-2003	Canadian Medical Discoveries Fund	Ecopia BioSciences Inc. - Shares		315,600.00
30-Dec-2003	Ontario teachers' Pension Plan Board	Yamana Gold Inc. - Common Shares		100,000.00

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

<u>Seller</u>	<u>Security</u>	<u>Number of Securities</u>
Larry Melnick	Champion Natural Health.com Inc. - Shares	425,000.00
Irving Teitelbaum	La Senza Corporation - Shares	150,000.00
Stephen Gross	La Senza Corporation - Shares	150,000.00
Susan M.S. Gastle	Microbix Biosystems Inc. - Common Shares	7,548.00
Dr. Jenny Phipps	PharmaGap Inc. - Common Shares	50,000.00
Robert Letellier	PharmaGap Inc. - Common Shares	40,000.00
Targa Group Inc.	Plaintree Systems Inc. - Common Shares	27,910,760.00
Tom Drivas	Romios Gold Resources Inc. - Common Shares	989,062.00
Michael R. Faye	Spectra Inc. - Common Shares	450,000.00
Andrew J. Malion	Spectra Inc. - Common Shares	275,000.00
Donald R. Sheldon	Vertigo Software Corp. - Common Shares	100,000.00
Andrew Benedek	ZENON Environmental Inc. - Common Shares	350,000.00

## Chapter 11

# IPOs, New Issues and Secondary Financings

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**Issuer Name:**

Aber Diamond Corporation  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated January 15, 2004  
Mutual Reliance Review System Receipt dated January 15, 2004

**Offering Price and Description:**

\$74,625,000  
1,500,000 Common Shares  
Price: \$49.75 per Common Share

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

CIBC World Markets Inc.  
Scotia Capital Inc.  
BMO Nesbitt Burns Inc.

**Promoter(s):**

-

**Project #605583**

---

**Issuer Name:**

APF Energy Trust  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated January 19, 2004  
Mutual Reliance Review System Receipt dated January 19, 2004

**Offering Price and Description:**

\$45,240,000  
3,900,000 Trust Units  
Price: \$11.60 Per Trust Unit

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

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

**Promoter(s):**

-

**Project #606367**

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**Issuer Name:**

BONAVISTA ENERGY TRUST  
Principal Regulator – Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated January 14, 2004  
Mutual Reliance Review System Receipt dated January 14, 2004

**Offering Price and Description:**

\$100,000,000  
7.50% Convertible Unsecured Subordinated Debentures

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

CIBC World Markets Inc.  
RBC Dominion Securities Inc.  
TD Securities Inc.  
BMO Nesbitt Burns Inc.  
Scotia Capital Inc.  
FirstEnergy Capital Corp.  
Peters & Co. Limited

**Promoter(s):**

-

**Project #605421**

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**Issuer Name:**

Brascan Corporation  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Shelf Prospectus dated January 20, 2004  
Mutual Reliance Review System Receipt dated January 21, 2004

**Offering Price and Description:**

US\$750,000,000  
Debt Securities

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

-

**Promoter(s):**

-

**Project #606817**

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**Issuer Name:**

Calloway Real Estate Investment Trust  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated January 19, 2004  
Mutual Reliance Review System Receipt dated January 19, 2004

**Offering Price and Description:**

\$115,500,000  
8,400,000 Units  
Price: \$13.75 per Unit

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

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

**Promoter(s):**

-

**Project #606416**

---

**Issuer Name:**

Defiant Energy Corporation  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated January 16, 2004  
Mutual Reliance Review System Receipt dated January 16, 2004

**Offering Price and Description:**

\$13,800,000  
3,000,000 Common Shares  
Price: \$4.60 per Common Share

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

Research Capital Corporation  
CIBC World Markets Inc.  
Canaccord Capital Corporation  
National Bank Financial Inc.  
Octagon Capital Corporation  
Raymond James Ltd.  
TD Securities Inc.  
Maison Placements Canada Inc.

**Promoter(s):**

-

**Project #606072**

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**Issuer Name:**

Dundee Real Estate Investment Trust  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated January 19, 2004  
Mutual Reliance Review System Receipt dated January 19, 2004

**Offering Price and Description:**

\$ \*  
\* REIT Units, Series A  
Price: \$ \* per Unit

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

TD Securities Inc.  
Scotia Capital Inc.  
Dundee Securities Corporation

**Promoter(s):**

Dundee Realty Corporation  
**Project #606306**

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**Issuer Name:**

Dundee Real Estate Investment Trust  
Principal Regulator - Ontario

**Type and Date:**

Amended and Restated Preliminary Prospectus dated January 20, 2004  
Mutual Reliance Review System Receipt dated January 20, 2004

**Offering Price and Description:**

\$100,031,250  
4,125,000 REIT Units, Series A  
Price: \$24.25 per Unit

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

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

**Promoter(s):**

Dundee Realty Corporation  
**Project #606306**

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**Issuer Name:**

Harvest Energy Trust  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated January 14, 2004  
Mutual Reliance Review System Receipt dated January 14, 2004

**Offering Price and Description:**

\$50,000,000  
9% Convertible Unsecured Subordinated Debentures

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

National Bank Financial Inc.  
CIBC World Markets Inc.  
FirstEnergy Capital Corp.  
Haywood Securities Inc.  
TD Securities Inc.  
Canaccord Capital Corporation

**Promoter(s):**

M. Bruce Chernoff  
Kevin A. Bennett  
**Project #605425**

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**Issuer Name:**

Provident Energy Trust  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated January 14, 2004  
Mutual Reliance Review System Receipt dated January 14, 2004

**Offering Price and Description:**

\$50,400,000  
4,500,000 Trust Units  
Price: \$ 11.20 per Trust Unit

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

Scotia Capital Inc.  
National Bank Financial Inc.  
BMO Nesbitt Burns Inc.  
TD Securities Inc.  
RBC Dominion Securities Inc.  
Canaccord Capital Corporation  
Desjardins Securities Inc.  
FirstEnergy Capital Corp.  
HSBC Securities (Canada) Inc.

**Promoter(s):**

-  
**Project #605401**

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**Issuer Name:**

Ritchie Bros. Auctioneers Incorporated  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Prospectus dated January 15, 2004  
Mutual Reliance Review System Receipt dated January 15, 2004

**Offering Price and Description:**

US\$ \* - 1,739,130 Common Shares  
Price: \$ \* per Common Share

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

Raymond James Ltd.  
CIBC World Markets Inc.  
Scotia Capital Inc.

**Promoter(s):**

-  
**Project #605703**

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**Issuer Name:**

Silk Road Resources Ltd.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Prospectus dated January 15, 2004  
Mutual Reliance Review System Receipt dated January 16, 2004

**Offering Price and Description:**

10,500,000 Common Shares  
and 5,250,000 Warrants  
Issuable on Exercise of 3,000,000 Series A Special  
Warrants  
and 7,500,000 Series B Special Warrants

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

GMP Securities Ltd.  
Canaccord Capital Corporation

**Promoter(s):**

Randal Matkaluk  
Ken Wang  
**Project #606077**

---

**Issuer Name:**

Stuart Energy Systems Corporation  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated January 15, 2004  
Mutual Reliance Review System Receipt dated January 15, 2004

**Offering Price and Description:**

\$ \*  
\* Common Shares  
Price: \$ \* per Common Share

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

National Bank Financial Inc.  
CIBC World Markets Inc.  
RBC Dominion Securities Inc.

**Promoter(s):**

-  
**Project #605555**

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**Issuer Name:**

WGI Heavy Minerals, Incorporated  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Prospectus dated January 14, 2004  
Mutual Reliance Review System Receipt dated January 15, 2004

**Offering Price and Description:**

\$37,975,000  
3,500,000 Common Shares  
Issuable Upon the Exercise of 3,500,000 Special Warrants  
Price: \$10.85 per Special Warrant

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

RBC Dominion Securities Inc.  
Haywood Securities Inc.  
First Associates Investments Inc.  
Sprott Securities Inc.

**Promoter(s):**

-

**Project #605624**

---

**Issuer Name:**

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

**Type and Date:**

Amendment #1 dated January 9, 2004 to Prospectus dated  
November 27, 2003  
Mutual Reliance Review System Receipt dated January 15, 2004

**Offering Price and Description:**

Class A Shares in Series  
Offering Price: Net Asset Value per Series Share

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

GrowthWorks Capital Ltd.

