The Ontario Securities Commission

OSC Bulletin

April 16, 2004

Volume 27, Issue 16

(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)

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Published under the authority of the Commission by:
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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
Outside North America	$400

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ISSN 0226-9325
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Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

APRIL 16, 2004

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

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

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

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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+ and John Craig Dunn**

s. 127

K. Manarin in attendance for Staff

Panel: HLM/MTM/ST

* BMO settled Sept. 23/02
\+ April 29, 2003

DATE: TBA — **ATI Technologies Inc., Kwok Yuen Ho, Betty Ho, JoAnne Chang, David Stone, Mary de La Torre, Alan Rae and Sally Daub**

s. 127

M. Britton in attendance for Staff

Panel: TBA

April 26, 2004
10:00 a.m. — **Brian Anderson and Flat Electronic Data Interchange ("F.E.D.I.")**

s. 127

K. Daniels in attendance for Staff

Panel: HLM/RLS

April 28, 2004	**Donald Greco**
10:00 a.m.	s. 8(2) and 21.7
	A. Clark in attendance for Staff
	Panel: PMM/SWJ/RLS
June 2004	**Gregory Hyrniw and Walter Hyrniw**
	s. 127
	K. Wootton 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 Notice of Ministerial Approval: National Instrument 52-107 Accounting Principles, Auditing Standards and Reporting Currency and Related Amendments to Ontario Regulation 1015

NOTICE OF MINISTERIAL APPROVAL: NATIONAL INSTRUMENT 52-107 ACCOUNTING PRINCIPLES, AUDITING STANDARDS AND REPORTING CURRENCY AND RELATED AMENDMENTS TO ONTARIO REGULATION 1015

On March 9, 2004, the Minister responsible for the Ontario Securities Commission approved pursuant to subsection 143.3(3) of the *Securities Act* (Ontario) National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (the Rule). The Rule and the related companion policy, Companion Policy to National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency (*the Companion Policy*)* will come into force in Ontario on March 30, 2004. The Rule was previously published in the OSC Bulletin on January 16, 2004.

On March 9, 2004, the Minister also approved pursuant to section 143(3) of the *Securities Act* (Ontario) amendments to Ontario Regulation 1015 of R.R.O. 1990 (General). These amendments come into force in Ontario on March 30, 2004. The amendments to the regulation will be published in the Ontario Gazette on April 17, 2004.

The Rule and Companion Policy are published in Chapter 5 of this Bulletin. The regulation amendments are published in Chapter 9 of this Bulletin.

1.1.3 Notice of Request for Comment - Discussion Paper 24-401 on Straight-through Processing, and Proposed National Instrument 24-101 Post-trade Matching and Settlement, and Proposed Companion Policy 24-101CP to National Instrument 24-101 Post-trade Matching and Settlement

CANADIAN SECURITIES ADMINISTRATORS' REQUEST FOR COMMENT ON DISCUSSION PAPER 24-401 ON STRAIGHT-THROUGH PROCESSING, AND PROPOSED NATIONAL INSTRUMENT 24-101 POST-TRADE MATCHING AND SETTLEMENT, AND PROPOSED COMPANION POLICY 24-101CP TO NATIONAL INSTRUMENT 24-101 POST-TRADE MATCHING AND SETTLEMENT

The Commission is publishing for comment in today's Bulletin Discussion Paper 24-401 on Straight-through Processing, Proposed National Instrument 24-101 Post-trade Matching and Settlement, and Proposed Companion Policy 24-101CP to National Instrument 24-101 Post-trade Matching and Settlement, together with a Request for Comment Notice.

The Notice, Discussion Paper, Proposed National Instrument and Proposed Companion Policy are published in Chapter 6 of this Bulletin.

1.1.4 CSA Staff Notice 51-313 Frequently Asked Questions National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities

CANADIAN SECURITIES ADMINISTRATORS STAFF NOTICE 51-313

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

Background

National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101) sets out requirements and standards for disclosure by reporting issuers engaged in oil and gas activities. The Companion Policy to NI 51-101 sets out the views of the Canadian Securities Administrators (CSA) as to the interpretation and application of NI 51-101 and its related forms.

Frequently asked questions on NI 51-101

To assist persons and companies using NI 51-101 and its related forms, we are publishing a number of frequently asked questions (FAQs) and CSA staff responses.

Many of the terms used in these FAQs are defined in NI 51-101 or Appendix 1 to the Companion Policy. NP 2-B refers to former National Policy Statement No. 2-B *Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators*.

The FAQs are grouped into the following categories:

A. Annual Filings

B. Prospectuses

C. All Disclosure

D. Reserves Evaluations and Evaluators

E. Exemptions

A. Annual Filings

A-1 **Q:** We have incorporated our NI 51-101 annual filings into our AIF. We filed our AIF on SEDAR in the SEDAR AIF category. Do we need to file anything else on SEDAR?

A: Yes. Even though you have filed your AIF on SEDAR, you also need to make one of the following filings under the SEDAR Oil and Gas Annual Disclosure (NI 51-101) category:

(a) file your annual NI 51-101 information, excerpted from your AIF, under the SEDAR Filing

Subtype/Document Type *Oil and Gas Annual Disclosure Filing (Forms 51-101 F1, F2 & F3),*

(b) file a notification that advises the public your annual NI 51-101 information is in your AIF in the SEDAR Filing Subtype/Document Type *Oil and Gas Annual Disclosure Filing (Forms 51-101 F1, F2 & F3)*, or

(c) if the news release you disseminated pursuant to section 2.2 of NI 51-101 explains that your annual NI 51-101 information is in your AIF, file the news release under either the SEDAR Filing Subtype/Document Type *Oil and Gas Annual Disclosure Filing (Forms 51-101 F1, F2 & F3)* or the SEDAR Filing Subtype/Document Type *News Release (section 2.2 of 51-101).*

Whichever option you choose, you must make this additional SEDAR filing under a different project number than you used for the AIF filing.

See section 2.4(b) of the Companion Policy.

A-2 **Q:** We do not have any reserves, only a few prospects, some unproved properties and some resources. Does NI 51-101 apply to us?

A: Yes. You must comply with NI 51-101 even if you do not have reserves because NI 51-101 applies to all reporting issuers engaged in oil and gas activities, which includes exploration activities and development of uproved properties. That means you must still make annual NI 51-101 filings and ensure that you comply with other NI 51-101 requirements. The requirement to make annual NI 51-101 filings is not limited to only those issuers that have reserves and related future net revenue.

Form 51-101F1

Section 1.4 of NI 51-101 states that the instrument applies only in respect of information that is material in respect of a reporting issuer. If indeed your company has no reserves, we would consider that fact alone material. Your disclosure, under Part 2 of Form 51-101F1, should make clear that your company has no reserves and hence no related future net revenue.

Supporting information regarding reserves data required under Part 2 (e.g., price estimates) that are not material to your company may be omitted. However, if your company had disclosed reserves and related future net revenue in the previous year, and has no reserves as at the end of its current financial year, you are still required to present a reconcilation to the prior-year's estimates of reserves and related future net revenue, as required by Part 4 of Form 51-101F1.

You are also required to disclose information required under Part 6 of Form 51-101F1. Those requirements apply irrespective of the quantum of reserves, if any. This would include information about properties (items 6.1 and 6.2), costs (item 6.6), and exploration and development activities (item 6.7). Your disclosure should make clear that you had no production, as that fact is material.

Form 51-101F2

NI 51-101 requires reporting issuers to retain an independent qualified reserves evaluator or auditor to evaluate or audit the company's reserves data and report to the board of directors. If you had no reserves during the year and hence did not retain an evaluator or auditor, then you would not need to retain one just to file a (nil) report of the independent evaluators on the reserves data in the form of Form 51-101F2. If, however, you did retain an evaluator or auditor to evaluate reserves, and the evaluator or auditor concluded that they could not be so categorized, or reclassified those reserves to resources, you would have to file a report of the qualified reserves evaluator because the evaluator has, in fact, evaluated the reserves and expressed an opinion.

Form 51-101F3

Irrespective of whether you have reserves, the requirement to file a report of management and directors in the form of Form 51-101F3 applies. (As for all reporting issuers, this requirement does not apply in British Columbia, however.)

Other NI 51-101 Requirements

NI 51-101 does not require companies to disclose anticipated volumes, cash flows or values in respect of unproved properties, prospects or resources. However, if you choose to disclose that type of information, sections 5.9 and 5.10 of NI 51-101 apply to that disclosure.

B. Prospectuses

B-1 **Q:** We are not yet subject to NI 51-101. Can our prospectus contain the disclosure required by NI 51-101?

A: Yes. Until you become subject to NI 51-101, by filing or being required to file your annual NI 51-101 information under Part 2 of NI 51-101, you can disclose information about your oil and gas activities in the prospectus using one of two options. See Section 1.3 of Companion Policy 51-101CP for when NI 51-101 first applies to an issuer.

Option 1: You may disclose the information in accordance with NP 2-B. You can satisfy those requirements by applying the reserves classifications of NI 51-101 instead of the reserves classifications of NP 2-B, if you choose. In all other respects you must satisfy the requirements of NP 2-B, including filing the underlying reserves evaluation report when you file your prospectus.

You should state in the prospectus that the information is presented in accordance with NP 2-B.

See ASC Notice *Oil and Gas Reserves and Related Information Reporting Standards* dated September 27, 2002 – "Use of Handbook Reserves Classifications".

Option 2: If you wish to disclose the information in accordance with NI 51-101, disclosure in your prospectus must be in accordance with NI 51-101. That means that the prospectus must include (or if it is a short form prospectus, it must incorporate by reference) the following:

- the information required by Form 51-101F1,
- the report of one or more qualified reserves evaluators or qualified reserves auditors in the form of Form 51-101F2, and
- the report of management and directors in the form of Form 51-101F3.

The information set out, or incorporated by reference, in your prospectus must also comply with Part 5 of NI 51-101.

You should state in the prospectus that "the information disclosed in the prospectus is presented in accordance with NI 51-101" only if you follow this second option.

See subclause (4) in Item 9 of ASC Form 14 *Information Required in a Prospectus of a Natural Resource Issuer*, as amended; or Item 6.5 of OSC Form 41-501F1 *Information Required in a Prospectus*, as amended.

B-2 **Q:** What oil and gas information about a significant acquisition do we need to disclose in a prospectus?

A: In addition to the specific prospectus requirements for financial information satisfying significant acquisitions, you must disclose sufficient information for a reader to determine how the acquisition affects the reserves data and other information previously disclosed in your annual NI 51-101 filings. This requirement stems from Part 6 of NI 51-101 with respect to material changes. See Part 6 of the Companion Policy for additional guidance.

B-3 **Q:** We have a December 31 year-end and are filing a preliminary prospectus in September. We want to disclose our reserves data and other oil and gas information as at a more recent date than December 31. Would we also have to disclose the reserves data and other information as at December 31?

A: An issuer may determine that its obligation to provide full, true and plain disclosure obliges it to include in its prospectus reserves data and other oil and gas information as at a date more recent than specified in the prospectus requirements. The prospectus requirements state that the information must be as at your most recent financial year-end in respect of which the prospectus includes financial statements. The prospectus requirements, while certainly not presenting an obstacle to such more current disclosure, would nonetheless require that the

corresponding information also be provided as at that financial year-end.

We would not generally object to granting relief to permit an issuer in these circumstances to include in its prospectus the oil and gas information prepared with an effective date more recent than the financial year-end date, without also including the corresponding information effective as at the year-end date. You should request such relief in the covering letter accompanying your preliminary prospectus. The grant of the relief would be evidenced by the prospectus receipt.

C. All Disclosure

C-1 **Q:** Does NI 51-101 apply to news releases?

A: Yes. Part 5 of NI 51-101 sets out requirements that apply to all disclosure. You must include in the news release, where applicable, the cautionary statements prescribed by NI 51-101. For example, if the news release refers to BOEs, it must contain the cautionary statement prescribed by section 5.14(d) of NI 51-101.

C-2 **Q:** Does our news release have to contain all of the information required by Form 51-101F1 if it contains information about our oil and gas reserves?

A: No. Form 51-101F1 sets out information that you must file annually or include in a prospectus. Although the news release must be consistent with that information, you can provide a summary of that information or a portion of it. See Parts 4 and 5 of NI 51-101.

C-3 **Q:** Does NI 51-101 apply to presentations by our company?

A: Yes. Part 5 of NI 51-101 sets out requirements that apply to all disclosure by or on behalf of a reporting issuer. Some of the provisions in Part 5 refer specifically to "written disclosure"; some refer only to "disclosure", which includes oral presentations. The requirements in those provisions that refer to written disclosure apply not only to filed disclosure –material change reports, annual NI 51-101 filings – but also to news releases and written materials provided in paper or electronically at company presentations.

For example, if material distributed at a company presentation refers to BOEs, the material should include, near the reference to BOEs, the cautionary statement required by section 5.14(d) of NI 51-101. That requirement does not apply to oral presentations. You would not have to make the prescribed cautionary statement in your speech even if you refer to BOEs.

C-4 **Q:** Can we state that our estimates of reserves have been (or may be) reduced because of the application of the new reserves definitions under NI 51-101? Should we disclose this potential effect of the new definitions as a risk factor?

A: No. We believe that a significant reduction in reserves cannot properly be attributed to NI 51-101 or the new reserves definitions as such. Section 6.5 of the COGE Handbook explains that any difference in reserves as a result of the implementation of the new reserves definitions should not be significant. You should provide a more comprehensive explanation for any significant reduction in reserves.

We do not consider the implementation of NI 51-101, the new reserves definitions or new industry standards a "risk factor" for investors.

C-5 **Q:** If we disclose finding and development costs, we must disclose comparatives from prior periods under clause 5.15(b)(iii) of NI 51-101. Can these comparatives be calculated using NP 2-B definitions?

A: Yes. The comparatives can use NP 2-B definitions provided the NP 2-B probable reserves have been risked and you have calculated the comparatives using method 1 and method 2 set out in paragraph 5.15(a) of NI 51-101. The methodology should be briefly explained.

D. Reserves Evaluations

D-1 **Q:** Who should we contact if we have technical questions about evaluating oil and reserves?

A: Contact:

Glenn Robinson, Senior Petroleum Evaluation Engineer
Alberta Securities Commission
(403) 297-4846
glenn.robinson@seccom.ab.ca

or

David Elliot, Senior Petroleum Evaluation Geologist
Alberta Securities Commission
(403) 297-4008
david.elliot@seccom.ab.ca

D-2 **Q:** We are preparing a reserves evaluation report for a client that has a December 31 year-end. We are preparing the evaluation report in March but it has an effective date of December 31.

(a) Can we prepare the evaluation using information that relates to events that occurred after December 31?

(b) Can we use our March price forecasts rather than the December ones?

A: (a) No. Information that relates to events that occurred after December 31 should not be incorporated into the forecasts. For example, information about drilling results from wells drilled in January or February, or changes in production that occurred after December 31, should not be used. Even though this more recent information is available, you should not go back and change the forecast information. The forecast is to be based on your perception of the future as of December 31, the effective date of your report.

(b) No. You should not use the March price forecasts; you should use the prices that you forecasted on or around December 31. You should also use the December forecasts for exchange rates and inflation. Revisions to price, exchange rate or inflation rate forecasts after December 31 would have resulted from events that occurred after December 31.

Forecast prices and costs are defined in NI 51-101 to be "generally recognized as being a reasonable outlook on the future". Section 4.1 of the Companion Policy explains that we would not consider that future prices or costs would satisfy this requirement if they fall outside the range of forecasts of comparable prices or costs used, as at the same [effective] date, for the same future period, by major independent qualified reserves evaluators or auditors.

The effective date of an evaluation of oil and gas reserves is a point in time that separates historical information from forecast information. Even though reserves evaluations are forecasts of the future, those forecasts are based primarily on historical information. The historical information pertains to the period of time ending on the effective date.

The evaluator should not go back and change the numbers because of technical and financial information that pertains to time after the effective date. However, to ensure that investors are not misled, the issuer may need to supplement its reserves data disclosure with a discussion of the effect of more recent information on its reserves data if the effect is material to the issuer. Item 5.2 of Form 51-101F1 requires an issuer to identify and discuss important economic factors or significant uncertainties that affect particular components of the reserves data. Like a "subsequent event" note in a financial statement, the issuer should discuss this type of information even if it pertains to a period subsequent to the effective date.

For example, if events subsequent to the effective date have resulted in significant changes in expected future prices, such that the forecast prices reflected in the reserves data differ materially from those that would be considered to be a reasonable outlook on the future around the date of the company's "statement of reserves data and other information", then the company's statement might include, pursuant to item 5.2, a discussion of that change and its effect on the disclosed future net revenue estimates.

D-3 **Q:** Paragraph 2(c) of Item 4.1 of Form 51-101F1 requires reconciliations of reserves to separately identify and explain technical revisions. Is it acceptable to include infill drilling results as a technical revision?

A: No. Technical revisions show changes in existing reserves estimates, on carried-forward properties, over the period of the reconciliation. Reserves additions derived from infill drilling during the year are not attributable to revisions to the previous year's reserves estimates. Infill drilling reserves should be included in the "improved recovery" category.

D-4 **Q:** NI 51-101 requires future net revenue to be estimated and disclosed both before and after deduction of income taxes. However, we are not subject to income taxes because of our [royalty or income] trust structure. What tax rate should we use in computing our future net revenue?

A: You should use the rate that most appropriately reflects the income tax you reasonably expect to pay on the future net revenue. If you are not subject to income tax because of your royalty trust structure, then the most appropriate income tax rate would be zero.

The general instructions in Form 51-101F1 give considerable flexibility in how you present the information required by that form. In your case, you could present the estimates of future net revenue in only one column and explain, in a note to the table, why the estimates of before-tax and after-tax future net revenue are the same.

D-5 **Q:** Does the royalty granted by its subsidiary to the trust affect the computation of "net" reserves?

A: No. NI 51-101 requires that certain reserves data be provided on both a "gross" and "net" basis, the latter being adjusted for both royalty entitlements and royalty obligations. The typical oil and gas income trust structure involves the grant of a royalty by an operating subsidiary of the trust to the trust itself, the royalty being the source of the distributions to trust investors. In this case, the royalty is wholly within the combined or consolidated trust entity (the trust and its operating subsidiary). This is not the type of external entitlement or obligation for which adjustment is made in determining, for example, "net reserves". Viewing the trust and its consolidated entities together, the relevant reserves and other oil and gas information is that of the operating subsidiary without deduction of the internal royalty to the trust.

D-6 **Q:** Should we consider tax pools when computing future net revenue after income taxes?

A: Yes. The definition of "future income tax expense" is set out in Part 1 of Appendix 1 to Companion Policy 51-101. Essentially, future income tax expenses represent estimated cash income taxes payable on the reporting issuer's future pre-tax cash flows. These cash income taxes payable should be computed by applying the appropriate year-end statutory tax rates, taking into account future tax rates already legislated, to future pre-tax net cash flows reduced by appropriate deductions of estimated unclaimed costs and losses carried forward for tax purposes and relating to oil and gas activities (i.e., tax pools). Such tax pools may include Canadian oil and gas property expense (COGPE), Canadian development expense (CDE), Canadian exploration expense (CEE), undepreciated capital cost (UCC) and unused prior year's tax losses. (Issuers should be aware of limitations on the use of certain tax pools resulting from acquisitions of properties in situations where provisions of the Income Tax Act concerning successor corporations apply.)

D-7 **Q:** Are we required to have funding available to develop our reserves before reserves can be assigned to an undeveloped property?

A: No. Reserves must be estimated assuming that development of the properties will occur without regard to the likely availability of funding required for that property. Your evaluator does not have to consider whether you will have the capital necessary to develop the reserves. (See section 7.8.2 of COGE Handbook and section 4.2(1)(a)(iii) of NI 51-101.)