**Promoter(s):**

-

**Project #587888**

---

**Issuer Name:**

MDPIM International Equity Pool  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated January 14, 2004 to Simplified  
Prospectus and Annual Information Form  
dated July 23, 2003  
Mutual Reliance Review System Receipt dated January 20, 2004

**Offering Price and Description:**

Mutual Fund Securities Net Asset Value

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

MD Management Limited

**Promoter(s):**

MD Private Trust Company

**Project #559401**

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**Issuer Name:**

MD Balanced Fund  
Principal Regulator - Ontario

**Type and Date:**

Amendment #4 dated January 14, 2004 to Final Simplified  
Prospectus and Annual Information Form  
dated July 23, 2003  
Mutual Reliance Review System Receipt dated January 20, 2004

**Offering Price and Description:**

Mutual Fund Securities Net Asset Value

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

MD Management Limited

**Promoter(s):**

MD Funds Management Inc.

**Project #552939**

---

**Issuer Name:**

Capital First Venture Fund Inc.

**Type and Date:**

Final Prospectus dated January 16, 2004  
Receipt dated January 16, 2004

**Offering Price and Description:**

Class A Shares

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

-

**Promoter(s):**

CFPA Sponsor Inc.  
Triax-Covington Corporation  
**Project #597483**

---

**Issuer Name:**

Equitech Corporation  
Principal Regulator - Alberta

**Type and Date:**

Final Prospectus dated January 14, 2004  
Mutual Reliance Review System Receipt dated January 20, 2004

**Offering Price and Description:**

RIGHTS TO SUBSCRIBE FOR UNITS

Maximum: 4,966,405 Units (\$993,281)

Minimum: 3,500,000 Units (\$700,000)

Subscription Price: \$0.20 per Unit

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

Northern Securities Inc.

**Promoter(s):**

-

**Project #588718**

---

**Issuer Name:**

Financial Industry Opportunities Fund Inc.

**Type and Date:**

Final Prospectus dated January 16, 2004  
Receipt dated January 16, 2004

**Offering Price and Description:**

Class A Shares, Series I and Class A Shares, Series II

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

-

**Promoter(s):**

CFPA Sponsor Inc.  
Triax-Covington Corporation  
**Project #592221**

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**Issuer Name:**

Look Communications Inc.  
Principal Regulator - Quebec

**Type and Date:**

Final Prospectus dated January 16, 2004  
Mutual Reliance Review System Receipt dated January 20, 2004

**Offering Price and Description:**

Rights to Subscribe for \$10,665,000 Principal Amount of  
7% Secured Convertible Debentures

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

-

**Promoter(s):**

-

**Project #578205**

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**Issuer Name:**

Ore-Leave Capital Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated January 13, 2004  
Mutual Reliance Review System Receipt dated January 15, 2004

**Offering Price and Description:**

\$1,500,000.00 (Maximum offering) 6,000,000 Units Price:  
\$0.25 per Unit  
and 13,740,000 Common Shares and 13,740,000 Common  
Share Purchase Warrants Issuable Upon the Exercise of  
previously issued Special Warrants

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

CTI Capital Inc.

**Promoter(s):**

Dino Titano

**Project #593647**

---

**Issuer Name:**

Retrocom Growth Fund Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated January 14, 2004  
Mutual Reliance Review System Receipt dated January 15, 2004

**Offering Price and Description:**

(Class A Series I Shares and Class C Series 10 Shares)

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

-

**Promoter(s):**

Retrocom Investment Management Inc.

**Project #599037**

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**Issuer Name:**

The VenGrowth II Investment Fund Inc.  
(Class A Shares)  
The VenGrowth Advanced Life Sciences Fund Inc.  
(Class A Shares)  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated January 14, 2004  
Mutual Reliance Review System Receipt dated January 15, 2004

**Offering Price and Description:**

Class A Shares

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

-

**Promoter(s):**

APSFA/AGFFP Sponsor Corp.

**Project #600456**

---

**Issuer Name:**

Canadian Capital Auto Receivables Asset Trust  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated January 13, 2004  
Mutual Reliance Review System Receipt dated January 14, 2004

**Offering Price and Description:**

(1) \$200,000,000.00 - 2.723% Auto Loan Receivables-  
Backed Notes, Series 2004-1, Class A-1;  
(2) \$225,000,000.00 - 3.129% Auto Loan Receivables-  
Backed Notes, Series 2004-1, Class A-2; and  
(3) \$225,000,000.00 - 3.539% Auto Loan Receivables-  
Backed Notes, Series 2004-1, Class

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

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

**Promoter(s):**

General Motors Acceptance Corporation of Canada,  
Limited

**Project #603453**

---

**Issuer Name:**

CU Inc.  
Principal Regulator - Alberta

**Type and Date:**

Final Short Form Shelf Prospectus dated January 16, 2004  
Mutual Reliance Review System Receipt dated January 16, 2004

**Offering Price and Description:**

\$750,000,000 Debentures (Unsecured)

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

BMO Nesbitt Burns Inc.  
RBC Dominion Securities Inc.  
TD Securities Inc.

**Promoter(s):**

-

**Project #604209**

**Issuer Name:**

EnerVest Diversified Income Trust  
Principal Regulator - Alberta

**Type and Date:**

Final Short Form Prospectus dated January 16, 2004  
Mutual Reliance Review System Receipt dated January 16, 2004

**Offering Price and Description:**

Offering of Rights to Subscribe for Units  
Subscription Price: Four Rights and \$6.35 per Unit  
The Subscription Price is 87.8% of the net asset value per Unit on January 14, 2004

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

GMP Securities Ltd.

**Promoter(s):**

-

**Project #604518**

**Issuer Name:**

Falcon Trust  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated January 12, 2004  
Mutual Reliance Review System Receipt dated January 14, 2004

**Offering Price and Description:**

\$172,645,950 (Approximate) - Commercial Mortgage  
Pass-Through Certificates, Series 2003-SMU

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

Scotia Capital Inc.

**Promoter(s):**

Scotia Capital Inc.

**Project #598439**

**Issuer Name:**

Hemosol Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated January 13, 2004  
Mutual Reliance Review System Receipt dated January 15, 2004

**Offering Price and Description:**

Up to \$5,881,350.00 - up to 7,841,800 Common Shares  
and up to 3,920,900 Common Share Purchase Warrants  
issuable on exercise of outstanding Special Warrants

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

Loewen, Ondaatje, McCutcheon Limited  
Vengate Capital Partners Company

**Promoter(s):**

-

**Project #602853**

**Issuer Name:**

Research In Motion Limited  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated January 14, 2004  
Mutual Reliance Review System Receipt dated January 14, 2004

**Offering Price and Description:**

US\$  
9,000,000 Common Shares

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

Merrill Lynch Canada Inc.  
Goldman Sachs Canada Inc.  
UBS Securities Canada Inc.  
BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
GMP Securities Ltd.

**Promoter(s):**

-

**Project #603779**

**Issuer Name:**

Schooner Trust  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated January 15, 2004  
Mutual Reliance Review System Receipt dated January 15, 2004

**Offering Price and Description:**

\$437,575,000.00(approximate) - COMMERCIAL  
MORTGAGE PASS-THROUGH CERTIFICATES, SERIES  
2004-CCF1

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

TD Securities Inc.  
Credit Suisse First Boston Canada Inc.

**Promoter(s):**

-

**Project #599403**

**Issuer Name:**

Counsel Conservative Portfolio  
Counsel Regular Pay Portfolio  
Counsel Balanced Portfolio  
Counsel Balanced RSP Portfolio  
Counsel Growth Portfolio  
Counsel Growth RSP Portfolio  
Counsel All Equity Portfolio  
Counsel All Equity RSP Portfolio  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses and Annual Information  
Forms dated January 19, 2004  
Mutual Reliance Review System Receipt dated January 20, 2004