Item 5.3 of Form 51-101 requires a company to discuss its expectations as to the sources and costs of funding estimated future development costs. If you expect that the costs of funding would make development of a property uneconomic, then even if reserves were

assigned, you must also discuss that expectation and your plans for the property.

Further, if you do not disclose the proved undeveloped reserves just because you have not yet spent the capital to develop these reserves, you may be omitting material information, thereby causing the reserves disclosure to be misleading. Also, if the proved undeveloped reserves are not disclosed to the public, then those who have a special relationship with your company and know about the existence of these reserves would not be permitted to purchase or sell the securities of your company until that information has been disclosed. If your company has a prospectus, the prospectus might not contain full true and plain disclosure of all material facts if it does not contain information about these proved undeveloped reserves.

D-8 **Q:** Occasionally the proved reserves that can be assigned to a discovery well may be insufficient to justify development of the project based on these limited reserves. This situation is common in frontier areas, especially in offshore regions. If there is good reason to believe that, eventually, significantly more reserves than the original proved reserves would be assigned to the reservoir, could these incremental reserves be classified as only "possible reserves"?

A: In this situation, the operator has two options: either (a) continue to develop the project or (b) discontinue development. Assessments are performed at all stages of development of a project to determine whether internal "hurdle rates" are achievable and whether further development work is justified. Discovery wells provide important additional information for these assessments, which are updated to incorporate this new information.

Because there is substantial uncertainty about the reserves, appropriate risk analysis methods should be used. The simplest method is referred to as an Expected Monetary Value ("EMV") method. This method can be used to produce "expected net present values" and "expected reserves". It does so by aggregating the products of a number of mutually exclusive events multiplied by their probability of occurrence, to produce a mean.

(a) If the expected net present value of the project is positive and meets the company's hurdle rate, then development of the project is justified. Applying the COGE Handbook definitions, the expected reserves would be equivalent to "proved + probable reserves". In the situation referred to in the question, where proved reserves are nil, the expected (or proved + probable) reserves would consist entirely of probable reserves.

The expected reserves will be less than the most optimistic of the mutually exclusive events considered. The increment between these two would be "possible reserves".

(b) If the expected net present value of the project is negative, or does not meet the company's hurdle rate, the development of the project would not be justified. In that case, the evaluator could characterize the increment only as contingent resources, indicating that technically recoverable additional volumes of oil and gas are present but not yet commercial.

D-9 **Q:** Can I use probabilistic methods to prepare reserves evaluations for my client who must report under NI 51-101?

A: Yes. NI 51-101 requires that reserves estimates be prepared or audited in accordance with the COGE Handbook, and the COGE Handbook states that reserves estimates may be prepared using either deterministic or probabilistic methods. The COGE Handbook also states there should not be a material difference between estimates prepared using deterministic and probabilistic methods. (See section 5.5 of the COGE Handbook and section 4.2(1)(a)(ii) of NI 51-101.)

We acknowledge that probabilistic methods, when used in conjunction with good engineering and geological practice, will provide more statistical information than can be achieved through the conventional deterministic method. There are, however, a few critical criteria that you must follow when applying probabilistic methods:

(a) You must still estimate the reserves applying the definitions and using the guidelines set out in the COGE Handbook.

(b) Aggregate reserves estimates should be prepared using simple arithmetic summation.

(c) If you also prepare aggregate reserves estimates using probabilistic methods, you should explain in your evaluation report the method used. In particular, you should specify what confidence levels you used at the entity, property and reported (i.e., total) levels for each of proved, proved + probable and proved + probable +possible (if reported) reserves.

If your client discloses the aggregate reserves that you prepared using probabilistic methods, your client should provide a brief explanation, near its disclosure about the reserves definitions used for estimating the reserves, about the method that you used and the underlying confidence levels that you applied.

D-10 **Q:** I am a member of a professional organization. How can I confirm if it is acceptable for the purposes of NI 51-101?

A: You can find a list of professional organizations that are acceptable for the purposes of NI 51-101 on the ASC's website: www.albertasecurities.com under Securities Law and Policy/ Regulatory Instruments/ NI 51-101.

E. Exemptions

E-1 **Q:** Where should we apply for an exemption order?

A: If you want to obtain an exemption from any of the requirements of NI 51-101 or the forms, you should apply to the securities regulatory authorities in all of the jurisdictions where you are a reporting issuer. A separate fee may apply in each jurisdiction. If you are reporting in more than one jurisdiction please see National Policy 12-201 *Mutual Reliance Review System for Exemptive Relief Applications* for details about the application process. Also see Part 8 of the Companion Policy.

E-2 **Q:** Where can I find exemptions that securities regulatory authorities have granted?

A: The exemption orders are posted on our websites.

For orders granted by the Alberta Securities Commission go to the ASC website at www.albertasecurities.com. Click on "Search" (at top of screen), type in "NI 51-101" as a keyword, click the box beside "exemption orders" so that a checkmark appears in the box and then click on "go". The orders granted most recently will appear at the top of the list. Click on "MRRS Decision Document" in the last column of each row to retrieve the document.

For orders granted by the BC Securities Commission go to the BCSC website at www.bcsc.bc.ca. Click on "Commission Documents Database" and "Search" for "51-101" for a list of documents relating to NI 51-101. To view exemption orders, look at the documents classified as "D&O"(Decisions and Orders).

For orders granted by the Ontario Securities Commission visit the OSC website at www.osc.gov.on.ca. Click on "Rules and Regulation" followed by "Orders and Rulings" to find a list of orders and rulings organized in alphabetical order.

April 8, 2004.

1.1.5 Notice of Commission Approval – Amendments to IDA Policy No. 1 Regarding Relationships between Members and Financial Services Entities – Sharing of Office Premises

THE INVESTMENT DEALERS ASSOCIATION OF CANADA ("IDA")
NOTICE OF COMMISSION APPROVAL
AMENDMENTS TO IDA POLICY NO. 1

The Ontario Securities Commission approved amendments to IDA Policy No. 1 regarding relationships between members and financial services entities - sharing of office premises. In addition, the Alberta Securities Commission approved and the British Columbia Securities Commission did not object to the amendments. The proposed amendments provide guidance on sharing of office premises and re-emphasize the provisions on privacy and confidentiality of client information. A copy and description of these amendments were published on July 11, 2003 at (2003) 26 OSCB 5423. No comments were received. Since the publication of the proposal, the IDA resubmitted the proposal to clarify the two references in the first paragraph of the Policy from "subject to another regulatory regime" to "subject to another Canadian regulatory regime".

1.1.6 Notice of Commission Approval – Amendments to IDA Regulation 100.5, Schedule 2A of Form 1, and Revisions to the Acceptable Form of New Issue Letter Regarding Capital Rules for Underwriting Commitments

THE INVESTMENT DEALERS ASSOCIATION OF CANADA ("IDA")
NOTICE OF COMMISSION APPROVAL
AMENDMENTS TO IDA CAPITAL RULES FOR UNDERWRITING COMMITMENTS

The Ontario Securities Commission approved amendments to IDA Regulation 100.5, Schedule 2A of Form 1, and revisions to the Acceptable Form of New Issue Letter regarding capital rules for underwriting commitments. In addition, the Alberta Securities Commission approved and the British Columbia Securities Commission did not object to the amendments. The proposed amendments more closely align the capital requirements with the underwriting risk being retained by the member. A copy and description of these amendments were published on February 20, 2004 at (2004) 27 OSCB 2217. No comments were received.

1.3 News Releases

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

FOR IMMEDIATE RELEASE
April 12, 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 – The Decision and Reasons and an Order of the Commission in the above-noted matter was issued on April 8, 2004. A copy of the documents is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For Media Inquiries: Wendy Dey
Director, Communications
416-593-8120

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

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Hemosol Inc. - MRRS Decision

Headnote

Rule 61-501 – going private transaction – transaction is plan of arrangement by which issuer selling tax losses to related party – transaction is also related party transaction but issuer relying upon financial hardship exemption for valuation requirement – transaction will require minority approval – transaction structured as going private transaction but in essence sale of tax losses is related party transaction – valuation exemption granted.

Rule Cited

Rule 61-501 – Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions, ss. 4.4, 4.5 and 9.1.

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO AND QUÉBEC

AND

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

AND

IN THE MATTER OF
HEMOSOL INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario and Québec (the "Jurisdictions") has received an application from Hemosol Inc. ("Hemosol") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirement contained in the Legislation to obtain a formal valuation (the "Formal Valuation Requirement") shall not apply to Hemosol in connection with a restructuring of Hemosol (the "Transaction") to be effected by way of an arrangement (the "Arrangement") under section 182 of the *Business Corporations Act* (Ontario) (the "OBCA") involving Hemosol, the securityholders of Hemosol and MDS Inc. ("MDS");

AND WHEREAS pursuant to National Policy 12-201 – *Mutual Reliance Review System for Exemptive Relief Applications* (the "System"), the Ontario Securities Commission (the "OSC") is the principal regulator for this application;

AND WHEREAS Hemosol has represented to the Decision Makers that:

1. Hemosol is a corporation existing under the OBCA. The registered and principal office of Hemosol is located in Mississauga, Ontario.

2. Hemosol is a reporting issuer in Ontario and in each of the other provinces of Canada. Hemosol is not on the list of defaulting reporting issuers maintained by the OSC or the Autorité des marchés financiers (the "AMF").

3. Hemosol is a biopharmaceutical company focused on the development and manufacturing of biologics, particularly blood-related proteins.

4. Hemosol has no revenues as its products are in development and have not yet been marketed commercially. Hemosol's ability to continue as a going concern is dependent on its ability to secure financing or to generate revenues in order to be able to continue its development activities. Hemosol is currently exploring the use of its manufacturing facility to manufacture biologic products for third parties as a way to generate revenues to fund development activities.

5. The authorized capital of Hemosol consists of an unlimited number of common shares ("Hemosol Common Shares"), an unlimited number of special shares issuable in series and 51,786 Series D special shares. As at January 30, 2004, 55,945,584 Hemosol Common Shares and no special shares were issued and outstanding.

6. The Hemosol Common Shares are listed on the Toronto Stock Exchange (the "TSX") and the Nasdaq Stock Market.

7. MDS is a corporation existing under the *Canada Business Corporations Act*. The registered and principal office of MDS is located in Toronto, Ontario.

8. MDS is an international health and life sciences company engaged in a broad range of activities including clinical laboratory services in Ontario (the "Ontario Labs Business").

9. MDS is a reporting issuer in Ontario and in each of the other provinces of Canada. MDS is not on the

list of defaulting reporting issuers maintained by the OSC or the AMF.

10. The common shares of MDS are listed on the TSX and the New York Stock Exchange.

11. As at January 30, 2004:

    (a) MDS held 6,549,897 Hemosol Common Shares, either directly or through a wholly-owned subsidiary, representing approximately 12% of the outstanding Hemosol Common Shares.

    (b) MDS held approximately 47% of the equity interest in MDS Capital Corp. (the balance of the equity interest is owned by institutional investors and management). MDS Capital Corp. and/or its affiliates provide management services to two entities which held an aggregate of 812,246 Hemosol Common Shares. The Hemosol Common Shares held by such funds are voted by such entities through authorized signing officers.

12. Of the 10 directors on the board of directors of Hemosol (the "Hemosol Board"), four are related to MDS by virtue of being directors, officers or employees of MDS or affiliates thereof.

13. MDS is a related party (as such term is defined in the Legislation) of Hemosol as it beneficially owns, or exercises control or direction over, voting securities of Hemosol carrying more than 10% of the voting rights attached to all of the issued and outstanding voting securities of Hemosol.

14. On February 11, 2004, Hemosol and MDS executed an arrangement agreement (the "Arrangement Agreement") providing for the Transaction.

15. The essence of the Transaction consists of MDS transferring a new business to Hemosol to allow Hemosol to utilize its existing tax losses (the "Tax Losses"), New Hemosol (as defined below) acquiring the existing business of Hemosol (the "Blood Products Business") and a cash payment of $16 million to New Hemosol from the MDS transferred business.

16. The Transaction will provide New Hemosol (as defined below) with financing that is vital to the continued development of the Blood Products Business and will improve the financial position of the Blood Products Business.

17. The steps in the Transaction must be as set out in an advance income tax ruling dated September 23, 2003, as amended by a supplementary tax ruling dated February 5, 2004, granted by Canada Customs and Revenue Agency to MDS in respect of the Transaction (the "Tax Ruling") in order for MDS to rely on the Tax Ruling.

18. In order for Hemosol to utilize the Tax Losses, MDS will in effect transfer its Ontario Labs Business to a new limited partnership (the "Labs Partnership") in which Hemosol will have a 99.99% interest. MDS will own 99.56% of the equity in Hemosol and the remaining equity interest of 0.44% will be held by the existing shareholders of Hemosol other than MDS or its subsidiaries (the "Public Shareholders"). MDS will not acquire voting control of Hemosol.

19. The existing Blood Products Business of Hemosol will also in effect be transferred to a new limited partnership (the "Blood Products Partnership"), which will be owned upon completion of the Arrangement as to 93% by a newly incorporated corporation under the OBCA ("New Hemosol") and as to 7% by Hemosol. New Hemosol will be the general partner of the Blood Products Partnership and will control the Blood Products Business. The share ownership of New Hemosol will mirror Hemosol's existing share ownership - that is, approximately 12% will be owned by MDS or its subsidiaries and approximately 88% will be owned by the Public Shareholders (based on current shareholdings). New Hemosol will also receive the $16 million value attributed to the Tax Losses.

20. The steps involved in completing the Transaction include the following:

    (a) MDS and a wholly-owned subsidiary ("MDS Sub") will form the Labs Partnership under the *Limited Partnerships Act* (Ontario) with MDS Sub acquiring a 0.01% general partnership interest in consideration for cash and MDS acquiring a 99.99% limited partnership interest in consideration for the transfer by MDS to the Labs Partnership of certain of the assets relating to the Ontario Labs Business. The Labs Partnership will hold the relevant licences required in order to receive substantially all of the revenues from the Ontario Ministry of Health in respect of the Ontario Labs Business.

    (b) Hemosol and New Hemosol will form the Blood Products Partnership under the *Limited Partnerships Act* (Ontario), with New Hemosol as the general partner and Hemosol as the limited partner. New Hemosol will acquire a 0.01% partnership interest in consideration for cash and Hemosol will acquire a 99.99% partnership interest in consideration for the transfer by Hemosol to the Blood Products Partnership of the Blood

Products Business. The Blood Products Partnership will assume all liabilities of Hemosol.

(c) The existing stock options of Hemosol held by Hemosol employees will be cancelled. Subject to approval of the Toronto Stock Exchange, New Hemosol will adopt a stock option plan and issue options to acquire New Hemosol Common Shares to the holders of certain of such cancelled Hemosol options with an exercise price designed to maintain economic equivalence with the cancelled Hemosol stock options accounting for the fact that such options will not provide for any right to acquire Hemosol Class A Common Shares in addition to New Hemosol Common Shares.

(d) MDS will surrender an aggregate of 2,500,000 warrants to purchase Hemosol Common Shares at an exercise price of $1 that it currently holds or has the right to receive in certain circumstances.

(e) New Hemosol will assume the obligations of Hemosol under the convertible securities of Hemosol (including warrants held by MDS, subject to the surrender described in the preceding paragraph) as if such convertible securities were a right to acquire New Hemosol Shares (other than an adjustment to the exercise price to maintain economic equivalence accounting for the fact that such convertible securities of New Hemosol will not provide any right to acquire Hemosol Class A Common Shares in addition to New Hemosol Common Shares).

(f) The articles of Hemosol will be amended to create three new classes of shares:

(i) another class of voting common shares in addition to the Hemosol Common Shares ("Hemosol Class A Common Shares"), entitled to one vote per share;

(ii) non-voting shares ("Hemosol Class B Non-Voting Shares"); and

(iii) non-voting redeemable preferred shares ("Hemosol Class C Preferred Shares").

(g) The articles of Hemosol will be amended to provide that (i) the business of Hemosol will be restricted to holding the limited partnership interests in the Blood Products Partnership and the Labs Partnership, performing its obligations under the Arrangement and certain incidental corporate powers and (ii) Hemosol's available cash, after providing for the redemption of Hemosol Class C Preferred Shares, will be distributed to the holders of the Hemosol Class A Common Shares and the Hemosol Class B Non-Voting Shares.

(h) Shareholders of Hemosol (including MDS and its subsidiaries) will exchange their Hemosol Common Shares with Hemosol on the basis of one Hemosol Class A Common Share and one Hemosol Class C Preferred Share for each Hemosol Common Share. Hemosol will cancel all Hemosol Common Shares acquired as a result of such exchange and the authorized capital will be limited to the three classes of shares described in paragraph (f) above.

(i) Shareholders of Hemosol (including MDS and its subsidiaries) will exchange their Hemosol Class C Preferred Shares with New Hemosol on the basis of one common share of New Hemosol ("New Hemosol Common Shares") for each Hemosol Class C Preferred Share.

(j) Hemosol will redeem all of the Hemosol Class C Preferred Shares held by New Hemosol on the effective date of the Arrangement in exchange for the transfer by Hemosol to New Hemosol of a 91.12% partnership interest in the Blood Products Partnership, $16 million in cash and the assumption by New Hemosol of Hemosol's obligations under its convertible securities. Hemosol will borrow such $16 million from the Labs Partnership.

(k) New Hemosol will invest $15 million of the cash proceeds of the redemption of Hemosol Class C Preferred Shares in the Blood Products Partnership in exchange for additional partnership units of the Blood Products Partnership, such that New Hemosol's former 91.13% general partnership interest will increase to 93% and Hemosol's former 8.87% limited partnership interest will decrease to 7%.

(l) $1 million of the cash proceeds of the redemption of Hemosol Class C Preferred Shares will be held in escrow for one year and may be released to Hemosol in respect of losses suffered by Hemosol relating to pre-closing liabilities.

At the end of the escrow period, the balance of the escrowed funds will be released to New Hemosol, provided that certain amounts may be retained pending settlement of any claims made by Hemosol.

(m) MDS will transfer its 99.99% limited partnership interest in the Labs Partnership to Hemosol in consideration for the issuance by Hemosol to MDS of additional Hemosol Class A Common Shares (such that upon completion of the Arrangement MDS will hold approximately 47.5% of the outstanding Hemosol Class A Common Shares) and such number of Hemosol Class B Non-Voting Shares that will result in MDS holding 99.56% of the equity of Hemosol (through a combination of Hemosol Class A Common Shares and Hemosol Class B Non-Voting Shares) and the Public Shareholders holding 0.44% of the equity of Hemosol (through Hemosol Class A Common Shares).

21. The result of the restructuring necessary to effect the Transaction is that Public Shareholders will have (i) a continuing equity interest in 93% of the Blood Products Business which is the current business carried on by Hemosol (through their ownership of New Hemosol shares) and (ii) a 0.44% equity interest in the Ontario Labs Business transferred by MDS to Hemosol (through their ownership of a new class of shares of Hemosol) which will entitle Public Shareholders to cash distributions in respect of income generated by the Ontario Labs Business.

22. It is intended that New Hemosol will apply to list the New Hemosol Common Shares on the Toronto Stock Exchange and, subject to obtaining confirmation from the Securities and Exchange Commission with regard to certain U.S. securities matters, will apply to transfer Hemosol's current listing on the Nasdaq Stock Market. The Hemosol Class A Common Shares will not be listed on any U.S. exchange or quoted on an inter-dealer quotation system of a registered national securities association in the United States. The Hemosol Class A Common Shares will not be listed on any stock exchange in Canada, but Hemosol intends to remain a reporting issuer in Ontario and in each of the other provinces of Canada.

23. In connection with the Arrangement, Hemosol will call an annual and special meeting (the "Meeting") to consider the Transaction and send to its shareholders, warrantholders and holder of broker options (collectively, the "Securityholders") a notice of special meeting, form of proxy and a management information circular describing the Transaction and attaching, among other things, a fairness opinion of KPMG Corporate Finance Inc. ("KPMG"). Hemosol has obtained an interim order from the Court:

(a) approving the calling of and providing for procedural matters in connection with the Meeting to consider and pass a special resolution to approve the Arrangement; and

(b) requiring that the vote to pass the aforesaid resolution at the Meeting be the affirmative vote of at least two-thirds of the votes cast at the Meeting by the Securityholders; in addition, such resolution requires the affirmative vote of a majority of the votes cast at the Meeting by shareholders excluding the votes cast by MDS and other persons whose votes cannot be included for the purposes of minority approval (as set out in minority approval provisions of the Legislation).

24. Subject to the approval of the Arrangement at the Meeting, Hemosol will apply to the Court for a final order approving the Arrangement.

25. On September 17, 2003, the Hemosol Board formed an independent committee (the "Independent Committee") composed of three directors who are not related to MDS to evaluate any transaction with MDS involving the Tax Losses and, if required, to oversee the negotiation of the definitive terms of such transaction and to make a recommendation to the Hemosol Board as to whether such transaction is in the best interests of Hemosol.

26. The Independent Committee engaged KPMG to provide financial advisory services to the Independent Committee. On February 11, 2004, KPMG provided an opinion to the Hemosol Board that the Transaction is fair, from a financial point of view, to the Public Shareholders.

27. On February 11, 2004, each of the Hemosol Board (excluding directors related to MDS who abstained from voting) and the Independent Committee unanimously approved the Transaction and determined that Hemosol is in serious financial difficulty, that the Transaction is designed to improve the financial position of Hemosol and that the terms of the Transaction are reasonable in the circumstances of Hemosol.

28. The Transaction is both a related party transaction and a going private transaction for the purposes of the Legislation. If the Transaction were only a related party transaction, the financial hardship exemption from the requirement to provide a formal valuation would be available.

29. Upon completion of the Transaction, Public Shareholders will continue to have an interest in substantially the same assets as they had prior to the Transaction, subject only to the transfer, in effect, of the interests in the Blood Products Business and the Ontario Labs Business required by the Tax Ruling.

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 Formal Valuation Requirement shall not apply to Hemosol in connection with the Transaction, provided that Hemosol complies with: (i) the provisions of the financial hardship exemption from the formal valuation requirement for related party transactions under the Legislation and (ii) the other applicable provisions of the Legislation.

March 17, 2004.

"Ralph Shay"

2.1.2 Cara Operations Limited - MRRS Decision

Headnote

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

Ontario Statutes

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

April 7, 2004

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

ATTN: Lori A. Stein

Dear Sirs and Mesdames:

Re: Cara Operations Limited (the "Applicant") – Application to Cease to be a Reporting Issuer under the securities legislation of Alberta, Manitoba, Newfoundland & Labrador, Nova Scotia, Ontario, Québec and Saskatchewan (the "Jurisdictions")

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

AND WHEREAS the applicant has represented to the Decision Makers that,

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

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

"Cameron McInnis"

2.1.3 IPC Financial Network Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Application – relief granted from the requirement to include prospectus level disclosure in an information circular about a holding company involved in a plan of arrangement.

Applicable Ontario Statutory Provisions

OSC Rule 54-501 Prospectus Disclosure, s. 3.1.

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

AND

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

AND

IN THE MATTER OF
IPC FINANCIAL NETWORK INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "**Decision Makers**") in British Columbia and Ontario (collectively, the "**Jurisdictions**") has received an application from IPC Financial Network Inc. ("**IPCFN**" or the "**Filer**") for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") that disclosure contemplated by the requirement in the Legislation to provide prospectus-level disclosure ("**Prospectus Level Disclosure**") shall not apply to a management proxy circular (the "**Circular**") to be sent to all shareholders of IPCFN in connection with the proposed acquisition by Investors Group Inc. ("**Investors Group**") of all of the issued and outstanding shares of IPCFN by way of a plan of arrangement (the "**Arrangement**") pursuant to section 192 of the *Canada Business Corporations Act* (the "**CBCA**") involving IPCFN, Investors Group and 4221079 Canada Inc. ("**IPCFN Holdco**"), a subsidiary of Investors Group, solely as the requirements would apply to IPCFN Holdco;

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 Filer has represented to the Decision Makers that:

1. IPCFN is a corporation incorporated under the CBCA. The common shares in the capital of IPCFN (the "**IPCFN Shares**") are listed and posted for trading on the TSX Venture Exchange. IPCFN is a reporting issuer in British Columbia, Alberta, Saskatchewan, Ontario, Quebec and Nova Scotia.

2. IPCFN is not in default of any requirements of the Legislation.

3. Investors Group is a corporation incorporated under the CBCA. The common shares in the capital of Investors Group are listed and posted for trading on the Toronto Stock Exchange. Investors Group is a reporting issuer in each province and territory of Canada.

4. IPCFN Holdco is a corporation incorporated under the CBCA and is a subsidiary of Investors Group. IPCFN Holdco is not a reporting issuer in any province of Canada. IPCFN Holdco has been incorporated for the sole purpose of acquiring certain of the IPCFN Shares pursuant to the Arrangement.

5. Pursuant to a revised and restated acquisition agreement dated as of February 24, 2004 between IPCFN and Investors Group, Investors Group and IPCFN Holdco will, subject to certain conditions being met, acquire all of the issued and outstanding IPCFN Shares pursuant to the Arrangement.

6. Pursuant to the Arrangement, holders of IPCFN Shares other than the Founder Shareholders and the Advisor and Management Shareholders (as defined below) (each an "**IPCFN Shareholder**") will be entitled to receive in exchange for each IPCFN Share, at their election, either: (i) $1.95 in cash (the "**Cash Consideration**"); or (ii) $0.975 in cash and 0.02973 of a common share of Investors Group (the "**Cash and Shares Consideration**").

7. The co-founders of IPCFN, the Vice Chairman of the Board and Chief Executive Officer and Vice Chairman of the Board and President of IPCFN, respectively (along with their respective holding companies and controlled entities, the "**Founder Shareholders**"), will receive, in exchange for each IPCFN Share held by such shareholder: (a) one IPCFN Holdco share, as to 72.5% of the IPCFN Shares owned or controlled by them and (b) 0.05945 of a common share of Investors Group as to the remaining 27.5% of the IPCFN Shares held by such shareholders.

8. Certain IPCFN Shareholders who are also financial advisors of IPCFN, and other members of IPCFN's management team other than the Founder Shareholders, (collectively, the "**Advisor and Management Shareholders**") will be entitled to receive for each IPCFN Share, at their election: (a) the Cash Consideration, (b) the Cash and Shares Consideration, or (c) one IPCFN Holdco Share subject to pro ration if such elections would otherwise result in the Advisor and Management Shareholders owning more than 14.5% of IPCFN Holdco immediately following completion of the transactions contemplated by the Arrangement.

9. Investors Group has required, and the Founder Shareholders have agreed to accept, IPCFN Holdco Shares as consideration in order to provide the Founder Shareholders with a direct incentive to grow the business of IPCFN and to provide Investors Group with assurances that the Founder Shareholders will have ongoing interests for a period of time in growing the business of IPCFN and preserving Investors Group's investment.

10. IPCFN Holdco Shares are being offered as consideration for the Advisor and Management Shareholders in order to continue IPCFN's philosophy of providing the opprortunity for this group to have equity participation in the business.

11. Notwithstanding the fact that the terms of the Arrangement provide for different consideration per IPCFN Share for IPCFN Shareholders, Advisor and Management Shareholders and Founder Shareholders, the Arrangement effectively constitutes an offer to acquire all of the IPCFN Shares at a consideration valued at approximately $1.95 per IPCFN Share (based on the $32.80 closing price per Investors Group share on February 24, 2004).

12. Pursuant to the requirements of OSC Rule 61-501 *Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions*, an issuer that proposes to carry out a transaction such as the Arrangement is required to engage an independent valuator to prepare a valuation of the affected securities (and any non-cash consideration being offered therefore) and to provide to the holders of the affected securities a summary of such valuation (the "**Valuation Requirement**").

13. The Applicant intends to rely on an exemption from the Valuation Requirement by virtue of the agreement of an institutional shareholder of IPCFN (an "**Institutional Shareholder**") to sell its IPCFN Shares to Investors Group pursuant to a support agreement ("**Institutional Shareholder Support Agreement**"). The arrangements between the Institutional Shareholder and Investors Group provides for the same consideration per Share to be payable to the Institutional Shareholder as the consideration per Share payable to the other IPCFN Shareholders pursuant to the Arrangement.

14. Investors Group, IPCFN Holdco, the Founder Shareholders and the Advisor and Management Shareholders who receive shares of IPCFN Holdco will be required to enter into a shareholders agreement (the "**IPCFN Holdco Shareholders Agreement**"). Investors Group, IPCFN Holdco and the Founder Shareholders have also entered into a founder shareholders agreement (the "**Founder Shareholders Agreement**") which addresses certain matters relating to the operation of IPCFN Holdco and IPCFN and the rights and obligations of IPCFN Holdco, the Founder Shareholders and Investors Group.

15. The IPCFN Holdco Shareholders Agreement and the Founder Shareholders Agreement (together, the "**Shareholders Agreements**") restrict the transfer of IPCFN Holdco Shares held by IPCFN Holdco Shareholders (other than Investors Group) but do provide specific liquidity rights to such shareholders in certain circumstances. The liquidity rights include 'put-rights' allowing IPCFN Holdco Shareholders to require Investors Group to purchase their IPCFN Holdco Shares under specified circumstances and 'piggy-back' rights allowing them to join in a sale by Investors Group of its IPCFN Holdco Shares to a third party under certain conditions.

16. The Founder Shareholders are subject to to an escrow arrangement which will (except in certain limited circumstances) limit their liquidity rights in respect of all of their IPCFN Holdco Shares for a period of two years from the effective date of the Arrangement (the "**Effective Date**") and thereafter in respect of an annually declining balance of their IPCFN Holdco Shares until the fifth anniversary of the Effective Date at which point the balance of their IPCFN Holdco Shares then held in escrow will be released.

17. The Advisor and Management Shareholders are not subject to an escrow arrangement.

18. All material terms of the Shareholders Agreements are described in the Circular.

19. The Circular will include the disclosure required by the Legislation in respect of Investors Group. IPCFN Holdco is a private company that was incorporated for the sole purpose of acquiring IPCFN Shares pursuant to the Arrangement. Investors Group will remain the controlling shareholder of IPCFN Holdco following the Arrangement. IPCFN Holdco's sole business immediately following completion of the Arrangement will be the ownership of IPCFN and the operation of IPCFN's business.

20. Under the requirements of the Legislation, IPCFN is required to provide Prospectus Level Disclosure about Investors Group and IPCFN Holdco. Prospectus Level Disclosure about IPCFN Holdco would include certain information about IPCFN as a 'significant acquisition' (as defined in the Legislation) of IPCFN Holdco. The Applicant is seeking relief from the disclosure requirements contemplated by the requirement to provide Prospectus Level Disclosure as they would apply to IPCFN Holdco.

21. IPCFN is currently a reporting issuer in the Jurisdictions and therefore current information concerning IPCFN is already available to all shareholders including the Founder Shareholders and Advisor and Management Shareholders. There has been no material change to the information currently in the public domain other than with respect to the Arrangement.

22. All material information about the Arrangement and the collateral interest of the Founder Shareholders and Advisor and Management Shareholders is being provided in the Circular in accordance with the requirements of OSC Rule 61-501 – *Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions* which IPCFN is required to comply with in the circumstances, including the disclosure required by OSC Form 33, to the extent applicable with the necessary modifications.

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

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

THE DECISION of the Decision Makers under the Legislation is that the requirement to provide Prospectus Level Disclosure shall not apply to the Circular in respect of IPCFN Holdco.

April 5, 2004.

"Charlie MacCready"

2.1.4 Moore Wallace Incorporated - MRRS Decision

Headnote

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

Ontario Statute

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

April 6, 2004

Osler, Hoskin & Harcourt LLP
1 First Canadian Place
Toronto
Ontario M5X 1B8

Attention: Adam Grabowski

Dear Mr. Grabowski:

Re: Moore Wallace Incorporated (the "Applicant") — Application to cease to be a reporting issuer under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland & Labrador (the "Jurisdictions")

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

As the Applicant has represented to the Decision Makers that,

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

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

"Cameron McInnis"

2.1.5 Income & Equity Index Participation Fund - MRRS Decision

Headnote

Closed-end investment trust exempt from prospectus and registration requirements in connection with the issuance of units to existing unitholders pursuant to a distribution reinvestment plan whereby distributions of income are reinvested in additional units of the trust, subject to certain conditions – first trade in units acquired under the distribution reinvestment plan 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. 25, 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, MANITOBA, ONTARIO, QUEBEC, NEW BRUNSWICK, NEWFOUNDLAND & LABRADOR, NOVA SCOTIA AND PRINCE EDWARD ISLAND

AND

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

AND

IN THE MATTER OF
INCOME & EQUITY INDEX PARTICIPATION FUND

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the "**Decision Maker**") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island (the "**Jurisdictions**") has received an application from Income & Equity Index Participation Fund (the "**Fund**"), for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") that the requirement contained in the Legislation to be registered to trade in a security (the "**Registration Requirement**") and to file a preliminary prospectus and a final prospectus and obtain receipts therefor (the "**Prospectus Requirement**") shall not apply to certain trades in trust units of the Fund ("**Trust Units**") under a distribution reinvestment plan (the "**DRIP**");

2. 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;

3. AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 - *Definitions* or in Notice 14-101 of the Agence nationale d'encadrement du secteur financier;

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

   4.1 the Fund is a closed-end investment trust established under the laws of Alberta pursuant to a declaration of trust dated December 17, 2003 as amended and restated January 28, 2004 (the "**Declaration of Trust**");

   4.2 Computershare Trust Company of Canada is the trustee of the Fund (in such capacity, the "**Trustee**");

   4.3 under the Declaration of Trust, the Fund is authorized to issue an unlimited number of transferable, non-redeemable trust units ("**Trust Units**"), of which there will be a minimum of 7,500,000 and a maximum of 30,000,000 Trust Units issued and outstanding on February 18, 2004;

   4.4 the Fund is not a "mutual fund" as defined in the Legislation because the Unitholders are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Fund as contemplated in the definition of "mutual fund" contained in the Legislation;

   4.5 the assets of the Fund consist of a portfolio of Canadian income funds, and instalment receipts or other rights to acquire such securities in respect thereof, as well as cash and cash equivalents (collectively, the "**Portfolio**") as well as five year capped call options (the "**Equity Call Options**") based on the S&P TSX 60 Index;

   4.6 the investment objectives of the Fund are:

      4.6.1 to provide Unitholders with the opportunity to receive monthly cash distributions by investing in an equally weighted diversified portfolio of Canadian income

funds that will be rebalanced semi-annually; and

4.6.2 to provide Unitholders with the opportunity to participate in gains in the Canadian equity market as represented by the S&P/TSX 60 Index through the distribution to each Unitholder of its pro rata share of the amount payable to the Fund or the net gains realized by the Fund, if any, pursuant to the Equity Call Options;

4.7 each Trust Unit represents an equal, fractional undivided beneficial interest in the net assets of the Fund, and entitles its holder to one vote at meetings of Unitholders and to participate equally with respect to any and all distributions made by the Fund, including distributions of net income and net realized capital gains, if any;

4.8 the Fund became a reporting issuer in each of the Jurisdictions on January 28, 2004 when it obtained a Final Decision Document in respect of a prospectus dated January 28, 2004 (the "**Prospectus**");

4.9 as of the date of this Decision, the Fund is not in default of any requirements under the Legislation;

4.10 Equity LIFT Management Ltd. (the "**Administrator**") is the authorized attorney of the Fund;

4.11 the Trust Units are listed on the Toronto Stock Exchange under the symbol "IEP.UN";

4.12 the Trust Units are available only in book-entry form, whereby CDS & Co., a nominee of The Canadian Depository for Securities Limited, is the only registered holder of Trust Units;

4.13 the Fund has established the DRIP to permit Unitholders, at their discretion, to automatically reinvest the Distributable Income paid on their Trust Units in additional Trust Units ("**DRIP Units**") as an alternative to receiving cash distributions;

4.14 the DRIP will be open to all Unitholders (other than non-residents of Canada);

4.15 distributions due to participants in the DRIP ("**DRIP Participants**") will be paid to Computershare Trust Company of Canada in its capacity as agent under the DRIP (in such capacity, the "**DRIP Agent**") and applied to the purchase of DRIP Units;

4.16 no commissions, service charges or brokerage fees will be payable by DRIP Participants in connection with the DRIP;

4.17 the DRIP Agent will purchase DRIP Units from the Fund at the net asset value per Trust Unit as at the applicable distribution date;

4.18 DRIP Participants may terminate their participation in the DRIP by providing 10 days' written notice to the DRIP Agent prior to the applicable record date;

4.19 DRIP Participants do not have the option of making cash payments to purchase additional DRIP Units under the DRIP;

4.20 the amount of distributions that may be reinvested in additional DRIP Units is expected to be small relative to the Unitholders' equity in the Trust, with the result being that the potential for dilution arising from the issuance of DRIP Units will not be significant;

4.21 except in Alberta, the distribution of the DRIP Units by the Fund pursuant to the DRIP cannot be made in reliance on certain registration and prospectus exemptions contained in the Legislation as the DRIP involves the reinvestment of distributable income including net realized capital gains distributed by the Fund and not the reinvestment of dividends, interest earnings or surplus of the Fund; and

4.22 the distribution of the DRIP Units by the Fund pursuant to the DRIP cannot be made in reliance on registration and prospectus exemptions contained in the Legislation for distribution reinvestment plans for mutual funds, as the Fund is not considered to be a "mutual fund" as defined in the Legislation;

5. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each of the Decision Makers (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 except in Alberta, the Registration Requirement and Prospectus Requirement contained in the Legislation shall not apply to trades or distributions by the Fund of DRIP Units for the account of DRIP Participants pursuant to the DRIP, provided that:

7.1.1 at the time of the trade or distribution the Fund is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation;

7.1.2 no sales charge is payable in respect of the trade;

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

7.1.3.1 their right to withdraw from the DRIP and to make an election to receive cash instead of DRIP Units on the making of a distribution of income by the Fund (the "**Withdrawal Right**"); and

7.1.3.2 instructions on how to exercise the Withdrawal Right;

7.1.4 the first trade of the DRIP Units acquired under this Decision shall be deemed to be a distribution or a primary distribution to the public; and

7.2 the Prospectus Requirement contained in the Legislation shall not apply to the first trade of DRIP Units acquired by DRIP Participants pursuant to the DRIP, provided that:

7.2.1 except in Quebec, the conditions in paragraphs 2 through 5 of subsection 2.6(3) of Multilateral Instrument 45-102 – *Resale of Securities* are satisfied; and

7.2.2 in Quebec:

7.2.2.1 at the time of the first trade the Fund is a reporting issuer in Quebec and is not in default of any of the requirements of the Legislation in Quebec;

7.2.2.2 no unusual effort is made to prepare the market or to create a demand for the DRIP Units;

7.2.2.3 no extraordinary commission or consideration is paid to a person or company other than the vendor of the DRIP Units in respect of the trade; and

7.2.2.4 the vendor of the DRIP Units, if in a special relationship with the Fund, has no reasonable grounds to believe that the Fund is in default of any requirement of the Legislation.

April 8, 2004.

"H. Lorne Morphy" "Wendell S. Wigle"

2.1.6 Digital Dispatch Systems Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from the requirement to send audited annual financial statements to shareholders concurrently with filing the statements, subject to certain conditions.

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
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN
AND ONTARIO

AND

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

AND

IN THE MATTER OF
DIGITAL DISPATCH SYSTEMS INC.