**Offering Price and Description:**

Series A and Series F Units @ Net Asset Value per Unit

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

-

**Promoter(s):**

Counsel Group of Funds Inc.  
**Project #599114**

**Issuer Name:**

Desjardins Fidelity Canadian Growth Company Fund  
Desjardins Overseas Equity Value RSP Fund  
Desjardins Fidelity True North (R) Fund  
Desjardins Fidelity Small Cap America RSP Fund  
Desjardins Fidelity Small Cap America Fund  
Desjardins Fidelity International Portfolio RSP Fund  
Desjardins Fidelity International Portfolio Fund  
Desjardins Enhanced Bond Fund  
Desjardins CI Value Trust Sector Fund  
Desjardins CI Value Trust RSP Fund  
Desjardins CI Canadian Investment Fund  
Desjardins American Equity Value Fund  
Desjardins Alternative Investments Fund  
Desjardins Canadian Equity Value Fund  
Desjardins Global Science and Technology Fund  
Desjardins Global Equity Value RSP Funds  
Desjardins Ethical Canadian Balanced Fund  
Desjardins Select Canadian Balanced Fund  
Desjardins Select Canadian Equity Fund  
Desjardins Select Global Equity Fund  
Desjardins Select American Equity Fund  
Desjardins Overseas Equity Value Fund  
Desjardins Québec Balanced Fund  
Desjardins Diversified Secure Fund  
Desjardins Diversified Moderate Fund  
Desjardins Diversified Audacious Fund  
Desjardins Diversified Ambitious Fund  
Desjardins Canadian Bond Fund  
Desjardins Money Market Fund  
Desjardins American Equity Value RSP Fund  
Desjardins Global Equity Value Fund  
Desjardins Short-Term Income Fund  
Desjardins Canadian Balanced Fund  
Desjardins Environment Fund  
Desjardins Dividend Fund  
Desjardins Canadian Small Cap Equity Fund  
Desjardins Canadian Equity Fund  
Principal Regulator - Quebec

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated January 9, 2004  
Mutual Reliance Review System Receipt dated January 9, 2004

**Offering Price and Description:**

Mutual Fund Securities Net Asset Value

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

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

**Promoter(s):**

-

**Project #590981**

**Issuer Name:**

RBC Investments North American Focus Fund (formerly RBC Investments Focused North American Fund)  
RBC Investments North American-Canadian Focus Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses and Annual Information Forms dated January 14, 2004  
Mutual Reliance Review System Receipt dated January 16, 2004

**Offering Price and Description:**

Advisor Series Units and Series F Units of:

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

RBC Dominion Securities Inc.

**Promoter(s):**

RBC Asset Management Inc.

**Project #591823**

**Issuer Name:**

Crystallex International Corporation  
Principal Jurisdiction - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated December 3, 2003  
Withdrawn January 14, 2004

**Offering Price and Description:**

US\$28,160,000  
12,800,000 Common Shares and 6,400,000 Common Share Purchase Warrants  
(Issuable Upon Exercise of 12,800,000 Previously Issued Special Warrants)

Price: US\$2.20 per Special Warrant

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

Loewen, Ondaatje, McCutcheon Limited  
Orion Securities Inc.

**Promoter(s):**

-

**Project #596479**

**Issuer Name:**

American Seafoods Corporation  
Principal Jurisdiction - Ontario

**Type and Date:**

Amendment to Preliminary Prospectus dated July 17, 2003  
Closed on January 19, 2004

**Offering Price and Description:**

31,700,288  
(Approximately US\$550,000,000)  
INCOME DEPOSIT SECURITIES (IDSs)

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

CIBC World Market Inc.

**Promoter(s):**

-

**Project #548802**

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## Chapter 12

# Registrations

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### 12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Satori Capital Partners Inc.	Limited Market Dealer	January 12, 2004
Change of Category	Banwell Financial Inc.	From: Mutual Fund Dealer To: Limited Market Dealer	December 16, 2004



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# SRO Notices and Disciplinary Proceedings

### 13.1.1 IDA Debt Market Regulation Project - Review of IDA Member Firms - Final Summary Report



#### DEBT MARKET REGULATION PROJECT

#### Review of IDA Member Firms

#### Final Summary Report

July 28, 2003

#### I. Background

In 2001 the Canadian Securities Administrators (CSA) and Investment Dealers Association of Canada (IDA) began a joint review of the over-the-counter debt markets in Canada, designed to determine whether any regulatory initiatives are required in that lightly regulated market. The project was overseen by a Steering Committee with staff of the Ontario Securities Commission (OSC) and Commission des Valeurs Mobilières du Québec (CVMQ) representing the CSA.

The project was planned to proceed in three stages:

1. a survey of market participants to identify issues
2. reviews of the debt market policies, procedures and activities of selected firms in relation to the issues identified in the survey and other issues of concern to the CSA and IDA; and
3. identification and implementation of remedial measures regarding any problems uncovered in the first two stages. Such remedial measures could, depending on the nature of the identified problems, include rulemaking, more strenuous enforcement of existing rules and/or education of market participants and investors.

This report summarizes the results of the Stage 2 reviews of IDA Member firms.

#### Survey of Market Participants

After a Request for Proposals process, Deloitte and Touche LLP ("Deloitte") was retained to conduct the survey of market participants. It obtained responses to a questionnaire approved by the CSA and IDA, some written and some oral, from a variety of participants including dealers, inter-dealer bond brokers, issuers, regulators, portfolio managers, retail clients, compliance officers and committees dealing with fixed income market issues.

Deloitte completed its report ("the Deloitte Report") on July 16, 2002 and it was made public on December 13, 2002.

The Deloitte report contained the following general findings:

#### 1. Overall Market Integrity

Concerns about market integrity are minor, although a minority of respondents expressed concerns about certain sharp trading practices and client confidentiality. A majority of respondents rate market integrity in the wholesale market as good, and most market participants feel market integrity has improved in recent years. A minority have some reservations about the fairness of the market, but generally do not support expanded regulation as a response.

#### 2. IDA Policy 5

Policy 5 is seen by the majority of market participants as sufficient for regulating the wholesale fixed income markets. However, this view needs to be considered in light of how familiar market participants really are with respect to the specific details of Policy 5. Outside of some traders in the dealers, it appears that greater education and training efforts are needed on the contents of Policy 5 and any related internal policies.

#### 3. Compliance Reviews

The IDA does not currently conduct compliance reviews focused on debt market trading, which in turn reduces the degree of focus and the resources allocated to debt market activities by in-house compliance departments. In-house compliance functions place little, if any, emphasis on debt market trading. In-house compliance procedures that do exist are not necessarily consistent across firms.

#### 4. Surveillance of the Debt Markets

Respondents do not believe real-time market surveillance is warranted due to lack of concern over debt trading issues and the cost that would be incurred relative to the perceived benefits. A minority supported the use of off-line (after the fact) surveillance reports.

**5. Retail Markets**

A strong consensus exists that reforms are needed in the retail market. The primary issue is poor transparency, which is increasingly an issue in light of advances in transparency in wholesale markets. Poor transparency can lead to other problems such as unreasonable prices or mark-ups, lack of understanding of debt markets, and clients' inability to safeguard their own interests.

**6. The Complaints Process**

Market participants, in particular institutions, are not aware of any formal channels for communicating their complaints about fixed income markets, especially with respect to market integrity issues. The complaints process that exists is not transparent to market participants.

**II. Purpose and Method of Debt Market Compliance Reviews**

Stage 2 of the project, reviews of debt market practices at selected IDA Member firms, was designed to determine whether the findings of the Deloitte survey – based as it was on the opinions and observations of market participants – were reflected in the actual practices and records of IDA Member firms.

Mr. Michael Sharpe was retained by the IDA as a consultant to develop a separate sales compliance module on debt market trading. Mr. Sharpe was General Counsel and Head of Compliance at RBC Dominion Securities Inc. and then CIBC World Markets Inc. until 2001. He had extensive experience dealing with debt market compliance issues, both retail and institutional, and was retained by Deloitte to assist in the development of the survey and evaluation of the responses and the report.

In consultation with CSA and IDA staff, Mr. Sharpe prepared an examination program covering the following areas:

1. Supervision of Account Activity
2. Fixed Income Research
3. Soft Dollar Arrangements
4. Accounts of Individuals
5. Retail Fixed Income Desk
6. IDA Policy 5
7. IDA Policy 7 (on sale/repurchase agreements or "repos")
8. Underwritings
9. Information barriers
10. Registration

11. Order Entry
12. Best Execution
13. Exceptions to Policies
14. Fixed Income Derivatives
15. Problems and Complaints

Mr. Sharpe also provided initial training and guidance to IDA staff assigned to conduct the reviews.

The CSA/IDA steering committee selected five IDA Members for review: 3 large, integrated, bank-owned dealers with both institutional and retail customers, and two independent dealers – one that deals only with institutions and the other only with retail clients. The integrated dealers and the independent institutional dealer also trade inventory positions. The dealer with only retail business does not maintain fixed income inventories, trading only to or from other dealers in response to retail orders.

The reviews were conducted between November, 2002 and February, 2003. Three were stand alone and two were conducted as part of a full sales compliance review of the dealer.

**Focus of the Reviews**

While all sections of the new program were completed at all of the selected members, for the purposes of the project and this report the following were the areas of focus:

1. IDA Policy 5
  - a. Familiarity of the Member and its debt market department staff with its contents;
  - b. Extent and contents of related, firm specific policies and procedures, with particular attention to the definition of prohibited practices such as frontrunning;
  - c. Enforcement of Policy 5 and related policies and procedures.
2. Primary Markets
  - a. Information barriers between government finance and trading;
  - b. Information barriers between underwriting and trading.
3. Secondary Markets – Retail
  - a. Mark-ups
  - b. Suitability

- c. Best execution
  - d. Effectiveness of in-house compliance
4. Secondary Market – Institutional
- a. Confidentiality of client orders and positions and frontrunning

The following sections of the report will deal with the findings in each of these areas across the five reviews.

### III. IDA Policy 5

IDA Policy 5 was implemented in 1998. It was developed in association with the Bank of Canada and Department of Finance (Canada) “to describe the standards for trading in wholesale domestic Canadian debt markets expected of Members of the Association, their affiliates and the customers and counterparties with whom such Members deal.” It enunciates standards regarding firms’ standards and procedures, dealings with customers and counterparties, market conduct and enforcement.

#### 1. Knowledge of Policy 5

The four Members having institutional clients and inventory trading are familiar with Policy 5. Three have integrated its contents into their firm policies, procedures and codes of conduct. One has included the text of the policy itself as a part or appendix of its policies and procedures. The retail only dealer generally had not addressed Policy 5. The discussion below regarding Policy 5 therefore generally omits the retail firm.

#### 2. Training

Two firms had conducted specific training regarding Policy 5 as part of their regular training process. The three firms that integrated Policy 5 into their policies, procedures and codes of conduct collect annual attestations from employees that they are familiar with and will abide by those policies, procedures and codes of conduct. The one institutional firm that did not integrate the policy gets attestation from all fixed income traders that they are familiar with and will abide by Policy 5.

#### 3. Definition of Prohibited Practices

None of the firms reviewed provided any debt market specific guidance as to what constitutes manipulative trading or frontrunning. Three had definitions of frontrunning in their policies, procedures and codes of conduct that relate to equities trading. One Member expressed the opinion that any frontrunning would be identified easily by the client, which would cease to do business with the Member, hence it is self-policed.

#### 4. Enforcement

All Members doing principal business indicated that daily trading is reviewed, in two cases by the institutional

compliance department and in one case by trade desk managers. One Member has a dedicated fixed income compliance officer. The retail-only Member did not conduct trading reviews in relation to Policy 5, but has now assigned a compliance officer to implement a review procedure. Other departments such as credit and risk management are also involved in some aspects. The Members that trade as principal were asked about several specific supervision items:

- Concentration  
All Members review position reports, generally from a credit or risk management perspective.
- Unusual differential in the traded yield between issues of similar maturity  
While Members look at inventory pricing, they do not generally look at this kind of issue. Two Members indicated that any such differential would be caught on a real-time basis by trade desk supervisors. One indicated that any unusual spikes or spreads in Government of Canada issues would be caught by the Bank of Canada, which would request a commentary.
- Unusual gap between the repo rate and the overnight rate for the same type of securities over a sustained period of time  
Other than through pricing of inventory, Members did not review for this. One Member indicated that it is self-policing, as market participants would not do business with a dealer that did not offer competitive rates.
- Unusual trading volumes in a particular issue  
None of the members thought that this was something that could be looked for, because the market is driven by institutional business which is often in large volumes. Members indicated that they would not be able to define an “unusual volume.”

None of the Members was aware of any instance of a failure by the Member itself, its affiliates or its customers to comply with Policy 5.

### Conclusions

While the large dealer firms are familiar with Policy 5 and have incorporated it into their procedures, there is a lack of specificity or common understanding of what exactly constitutes improper conduct under the Policy. Terms that appear in the policy like frontrunning, borrowed from equity auction markets, are widely believed to have no application in the secondary debt markets. There was a general belief among compliance personnel that the institutional nature of the market prevents most improper activity and therefore makes compliance efforts unnecessary.

While equity auction market abuses may have no counterparts in the dealer debt markets, Policy 5 was written in consultation with market participants and the Members reviewed produced no reasoned arguments in support of their conclusion that some of the improper activities specified in Policy 5 were either non-existent or would be identified and the perpetrators sanctioned informally by market participants withholding their business. There therefore appears to be a gap between the concerns of the authors of Policy 5 and the understanding of those at Member firms charged with implementing it.

There is also a gap in information related to trading volumes or unusual price patterns because there is no centralized data. Members expect the Bank of Canada to spot any problems in Government of Canada issues or just expect that unusual prices would be identified and corrected by the trade desk supervisors. While this may be so for government and major corporate debt issues, there is no guarantee that smaller, less widely held corporate issues are not subject to risk of manipulative activity. Special features like convertibility may add to the risk.

#### **IV. Primary Markets**

##### **1. Government Issues**

Only one Member indicated that it has strict information barriers between the Government Finance Department and trading. Its Government Finance Department is on a separate floor from the fixed income trading area. It indicated that there is never any need to bring traders over the wall.

Generally, the other Members did not view government issues as raising information barrier issues. Government of Canada issues are sold through the auction process and Provincial government issues are priced on a spread against benchmark issues.

##### **2. Corporate Issues**

Members were more aware of information barrier concerns for corporate debt issuers, but the procedures were less rigorous than for equity issues. Three Members indicated that many corporate fixed income issues are not material. Two noted that medium term note issues for large corporate issuers are done by shelf prospectus, therefore the information is largely public and the issues are priced and placed so quickly that there is little or no reason for concern about insider trading. Two indicated that issues were arranged only by corporate finance and syndication personnel; one reported that senior traders may be asked for their opinions on pricing but are aware of the requirement to keep the information confidential until the issue is announced.

Generally, Members indicated that the specific, formal information barrier procedures for new equity issues are not in place for corporate debt issues. Only one Member indicated that it may place securities on a grey or restricted list in relation to a debt issue; there is no record keeping regarding knowledge of the issue within the dealer.

Instead, Members appear to rely on their personnel being aware of general requirements not to use or disseminate material non-public information. One dealer indicated that the only time formal procedures are implemented is when the issue relates to a significant transaction such as an acquisition or reorganization.

The three bank-owned Members all indicated that the corporate loan book is held at the bank and that there are information barriers between the bank and the dealer. One Member reported that persons with knowledge of the loan portfolio are located on the trading floor, but are not involved in trading fixed income or equity inventories. The Member is considering what information barrier procedures, if any, should be implemented, but is having some difficulty in the absence of any guidance on the issue and because information about public corporations' borrowing is in the public domain.

#### **Conclusion**

In general, inside information and information barrier issues in relation to new debt issues do not appear on Members' radar screens. The Deloitte report notes that some commentators suggested that dealers may use information from underwriting/ syndication departments to move markets in order to influence prices quoted to issuers for new issues. While the nature of the issuers and processes for new government debt issues make the receipt and abuse of non-public information much less likely, the Deloitte study notes that one commentator said that the problem was worse for government issues than for corporate issues. However, it is notable that neither the Association nor any dealers reviewed have ever received any complaints from issuers in this regard.

Similarly, while in many instances new corporate debt issues have no impact in either the debt or equity markets, some issues may have an impact on a corporation's financial structure sufficient to affect the price of its other securities. Some firms do not appear to have determined how and when to implement information barrier procedures with respect to upcoming debt issues, such as maintenance of records of the receipt of information and maintenance and checking of grey and restricted lists.

#### **V. Secondary Markets – Retail**

As previously noted, one Member reviewed does institutional business only so all questions regarding retail trading were irrelevant.

##### **1. Mark-ups and Commissions**

The three Members who have inventories generally fill retail orders out of inventory. In one case registered representatives have direct electronic access to enter orders against inventory at prices set by the institutional trading department for institutional clients; at the other two there is a separate retail inventory marked up from the institutional inventory. At both of those firms registered representatives enter electronic orders directly against the retail inventory at the quoted prices. At one firm, if the

issue is not carried in inventory, the retail desk will go to other dealers to fill the order. At the other, while the retail desk can also go to outside dealers for bonds not in inventory, it will first suggest to the registered representative a comparable issue that is in inventory.

All of the dealers reported that prices are set by the institutional trading department based on benchmark issues. Two Members have guidelines regarding mark-ups and monitor for compliance with those guidelines. The Member whose registered representatives can trade directly against institutional inventory reported that any trade outside its mark-up guidelines would automatically be routed to a trader before execution for enquiries as to the reason for the price.