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan and Ontario (the "Jurisdictions") has received an application from Digital Dispatch Systems Inc. ("Digital") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirement contained in the Legislation that a reporting issuer send to its security holders its comparative consolidated financial statements and auditor's report thereon relating to its financial year ended December 31, 2003 (the "Annual Financial Statements") concurrently with the filing of the Annual Financial Statements with the Decision Makers (the "Concurrent Mailing Requirement") shall not apply to Digital;

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

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

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

1. it is a company incorporated under the *Company Act* (British Columbia) with its head office located in British Columbia;

2. it is a reporting issuer in the Jurisdictions and is not in default of any applicable requirement of the Legislation;

3. its authorized capital consists of 200,000,000 common shares without par value and 50,000,000 preferred shares without par value, of which 10,257,983 common shares and no preferred shares are issued and outstanding;

4. its common shares are listed and posted for trading on The Toronto Stock Exchange;

5. it proposes to file a preliminary long form prospectus (the "Preliminary Prospectus") in mid-March, 2004 and a final long form prospectus approximately six weeks later (together, the "Prospectuses") for the offering of a series of common shares;

6. the Annual Financial Statements and related management's discussion and analysis ("MD&A") have been approved by Digital's board of directors;

7. although the Legislation does not require Digital to file the Annual Financial Statements until May 19, 2004, it will file its Annual Financial Statements and MD&A prior to, or concurrently with, the filing of the Preliminary Prospectus because it wants to incorporate its Annual Financial Statements into the Prospectuses;

8. concurrently with the filing of the Annual Financial Statements and MD&A, Digital proposes to announce that the Annual Financial Statements and MD&A have been filed and will be publicly available via the System for Electronic Document Analysis and Retrieval ("SEDAR");

9. it proposes to send the Annual Financial Statements and MD&A to its shareholders entitled to receive them concurrently with the mailing of the notice of meeting and management proxy circular for the annual meeting of shareholders of Digital in respect of fiscal 2003 and, in any event, not later than the last date upon which they could have been filed with the Decision Makers in compliance with the Legislation;

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 the Concurrent Mailing Requirement shall not apply to Digital in respect of its Annual Financial Statements, provided that:

    1. Digital issues, concurrently with the filing of the Annual Financial Statements and MD&A with the Decision Makers, a press release that will:

        (a) be filed on SEDAR and Digital's website;

        (b) include the approximate date on which the Annual Financial Statements and MD&A will be mailed to the shareholders of Digital who are entitled to receive them; and

        (c) state that any of the shareholders of Digital entitled to receive the Annual Financial Statements and MD&A may, on request to Digital, obtain a copy, and that they will be able to view the Annual Financial Statements and MD&A on the SEDAR website; and

    2. Digital sends the Annual Financial Statements and MD&A to its shareholders entitled to receive them in accordance with the procedures outlined in National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* and, in any event, not later than the last date upon which they could have been filed with the Decision Makers in compliance with the Legislation.

March 23, 2004.

"Brenda Leong"

2.2 Orders

2.2.1 King Street Capital Management, L.L.C. - s. 80 of the CFA

Headnote

Section 80 of the Commodity Futures Act (Ontario) (the CFA) - Relief from the adviser registration requirement of paragraph 22(1)(b) of the CFA granted to a non-resident adviser, for a term of 3 years, in respect of advising a certain non-Canadian mutual funds, non-redeemable investment funds or similar investment vehicles, regarding trades in commodity futures contracts and commodity futures options traded on commodity futures exchanges located primarily outside of Canada and cleared through clearing corporations located primarily outside of Canada, subject to certain terms and conditions.

Statutes Cited:

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., s. 22(1)(b) and s. 80.
Securities Act, R.S.O. 1990, c. S.5, as am. – Rule 35-502 – Non Resident Advisers.

**IN THE MATTER OF THE
COMMODITY FUTURES ACT, R.S.O. 1990,
CHAPTER C. 20, AS AMENDED (THE "CFA")**

AND

**IN THE MATTER OF
KING STREET CAPITAL MANAGEMENT, L.L.C.**

**ORDER
(Section 80 of the CFA)**

UPON the application (the "**Application**") of King Street Capital Management, L.L.C. (the "**Applicant**") to the Ontario Securities Commission (the "**Commission**") for an order pursuant to section 80 of the CFA that the Applicant and its respective members, directors, officers, and employees, are exempt, for a period of three years, from the requirements of paragraph 22(1)(b) of the CFA in respect of advising King Street Capital, Ltd. (the "**Existing Fund**") and certain other mutual funds, non-redeemable investment funds or similar investment vehicles (the "**Future Funds**", the Existing Fund and the Future Funds are collectively referred to herein as the "**Funds**"), in respect of trades in commodity futures contracts and commodity futures options traded on commodity futures exchanges located primarily outside of Canada and cleared through clearing corporations located primarily outside of Canada;

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is a limited liability company organized under the laws of the state of Delaware. The Applicant may also include affiliates of, or entities organized by, the Applicant which may subsequently execute and submit to the Commission a verification certificate referencing the Application confirming the truth and accuracy of the information set out in the Application with respect to that particular Applicant.

2. The Existing Fund is, and the Future Funds will be, established outside of Canada. Securities of the Existing Fund are, and securities of the Future Funds will be, primarily offered outside of Canada to institutional investors and high net worth individuals. Securities of the Existing Fund are, and securities of the Future Funds will be, offered to certain Ontario residents who are institutional investors or high net worth individuals and will be offered and distributed in Ontario in reliance upon an exemption from the prospectus requirements of the *Securities Act* (Ontario) (the "**OSA**"), and in reliance upon an exemption from the adviser registration requirement of the OSA under section 7.1 or section 7.10 of Commission Rule 35-502 Non-Resident Advisers ("**Rule 35-502**").

3. The Applicant is responsible for, in addition to other things, providing certain administrative services, investment advice and other investment management services to the Funds and arranging for the execution of the Funds' securities transactions. The Applicant currently provides advice with respect to commodity futures contracts and commodity futures options to the Existing Fund and may in the future provide similar advice to the Future Funds.

4. The Applicant is not currently registered, and is not required to be registered, as an investment adviser under the U.S. Investment Advisers Act of 1940, as amended, or any other applicable regulations.

5. The Applicant filed a claim of exemption from registration as a commodity pool operator with the United States Commodity Futures Trading Commission on September 17, 2003, which became effective upon the filing of the claim of exemption.

6. The Applicant, where required, is or will be registered or licensed or is or will be entitled to rely on appropriate exemptions from such registrations or licences to provide advice to the Funds pursuant to the legislation applicable to the Funds, the Applicant or those who invest in the Funds. In particular:

   (a) The Applicant is not registered in any capacity under the CFA or the OSA.

(b) Securities of the Funds will be offered primarily abroad. The Funds will not seek to become a reporting issuer in Ontario or in any other Canadian jurisdiction.

(c) The Funds may, as part of their investment program, invest in commodity futures contracts and commodity futures options principally traded on organized exchanges outside of Canada and cleared through clearing corporations located outside of Canada.

(d) Prospective investors who are Ontario residents will receive disclosure (the "**Statement**") that includes (i) a statement that there may be difficulty in enforcing legal rights against the Funds or the Applicant which advises the Funds, because such entities are resident outside of Canada and all or substantially all of their assets are situated outside of Canada; and (ii) a statement that the Applicant advising the Funds is not registered with or licensed by any securities regulatory authority in Canada and, accordingly, the protections available to clients of a registered adviser will not be available to purchasers of securities of the Funds.

AND UPON being satisfied that it would not be prejudicial to the public interest for the Commission to grant the exemption requested on the basis of the terms and conditions proposed,

IT IS ORDERED pursuant to section 80 of the CFA that each of the Applicants and their respective members, directors, officers, and employees responsible for advising the Funds are not subject to the requirements of paragraph 22(1)(b) of the CFA in respect of their advisory activities in connection with the Funds, for a period of three (3) years, provided that at the time that such activities are engaged in:

(a) any such Applicant, where required, is or will be registered or licensed, or is or will be entitled to rely on appropriate exemptions from such registrations or licences, to provide advice to the Funds pursuant to the applicable legislation of its principal jurisdiction;

(b) the Funds invest, or may in the future invest, in commodity futures and options contracts principally traded on organized exchanges outside Canada and cleared through clearing corporations located outside of Canada;

(c) securities of the Funds will be offered primarily outside of Canada and will only be distributed in Ontario in reliance on an exemption from the prospectus requirements of the OSA and upon an exemption from the adviser registration requirement of the OSA under section 7.1 or section 7.10 of Rule 35-502;

(d) prospective investors who are Ontario residents will receive the Statement;

(e) any Applicant whose name does not specifically appear in this Order and who proposes to rely on the exemption granted under this Order, shall, as a condition to relying on such exemption, have executed and filed with the Commission a verification certificate referencing this Order and confirming the truth and accuracy of the Application with respect to that particular Applicant; and

(f) the Applicant shall, as a condition to relying on this Order, file with the Commission notice of the name, date of creation, jurisdiction of formation and investment fund manager of any Future Fund that the Applicant wishes to advise.

April 2, 2004.

"H. Lorne Morphy" "Wendell S. Wigle"

2.2.2 Glen Harvey Harper - s. 127

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

AND

**IN THE MATTER OF
GLEN HARVEY HARPER**

**ORDER
(Section 127)**

WHEREAS on January 12, 2004, the Ontario Securities Commission (the Commission) issued a Notice of Hearing pursuant to section 127 of the *Securities Act* (the *Act*) in respect of Glen Harvey Harper;

AND WHEREAS the Commission conducted a hearing into this matter on March 19, 2004;

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

IT IS ORDERED THAT:

(1) Pursuant to clause 8 of s.127(1) of the *Act*, Harper is prohibited for 15 years from becoming or acting as a director or officer of any reporting issuer.

(2) Pursuant to clause 2 of s.127(1) of the *Act*, trading in any securities by Harper cease for a period of 15 years, with the exception that Harper be permitted to trade

(a) for his own account or any account in which he or he and his wife have the only beneficial interest (including any registered retirement savings plan account),

i in debt securities,

ii in securities of reporting issuers whose market capitalization exceeds $500 million at the time of acquisition, and

iii in securities of any issuer that is not a reporting issuer; and

(b) for 90 days from the date of this order in order to dispose of securities owned at the date hereof by him or his registered retirement savings plans.

April 8, 2004.

"Paul M. Moore" "Paul K. Bates" "Suresh Thakrar"

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 Reasons for Decision

3.1.1 Glen Harvey Harper

Headnote

Sentencing – Principles – Insider Trading – Orders in the Public Interest – Cease Trade Order – Prohibition from Acting as Officer and Director

Harper was charged and convicted under s. 122 of the Ontario Securities Act, R.S.O., 1990, c. S.5, as amended, (the "Act") on two counts of insider trading. Harper was found guilty of both counts on July 21, 2000 and was sentenced to a period of one year imprisonment for each offence to be served concurrently and to a total fine of $3,951,672. Harper appealed both his conviction and sentence, which was subsequently reduced to six months imprisonment on each count, to be served concurrently and the fine was reduced to $2 million and a surcharge of $400,000 as prescribed by section 60.1 of the Provincial Offences Act.

Subsequently, the Commission issued a Notice of Hearing dated January 12, 2004, pursuant to section 127 of the Act. The hearing was held before the panel on March 19, 2004 and staff requested that the panel make two orders in the public interest. The first order requested was that Harper be prohibited from becoming or acting as a director or officer of any issuer. The second order requested was that trading in any securities by Harper cease and staff requested that the duration of such orders extend for a period of a minimum of 15 years.

Held: The panel held that their jurisdiction under s.127 of the Act to make orders in the public interest is not an add-on or top-up authority applicable only where there has not been a breach of the law, or, if there has been a breach, where no other action has been taken under other provisions of the law. Rather it is their complete and independent jurisdiction under s.127. The panel noted that Harper's improper trading was over a period of five months, and during that period, Harper engaged in deceit upon the capital markets and upon the investors of Golden Rule Resources Inc. Furthermore, the panel pointed out that Harper is an individual with an untarnished work record, save for the five months of dishonourable conduct, and that Harper has paid his debt to society through the courts. However, from a prophylactic perspective, the panel stated, they could not be satisfied that, absent the orders they were making, he would not improperly use material insider information again, given the opportunity. Taking everything into account, Harper should not be left to freely trade in the capital markets. In view of his past conduct, protective and prophylactic orders should be made, which would also send the message that any like-minded individuals in circumstances similar to Harper's during his five months of trading, if they conduct themselves as Harper did, may be subject to similar prophylactic consequences regarding their access to the capital markets. The panel in its order allowed for two limited carve-outs that they felt were justifiable in the particular circumstances as not likely to put the market at risk.

The panel ordered that: (1) pursuant to clause 8 of s.127(1), Harper be prohibited for 15 years from becoming or acting as a director or officer of any reporting issuer; and (2) pursuant to clause 2 of s.127(1), trading in any securities by Harper cease for a period of 15 years, with the exception that Harper be permitted to trade (a) for his own account or any account in which he or he and his wife have the only beneficial interest (including any registered retirement savings plan account), (i) in debt securities, (ii) in securities of reporting issuers whose market capitalization exceeds $500 million at the time of acquisition, and (iii) in securities of any issuer that is not a reporting issuer; and (b) for 90 days from the date of the order in order to dispose of securities owned at the date thereof by him or his registered retirement savings plans.

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

AND

IN THE MATTER OF
GLEN HARVEY HARPER

Hearing: March 19, 2004

Panel: Paul M. Moore, Q.C. - Vice-Chair of the Commission (Chair)
Paul K. Bates - Commissioner
Suresh Thakrar - Commissioner

Counsel: Jay Naster - For the Staff of the Ontario Securities Commission

Brian Greenspan - For Glen Harvey Harper
Peter Copeland

DECISION AND REASONS

I. The Proceedings

[1] This matter appears before the Commission as the result of a Notice of Hearing dated January 12, 2004. The Notice of Hearing, issued pursuant to section 127 of the Ontario *Securities Act* R.S.O., 1990, c. S.5, as amended, (the "Act"), asks for a determination:

(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.

II. Factual Background to the Proceedings

[2] Glen Harvey Harper ("Harper") was a founder of Golden Rule Resources Inc. ("Golden Rule"). In the period January 1997 to May 1997, he was the President of Golden Rule and a member of the board of directors. Golden Rule was a junior mineral exploration company with a head office in Calgary, Alberta. It had been listed on the Toronto Stock Exchange since 1984.

[3] Pursuant to an information sworn on March 23, 1999, Harper was charged under s.122 of the Act with two counts of insider trading, that:

(i) On or between the 3rd day of January, 1997 and the 6th 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 14th day of March, 1997 and the 6th 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").

[4] Following a four week trial before Mr. Justice P. A. Sheppard of the Ontario Court of Justice, Toronto Region, Harper was found guilty as charged on both counts on July 21, 2000.

[5] 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 on September 18, 2000. Harper appealed both his conviction and sentence. The Commission brought a cross-appeal as to sentence.

[6] On January 7, 2002 Harper's appeal from conviction was dismissed by Mr. Justice F. 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, to be served concurrently. The fine was reduced to $2 million on the grounds that the trial judge erred in calculating the fine according to the loss avoidance provisions contained within s.122(4) of the Act. A cross-appeal as to sentence brought by the Commission was dismissed by Roberts J. on that same day.

[7] The Commission sought leave to appeal the decision of Roberts J. respecting the sentence imposed regarding both the term of imprisonment and the quantum of fine. Leave to appeal was sought pursuant to s.131 of the *Provincial Offences Act,* R.S.O. 1990, c.P.33, as amended (the "POA"). On January 21, 2002 Chief Justice R. McMurtry granted leave to appeal the sentence but only with regards to the issue of the quantum of fine.

[8] The Court of Appeal agreed with the Commission that Sheppard J. was correct in utilizing the loss avoidance provisions contained within s.122(4) of the Act in calculating the quantum of the fine. However, the Court of Appeal was of the opinion that the quantum calculation should not have included the proceeds from the sale of shares to which Harper was not a beneficial owner. The facts indicated that along with the shares that Harper held personally, he sold shares in the account of both his wife and in the account of Jaguar Exploration Corp. which was a company that held the shares in trust for Harper's children. The Court of Appeal adjusted the loss avoidance calculations accordingly and did not include the proceeds from the sales of the shares held by Harper's wife or the trust. The Court of Appeal chose not to interfere with the $2 million fine as imposed by Roberts J., and 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.

[9] Counsel for staff presented the convictions on both counts as the evidence which made out the allegations against Harper in these proceedings. The convictions are clearly admissible as evidence under ss.15.1 of the *Statutory Powers Procedure Act* R.S.O. 1990, c.S.22, as amended, (the "SPPA"), and as per ***Re Woods*** (1995), 18 O.S.C.B. 4635.

[10] We note that Sheppard J. made a number of findings of fact which are set out in his 30-page Reasons for Judgement. We further note that none of these findings were ever disturbed by either the Summary Conviction Appeal Court or the Court of Appeal. All of the findings were relied upon by staff in this proceeding and they are summarized by Sheppard J. on page 30 of his reasons, as quoted below:

> **CONCLUSION**
>
> This court has found above 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.

III. The Issue

[11] Counsel for staff now appears before the Commission and requests that the Commission make two orders in the public interest. The first order requested is that Harper be prohibited from becoming or acting as a director or officer of any issuer. The second order requested is that trading in any securities by Harper cease. Counsel requests that the duration of such orders extend for a period of a minimum of 15 years.

IV. The Position of the Parties

1. Staff's Position

a) Breach of Fiduciary Duties

[12] Counsel for staff points to the most aggravating feature of the case which is Harper's breach of his fiduciary duties to Golden Rule and its shareholders while an officer and director. In order to flush out the nature of this breach, a review of the facts is required.

[13] At the relevant period, Harper was the President and Chairman of the board of directors of Golden Rule. He occupied the same positions with Hixon Gold Resources Inc. ("Hixon"), a public company controlled by Golden Rule, which owned 46% of Hixon's shares as of September 30, 1996. During the relevant period, shares of Hixon were listed and posted for trading on the Vancouver Stock Exchange.

[14] On June 3, 1996, Hixon issued a press release announcing that it had acquired an interest in a property, the Stenpad Concession ("Stenpad"), located in Ghana, West Africa. The release also indicated that Golden Rule had acquired an option to acquire a 50% interest in the property and that the initial prospecting, geological mapping and sampling on the property identified several gold mineralization anomalies. Golden Rule shares had opened for trading on June 3, 1996, at $2.69.

[15] The next press release issued by Golden Rule in respect of Stenpad was on October 3, 1996, where Golden Rule reported that significant gold values had been identified as a result of exploration at Stenpad during the summer months. On October 3, 1996, Golden Rule shares had opened for trading at $2.15. Over the previous year, Golden Rule shares had traded in the range of $1.05 to $3.35.

[16] Between October 3, 1996 and March 27, 1997, Golden Rule continued to release information regarding the results of exploration at Stenpad, including extremely positive assay results from both trench and soil sampling. As early as October 25, 1996, Golden Rule advised the public that "the gold zone has the potential to host a multi-million ounce deposit." During this six month period, the price of Golden Rule shares rose to peaks of $13.80 on January 27, 1997 and $12.40 on March 14, 1997. With approximately 24.3 million shares outstanding as of September 30, 1996, Golden Rule's market capitalization rose from approximately $52.2 million on October 3, 1996 to a high of approximately $335.3 million on January 27, 1997.

[17] Between January 3, 1997 and May 6, 1997, Golden Rule obtained additional assay results that were not disclosed to the public, specifically:

- assay results of approximately 800 soil samples received by Golden Rule on January 2 and 3, 1997, relating to a geo-chemical survey being conducted by Golden Rule on the Stenpad property (the "800 samples"); and,
- assay results of 37 trench samples taken by Teck Exploration Ltd. ("Teck") and received by Golden Rule on March 12, 1997 as a result of due diligence conducted by Teck in respect of the Stenpad property (the "Teck samples").