All three Members also have minimum and maximum commission guidelines and exception reports that are used to review any commissions outside those guidelines. The commission is set by the registered representative and is negotiable, but is included in the overall price to the client rather than as a separate, added commission. The price to the client can therefore include a mark-up and a commission or both. One member indicated that it has encountered more problems with commissions discounted below the minimum guideline than with those above the maximum guideline. Another showed generally lower commissions on sell transactions, and reported that the commissions were usually discounted and often none were charged because the proceeds were being used to buy a different issue and commissions were charged on the buy.

Exceptions to mark-up or commission guidelines were handled by different supervisors at different Members, including branch managers, head office retail supervisors and trade desk supervisors.

The retail-only Member that does not trade from inventory also has mark-up and commission guidelines, but prior to the review had not monitored adherence to the guidelines. It has reported that it is now starting to do.

All of the Members reported that the same processes were used to supervise mark-ups and commissions on strip bonds and residuals as for other fixed income products.

Exception and trading reports were reviewed at the three Members having them. The exception reports worked as described. Trading outside of the mark-up and commission guidelines were identified at one Member in an exception report and questioned, but were not generally reversed. These frequently related to low volume orders in which minimum commission levels put the percentage commission above the guidelines.

The rates on all of the commission matrices vary with term to maturity between \$0.10 and \$1.00 at one dealer, \$1.50 at another and \$2.00 at the third. Actual totals were obtained from one dealer on 2,461 retail trades over a five day period. The average mark-ups were \$0.516 on buys and \$0.616 on sells. In terms of percentage of the cost the trade the average was 0.62% on buys and 0.71% on sells.

Trades in the same issues on the same days by retail and institutional clients at one dealer were compared. All were within the dealer's mark-up and commission guidelines. Trades by retail clients in the same issues on the same days were compared between the three dealers. Price differences were found to be minimal – well below the mark-up and commission amounts.

#### Suitability

Members did not separate fixed income suitability reviews from general retail account reviews, which look at overall portfolio suitability. One Member noted that these reviews tend to focus on equities, where the risks tend to be higher. All Members have exception reports for fixed income trades over \$100,000 in retail accounts, as required under IDA Policy 2, which are reviewed on a daily basis.

Samples of accounts at each Member trading in fixed income products found no suitability issues with respect to the debt portion of the portfolios, which tended to contain plain vanilla products. The one except was an account in which the concern related more to the age of the client than the stated investment objectives of 100% high risk. In that case the client appears to be related to the registered representative. The account was brought to the Member's attention for further review.

#### 3. Best Execution

None of the Members considered best execution an issue. The institutional-only firm reported that its clients get prices from various dealers and will trade with the firm offering the best price. The retail firm reported that it has access to prices from several live trading systems, including those of major dealers and alternative trading systems and will go to the source offering the best price.

The three Members that do both retail and inventory trading indicated that trades to retail customers are generally from inventory at prices set by the institutional trading department for institutional customers, which have to be competitive. They are set against benchmark issues and the institutional trading departments monitor prices at other dealers and inter-dealer bond brokers to ensure that they are competitive. They indicated that the institutional market is highly competitive so they cannot allow their prices to get out of line with the competition.

The same three Members reported that they contribute to a weekly survey conducted by the Canadian Depository for Securities, which gives them reports on the high, low and mean prices of trades in various issues, and they seek to ensure that they have been "somewhere in the middle" as one Member put it.

#### 4. Effectiveness of In-house Compliance

As noted with regard to each specific item above, no retail debt market problems were uncovered in the reviews.

Three of the dealers reported that their fixed income operations are subject to internal audit. None of the audits

had uncovered any issues regarding retail debt market trading. The Members were also asked about client complaints regarding fixed income trading and none reported receiving any. Complaint logs were reviewed and supported that contention.

## **VI. Secondary Markets – Institutional**

### **1. Confidentiality of Client Orders and Positions and Frontrunning**

The policies, procedures and codes of conduct noted in Section III (regarding Policy 5) above all include sections requiring strict confidentiality regarding client orders and positions. However, as described in that section none of the Members reviewed viewed frontrunning as a debt market issue because of the nature of the market. One Member noted that any use by a dealer of knowledge of a client order in its own trading would quickly be identified by an institutional client and would result in loss of business.

Three of the five firms require pre-approval of all personal trades by fixed income department employees. The proposed trades are reviewed against grey and restricted lists. These firms also reviewed all trades in employee accounts to ensure that pre-approval was received. The only reports of violations of the rules related to pre-approval rather than the nature of the trade. At one firm these result in a warning letter on first offence. Another firm reported only one incident of improper trading in 4 years: the employee had put the trade through a discount broker and was suspended for three days without pay.

All firms also reviewed all employee trading according to the terms of IDA Policy 2, which requires disclosure of all accounts outside the firm and reporting of all trades in any external accounts.

One firm has a sophisticated review system that checks employee trades to determine patterns of trading ahead of clients or deals.

## **VII. Recommendations**

The reviews did not find any evidence of serious problems in debt market trading at the selected Members. There were no customer complaints and no evidence of retail customers being charged exorbitant mark-ups.

What was found was inattention to some aspects of debt trading compliance, a feeling that the market is self-policing and that there simply are no issues of concern, combined with a general lack of focus on identifying what risks or exact types of improper activity might be worthy of attention.

Based on the reviews, IDA Sales Compliance makes the following recommendations.

1. Policy 5 should be reviewed and revised to try bring more specificity to the types of improper conduct that can occur in the debt markets and how they should be prevented. The results could

take the form of a revision to the policy itself, definitional and best practice guidance for Members, or both. Both debt trading experts and Member compliance staff should be involved, as there is clearly a problem with a Policy noting issues that none of the Members reviewed seem to understand.

2. The IDA should conduct similar detailed debt market reviews on all Members. It is evident that some firms were not paying close enough attention to part or all of their compliance responsibilities with regard to debt trading activity, generally as a result of complacency. The reviews will both call attention to the requirements and provide a baseline of information on retail pricing practices.

The reviews should ensure that Members involved in underwriting and distribution of corporate debt issues have a process for making a determination whether knowledge of a particular negotiation, proposal, underwriting or distribution might have an impact on the market – debt or equity – so that appropriate procedures are put in place in those instances, however few, where non-public information about the issue is material.

The reviews should further ensure that Members have methods of reviewing for unusual concentration or trading activity in debt issues, although reviews may be limited to those issues or types of issues that present a risk of manipulative activity.

3. While there was no evidence of an urgent need for consolidated price and volume information across the market, the gaps in its availability make both internal and regulatory compliance reviews more difficult and time-consuming and render the results less certain. Easy availability of better market information would help retail clients ensure that they are being given reasonable prices, but the reviews found no evidence that current pricing is uncompetitive or unreasonable. The development of better market information, already underway, should be encouraged.

13.1.2 Notice of Commission Approval –  
Amendments to MFDA Policy No. 3 –  
Handling Client Complaints

**THE MUTUAL FUND DEALERS ASSOCIATION (MFDA)  
NOTICE OF COMMISSION APPROVAL  
AMENDMENTS TO MFDA POLICY NO. 3 –  
HANDLING CLIENT COMPLAINTS**

The Ontario Securities Commission approved amendments to MFDA Policy No. 3 on handling client complaints. 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 amendments. The amendments to MFDA Policy No. 3 establish additional reporting requirements for MFDA Members or Approved Persons on customer complaints. The amendments also prohibit direct settlement between Approved Persons and clients made without the Member's knowledge. A copy and description of these amendments were published on July 11, 2003 at (2003) 26 OSCB 5414. A summary of the public comments received is contained in Appendix "A".

**APPENDIX "A"**

**Summary of Public Comments Respecting  
Proposed Amendments to MFDA Policy No. 3 -  
Handling Client Complaints  
And Response of the MFDA**

On July 11, 2003, the Ontario Securities Commission published for public comment proposed amendments to MFDA Policy No. 3 "Handling Client Complaints" (the "Proposed Amendments"). 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.

Two submissions were received during the public comment period:

1. Royal Mutual Funds Inc.
2. Independent Planning Group 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.

The following is a summary of the comments received, together with the MFDA's responses.

One commentator requested further guidance as to the expectations of the MFDA regarding the reporting of complaints that are unrelated to the sale of a security. In particular, the commentator noted that greater clarity would be helpful with respect to complaints arising from financial planning activity but unrelated to the sale of a security.

**MFDA Response**

Further guidance will be provided by way of a bulletin to Members. The MFDA will expect Members to report such conduct with regard to all Member business. The MFDA will encourage Members as a matter of best practice to also report any such conduct of which it is aware relating to licensed insurance activity, any other financial activity or any activity on the part of Approved Persons relating to individuals who are clients of the Member.

Another commentator requested clarification as to whether the reference to "individual" in the commentary that accompanied the Proposed Amendments is the same as an Approved Person. The Detailed Analysis section in the commentary to the Proposed Amendments noted that each Member must report to the MFDA whenever such Member or a partner, director, officer, salesperson, employee or agent of the Member has entered into a private settlement or has disposed of any claim in securities related litigation or arbitration by judgement, award or settlement where the amount exceeds the monetary threshold prescribed (\$25,000 for a Member and \$15,000 for an individual).



**MFDA Response**

The reference in the Detailed Analysis is consistent with the wording of the Policy, and "individual" should be read as meaning Approve Person.

**13.1.3 Notice of Commission Approval –  
Amendments to MFDA Rule 5.3.1 –  
Delivery of Account Statement**

**THE MUTUAL FUND DEALERS ASSOCIATION (MFDA)  
NOTICE OF COMMISSION APPROVAL  
AMENDMENTS TO MFDA RULE 5.3.1 –  
DELIVERY OF ACCOUNT STATEMENT**

The Ontario Securities Commission approved amendments to MFDA Rule 5.3.1 regarding delivery of account statement. 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 amendments. The amendments to MFDA Rule 5.3.1 allow a MFDA Member operating in client name to rely on the trustee administering self-directed registered plans to send account statements under certain conditions. The amendments also permit a Member to rely on the affiliated fund manager to send the client account statements, when the Member is affiliated with a mutual fund manager and, in connection with a specific client account, is only selling the mutual fund securities of an issuer managed by the affiliated manager. A copy and description of these amendments were published on July 11, 2003 at (2003) 26 OSCB 5409. A summary of the public comments received and the final amendments to Rule 5.3.1 blacklined from the version published on July 11, 2003 are contained in Appendix "A" and "B" respectively.

**APPENDIX "A"**

**Summary of Public Comments Respecting  
Proposed Amendments to MFDA Rule 5.3.1 - Delivery  
of Account Statement  
And Response of the MFDA**

On July 11, 2003, the Ontario Securities Commission published for public comment proposed amendments to MFDA Rule 5.3.1 – Delivery of Account Statement. 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.

Five submissions were received during the public comment period:

1. Royal Mutual Funds Inc.
2. Sun Life Assurance Company of Canada on behalf of IQON Financial Inc.
3. Manulife Securities International Ltd.
4. Performa Financial Group Ltd.
5. Independent Planning Group 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.

The following is a summary of the comments received, together with the MFDA's responses.

**1. Rule 5.3.1(c) – Self-Directed Registered Plans Administered by a Trustee**

**A. General Comments**

One commentator expressed the view that the stated objective of the proposed amendment, to avoid client confusion associated with receiving multiple statements from different sources, would not be achieved since Rule 5.3.1 would still require that Members send annual statements for non-intermediary accounts. The commentator stated that clients would continue to receive statements from multiple sources: Members, intermediaries and mutual fund companies. This commentator was of the view that client confusion would not be eliminated by the proposed amendment for the following reasons:

- Many Members do not have the technology to exclude intermediary accounts from their statement runs, which will result in the dealer having to send intermediary account information

regardless. Under these circumstances, Members will not be able to provide clients with true and complete intermediary account information with respect to stocks, bonds and cash holdings.

- Even if Members can exclude intermediary information from their account statements, they would have to send a separate cover letter with all the statements in order to provide clients with an explanation as to why the Member is not including all holdings on the statement, which will lead to further confusion.
- Data transfers from mutual fund companies continue to have errors and exclusions and Members are continually processing exception reports as a result of receiving incorrect or missing data from fund companies. Industry data standards have not been implemented by all fund companies. Fund company statements must continue to be sent to clients to ensure that clients are receiving accurate information from at least one source.

The commentator suggested that Members who operate solely in client name should be excluded from the requirement to provide annual statements or at the very least be excluded from having to provide clients with a listing of transactions. The commentator expressed concern regarding the expense incurred by Members in sending annual statements with transactions and noted that fund company statements are considered more accurate than dealer statements. The commentator also requested that consideration be given to developing a policy to address electronic options with respect to the delivery of account statements whereby clients would have secure internet access to view their accounts and transactions at any time.

Several commentators expressed general support for Rule 5.3.1(c), but had concerns with specific aspects of the amendments and the proposed conditions as drafted.

**MFDA Response**

The objective of the amendment is to avoid client confusion as the client will receive a statement from the Member and the trustee for the same account. For "non-intermediary" or trustee accounts, there would be no duplication as only the Member would be sending an account statement.

This amendment does not impose a requirement for a Member to rely on a trustee to send an account statement but rather provides the option of relying on the trustee to send an account statement. If a Member does not have the technology to exclude trustee accounts from its statement runs, the Member could still send its own account statement.

MFDA Rule 5.3.4 provides that “only transactions executed by the Member may appear on the statement of account.” Non-member transactions where the assets are held with a trustee should not appear on a Member’s account statement.

This amendment does not prohibit or otherwise discuss the sending of account statements by fund companies.

The requirement to send an account statement for client name accounts was subject to public comment during the MFDA’s recognition process. No amendments have been proposed for Rule 5.3.1(a).

MFDA Notice MR-0015 provides for electronic delivery of account statements under the conditions contained within the notice.

**B. Member May Not Act as Agent for Trustee**

One commentator expressed cautious support for the proposed amendment but questioned the policy basis behind the proposed condition that the Member not act as an agent for the trustee in order for a Member to rely on the trustee administering self-directed registered plans to send client account statements. The commentator noted that it acts as an investment agent for the trustee for client name registered plans but does not exercise what could be considered a trusteeship function. The commentator further noted that this type of agency relationship is typical in the industry. The commentator suggested that this condition be eliminated or alternatively clarified to cover only situations where Members act as agent in furtherance of the trusteeship function.

**MFDA Response**

The condition that a Member not act as agent for the trustee is relevant because those Members who act as agents for the trustee are delegated the responsibility for client record keeping and reporting of investment activities by the trustee. Accordingly, the Member is required to send an account statement where it is acting as agent for the trustee.

Where the trustee is responsible for these activities, it follows that the trustee should be responsible for sending the client account

statements and the Member afforded the option of relying on the trustee to send account statements provided certain conditions are met.

**C. Member’s Full Legal Name must Appear on Account Statement**

Another commentator expressed concern regarding the proposed condition that the Member’s full legal name appears on the account statement together with the name of the trustee. The commentator questioned what would happen where investments held in a self-directed account are held by more than one Member and suggested that the presence of the legal name of the Member may cause some clients to believe that the Member is responsible for all the assets held in the self-directed account. This commentator stated that the account statements should disclose which investments are held through the Member.

**MFDA Response**

The trustee account statement must clearly disclose which transactions have been made through the Member. Further guidance will be provided in a companion Member Regulation Notice.

**D. Member Must Receive Copies of the Statements to Ensure Accuracy of Information Regarding transactions Executed by the Member**

Two commentators questioned the proposed condition that they receive copies of the statements to ensure that the information contained therein matches its own information regarding the transactions it executes.

One commentator felt that this proposed condition is not necessary and will result in extra expense to both parties. The commentator noted that few Members will actually review the statements as most rely on electronic data files and exception reports to verify the accuracy of the data and that it would be the Approved Person that would have a chance of noticing an error upon visual review of the statements.

The other commentator was concerned about the potential violation of privacy rights of clients that the proposed condition might involve. The commentator noted that a dealer may not be entitled to view information with respect to client investments purchased through other entities and thus the trustee would need to ensure that they obtain client consent to release statements to the dealer or provide only information relating to investments purchased through the dealer. The commentator was of the view that this would be a costly undertaking that would ultimately increase

costs to consumers. The commentator also noted that it may not be possible for larger Members to review all of the statements in a timely and cost effective manner and that the requirement would be onerous and logistically difficult to implement. The commentator felt that the proposed condition was seriously flawed and should be reworked.

#### **MFDA Response**

MFDA Rule 2.8 requires that no client communication, including account statements, be misleading. If the Member is not sending an account statement but relying on the statement sent by the trustee, the Member is still required to ensure that the information is not misleading.

Additionally, MFDA Policy 2 requires Members to review account statements within 21 days of the period covered by the statement. Without a copy of the account statement sent by the trustee, in electronic or paper form, the Member cannot comply with this requirement.

If client consent is required, the Member and trustee should obtain such authorization prior to relying on this proposed amendment.