[18] No later than 3:51pm on January 2, 1997, Harper had knowledge that the 800 samples, which related to wide areas of the property, had returned extremely low results in contrast to the extremely positive soil sample results that had been previously disclosed.

[19] On March 12, 1997, Harper had knowledge that the Teck samples, taken from the same locations as the Golden Rule samples that had previously yielded extremely positive results, returned low values. The results from the 800 samples and the Teck samples were material information that was not generally disclosed to the public. The trial judge did not accept that Harper had held an honest and reasonable mistaken belief regarding the materiality of the 800 samples and the Teck samples.

[20] Between January 3, 1997 and May 6, 1997, Harper conducted trades of Golden Rule shares on behalf of the following persons and companies:

- shares personally held: 101,400 shares were sold for $929,465; 600,000 shares were purchased on the market for $304,250; 184,000 shares were purchased for $377,200 through the exercise of an option;
- Brigand Resources Inc. (a company wholly owned by Harper): 50,000 shares were purchased on January 30, 1997 for $479,575 and subsequently sold on March 14, 1997 for $595,555;
- Debbie Harper (Harper's wife): 5,000 shares were sold on January 27, 1997 for $65,165; 25,000 shares were purchased on May 5, 1997 for $156,600 and subsequently sold on May 6, 1997 for $221,765; and,

- Jaguar Exploration Corp., (a company whose shares were owned by Debbie Harper in trust for the Respondent's four children): 243,302 shares were sold for $2,295,684.50; on February 6, 1997, 10,000 were purchased for $101,000.

[21] Disclosure was finally made on May 15, 1997. On that day, Golden Rule issued a press release relating to the Stenpad results obtained separately by the Ghana Minerals Commission and by CME Consulting Ltd., an independent consultant sponsored by the Ghana Minerals Commission. The press release indicated that the CME and Mineral Commission results were "significantly different" from results previously obtained. On July 15, 1997, Golden Rule issued a press release relating to the initial results of a diamond drilling program, as well as further trench samples and soil sample results. With respect to the soil samples, which had been obtained as a result of check sampling, it was reported that the results were "significantly less than the very high results previously announced from reconnaissance sampling" and that the earlier results were "unreliable". Neither the May 15, 1997 press release nor the July 15, 1997 press release referred to the results of either the 800 samples or the Teck samples.

[22] Counsel for staff underscores that when illegal insider trading is accompanied by a breach of fiduciary duty it is a particularly egregious matter. Counsel indicates that as an officer and director of a public corporation, Harper owed a duty to act honestly and in good faith with a view to acting in the best interests of the corporation. This includes the duty to place the interests of the corporation ahead of any personal interests that Harper may have had. Counsel notes that serving as an officer and director is a voluntary privilege assumed by a select few. Those duties are owed as a matter of law to the corporation. Indirectly, they are for the benefit of the corporation's shareholders and the investing public in general.

[23] Harper abused his duty. He used inside information for his own personal advantage and this is an aggravating factor in assessing the appropriate sanctions.

b) Intentional Misleading of the Public Over a Span of Time

[24] Harper continued to withhold information about the results of the 800 samples even though the company issued numerous press releases that provided many opportunities for the release of this information.

[25] Pages 22/23 of Sheppard J.'s judgment outlines the following instances of continuous disclosure on the part of Golden Rule where the results of the 800 samples were purposefully withheld and investors misled:

January 7, 1997	Press release – trench results
January 10, 1997	Press release – trench results
January 10, 1997	Scotia Capital report on Golden Rule (draft reviewed by Harper on January 8th)
January 21, 1997	Harper presents to analysts/investors in Toronto
January 22, 1997	Harper presents to analysts/investors in Vancouver
January 22, 1997	Press release (claims there are "no additional results on the Stenpad property")
January 30, 1997	A soil geochemistry map provided to the Ghana Minerals Commission showing an area marked "no soil data" where in fact a number of the 800 samples were drawn.
Jan./Feb./Mar./Apr. 1997	Monthly newsletters to investors.
February 5, 1997	Press release that is misleading. The 72 samples being described are not indicated as being "re-samples" from the area of the original 800 sample because of the failure to disclose the 800 samples. Hence the reader could only conclude that the samples being described were the only samples taken from that area, which was not the case.

[26] Counsel for staff indicates that Harper continually used his position and influence to withhold the negative results. Not only did Harper remain mute on these matters but he intentionally misled the investing public.

c) Lack of Honest and Reasonable Belief

[27] Counsel for staff refers to page 27 of Sheppard J.'s decision where it is clearly indicated that the judge rejected Harper's defence that he had a reasonable belief in the lack of materiality of the samples due to his reliance on the opinion of the project geologist, Dr. Mark Nebel. Harper's claim to have had a reasonable and honest mistaken belief in respect of those

samples was neither honest nor reasonable.

d) Harper Had Total Control of the Material Information

[28] The facts of the case indicate that Teck expressed interest in acquiring a position in Golden Rule in early 1997 after reading Golden Rule's inspiring press releases of October/November 1996.

[29] Teck and Harper then entered into a confidentiality agreement prior to any due diligence evaluations that would be undertaken by Teck. On February 27, 1997, Teck and Harper agreed to the following clause of the confidentiality agreement:

> ***Insider Information***
>
> Teck acknowledges that applicable securities laws prohibit any person who has material, non-public information concerning a corporation or its properties or business prospects from purchasing or selling securities of such corporation or from communicating such information to any other person or entity under circumstances in which it is reasonably foreseeable that such person or entity is likely to purchase or sell such securities.

[30] Teck's due diligence was to be performed between March 7th and 12th at the site. Sampling was taken in the trenches next to where Golden Rule had taken their sample. Thirty-seven samples were collected and analyzed. A witness at the trial, Mr. G. Farquharson, was qualified to give expert evidence on issues relating to appraisal, evaluations and feasibility studies. Farquharson indicated that the Teck sample gold assay certificate results showed only one-tenth the gold levels that the previously reported Golden Rule samples at the same locations had shown.

[31] Sheppard J. noted on page19 of his decision that in a one-week period after becoming aware of at least 33 of the 37 Teck assay results, Harper sold $1,345,630 of Golden Rule shares and bought none. These sales all occurred around the $10.00 to $11.0 per share range. This occurred, not withstanding the confidentiality agreement with Teck.

[32] In his submissions, counsel for staff notes that while Teck was held to the confidentiality agreement, Harper succeeded in burying the material facts from the investing public for over six months while he actively sold shares and continued to facilitate the duping of the investing public.

[33] Counsel for staff submits that Harper's ability to control the information being released to the public in respect of Golden Rule is a particularly aggravating feature of the case. Counsel submits that Harper used his position as an officer and director of the corporation to create a misleading picture of the status of the company and because of this he was able to trade on the market and avoid a great deal of loss in the value of the shares for himself and his family.

[34] Counsel for staff concedes that Harper is 60 years of age and that it is unlikely that he will re-offend.

2. Respondent's Position

[35] Counsel for the respondent indicated that pursuant to proceedings initiated under s.122 of the Act, Harper has been tried, convicted and sentenced. The sentence of six months imprisonment to be served concurrently and a fine of two million dollars has been paid. Furthermore, a surcharge of $400,000 remains outstanding. With regard to the surcharge that remains outstanding, counsel for the respondent indicates in his submissions to us that the matter was only recently affirmed by the Ontario Court of Appeal and there is no indication that it will not be satisfied.

[36] Counsel for the respondent argues that one cannot surgically remove proceedings pursuant to s.122 of the Act from proceedings pursuant to s.127. He notes that both sections were drafted by the legislators to lay under Part XXII of the Act which deals with enforcement. With this in mind, counsel for the respondent notes that a very strong message has already been sent in the case of his client to like-minded individuals who would engage in insider trading.

[37] Harper concedes through his counsel that his actions which render him before this tribunal, should involve his loss of the privilege of participating as an officer or director in the capital markets for a period of fifteen years. Counsel adds that in the course of being banned as an officer or director from any reporting issuer, Harper will never again be in a position similar to the one that put him in possession of inside information. Devoid of that knowledge and devoid of that opportunity, counsel argues, Harper will never be in the position to become involved in insider trading in the future. Counsel submits that his client currently holds no positions as officer or director of a reporting issuer or any company.

[38] Furthermore, counsel for the respondent cautions that the message to be sent for general deterrence is a message strictly confined within the context of the facts of the case.

[39] Counsel for the respondent notes that prior to the charges that led to the s.122 proceedings, Harper enjoyed a distinguished business career that spanned 35 years. He notes that the period of misconduct, while grave, spanned the course

of five months. He adds that his client served a six month jail sentence, paid two million dollars in fines and has lost his right to practice his chosen profession through disciplinary actions initiated by the Association of Professional Engineers, Geologists and Geophysicists of Alberta. Finally, counsel for the respondent indicates to us that Harper's remorse is implicit within his concession that he should never again assume the privilege of serving as an officer or director of a reporting issuer.

[40] Counsel for the respondent filed 39 letters of reference for Harper from family, friends and business colleagues. The letters spoke highly of Harper and were persuasive as to his good character and general business ethics.

[41] Counsel for the respondent provided us with evidence that Harper has two separate registered retirement savings plans that contain equities and debt instruments. Counsel submits that if the panel is to apply a cease trade order without carve-outs for the registered plans, the funds would be frozen and at the mercy of the market for the duration of the order which would function as a penalty to his client.

[42] Counsel indicated that Harper has few assets outside the registered plans. Should the panel decide to impose a cease trade order upon Harper, a small grace period would be required for him to be out of the market completely.

[43] Counsel for the respondent also provided us with a notice of assessment from Revenue Canada dated May 2003 , showing that Harper had unused capital losses in the amount of $1,890,031 that may be carried forward. Counsel submits that should Harper be prohibited for the next 15 years from trading in the capital markets, the likelihood of this unused capital loss ever being utilized, while arguably not impossible, would be limited. Counsel submits that such a restriction upon his client would also operate as a penalty.

V. Analysis

1. The Public Interest Jurisdiction Under s.127

[44] Our jurisdiction under s.127 of the Act to make orders in the public interest is not an add-on or top-up authority applicable only where there has not been a breach of the law, or, if there has been a breach, where no other action has been taken under other provisions of the law. We have a complete and independent jurisdiction under s.127 of the Act. It is our only and complete jurisdiction under s.127. The public interest jurisdiction is framed by the two purposes of the Act which are set out in s.1.1 and expressed by Iacobucci J. in the following passage from ***Committee for the Equal Treatment of Asbestos Minority Shareholders v. OSC***, [2001] 2 S.C.R. 132:

> However, the public interest jurisdiction of the OSC is not unlimited. Its precise nature and scope should be assessed by considering s.127 in context. Two aspects of the public interest jurisdiction are of particular importance in this regard. First, it is important to keep in mind that the OSC's public interest jurisdiction is animated in part by both of the purposes of the Act described in s.1.1 namely "to provide protection to investors from unfair, improper or fraudulent practices" and "to foster fair and efficient capital markets and confidence in capital markets". Therefore, in considering an order in the public interest, it is an error to focus only on the fair treatment of investors. The effect of an intervention in the public interest on capital market efficiencies and public confidence in the capital markets should also be considered.
>
> Second, it is important to recognize that s.127 is a regulatory provision. In this regard, I agree with Laskin J.A. that "[t]he purpose of the Commission's public interest jurisdiction is neither remedial nor punitive; it is protective and preventive, intended to be exercised to prevent likely future harm to Ontario's capital markets" (page272). This interpretation of s.127 powers is consistent with the previous jurisprudence of the OSC in cases such as ***Canadian Tire, supra***, aff'd (1987), 59 O.R.(2d) 79 (Div.Ct.); leave to appeal to C.A. denied (1987), 35 B.L.R. xx, in which it was held that no breach of the Act is required to trigger s.127. It is also consistent with the objective of regulatory legislation in general. The focus of regulatory law is on the protection of societal interests, not punishment of an individual's moral faults: see ***R. v. Wholesale Travel Group Inc.***, [1991] 3 S.C.R. 154, at page 219.

[45] Consistent with the preventive nature of the public interest jurisdiction of s.127, we are mindful of the need to act protectively in order to ensure the smooth functioning of the capital markets in Ontario. Our jurisdiction to achieve this goal is described in ***Re Mithras Management Ltd.***, [1990], 13O.S.C.B. 1600 , at pages 1610-1611:

> [T]he role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing, we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient after all.

2. Relevant Considerations

[46] In ***Re Woods***, the Commission noted the first two considerations that must be made when determining appropriate sanctions in the public interest. The first is whether or not the respondent is likely to re-offend. The second consideration is whether or not the conduct of the respondent is such to bring into question the integrity and reputation of the capital markets in general.

[47] We have considered the relevant factors that have had, or may have, an impact on the respondent and may influence his future conduct, as laid out in ***Re M.C.J.C. Holdings and Michael Cowpland*** [February 22, 2002] 25 O.S.C.B. 1133 ("**Cowpland**"):

- the size of the profit or loss avoidance from the illegal conduct: which in this case was approximately $3.59 million. See ***R. v. Glen Harvey Harper***, (September 18, 2000), Sheppard J. at page 16 (prior to the addition of the factor of .1).
- the size of the financial sanction or voluntary payment: which in this case was $2 million plus the $400,000 provincial surcharge that remains outstanding.
- the effect of sanctions on the livelihood of the respondent: we accept the submissions of counsel for the respondent that Harper was forced to liquidate most of his assets in order to meet the criminal financial penalties.
- the restraint any sanction may have on the ability of the respondent to participate without check in the capital markets.

[48] Harper was properly fined, according to the provisions of s.122 of the Act, only in respect of trading for his own account, and not in respect of his trading for the accounts of his family. We do not intend to compensate, through orders under s.127, for any shortfall in fines that could have resulted under s.122 had that section extended to profits or losses avoided from trading by Harper for accounts not beneficially owned by him. However, in considering the magnitude of Harper's improper conduct and the appropriateness of orders under s.127, we have taken into account the benefits to such accounts. Harper had the sole control over whether or not the material information in the Stenpad properties would be disclosed.

[49] The behaviour in this case was particularly egregious. We reiterate our earlier repudiation of insider trading in ***Cowpland*** at page 1135:

> Illegal insider trading by its very nature is a cancer that erodes public confidence in the capital markets. It is one of the most serious diseases our capital markets face. If we do not act in the public interest by sending an appropriate message in appropriate circumstances, then we fail in doing our duty.

[50] Harper's improper trading was over five months. During that period, Harper engaged in deceit upon the capital markets and upon the investors of Golden Rule.

[51] At 60 years of age and with an untarnished work record, save for the five months of dishonourable conduct, there have been no other matters that have brought him before the courts or this Commission. He has paid his debt to society through the courts. However, from a prophylactic perspective, we cannot be satisfied that, absent the orders we are making, he would not improperly use material insider information again, given the opportunity.

[52] Taking everything into account, Harper should not be left to freely trade in the capital markets. In view of his past conduct, protective and prophylactic orders should be made. They will also send the message that any like-minded individuals in circumstances similar to Harper's during his five months of trading, if they conduct themselves as Harper did, may be subject to similar prophylactic consequences regarding their access to the capital markets.

[53] Counsel for the respondent concedes that Harper should be prohibited from acting as a director or officer of any issuer for 15 years. Counsel for staff also requests a cease trade order for 15 years. Since Harper is 60 years of age, 15-year bans would keep Harper out of the market, in effect, for the rest of his remaining business life.

[54] Harper should be cease traded for a period of 15 years and prevented from acting as a director and officer of any reporting issuer for a similar period. However, taking into account opportunities that gave rise to past problems with Harper and the reduction of opportunity to acquire inside information as a director or officer of a reporting issuer resulting from orders we are making, we are allowing two limited carve-outs that are justifiable in the particular circumstances as not likely to put the market at risk.

VI. The Order

[55] Accordingly, being of the opinion that it is in the public interest to do so, we are ordering that

(1) Pursuant to clause 8 of s.127(1), Harper is prohibited for 15 years from becoming or acting as a director or officer of any reporting issuer.

(2) Pursuant to clause 2 of s.127(1), trading in any securities by Harper cease for a period of 15 years, with the exception that Harper be permitted to trade

(a) for his own account or any account in which he or he and his wife have the only beneficial interest (including any registered retirement savings plan account),

(i) in debt securities,

(ii) in securities of reporting issuers whose market capitalization exceeds $500 million at the time of acquisition, and

(iii) in securities of any issuer that is not a reporting issuer; and

(b) for 90 days from the date of the order in order to dispose of securities owned at the date thereof by him or his registered retirement savings plans.

April 8, 2004.

"Paul M. Moore" "Paul K. Bates" "Suresh Thakrar"

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Chapter 4

Cease Trading Orders

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		

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Chapter 5

Rules and Policies

5.1.1 National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency

NATIONAL INSTRUMENT 52-107
ACCEPTABLE ACCOUNTING PRINCIPLES, AUDITING STANDARDS AND REPORTING CURRENCY

NATIONAL INSTRUMENT 52-107
ACCEPTABLE ACCOUNTING PRINCIPLES, AUDITING STANDARDS AND REPORTING CURRENCY

PART 1
DEFINITIONS AND INTERPRETATION

1.1 Definitions – In this Instrument:

"accounting principles" mean a body of accounting principles that are generally accepted in a jurisdiction of Canada or a foreign jurisdiction and include, without limitation, Canadian GAAP, U.S. GAAP and International Financial Reporting Standards;

"acquisition statements" means the financial statements of an acquired business or a business to be acquired, or operating statements for an oil and gas property that is an acquired business or a business to be acquired, that are required to be filed under National Instrument 51-102 or that are included in a prospectus;

"auditing standards" mean a body of auditing standards that are generally accepted in a jurisdiction of Canada or a foreign jurisdiction and include, without limitation, Canadian GAAS, U.S. GAAS and International Standards on Auditing;

"business acquisition report" means a completed Form 51-102F4 *Business Acquisition Report*;

"convertible security" means a security of an issuer that is convertible into, or carries the right of the holder to acquire, or of the issuer to cause the acquisition of, a security of the same issuer;

"credit support issuer" means an issuer of securities for which a credit supporter has provided a guarantee;

"credit supporter" means a person or company that provides a guarantee for any of the payments to be made by an issuer of securities as stipulated in the terms of the securities or in an agreement governing rights of, or granting rights to, holders of the securities;

"designated foreign issuer" means a foreign issuer

(a) that does not have a class of securities registered under section 12 of the 1934 Act and is not required to file reports under section 15(d) of the 1934 Act,

(b) that is subject to foreign disclosure requirements, and

(c) for which the total number of equity securities owned, directly or indirectly, by residents of Canada does not exceed ten per cent, on a fully-diluted basis, of the total number of equity securities of the issuer, calculated in accordance with sections 1.2 and 1.3;

"designated foreign jurisdiction" means Australia, France, Germany, Hong Kong, Italy, Japan, Mexico, the Netherlands, New Zealand, Singapore, South Africa, Spain, Sweden, Switzerland or the United Kingdom of Great Britain and Northern Ireland;

"exchangeable security" means a security of an issuer that is exchangeable for, or carries the right of the holder to acquire, or of the issuer to cause the acquisition of, a security of another issuer;

"exchange-traded security" means a security that is listed on a recognized exchange or is quoted on a recognized quotation and trade reporting system or is listed on an exchange or quoted on a quotation and trade reporting system that is recognized for the purposes of National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*;

"executive officer" with respect to a person or company means an individual who is

(a) a chair of the person or company,

(b) a vice-chair of the person or company,

(c) the president of the person or company,

(d) a vice-president of the person or company in charge of a principal business unit, division or function including sales, finance or production,