Rule 5.3.1(c) has been amended to incorporate the proposed conditions that were referenced in the commentary accompanying Proposed Rule 5.3.1(c) when it was published for comment. Attached is a black-lined version of the amendments to Rule 5.3.1(c) indicating the changes from the previously published version.

#### **2. Rule 5.3.1(d) - Member Exclusively Distributing the Funds of an Affiliated Fund Manager**

Two commentators while expressing support for the general intent and objective of proposed Rule 5.3.1(d), were of the view that the amendment as drafted was too limited in its application.

One commentator expressed concern with respect to the restriction in the proposed amendment that would require a Member to sell only the mutual fund securities of an issuer managed by the affiliated fund manager. The commentator noted that they would not be able to avail themselves of the exception where they are selling only the mutual fund securities of an issuer managed by their affiliated fund manager with respect to their client name accounts if they also sell third party funds in nominee name. The commentator requested that the proposed amendment be revised to clarify that the restriction in the proposed amendment applies at the account level rather than the Member level. The commentator suggested that the proposed amendment be reworded to provide that where a Member is affiliated with a mutual fund manager and is selling only the mutual fund securities of an issuer

managed by an affiliated fund manager in respect of its client name accounts, the Member would be entitled to rely on the fund manager to send the account statement in respect of those accounts.

One commentator was of the view that the proposed amendment should not be limited to a Member which only sells funds of an affiliated fund manager but should extend to any Member in respect of a client of the Member where the client only holds funds managed by a single fund manager. The commentator suggested that where a Member's client elects to invest in funds managed by more than one fund manager, the exemption would no longer apply and the Member would be required to issue an account statement. The commentator submitted that the reasons supporting Rule 5.3.1(d) as currently drafted support an exemption in these circumstances as well.

#### **MFDA Response**

The proposed amendment has been clarified to reflect that it is applicable on an account level for client name accounts only. In addition, the reference to "any conditions which may be imposed" has been removed as the MFDA does not contemplate any additional conditions to relying on Rule 5.3.1(d) at this time. Attached is a black-lined version of the amendments to Rule 5.3.1(d) indicating the changes from the previously published version.

The proposed amendment includes the requirement that the fund manager be affiliated and does not related to unaffiliated fund managers because the Member has more access and control to information of affiliates.

#### **3. Consolidated Account Statements**

On a related topic, several commentators expressed opposition to the withdrawal of proposed Rule 5.3.5, which would have permitted the delivery of consolidated account statements. One commentator was of the view that Members should be allowed to provide consolidated statements to clients similar to those that clients would otherwise receive from the trustee pursuant to proposed Rule 5.3.1(c). This commentator felt that at a minimum, the MFDA should allow Members to embed portfolio summaries in account statements.

Another commentator was of the view that clients would benefit tremendously from receiving a single, consolidated statement which clearly discloses the legal entities that are related to particular transactions and holdings rather than requiring separate statements. This commentator further stated that while they support the MFDA's objective of ensuring that clients understand which

entity they are transacting business with when purchasing mutual fund securities, they were of the view that this objective could be satisfied through appropriate disclosure on a consolidated statement.

Another commentator expressed the view that all products sold through a Member should be allowed to appear in a single corporate account statement. This commentator stated that not allowing the Member to include other assets such as segregated funds in the statement of account will prevent the Member from offering valuable service to the client. The commentator further noted that dealers will probably choose not to report the assets, holding them in client name, thereby offering less information to clients. The commentator was of the view that if the dealer does not report the assets, Approved Persons may prepare ad hoc consolidated account statements of their own, increasing the risk of confusion, error and fraud.

**MFDA Response**

Following discussions with the Alberta, British Columbia, Ontario and Saskatchewan Securities Commissions together with the MFDA Investor Protection Corporation and after considering the comments received, the MFDA reconsidered its original approach to the delivery of consolidated statements set out in proposed Rule 5.3.5. The MFDA was of the view that despite the disclosure requirements set out in proposed Rule 5.3.5, the practice of consolidated reporting would result in client confusion about the investor protection applicable to the financial products shown in a consolidated statement.

To address the issue of consolidated statements, the MFDA will be issuing a notice regarding portfolio summaries, which can be sent in addition to the Member's client account statement under certain conditions.

**APPENDIX "B"**  
**The Final Amendments to Rule 5.3.1 - Delivery of Account Statement**

**Rule 5.3.1 Delivery of Account Statement**

- (a) Each Member shall send an account statement to each client in accordance with the following minimum standards:
  - (i) once every 12 months for a client name account;
  - (ii) once a month for nominee name accounts of clients where there is an entry during the month and a cash balance or security position; and
  - (iii) quarterly for nominee name accounts where no entry has occurred in the account and there is a cash balance or security position at the end of the quarter.
  
- (b) A Member may not rely on any other person (including an Approved Person) to send account statements as required by this Rule.
  
- (c) Notwithstanding the provisions of 5.3.1(b), a Member may rely on the trustee administering a self-directed registered plan to send the account statement required by paragraph (a)(i) where the following conditions ~~prescribed by the Corporation~~ are met:
  - (i) The Member does not act as agent for the trustee for the registered plans;
  - (ii) The trustee meets the definition of "Acceptable Institution" as defined in Form 1;
  - (iii) There is a services agreement in place between the Member and the trustee which complies with the requirements of MFDA Rule 1.1.3 and provides that the trustee is responsible for sending account statements to clients of the Member that comply with the requirements of MFDA Rule 5;
  - (iv) There is clear disclosure about which trades are placed by the Member;
  - (v) Clear disclosure must be provided on the account statement regarding which securities positions referred to on the statement are eligible for coverage by the MFDA Investor Protection Corporation and which are not (once the Corporation is offering coverage);
  - (vi) The Member's full legal name must appear on the account statement

together with the name of the trustee;  
and

(vii) The Member must receive copies of the statements to ensure that the information contained therein match its own information regarding the transactions it executes.

(d) Notwithstanding the provisions of 5.3.1(b), where a Member is affiliated with a fund manager and in connection with a specific client account is selling only the mutual fund securities of an issuer managed by such affiliated fund manager for that client account, then the Member may rely on the affiliated fund manager to send the account statement required by paragraph (a)(i) for that specific client account. subject to compliance with any conditions which may be imposed by the Corporation.

### 13.1.4 IDA Settlement Hearing - Jaime Vilas-Boas

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

#### **NOTICE TO PUBLIC: SETTLEMENT HEARING**

#### **IN THE MATTER OF JAIME VILAS-BOAS**

January 14, 2004 (Toronto, Ontario) – The Investment Dealers Association of Canada announced today that a hearing date has been set for the presentation, review and consideration of a Settlement Agreement by the Ontario District Council of the Association.

The Settlement Agreement is between Staff of the Association and Jaime Vilas-Boas and relates to matters for which Mr. Vilas-Boas may be disciplined by the Association. The conduct that is the subject of the hearing occurred during the period between June 2000 and December 2000 while Mr. Vilas-Boas was employed at the Mississauga office of Merrill Lynch Canada Inc.

The proceeding is scheduled to commence at 10:00 a.m. or soon thereafter on January 30, 2004 at the offices of Atchinson & Denman, Court Reporting Services Ltd. located at 155 University Avenue, Suite 302, Toronto, Ontario. The proceeding is open to the public except as may be required for the protection of confidential matters.

The Investment Dealers Association of Canada is the national self-regulatory organization and representative of the securities industry. The Association's mission is to protect investors and enhance the efficiency and competitiveness of the Canadian capital markets. The IDA enforces rules and regulations regarding the sales, business and financial practices of its Member firms. Investigating complaints and disciplining Members are part of the IDA's regulatory role.

*For further information, please contact:*

Alex Popovic  
Vice-President, Enforcement  
(416) 943-6904 or [apopovic@ida.ca](mailto:apopovic@ida.ca)

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

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## Chapter 25

# Other Information

### 25.1 Exemptions

#### 25.1.1 Kingwest and Company - ss. 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 subsection 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

January 12, 2004

##### Fogler, Rubinoff

Suite 4400, P.O. Box 95, Royal Trust Tower  
Toronto-Dominion Centre  
Toronto, M5K 1G8

Attention: Eric Roblin

Dear Sirs/Mesdames:

**Re: Kingwest and Company  
Application for Exemptive Relief under OSC  
Rule 13-502 Fees (the "Rule" or "Rule 13-502")  
Application No. 001/04**

By letter dated December 22, 2003 (the "Original Application"), you applied on behalf of Kingwest and Company ("Kingwest"), the manager of certain pooled funds listed in the Original Application (the "Existing Pooled Funds") and other pooled funds managed by Kingwest from time to time (collectively with the Existing Pooled Funds, the "Pooled Funds"), to the Ontario Securities Commission (the "Commission") under subsection 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 letter dated January 6, 2004 (the "Amended Application" and together with the Original Application, the "Application"), you additionally applied to the securities regulatory authority in Ontario (the "Decision Maker") on behalf of Kingwest, the manager of the Existing Pooled Funds, 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 subsection 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. Kingwest is a partnership organized under the laws of Ontario with its head office in Ontario. Kingwest is the manager of the Existing Pooled Funds. Kingwest is registered with the Commission as a broker and a dealer in the category of investment dealer.
2. The Existing Pooled Funds are open-end mutual fund trusts established under the laws of Ontario. The Existing Pooled Funds are not reporting issuers in Ontario. Units of the Existing Pooled Funds are distributed in certain provinces of Canada without a prospectus pursuant to exemptions from the prospectus delivery requirements of applicable securities legislation.
3. The Existing 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.



**Other Information**

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5. In the Application, Kingwest and the Pooled Funds have requested under subsection 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 Kingwest 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 subsection 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 Kingwest and the Pooled Funds from

- i) paying an activity fee of \$5,500 in connection with the Application, provided that Kingwest 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”

**25.1.2 Capital First Venture 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 Exemption expires on November 30, 2004.

**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, 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  
CAPITAL FIRST VENTURE FUND INC.**

**EXEMPTION  
(Section 9.1)**

**WHEREAS** the Capital First Venture Fund Inc. (the Fund) has made an application (the Application) to 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 payments to registered dealers;

**AND WHEREAS** the Commission has considered the Application and the recommendation of staff of the Commission;

**AND WHEREAS** the Fund and Triax-Covington Corporation (the Manager), the manager of the Fund, have represented to the Commission, through its counsel, Gowling Lafleur Henderson LLP, as follows:

1. The Fund is a corporation incorporated under the *Business Corporations Act* (Ontario). The Fund has applied for registration as a labour sponsored investment fund corporation under the *Community Small Business Investment Funds Act* (Ontario).

## Other Information

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2. The Fund is a mutual fund as defined in the *Securities Act* (Ontario). The Fund has filed a preliminary prospectus dated December 8, 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 (the Class A Shares).
3. The authorized capital of the Fund consists of an unlimited number of Class A Shares, of which none are issued and outstanding as of the date hereof, and an unlimited number of Class B shares (the Class B Shares), all of which issued and outstanding Class B Shares are owned by the Canadian Federal Pilots Association (the Sponsor) as of the date hereof.
4. The Manager and the Sponsor formed and organized the Fund.
5. The Manager will pay the following distribution costs to registered dealers for selling Class A Shares:
  - i) a total initial commission of 6% of the original issue price for each Class A Shares subscribed for, and
  - ii) a service fee equal to 0.5% annually of the net asset value of the Class A Shares of the Fund held by clients of the sales representatives of the dealers.
6. The Fund proposes to pay for the reimbursement of certain 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. For accounting purposes, the Fund will, as applicable, expense the Co-op Expenses in the fiscal period when incurred and will not defer and amortize any Co-op Expenses.
8. Due to the structure of the Fund, the most tax efficient way for the Co-op Expenses to be financed is for the Fund to pay such expenses directly.
9. The Manager, or its affiliate, are the only members of the organization of the Fund, other than the Fund itself, available to pay the Co-op Expenses. Without the requested discretionary relief, the Manager would be obliged to finance the Co-op Expenses through borrowing.
10. Requiring the Manager to pay the Co-op Expenses while granting an exemption to other labour funds and permitting such funds to pay similar Co-op Expenses directly, would put the Fund at a permanent and serious competitive disadvantage with its competitors resulting from increased management fees 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 Co-op Expenses paid by it will be compensation permitted to be paid to participating dealers under NI 81-105.

**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 Co-op Expenses, provided that:

1. the Co-op Expenses are otherwise permitted by, and paid in accordance with, NI 81-105;
2. the Co-op Expenses are accounted for in the Fund's financial statements in the manner described in paragraph 7 above; and
3. this Exemption, unless renewed by the Commission, shall cease to be operative on November 30, 2004

January 13, 2004.

"Paul M. Moore"

"H. Lorne Morphy"

**25.1.3 Financial Industry Opportunities 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 Exemption expires on November 30, 2004.

**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, 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  
FINANCIAL INDUSTRY OPPORTUNITIES FUND INC.**

**EXEMPTION  
(Section 9.1)**

**WHEREAS** the Financial Industry Opportunities Fund Inc. (the Fund) has made an application (the Application) to 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 payments to registered dealers;

**AND WHEREAS** the Commission has considered the Application and the recommendation of staff of the Commission;

**AND WHEREAS** the Fund and Triax-Covington Corporation (the Manager), the manager of the Fund, have represented to the Commission, through its counsel, Gowling Lafleur Henderson LLP, as follows:

1. The Fund is a corporation incorporated under the *Business Corporations Act* (Ontario). The Fund has applied for registration 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 the *Securities Act* (Ontario). The Fund has filed a preliminary prospectus dated November 25, 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 (the Class A Shares).

3. The authorized capital of the Fund consists of an unlimited number of two series of Class A Shares, designated as Class A shares, Series I and Class A shares, Series II, of which none are issued and outstanding as of the date hereof, and an unlimited number of Class B shares (the Class B Shares), all of which issued and outstanding Class B Shares are owned by the Canadian Federal Pilots Association (the Sponsor) as of the date hereof.

4. The Manager and the Sponsor formed and organized the Fund.

5. The Manager will pay the following distribution costs to registered dealers:

with respect to Class A Shares, Series I,

i) a total initial commission of 6% of the original issue price for each Class A Share, Series I subscribed for, and

ii) a service fee equal to 0.5% annually of the net asset value of the Class A Shares, Series I of the Fund held by clients of the sales representatives of the dealers;

with respect to Class A Shares, Series II,

iii) a total initial commission of 10% of the original issue price for each Class A Share, Series II subscribed for, and

iv) after a period of eight years, a service fee equal to 0.5% annually of the net asset value of the Class A Share, Series II of the Fund held by clients of the sales representatives of the dealers.

6. The Fund proposes to pay for the reimbursement of certain 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. For accounting purposes, the Fund will, as applicable, expense the Co-op Expenses in the fiscal period when incurred and will not defer and amortize any Co-op Expenses.

8. Due to the structure of the Fund, the most tax efficient way for the Co-op Expenses to be

**Other Information**

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financed is for the Fund to pay such expenses directly.

9. The Manager, or its affiliate, are the only members of the organization of the Fund, other than the Fund itself, available to pay the Co-op Expenses. Without the requested discretionary relief, the Manager would be obliged to finance the Co-op Expenses through borrowing.
10. Requiring the Manager to pay the Co-op Expenses while granting an exemption to other labour funds and permitting such funds to pay similar Co-op Expenses directly, would put the Fund at a permanent and serious competitive disadvantage with its competitors resulting from increased management fees 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 Co-op Expenses paid by it will be compensation permitted to be paid to participating dealers under NI 81-105.

**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 Co-op Expenses, provided that:

1. the Co-op Expenses are otherwise permitted by, and paid in accordance with, NI 81-105;
2. the Co-op Expenses are accounted for in the Fund's financial statements in the manner described in paragraph 7 above; and
3. this Exemption, unless renewed by the Commission, shall cease to be operative on November 30, 2004.

January 13, 2004.

"Paul M. Moore"

"H. Lorne Morphy"

**25.2 Approvals**

**25.2.1 Crystal Wealth Management System Limited  
- cl. 213(3)(b) of the LTCA**

**Headnote**

Clause 213(3)(b) of the Loan and Trust Corporations Act - application for approval to act as trustee.

**Statutes Cited**

Loan and Trust Corporations Act, R.S.O. 1990, c. L.25, as am., clause 213(3)(b).

January 13, 2004

**Borden Ladner Gervais LLP**

20 Queen Street West  
Suite 800  
Toronto, Ontario  
M5H 3S8

Attention: Leslie Erlich

Dear Sirs/Mesdames:

**Re: Crystal Wealth Management System Limited  
("Crystal")  
Application for approval to act as trustee of  
OneFund Diversified Plus and other pooled  
funds which may be established and managed  
by Crystal in the future and offered pursuant to  
a prospectus exemption (the "Funds")**

Further to your application dated December 23, 2003 (the "Application") filed on behalf of Crystal 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* (Ontario), the Commission approves the proposal that Crystal act as trustee of the Funds.

"Paul M. Moore"

"Lorne H. Morphy"

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