(e) an officer of the person or company or any of its subsidiaries who performed a policy-making function in respect of the person or company, or

(f) any other individual who performed a policy-making function in respect of the person or company;

"foreign disclosure requirements" means the requirements to which a foreign issuer is subject concerning disclosure made to the public, to securityholders of the issuer, or to a foreign regulatory authority

(a) relating to the foreign issuer and the trading in its securities, and

(b) that is made publicly available in the foreign jurisdiction under

(i) the securities laws of the foreign jurisdiction in which the principal trading market of the foreign issuer is located, or

(ii) the rules of the marketplace that is the principal trading market of the foreign issuer;

"foreign issuer" means an issuer, other than an investment fund, that is incorporated or organized under the laws of a foreign jurisdiction, unless

(a) outstanding voting securities of the issuer carrying more than 50 per cent of the votes for the election of directors are owned, directly or indirectly, by residents of Canada, and

(b) any of the following apply:

(i) the majority of the executive officers or directors of the issuer are residents of Canada;

(ii) more than 50 per cent of the consolidated assets of the issuer are located in Canada; or

(iii) the business of the issuer is administered principally in Canada;

"foreign registrant" means a registrant that is incorporated or organized under the laws of a foreign jurisdiction , except a registrant that satisfies the following conditions:

(a) outstanding voting securities of the registrant carrying more than 50 per cent of the votes for the election of directors are owned, directly or indirectly, by residents of Canada; and

(b) any of the following apply:

(i) the majority of the executive officers or directors of the registrant are residents of Canada;

(ii) more than 50 per cent of the consolidated assets of the registrant are located in Canada; or

(iii) the business of the registrant is administered principally in Canada;

"foreign regulatory authority" means a securities commission, exchange or other securities market regulatory authority in a designated foreign jurisdiction;

"inter-dealer bond broker" means a person or company that is approved by the Investment Dealers Association under IDA By-Law No. 36 *Inter-Dealer Bond Brokerage System*s, as amended, and is subject to IDA By-Law No. 36 and IDA Regulation 2100 *Inter-Dealer Bond Brokerage System*s, as amended;

"investment fund" means a mutual fund or a non-redeemable investment fund;

"issuer's GAAP" means the accounting principles used to prepare an issuer's financial statements, as permitted by this Instrument;

"marketplace" means

(a) an exchange,

(b) a quotation and trade reporting system,

(c) a person or company not included in paragraph (a) or (b) that

(i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities,

(ii) brings together the orders for securities of multiple buyers and sellers, and

(iii) uses established, non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade, or

(d) a dealer that executes a trade of an exchange-traded security outside of a marketplace,

but does not include an inter-dealer bond broker;

"multiple convertible security" means a security of an issuer that is convertible into, or exchangeable for, or carries the right of the holder to acquire, or of the issuer to cause the acquisition of, a convertible security, an exchangeable security or another multiple convertible security;

"National Instrument 51-102" means National Instrument 51-102 *Continuous Disclosure Obligations*;

"National Instrument 71-102" means National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers;*

"non-redeemable investment fund" means any issuer

(a) where contributions of security holders are pooled for investment,

(b) where security holders do not have day-to-day control over the management and investment decisions of the issuer, whether or not they have the right to be consulted or to give directions, and

(c) whose securities do not entitle the security holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the issuer;

"principal trading market" means the published market on which the largest trading volume in the equity securities of the issuer occurred during the issuer's most recently completed financial year that ended before the date the determination is being made;

"public enterprise" means a public enterprise determined with reference to the Handbook;

"published market" means, for a class of securities, a marketplace on which the securities have traded that discloses, regularly in a publication of general and regular paid circulation or in a form that is broadly distributed by electronic means, the prices at which those securities have traded;

"recognized exchange" means

(a) in Ontario, an exchange recognized by the securities regulatory authority to carry on business as a stock exchange, and

(b) in every other jurisdiction of Canada, an exchange recognized by the securities regulatory authority as an exchange, self-regulatory organization or self-regulatory body;

"recognized quotation and trade reporting system" means

(a) in every jurisdiction of Canada other than British Columbia, a quotation and trade reporting system recognized by the securities regulatory authority under securities legislation to carry on business as a quotation and trade reporting system, and

(b) in British Columbia, a quotation and trade reporting system recognized by the securities regulatory authority under securities legislation as a quotation and trade reporting system or as an exchange;

"SEC issuer" means an issuer that

(a) has a class of securities registered under section 12 of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act, and

(b) is not registered or required to be registered as an investment company under the *Investment Company Act* of 1940 of the United States of America, as amended;

"SEC foreign issuer" means a foreign issuer that is also an SEC issuer;

"underlying security" means a security issued or transferred, or to be issued or transferred, in accordance with the terms of a convertible security, an exchangeable security or a multiple convertible security;

"U.S. GAAP" means generally accepted accounting principles in the United States of America that the SEC has identified as having substantial authoritative support, as supplemented by Regulation S-X and Regulation S-B under the 1934 Act; and

"U.S. GAAS" means generally accepted auditing standards in the United States of America, as supplemented by the SEC's rules on auditor independence.

1.2 Determination of Canadian Shareholders for Calculation of Designated Foreign Issuer and Foreign Issuer –

(1) For the purposes of paragraph (c) of the definition of "designated foreign issuer" and paragraph 5.1(c), a reference to equity securities owned, directly or indirectly, by residents of Canada, includes

(a) the underlying securities that are equity securities of the foreign issuer; and

(b) the equity securities of the foreign issuer represented by an American depositary receipt or an American depositary share issued by a depositary holding equity securities of the foreign issuer.

(2) For the purposes of paragraph (a) of the definition of "foreign issuer", securities represented by American depositary receipts or American depositary shares issued by a depositary holding voting securities of the foreign issuer must be included as outstanding in determining both the number of votes attached to securities owned, directly or indirectly, by residents of Canada and the number of votes attached to all of the issuer's outstanding voting securities.

1.3 Timing for Calculation of Designated Foreign Issuer, Foreign Issuer and Foreign Registrant – For the purposes of paragraph (c) of the definition of "designated foreign issuer" , paragraph (a) of the definition of " foreign issuer" and paragraph (a) of the definition of "foreign registrant", the calculation is made

(a) if the issuer has not completed one financial year, on the earlier of

(i) the date that is 90 days before the date of its prospectus, and

(ii) the date that it became a reporting issuer; and

(b) for all other issuers and for registrants, on the first day of the most recent financial year or year-to-date interim period for which operating results are presented in the financial statements filed or included in the issuer's prospectus.

1.4 Interpretation

(1) **Interpretation of "prospectus"** – For the purposes of this Instrument, a reference to "prospectus" includes a preliminary prospectus, a prospectus, an amendment to a preliminary prospectus and an amendment to a prospectus.

(2) **Interpretation of "included"** – For the purposes of this Instrument, a reference to information being "included in" another document means information reproduced in the document or incorporated into the document by reference.

PART 2
APPLICATION

2.1 Application –

(1) This Instrument does not apply to investment funds.

(2) This Instrument applies to

(a) all annual and interim financial statements delivered by registrants to the securities regulatory authority,

(b) all annual, interim and *pro forma* financial statements filed, or included in a document that is filed, under National Instrument 51-102 or National Instrument 71-102,

(c) all annual, interim and *pro forma* financial statements included in a prospectus or a take-overbid circular filed, or included in a document that is filed,

(d) any operating statements for an oil and gas property that is an acquired business or a business to be acquired, that are filed under National Instrument 51-102 or that are included in a prospectus or a take-over bid circular filed, or included in a document that is filed,

(e) any other annual, interim or *pro forma* financial statement filed by a reporting issuer, and

(f) financial information that is filed under National Instrument 51-102 or that is included in a prospectus or a take-over bid circular filed, or included in a document that is filed, that is

(i) derived from a credit support issuer's consolidated financial statements, or

(ii) summarized financial information as to the assets, liabilities and results of operations of a business relating to an acquisition that is, or will be, an investment accounted for by the issuer using the equity method.

PART 3
GENERAL RULES

3.1 Acceptable Accounting Principles –

(1) Financial statements, other than acquisition statements, must be prepared in accordance with Canadian GAAP as applicable to public enterprises.

(2) Financial statements must be prepared in accordance with the same accounting principles for all periods presented in the financial statements.

(3) The notes to the financial statements must identify the accounting principles used to prepare the financial statements.

3.2 Acceptable Auditing Standards – Financial statements, other than acquisition statements, that are required by securities legislation to be audited must be audited in accordance with Canadian GAAS and be accompanied by an auditor's report that

(a) does not contain a reservation;

(b) identifies all financial periods presented for which the auditor has issued an auditor's report;

(c) refers to the former auditor's reports on the comparative periods, if the issuer or registrant has changed its auditor and one or more of the comparative periods presented in the financial statements were audited by a different auditor; and

(d) identifies the auditing standards used to conduct the audit and the accounting principles used to prepare the financial statements.

3.3 Acceptable Auditors –

An auditor's report filed by an issuer or registrant must be prepared and signed by a person or company that is authorized to sign an auditor's report by the laws of a jurisdiction of Canada or a foreign jurisdiction, and that meets the professional standards of that jurisdiction.

3.4 Measurement and Reporting Currencies –

(1) The reporting currency must be disclosed on the face page of the financial statements or in the notes to the financial statements unless the financial statements are prepared in accordance with Canadian GAAP and the reporting currency is the Canadian dollar.

(2) The notes to the financial statements must disclose the measurement currency if it is different than the reporting currency.

3.5 Financial Information Derived from a Credit Support Issuer's Consolidated Financial Statements –

If a credit support issuer files, or includes in a prospectus, financial information derived from the credit support issuer's consolidated financial statements,

(a) the credit support issuer's consolidated financial statements must be prepared in accordance with Canadian GAAP as applicable to public enterprises for all periods presented in the financial statements and in the case of annual audited consolidated financial statements,

(i) be audited in accordance with Canadian GAAS and

(ii) be accompanied by an auditor's report that

(A) does not contain a reservation, and

(B) is prepared and signed by a person or company that is authorized to sign an auditor's report by the laws of a jurisdiction of Canada or a foreign jurisdiction, and that meets the professional standards of that jurisdiction;

(b) the financial information must disclose that the credit support issuer's consolidated financial statements from which the financial information is derived were prepared in accordance with Canadian GAAP as applicable to public enterprises; and

(c) the financial information must disclose the reporting currency for the financial information, and disclose the measurement currency if it is different than the reporting currency.

PART 4
EXEMPTIONS FOR SEC ISSUERS

4.1 Acceptable Accounting Principles for SEC Issuers –

(1) Despite subsections 3.1(1) and 3.1(2), financial statements filed by an SEC issuer, other than acquisition statements, may be prepared in accordance with U.S. GAAP provided that, if the SEC issuer previously filed or included in a prospectus financial statements prepared in accordance with Canadian GAAP, the SEC issuer complies with the following:

(a) the notes to the first two sets of the issuer's annual financial statements after the change from Canadian GAAP to U.S. GAAP and the notes to the issuer's interim financial statements for interim periods during those two years

(i) explain the material differences between Canadian GAAP as applicable to public enterprises and U.S. GAAP that relate to recognition, measurement and presentation;

(ii) quantify the effect of material differences between Canadian GAAP as applicable to public enterprises and U.S. GAAP that relate to recognition, measurement and presentation, including a tabular reconciliation between net income reported in the financial statements and net income computed in accordance with Canadian GAAP as applicable to public enterprises; and

(iii) provide disclosure consistent with disclosure requirements of Canadian GAAP as applicable to public enterprises to the extent not already reflected in the financial statements;

(b) financial information for any comparative periods that were previously reported in accordance with Canadian GAAP are presented as follows:

(i) as previously reported in accordance with Canadian GAAP;

(ii) as restated and presented in accordance with U.S. GAAP; and

(iii) supported by an accompanying note that

(A) explains the material differences between Canadian GAAP and U.S. GAAP that relate to recognition, measurement and presentation; and

(B) quantifies the effect of material differences between Canadian GAAP and U.S. GAAP that relate to recognition, measurement and presentation, including a tabular reconciliation between net income as previously reported in the financial statements in accordance with Canadian GAAP and net income as restated and presented in accordance with U.S. GAAP; and

(c) if the SEC issuer has filed financial statements prepared in accordance with Canadian GAAP for one or more interim periods of the current year, those interim financial statements are restated in accordance with U.S. GAAP and comply with paragraphs (a) and (b).

(2) The comparative information specified in subparagraph 4.1(1)(b)(i) may be presented on the face of the balance sheet and statements of income and cash flow or in the note to the financial statements required by subparagraph 4.1(1)(b)(iii).

4.2 Acceptable Auditing Standards for SEC Issuers – Despite section 3.2, financial statements filed by an SEC issuer, other than acquisition statements, that are required by securities legislation to be audited may be audited in accordance with U.S. GAAS if the financial statements are accompanied by an auditor's report prepared in accordance with U.S. GAAS that

(a) contains an unqualified opinion;

(b) identifies all financial periods presented for which the auditor has issued an auditor's report;

(c) refers to the former auditor's reports on the comparative periods, if the issuer has changed its auditor and one or more of the comparative periods presented in the financial statements were audited by a different auditor; and

(d) identifies the auditing standards used to conduct the audit and the accounting principles used to prepare the financial statements.

PART 5
EXEMPTIONS FOR FOREIGN ISSUERS

5.1 Acceptable Accounting Principles for Foreign Issuers – Despite subsection 3.1(1), financial statements filed by a foreign issuer, other than acquisition statements, may be prepared in accordance with

(a) U.S. GAAP, if the issuer is an SEC foreign issuer;

(b) International Financial Reporting Standards;

(c) accounting principles that meet the disclosure requirements for foreign private issuers, as that term is defined for the purposes of the 1934 Act, if

(i) the issuer is an SEC foreign issuer;

(ii) on the last day of the most recently completed financial year the total number of equity securities owned directly or indirectly by residents of Canada does not exceed ten per cent, on a fully-diluted basis, of the total number of equity securities of the issuer; and

(iii) the financial statements include any reconciliation to U.S. GAAP required by the SEC;

(d) accounting principles that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer is subject, if the issuer is a designated foreign issuer; or

(e) accounting principles that cover substantially the same core subject matter as Canadian GAAP, including recognition and measurement principles and disclosure requirements, if the notes to the financial statements

(i) explain the material differences between Canadian GAAP applicable to public enterprises and the accounting principles used that relate to recognition, measurement and presentation;

(ii) quantify the effect of material differences between Canadian GAAP applicable to public enterprises and the accounting principles used that relate to recognition, measurement and presentation, including a tabular reconciliation between net income reported in the issuer's financial statements and net income computed in accordance with Canadian GAAP applicable to public enterprises; and

(iii) provide disclosure consistent with Canadian GAAP applicable to public enterprises requirements to the extent not already reflected in the financial statements.

5.2 Acceptable Auditing Standards for Foreign Issuers – Despite section 3.2, financial statements filed by a foreign issuer, other than acquisition statements, that are required by securities legislation to be audited may be audited in accordance with

(a) U.S. GAAS if the auditor's report contains an unqualified opinion;

(b) International Standards on Auditing, if the auditor's report is accompanied by a statement by the auditor that

(i) describes any material differences in the form and content of the auditor's report as compared to an auditor's report prepared in accordance with Canadian GAAS; and

(ii) indicates that an auditor's report prepared in accordance with Canadian GAAS would not contain a reservation; or

(c) auditing standards that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer is subject, if the issuer is a designated foreign issuer,

if the financial statements are accompanied by an auditor's report prepared in accordance with the same auditing standards used to audit the financial statements and the auditor's report identifies the auditing standards used to conduct the audit and the accounting principles used to prepare the financial statements.

PART 6
REQUIREMENTS FOR ACQUISITION STATEMENTS

6.1 Acceptable Accounting Principles for Acquisition Statements –

(1) Acquisition statements included in a business acquisition report or included in a prospectus must be prepared in accordance with any of the following accounting principles:

(a) Canadian GAAP applicable to public enterprises;

(b) U.S. GAAP;

(c) International Financial Reporting Standards;

(d) accounting principles that meet the disclosure requirements for foreign private issuers, as that term is defined for the purposes of the 1934 Act, if

(i) the issuer or the acquired business is an SEC foreign issuer;

(ii) on the last day of the most recently completed financial year the total number of equity securities owned directly or indirectly by residents of Canada does not exceed ten per cent, on a fully-diluted basis, of the total number of equity securities of the SEC foreign issuer; and

(iii) the financial statements include any reconciliation to U.S. GAAP required by the SEC;

(e) accounting principles that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer or the acquired business is subject, if the issuer or the acquired business is a designated foreign issuer; or

(f) accounting principles that cover substantially the same core subject matter as Canadian GAAP, including recognition and measurement principles and disclosure requirements.

(2) Acquisition statements must be prepared in accordance with the same accounting principles for all periods presented.

(3) The notes to the acquisition statements must identify the accounting principles used to prepare the acquisition statements.

(4) If acquisition statements are prepared using accounting principles that are different from the issuer's GAAP, the acquisition statements for the most recently completed financial year and interim period that are required to be filed must be reconciled to the issuer's GAAP and the notes to the acquisition statements must

(a) explain the material differences between the issuer's GAAP and the accounting principles used to prepare the acquisition statements that relate to recognition, measurement, and presentation;

(b) quantify the effect of material differences between the issuer's GAAP and the accounting principles used to prepare the acquisition statements that relate to recognition, measurement and presentation, including a tabular reconciliation between net income reported in the acquisition statements and net income computed in accordance with the issuer's GAAP; and

(c) provide disclosure consistent with the issuer's GAAP to the extent not already reflected in the acquisition statements.

(5) Despite subsections (1) and (4), if the issuer is required to reconcile its financial statements to Canadian GAAP, the acquisition statements for the most recently completed financial year and interim period that are required to be filed must be

(a) prepared in accordance with Canadian GAAP applicable to public enterprises; or

(b) reconciled to Canadian GAAP applicable to public enterprises and the notes to the acquisition statements must

(i) explain the material differences between Canadian GAAP applicable to public enterprises and the accounting principles used to prepare the acquisition statements that relate to recognition, measurement, and presentation;

(ii) quantify the effect of material differences between Canadian GAAP applicable to public enterprises and the accounting principles used to prepare the acquisition statements that relate to recognition, measurement and presentation, including a tabular reconciliation between net income reported in the acquisition statements and net income computed in accordance with Canadian GAAP applicable to public enterprises; and

(iii) provide disclosure consistent with disclosure requirements of Canadian GAAP applicable to public enterprises to the extent not already reflected in the acquisition statements.

6.2 Acceptable Auditing Standards for Acquisition Statements –

(1) Acquisition statements that are required by securities legislation to be audited must be audited in accordance with

(a) Canadian GAAS; or

(b) U.S. GAAS.

(2) Despite subsection (1), acquisition statements filed by or included in a prospectus of a foreign issuer may be audited in accordance with

(a) International Standards on Auditing, if the auditor's report is accompanied by a statement by the auditor that

(i) describes any material differences in the form and content of the auditor's report as compared to an auditor's report prepared in accordance with Canadian GAAS; and

(ii) indicates that an auditor's report prepared in accordance with Canadian GAAS would not contain a reservation; or

(b) auditing standards that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer is subject, if the issuer is a designated foreign issuer.

(3) Acquisition statements must be accompanied by an auditor's report prepared in accordance with the same auditing standards used to audit the acquisition statements and the auditor's report must identify the auditing standards used to conduct the audit and the accounting principles used to prepare the financial statements.

(4) If acquisition statements are audited in accordance with paragraph (1)(a), the auditor's report must not contain a reservation.

(5) If acquisition statements are audited in accordance with paragraph (1)(b), the auditor's report must contain an unqualified opinion.

(6) Despite paragraph (2)(a) and subsections (4) and (5) an auditor's report that accompanies acquisition statements may contain a qualification of opinion relating to inventory if

(a) the issuer includes in the business acquisition report, prospectus or other document containing the acquisition statements, a balance sheet for the business that is for a date that is subsequent to the date to which the qualification relates; and

(b) the balance sheet referred to in paragraph (a) is accompanied by an auditor's report that does not contain a qualification of opinion relating to closing inventory.

6.3 Financial Information for Acquisitions Accounted for by the Issuer Using the Equity Method –

(1) If an issuer files, or includes in a prospectus, summarized financial information as to the assets, liabilities and results of operations of a business relating to an acquisition that is, or will be, an investment accounted for by the issuer using the equity method, the financial information must

(a) meet the requirements in section 6.1 if the term "acquisition statements" in that section is read as "summarized financial information as to the assets, liabilities and results of operations of a business relating to an acquisition that is, or will be, an investment accounted for by the issuer using the equity method," and

(b) disclose the reporting currency for the financial information, and disclose the measurement currency if it is different than the reporting currency.

(2) If the financial information referred to in subsection (1) is for any completed financial year, the financial information must

(a) either

(i) meet the requirements in section 6.2 if the term "acquisition statements" in that section is read as "summarized financial information as to the assets, liabilities and results of operations of a business relating to an acquisition that is; or will be, an investment accounted for by the issuer using the equity method," or

(ii) be derived from financial statements that meet the requirements in section 6.2 if the term "acquisition statements" in that section is read as "financial statements from which is derived summarized financial information as to the assets, liabilities and results of operations of a business relating to an acquisition that is, or will be, an investment accounted for by the issuer using the equity method"; and

(b) be audited, or derived from financial statements that are audited, by a person or company that is authorized to sign an auditor's report by the laws of a jurisdiction of Canada or a foreign jurisdiction, and that meets the professional standards of that jurisdiction.

PART 7
PRO FORMA FINANCIAL STATEMENTS

7.1 Acceptable Accounting Principles for *Pro Forma* Financial Statements –

(1) *Pro forma* financial statements must be prepared in accordance with the issuer's GAAP.

(2) Despite subsection (1), if an issuer's financial statements have been reconciled to Canadian GAAP under subsection 4.1(1) or paragraph 5.1(e), the issuer's *pro forma* financial statements must be prepared in accordance with, or reconciled to, Canadian GAAP applicable to public enterprises.

(3) Despite subsection (1), if an issuer's financial statements have been prepared in accordance with the accounting principles referred to in paragraph 5.1(c) and those financial statements are reconciled to U.S. GAAP, the *pro forma* financial statements may be prepared in accordance with, or reconciled to, U.S. GAAP.

PART 8
EXEMPTIONS FOR FOREIGN REGISTRANTS

8.1 Acceptable Accounting Principles for Foreign Registrants – Despite subsection 3.1(1), financial statements delivered by a foreign registrant may be prepared in accordance with

(a) U.S. GAAP;

(b) International Financial Reporting Standards;

(c) accounting principles that meet the disclosure requirements of a foreign regulatory authority to which the registrant is subject, if it is a foreign registrant incorporated or organized under the laws of that designated foreign jurisdiction; or

(d) accounting principles that cover substantially the same core subject matter as Canadian GAAP, including recognition and measurement principles and disclosure requirements, if the notes to the financial statements

(i) explain the material differences between Canadian GAAP as applicable to public enterprises and the accounting principles used that relate to recognition, measurement and presentation;

(ii) quantify the effect of material differences between Canadian GAAP as applicable to public enterprises and the accounting principles used that relate to recognition, measurement, and presentation; and

(iii) provide disclosure consistent with disclosure requirements of Canadian GAAP as applicable to public enterprises to the extent not already reflected in the financial statements.

8.2 Acceptable Auditing Standards for Foreign Registrants – Despite section 3.2, financial statements delivered by a foreign registrant that are required by securities legislation to be audited may be audited in accordance with

(a) U.S. GAAS if the auditor's report contains an unqualified opinion;

(b) International Standards on Auditing, if the auditor's report is accompanied by a statement by the auditor that

(i) describes any material differences in the form and content of the auditor's report as compared to an auditor's report prepared in accordance with Canadian GAAS; and

(ii) indicates that an auditor's report prepared in accordance with Canadian GAAS would not contain a reservation; or

(c) auditing standards that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the registrant is subject, if it is a foreign registrant incorporated or organized under the laws of that designated foreign jurisdiction,

if the financial statements are accompanied by an auditor's report prepared in accordance with the same auditing standards used to audit the financial statements and the auditor's report identifies the auditing standards used to conduct the audit and the accounting principles used to prepare the financial statements.

PART 9
EXEMPTIONS

9.1 Exemptions –

(1) The regulator or securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant an exemption.

9.2 Certain Exemptions Evidenced by Receipt –

(1) Subject to subsections (2) and (3), without limiting the manner in which an exemption may be evidenced, an exemption from this Instrument as it pertains to financial statements or auditor's reports included in a prospectus, may be evidenced by the issuance of a receipt for the prospectus or an amendment to the prospectus.

(2) A person or company must not rely on a receipt as evidence of an exemption unless the person or company

(a) sent to the regulator or securities regulatory authority, on or before the date the preliminary prospectus or the amendment to the preliminary prospectus or prospectus was filed, a letter or memorandum describing the matters relating to the exemption application, and indicating why consideration should be given to the granting of the exemption; or

(b) sent to the regulator or securities regulatory authority the letter or memorandum referred to in paragraph (a) after the date of the preliminary prospectus or the amendment to the preliminary prospectus or prospectus has been filed and receives a written acknowledgement from the securities regulatory authority or regulator that issuance of the receipt is evidence that the exemption is granted.

(3) A person or company must not rely on a receipt as evidence of an exemption if the regulator or securities regulatory authority has before, or concurrently with, the issuance of the receipt for the prospectus, sent notice to the person or company that the issuance of a receipt does not evidence the granting of the exemption.

(4) For the purpose of this section, a reference to a prospectus does not include a preliminary prospectus.

PART 10
EFFECTIVE DATE

10.1 Effective Date – This Instrument comes into force on March 30, 2004.

COMPANION POLICY
TO NATIONAL INSTRUMENT 52-107
ACCEPTABLE ACCOUNTING PRINCIPLES, AUDITING STANDARDS AND REPORTING CURRENCY

PART ONE GENERAL

1.1 Introduction and Purpose – This companion policy provides information about how the provincial and territorial securities regulatory authorities interpret National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (the Instrument). The Instrument does not apply to investment funds. The Instrument sets out the accounting principles and auditing standards that must be used by

(a) registrants required to deliver financial statements to a provincial or territorial securities regulatory authority.

(b) issuers required to file financial statements or any operating statement for an oil and gas property under National Instrument 51-102 and National Instrument 71-102,

(c) issuers required to include financial statements or any operating statement for an oil and gas property in a prospectus or take-over bid circular, or

(d) issuers required to deliver financial information that is filed under NI 51-102 or that is included in a prospectus or a take-over bid circular filed, or included in a document that is filed, with the securities regulatory authority that is

(i) derived from a credit support issuer's consolidated financial statements, or

(ii) summarized financial information as to the assets, liabilities and results of operations of a business relating to an acquisition that is, or will be, an investment accounted for by the issuer using the equity method.

Any other financial statement filed by a reporting issuer with a provincial or territorial securities regulatory authority must also be prepared in accordance with this Instrument.

1.2 Multijurisdictional Disclosure System – National Instrument 71-101 *The Multijurisdictional Disclosure System* (NI 71-101) permits certain U.S. incorporated issuers to satisfy Canadian disclosure filing obligations, including financial statements, by using disclosure documents prepared in accordance with U.S. federal securities laws. The Instrument does not replace or alter NI 71-101. There are instances in which NI 71-101 and the Instrument offer similar relief to a reporting issuer. There are other instances in which the relief differs. If both NI 71-101 and the Instrument are available to a reporting issuer, the issuer should consider both instruments. It may choose to rely on the less onerous instrument in a given situation.

1.3 Calculation of Voting Securities Owned by Residents of Canada – The definition of "foreign issuer" is based upon the definition of foreign private issuer in Rule 405 of the 1933 Act and Rule 3b-4 of the 1934 Act. For the purposes of the definition of "foreign issuer", in determining the outstanding voting securities that are directly or indirectly owned by residents of Canada, an issuer should

(a) use reasonable efforts to identify securities held by a broker, dealer, bank, trust company or nominee or any of them for the accounts of customers resident in Canada,

(b) count securities beneficially owned by residents of Canada as reported on reports of beneficial ownership, including insider reports and early warning reports, and

(c) assume that a customer is a resident of the jurisdiction or foreign jurisdiction in which the nominee has its principal place of business if, after reasonable inquiry, information regarding the jurisdiction or foreign jurisdiction of residence of the customer is unavailable.

This method of calculation differs from that of NI 71-101 which only requires a calculation based on the address of record. Some SEC foreign issuers may therefore qualify for exemptive relief under NI 71-101 but not under this Instrument.

1.4 Exemptions Evidenced by the Issuance of a Receipt – Section 9.2 of the Instrument states that an exemption from any of the requirements of the Instrument pertaining to financial statements or auditor's reports included in a prospectus may be evidenced by the issuance of a receipt for that prospectus. Issuers should not assume that the

relief evidenced by the receipt will also apply to financial statements or auditors' reports filed in satisfaction of continuous disclosure obligations or included in any other filing.

1.5 Filed or Delivered – Financial statements that are filed in a jurisdiction will be made available for public inspection in that jurisdiction, subject to the provisions of securities legislation in the local jurisdiction regarding confidentiality of filed material. Material that is delivered to a regulator, but not filed, is not required under securities legislation to be made available for public inspection. However, the regulator may choose to make such material available for inspection by the public.

1.6 Other Legal Requirements – Issuers and auditors should refer to National Instrument 52-108 *Auditor Oversight* for requirements relating to auditor oversight by the Canadian Public Accountability Board. In addition, issuers and registrants are reminded that they and their auditors may be subject to requirements under the laws and professional standards of a jurisdiction that address matters similar to those addressed by the Instrument, and which may impose additional or more onerous requirements. For example, applicable corporate law may prescribe the GAAP or GAAS required for financial statements. Similarly, applicable federal, provincial or state law may impose licensing requirements on an auditor practising public accounting in certain jurisdictions.

PART TWO ACCEPTABLE ACCOUNTING PRINCIPLES

2.1 Acceptable Accounting Principles for Foreign Issuers – Appendix A contains a chart outlining the accounting principles permitted for annual and interim financial statements of foreign issuers.

2.2 Canadian GAAP Applicable to Public Enterprises - National Instrument 14-101 *Definitions* defines Canadian GAAP as generally accepted accounting principles determined with reference to the Handbook. The Handbook has differing requirements for public enterprises and non-publicly accountable enterprises. The Instrument generally requires issuers and registrants to use Canadian GAAP applicable to public enterprises. The following are some of the significant differences in the provisions of Canadian GAAP applicable to public enterprises compared to those applicable to non-publicly accountable enterprises:

(a) financial statements for public enterprises cannot be prepared using the differential reporting options as set out in the Handbook;

(b) transition provisions applicable to enterprises other than public enterprises are not available; and

(c) financial statements must include any additional disclosure requirements applicable to public enterprises.

2.3 GAAP Reconciliations – The Instrument specifies that where a reconciliation to Canadian GAAP applicable to public enterprises or a reconciliation to the issuer's GAAP is required, the reconciliation must quantify the effect of material differences between that GAAP and the accounting principles used that relate to recognition, measurement and presentation in the subject financial statements.

While the differences affecting net income must be presented in a tabular format, differences relating to other aspects of the financial statements may be presented in either a tabular reconciliation or some other form of reconciliation.

2.4 Financial Statements After an SEC Issuer Changes From Canadian GAAP to U.S. GAAP –

(1) An SEC issuer may change from Canadian GAAP to U.S. GAAP any time during a year. If, after filing financial statements prepared in accordance Canadian GAAP for one or more interim periods during a year, the issuer decides to adopt U.S. GAAP, the issuer may be required to restate and re-file the interim financial statements for the current year previously filed. An SEC issuer that changes from Canadian GAAP to U.S. GAAP during a year should consult National Instrument 51-102 to determine which financial statements should be restated and re-filed in satisfaction of its continuous disclosure obligations. Similarly, issuers planning to file a prospectus should refer to the prospectus instrument under which the prospectus will be prepared and filed to determine the financial statements that it may be required to restate and re-file.

(2) Appendix B includes examples of formats for presenting comparative financial information required by paragraph 4.1(1)(b) of the Instrument for both annual and interim financial statements after an SEC issuer changes from Canadian GAAP to U.S. GAAP.

2.5 Acquisition Statements

The Instrument provides that issuers may file acquisition statements prepared in accordance with Canadian GAAP as applicable to public enterprises. This means that the financial statements of a private enterprise may need to be modified to adjust for the items discussed in section 2.2 of this policy.

Subsection 6.1(4) of the Instrument requires acquisition statements to be reconciled to the issuer's GAAP. In addition, if an issuer is required to reconcile its financial statements to Canadian GAAP, subsection 6.1(5) of the Instrument requires acquisition financial statements either be prepared in accordance with, or reconciled to, Canadian GAAP applicable to public enterprises. If an SEC issuer has prepared and filed both Canadian GAAP and U.S. GAAP financial statements for its most recently completed interim and annual period, and the issuer can provide acquisition statements prepared in accordance with U.S. GAAP, the issuer may apply for an exemption from the requirement to file acquisition statements prepared in accordance with, or reconciled to, Canadian GAAP applicable to public enterprises. An issuer granted this relief would be required to prepare the pro forma financial statements based on the issuer's U.S. GAAP financial statements and the U.S. GAAP acquisition statements and include a reconciliation of the pro forma financial statements to Canadian GAAP. If the issuer is granted this relief in the context of a prospectus, the issuer's U.S. GAAP financial statements must be included in the prospectus.

2.6 Acceptable Accounting Principles for Financial Information

If an issuer or registrant is required to file other financial information, such as selected financial data or a statement of capital calculations, staff expects that information to be prepared on a basis that is consistent with the principles applied in the financial statements.

PART THREE ACCEPTABLE ACCOUNTING PRINCIPLES AND AUDITING STANDARDS

3.1 Acceptable Accounting Principles – Subsection 3.1(3) of the Instrument requires that the notes to the financial statements identify the accounting principles used to prepare the financial statements. We believe that disclosing financial information to the marketplace in a news release without disclosing the accounting principles used to prepare the financial information is inconsistent with this requirement.

3.2 Accounting Principles that Cover Substantially the Same Core Subject Matter as Canadian GAAP - Paragraphs 5.1(e) and 8.1(d) of the Instrument indicate that foreign issuers may prepare their financial statements using accounting principles that cover substantially the same core subject matter as Canadian GAAP. We believe U.S. GAAP meets this criteria. The accounting principles of other jurisdictions may also meet this criteria if the principles are based on a fundamental conceptual framework and the jurisdiction has an established methodology for ensuring that the principles are updated regularly to keep pace with international developments in accounting.

In evaluating a jurisdiction's accounting principles, the issuer or registrant should consider whether, at a minimum, the core standards as identified by the International Organization of Securities Commissions at its May 2000 conference are addressed. These core standards include: presentation of financial statements; inventories; depreciation accounting; cash flow statements; net profit or loss for the period, fundamental errors and changes in accounting policies; events after the balance sheet date; construction contracts; income taxes; segment reporting; property, plant and equipment; leases; revenue; accounting for government grants and disclosure of government assistance; the effects of changes in foreign exchange rates; business combinations; borrowing costs; related party disclosures; consolidated financial statements and accounting for investments in subsidiaries; accounting for investments in associates; financial reporting in hyperinflationary economies, financial reporting of interests in joint ventures; financial instruments: disclosure and presentation; earnings per share; interim financial reporting; discontinuing operations; impairment of assets; provisions, contingent liabilities and contingent assets; intangible assets; and financial instruments: recognition and measurement. We may request the issuer or registrant provide a rationale for asserting that the accounting principles of the jurisdiction cover substantially the same core subject matter as Canadian GAAP.

3.3 Summary of Acceptable Auditing Standards – Appendix C contains a chart outlining the auditing standards permitted for the audit of financial statements of foreign issuers.

PART FOUR AUDITORS AND THEIR REPORTS

4.1 Auditor's Expertise – The securities legislation in most jurisdictions prohibits a regulator or securities regulatory authority from issuing a receipt for a prospectus if it appears to the regulator or securities regulatory authority that a person or company who has prepared any part of the prospectus or is named as having prepared or certified a report used in connection with a prospectus is not acceptable.

4.2 Canadian Auditors for Canadian GAAP and GAAS Financial Statements – A Canadian auditor is a person or company that is authorized to sign an auditor's report by the laws, and that meets the professional standards, of a jurisdiction of Canada. We would normally expect issuers and registrants incorporated or organized under the laws of Canada or a jurisdiction of Canada, and any other issuer or registrant that is not a foreign issuer nor a foreign registrant, to engage a Canadian auditor to audit the issuer's or registrant's financial statements if those statements are prepared in accordance with Canadian GAAP and will be audited in accordance with Canadian GAAS unless a valid business reason exists to use a non-Canadian auditor. A valid business reason would include a situation where the principal operations of the company and the essential books and records required for the audit are located outside of Canada.

Non-Canadian auditors auditing financial statements in accordance with Canadian GAAS and prepared by the issuer or registrant in accordance with Canadian GAAP are expected to consult or involve an auditor familiar with Canadian GAAS and Canadian GAAP as applicable to public enterprises.

4.3 Reservations in an Auditor's Report –

(1) The Instrument generally prohibits an auditor's report from containing a reservation, qualification of opinion, or other similar communication that would constitute a reservation under Canadian GAAS.

(2) Part 9 of the Instrument permits the regulator or securities regulatory authority to grant exemptive relief from the Instrument, including the requirement that an auditor's report not contain a reservation, qualification of opinion or other similar communication that would constitute a reservation under Canadian GAAS. However, we believe that such exemptive relief should not be granted if the reservation, qualification of opinion or other similar communication is

(a) due to a departure from accounting principles permitted by the Instrument, or

(b) due to a limitation in the scope of the auditor's examination that

(i) results in the auditor being unable to form an opinion on the financial statements as a whole,

(ii) is imposed or could reasonably be eliminated by management, or

(iii) could reasonably be expected to be recurring.

4.4 Auditors' Knowledge of an Issuer's Accounting Principles and Auditing Standards – A foreign issuer or foreign registrant may have its financial statements prepared and audited in accordance with accounting principles and auditing standards, respectively, that do not correspond to the home jurisdiction of its auditor. In these situations, we may request, during a review of the issuer's prospectus, continuous disclosure records or other filings, or a registrant's filings, a letter from the foreign auditor describing its expertise in the accounting principles used to prepare the issuer's or registrant's financial statements and the auditing standards applied. A similar request may be made if the issuer or registrant has reconciled its financial statements to a set of accounting principles that are different from those of the auditor's home jurisdiction.

APPENDIX A
Accounting Principles Permitted for Annual and Interim Financial Statements of Foreign Issuers[1]

Accounting Principles:	Foreign Issuers [2]		
	SEC Foreign Issuers [2, 3]	Designated Foreign Issuers [2, 3]	Other Foreign Issuers[3]
Canadian GAAP	✓ s. 3.1(1)	✓ s. 3.1(1)	✓ s. 3.1(1)
U.S. GAAP	✓ No reconciliation required s. 5.1(a)	✓ Reconciliation to Canadian GAAP may be required [4] s. 5.1(d) or 5.1(e)	✓ Reconciliation to Canadian GAAP required s. 5.1(e)
International Financial Reporting Standards	✓ No reconciliation required s. 5.1(b)	✓ No reconciliation required s. 5.1(b)	✓ No reconciliation required s. 5.1(b)
Foreign accounting principles used in an SEC filing	✓ Only if ≤ 10% Canadian shareholders Reconciliation to U.S. GAAP required for annual financial statements s. 5.1(c)		
Accounting principles accepted in the Designated Foreign Jurisdiction		✓ No reconciliation required s. 5.1(d)	
Accounting principles that cover substantially the same core subject matter as Canadian GAAP	✓ Reconciliation to Canadian GAAP required s. 5.1(e)	✓ Reconciliation to Canadian GAAP required s. 5.1(e)	✓ Reconciliation to Canadian GAAP required s. 5.1(e)

Notes

1 This chart should be read in conjunction with National Instruments 52-107, 51-102 and 71-102 and Companion Policy 71-102CP. The chart does not relate to financial statements other than those of reporting issuers.

2 These terms are defined in the Instrument.

3 The corresponding section references in the Instrument appear in the bottom right-hand corner of each cell.

4 A Canadian GAAP reconciliation would not be required if the designated foreign jurisdiction accepts financial statements prepared in accordance with U.S. GAAP.

Appendix B – Presentation of Comparatives after an SEC Issuer Changes from Canadian GAAP to U.S. GAAP

The following are examples of formats for presenting comparative financial information required by paragraph 4.1(1)(b) of the Instrument for both annual and interim financial statements after an SEC issuer changes from using Canadian GAAP to U.S. GAAP. The examples do not address the reconciliation requirements in paragraph 4.1(1)(a).

1. Annual Financial Statements

Option 1 – All comparatives presented on the face of the financial statements

(a) Balance Sheet, Statements of Income and Cash Flow

Most Recent Year (U.S. GAAP)	Prior Year Comparative Restated (U.S. GAAP)	Prior Year Comparative as Previously Reported (Canadian GAAP)
Financial statement line items		

(b) Notes to the Annual Financial Statements

- explanation of material differences between Canadian GAAP and U.S. GAAP relating to recognition, measurement and presentation
- quantification of the differences relating to recognition, measurement and presentation

Option 2 – Comparative figures as previously reported in Canadian GAAP presented in a note to the annual financial statements

(a) Balance Sheet, Statements of Income and Cash Flow

Most Recent Year (U.S. GAAP)	Prior Year Comparative Restated (U.S. GAAP)
Financial statement line items	

(b) Notes to the Annual Financial Statements

(i) Balance Sheet, Statements of Income and Cash Flow

Prior Year Comparative as Previously Reported (Canadian GAAP)
Financial statement line items

(ii) Supporting Reconciliation Information

- explanation of material differences between Canadian GAAP and U.S. GAAP relating to recognition, measurement and presentation, for the prior year comparatives
- quantification of the differences relating to recognition, measurement and presentation

2. Interim Financial Statements

Option 1 – All comparative figures presented on the face of the interim financial statements

(a) Balance Sheet

Most Recent Interim Period (U.S. GAAP)	Prior Year Comparative Restated (U.S. GAAP)	Prior Year Comparative as Previously Reported (Canadian GAAP)

Financial statement line items

(b) Statements of Income and Cash Flow

Most Recent Interim Period (3 months) (U.S. GAAP)	Comparative Interim Period (3 months) Restated (U.S. GAAP)	Comparative Interim Period (3 months) as Previously Reported (Canadian GAAP)	Most Recent Year-to-Date Interim Period (U.S. GAAP)	Comparative Year-to-Date Interim Period Restated (U.S. GAAP)	Comparative Year-to-Date Interim Period as Previously Reported (Canadian GAAP)
Financial statement line items					

(c) Notes to the Interim Financial Statements

- explanation of material differences between Canadian GAAP and U.S. GAAP for the comparative interim periods (most recent three months and year-to-date) relating to recognition, measurement and presentation, for the prior period comparatives
- quantification of the differences relating to recognition, measurement and presentation

Option 2 - Comparative figures as previously reported in Canadian GAAP presented in a note to the interim financial statements

(a) Balance Sheet

Most Recent Interim Period (U.S. GAAP)	Prior Year Comparative Restated (U.S. GAAP)
Financial statement line items	

(b) Statements of Income and Cash Flow

Most Recent Interim Period (3 months) (U.S. GAAP)	Comparative Interim Period (3 months) Restated (U.S. GAAP)	Most Recent Year-to-Date Interim Period (U.S. GAAP)	Comparative Year-to-Date Interim Period Restated (U.S. GAAP)
Financial statement line items			

(c) Notes to the Interim Financial Statements

(i) Balance Sheet Comparatives

Prior Year Comparative as Previously Reported (Canadian GAAP)
Financial statement line items

(ii) Statements of Income and Cash Flow Comparatives

Comparative Interim Period (3 months) as Previously Reported (Canadian GAAP)	Comparative Year-to-Date Interim Period as Previously Reported (Canadian GAAP)
Financial statement line items	

(iii) Supporting Reconciliation Information

- explanation of material differences between Canadian GAAP and U.S. GAAP for the comparative interim periods (most recent three months and year-to-date)
- quantification of the differences relating to recognition, measurement and presentation

Option 3 - Comparative figures as previously reported in Canadian GAAP presented in a note to the interim financial statements and integrated with reconciliation information

(a) Balance Sheet

Most Recent Interim Period (U.S. GAAP)	Prior Year Comparative Restated (U.S. GAAP)
Financial statement line items	

(b) Statements of Income and Cash Flow

Most Recent Interim Period (3 months) (U.S. GAAP)	Comparative Interim Period (3 months) Restated (U.S. GAAP)	Most Recent Year-to-Date Interim Period (U.S. GAAP)	Comparative Year-to-Date Interim Period Restated (U.S. GAAP)
Financial statement line items			

(c) Note to the Interim Financial Statements

(i) Balance Sheet Comparatives and Quantification of Differences

Prior Year Comparatives as Previously Reported (Canadian GAAP)	Reconciling Adjustments	Prior Year Comparative Restated (U.S. GAAP)
Financial statement line items		

(ii) Statements of Income and Cash Flow Comparatives and Quantification of Differences

Comparative Interim Period (3 months) as Previously Reported (Canadian GAAP)	Reconciling Adjustments	Comparative Interim Period (3 months) Restated (U.S. GAAP)	Comparative Year-to-Date Interim Period as Previously Reported (Canadian GAAP)	Reconciling Adjustments	Comparative Year-to-Date Interim Period Restated (U.S. GAAP)
Financial statement line items					

(**iii) Supporting Reconciliation Information**

- explanation of material differences between Canadian GAAP and U.S. GAAP relating to recognition, measurement and presentation which are quantified in the "Reconciling Adjustments" columns above.

APPENDIX C
Auditing Standards Permitted for the Audit of Financial Statements of Foreign Issuers[1]

Auditing Standards:	Foreign Issuers[2]		
	SEC Foreign Issuers [2,3]	Designated Foreign Issuers [2, 3]	Other Foreign Issuers[3]
Canadian GAAS	✓ s. 3.2	✓ s. 3.2	✓ s. 3.2
U.S. GAAS	✓ s. 5.2(a)	✓ s. 5.2(a)	✓ s. 5.2(a)
International Standards on Auditing	✓ [4] s. 5.2(b)	✓ [4] s. 5.2(b)	✓ [4] s. 5.2(b)
Auditing Standards Accepted in the Designated Foreign Jurisdiction[5]		✓ s. 5.2(c)	

Notes

1 This chart should be read in conjunction with National Instruments 52-107, 51-102 and 71-102 and Companion Policy 71-102CP. The chart does not relate to financial statements other than those of reporting issuers.

2 These terms are defined in the Instrument.

3 The corresponding section references in the Instrument appear in the bottom right-hand corner of each cell.

4 The audit report must be accompanied by a statement disclosing any material differences in the form and content of the audit report compared to a Canadian GAAS audit report.

5 The auditing standards must meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer is subject.

Chapter 6

Request for Comments

6.1.1 CSA Request for Comment on Discussion Paper 24-401 on Straight-through Processing, and Proposed National Instrument 24-101 Post-trade Matching and Settlement, and Proposed Companion Policy 24-101CP to National Instrument 24-101 Post-trade Matching and Settlement

CANADIAN SECURITIES ADMINISTRATORS' REQUEST FOR COMMENT ON DISCUSSION PAPER 24-401 ON STRAIGHT-THROUGH PROCESSING, AND PROPOSED NATIONAL INSTRUMENT 24-101 POST-TRADE MATCHING AND SETTLEMENT, AND PROPOSED COMPANION POLICY 24-101CP TO NATIONAL INSTRUMENT 24-101 POST-TRADE MATCHING AND SETTLEMENT

I. Introduction

The Canadian Securities Administrators (the CSA or we) are publishing for comment the following (collectively, the Documents):

- Canadian Securities Administrators' Discussion Paper 24-401 on Straight-through Processing and Request for Comments (the Paper)
- Proposed National Instrument 24-101 — *Post-Trade Matching and Settlement* (the Instrument)
- Proposed Companion Policy 24-101CP — To National Instrument 24-101 — *Post-Trade Matching and Settlement* (the Companion Policy)

The Documents have been approved for publication in Ontario, British Columbia, Saskatchewan and Alberta and are being published at this time by the Ontario Securities Commission (OSC). All other CSA jurisdictions are expected to approve the Documents for public comment. The comment period will end on July 16, 2004,

The Paper discusses the importance of the securities clearing and settlement system and straight-through processing (STP) to the Canadian capital markets. It sets out the industry's role in achieving STP and the CSA's observations of industry efforts.

The Paper describes the industry's requests for regulatory action from the CSA, and the CSA's responses, in the context of the following key STP initiatives:

1. *Trade comparison and matching* - Improving the post-trade, pre-settlement processing of institutional trades in Canada, particularly the confirmation and affirmation process, whereby the details (including terms of settlement) of a securities trade executed on behalf of an institutional investor are agreed upon by all relevant parties on the date the trade is executed (or T).

2. *Corporate actions reporting* - Improving the process in Canada of disseminating entitlement (also known as *corporate actions*) information on publicly traded securities in a standardized or data-defined format received from issuers or offerors.

3. *Using the Large Value Transfer System for corporate entitlement payments* - Requiring issuers and offerors to make their entitlement payments (such as dividend, interest, redemption, repurchase or take-over bid payments) in funds transmitted by the *Large Value Transfer System (LVTS).*

4. *Addressing processing issues relating to client name model for investment funds* - Improving the post-trade processing of investment fund transactions in the context of the *client name* business model as compared to the *nominee name* business model.

5. *Improving the processing of securities lending transactions* - Introducing electronic functionality for recalling loaned securities.

6. *Furthering immobilization and dematerialization of physical securities* - Reducing the physical movement of securities certificates in connection with the settlement of transactions in publicly traded securities among market participants.

The industry has identified the need for the CSA to mandate market participants to complete confirmation and affirmation, or matching, of institutional trades on T as the most important regulatory initiative to support the industry's STP milestones. The CSA agree that it is necessary to take regulatory action and propose to mandate a requirement that institutional trades be matched as soon as practicable after a trade is executed and in any event no later than the close of business on T. The CSA also propose to adopt general T+3 settlement cycle and *good delivery* rules.

Consequently, the CSA are publishing for comment, together with the Paper, the proposed Instrument and Companion Policy. A summary of the proposed Instrument is set out below.

II. Specific Request for Comments

Please refer to the Paper (under Part IV: Conclusion and Request for Comments).

III. Background to Proposed Instrument

Since the early 1970's, many initiatives have been implemented by the Canadian securities industry to enhance the efficiency of the securities clearing and settlement process and reduce risk in our capital markets. These initiatives include developing and requiring the use of a central securities depository and central counterparty (CSD/CCP) utility, encouraging the immobilization of securities and the use of *book-based* systems, and requiring that trades be settled within three days of the day of the trade (described as a T+3 settlement cycle period). These initiatives have rendered the process of clearing and settlement of securities trades in Canada one of the most efficient and safest in the world. However, some aspects of securities clearing and settlement need to be improved, particularly functions performed outside the scope of the CSD/CCP activities of a clearing agency in the Canadian capital markets. In the past decade, the volumes and dollar values of securities trades in Canada and globally have grown substantially. The increasing volumes mean existing back-office systems and procedures of market participants are challenged to meet post-trade processing demands, exacerbating the risk that a transaction may not be completed or that one of the parties to a transaction may fail.

1. What is trade matching?

A first step in settling a securities trade is to ensure that the buyer and the seller agree on the details of the transaction, a process referred to as trade confirmation and affirmation or *trade comparison and matching*. A dealer who executes trades on behalf of others is required to confirm trade details, not only with the counterparty to the trade, but also with the client for whom it acted. Agreement of trade details (sometimes referred to as *trade data elements*) must occur as soon as possible so that errors and discrepancies in the trades can be discovered early in the clearing and settlement process. Errors in recording trade details could result in inaccurate books and records, increased costs, and increased market risk and credit risk, which in turn could lead to systemic disturbances in the market. International standards and best practices suggest that speedy, accurate verification of trades and matching settlement instructions is an essential precondition for avoiding settlement failures, especially when the settlement cycle is relatively short.

Automatic trade comparison and matching systems are increasingly common in certain markets. In Canada's capital markets, different systems and processing and settlement practices have evolved over time. These include: *broker-to-broke*r trades of exchange-listed securities, frequently associated with retail customer trades, which are generally matched or *locked-in* at a stock exchange or other marketplace; trades of non-exchange-traded securities between two participants of The Canadian Depository for Securities Limited (CDS), which can effectively be confirmed and affirmed through CDS' trade confirmation and affirmation system; and mutual and segregated fund transactions, where FundSERV's facilities provide a mechanism for matching, leading to the settlement of investment fund units for retail clients.

In contrast to these systems, *institutional trades* do not have the benefit of any formal mechanism or system that facilitates trade comparison and matching. Institutional investors account for a large percentage of the trading activity in our capital markets in terms of number of securities and value traded. The typical institutional trade involves at least three parties: an investment manager or portfolio adviser (institutional investor), usually acting on behalf of one or more underlying client accounts, who decides what securities to buy or sell and how the assets should be allocated among the client accounts; a dealer to execute the resulting trades; and a financial institution acting as custodian to hold the institutional investor's assets. After placing an order with, and receiving a notice of execution of a trade from, a dealer, the institutional investor must provide the dealer and custodian with certain details to facilitate the settlement of the trade. In particular, the institutional investor must provide details with respect to the underlying client accounts managed by it, and must instruct the custodian to release funds and/or securities to the clearing agency. The dealer, in turn, must issue a customer trade confirmation containing required information pertaining to the trade pursuant to securities legislation or the rules of a self-regulatory organization (SROs). A key difference between institutional and retail trade processing is that not all of the 26 trade data elements required to initiate an institutional notice of execution are required at a retail level.

According to the Canadian Capital Markets Association (CCMA),[1] the timely clearing and settlement of institutional trades is inhibited by manual processing, over-night batch runs, the undisciplined flow of information, and expensive trade data errors. Inadequate technology is the leading source of problems in the current processing environment. There is too much reliance on manual processing, a lack of real-time functionality, a lack of standard interfaces and inter-operability, and poor communication mechanisms. The current process of confirming and affirming trades is also fragmented and sequential and will not support future trade volume increases of a magnitude we have experienced during the last ten years. The current institutional trade processing model will need to be re-engineered, especially if the industry or regulators decide to move to a T+1 settlement cycle period.

2. What is trade settlement?

A trade executed on the facilities of a marketplace is the entering into of a contract for the purchase or sale of securities. The marketplace is not directly involved with the exchange of property for other property or money. The rules and customs of a marketplace or SRO will generally set the terms of the contracts that are formed through the trading of securities. Settlement of trades in most equity and long-term debt securities will usually occur on T+3.[2]

Settlement is to be distinguished from clearance. Clearing is the process which begins immediately after the execution of a trade, and includes the comparison and trade matching process. It also includes the calculation of the mutual obligations of market participants, usually on a net basis, for the exchange of securities and money—a process which occurs within the operations of a clearing agency. The concept of *clearing* or *clearance* is therefore given a broad meaning to include the process of transmitting, reconciling and confirming payment orders or security transfer instructions prior to settlement. *Settlement* is, on the other hand, the moment when the property right or entitlement to the securities is transferred finally and irrevocably from one investor to another, usually in exchange for a corresponding transfer of money. In the context of settlement of a trade through the facilities or services of a clearing agency, settlement should be viewed as the discharge of obligations in respect of funds or securities, computed on a net basis, between and among the clearing agency and the participants of the clearing agency.

IV. Substance and Purpose of Proposed Instrument

The purpose of the proposed Instrument is to provide a framework in provincial securities legislation for ensuring more efficient post-trade processing of trades in publicly traded securities. The Instrument requires dealers and their institutional clients to complete the process of trade comparison and matching as quickly as practicable—by the close of business on T, as a general rule, or by the close of business on the day following trade date, or T+1, where exception processing is required to correct the details of a trade.

In addition, the Instrument requires trades in depository eligible securities to be settled within T+3. It also contains a *good delivery rule* that requires all delivery-versus-payment (DVP) or receive-versus-payment (RVP) trades in depository eligible securities to be settled through the facilities of a recognized clearing agency. These general requirements, which already exist to some extent in SRO and marketplace rules, will complement existing requirements and strengthen the securities clearing and settlement system in Canada.

1. Summary of Proposed Instrument

The Instrument mandates dealers and portfolio advisers (that is, advisers that have discretionary trading authority over client accounts) to *take all necessary step*s to match a trade as soon as practicable after the trade is executed and in any event no later than the close of business on T. To enable matching of trades executed on behalf of institutional clients on T, dealers, advisers and other parties will have to *take all necessary steps* to promptly compare the trade data elements. Dealers are required to enter into a written *trade-matching compliance agreement* with their institutional clients before they can execute trades on behalf of their clients on a DVP or RVP basis. The Instrument allows for trade comparison and matching to be undertaken through centralized facilities operated by a recognized clearing agency, a recognized exchange, a recognized quotation and trade reporting system, or a *matching service utility*. As described in the Companion Policy, a person or company subject to the Instrument or bound by a trade-matching compliance agreement will be presumed to have *taken all necessary steps* to match a trade as soon as practicable after the trade is executed if the person or company has complied with best practices and standards for institutional trade processing established and generally accepted by the industry as a whole.[3] The Companion Policy describes certain key trade data elements that need to be confirmed and affirmed as soon as practicable

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1 The CCMA is an organization founded in 2000 by industry groups and participants in the financial services industries to promote and lead the STP initiatives in Canada.

2 See Rule 5-103 of the Toronto Stock Exchange and Regulation 800.27 of the Investment Dealers Association of Canada.

3 The CCMA released on June 9, 2003 for public comment a document entitled *Canadian Securities Marketplace Best Practices and Standards: Institutional Trade Processing, Entitlements and Securities Lending* (CCMA Best Practices and Standards White Paper) that sets out best practices and standards for the processing for settlement of institutional trades, the processing of entitlements (corporate actions), and the processing of securities lending transactions. The final version of the CCMA Best Practices and Standards White Paper dated December 2003 can be found on the CCMA website at www.ccma-acmc.ca.

after a trade is executed. In addition, the Instrument sets out certain filing and reporting requirements for matching service utilities, which will enable the Canadian securities regulatory authorities to monitor compliance with industry best practices and standards for trade matching and progress towards industry-wide inter-operability.

Finally, the Instrument requires dealers to take all necessary steps to settle trades in depository eligible securities no later than the end of T+3. It also prohibits dealers from executing a trade in a depository eligible security on behalf of a client pursuant to a DVP or RVP arrangement, unless settlement of the trade is effected through the facilities of a recognized clearing agency.

V. Authority for Proposed Instrument in Ontario

In Ontario, the proposed Instrument is being made under the following provisions of the *Securities Act* (Ontario) (the Act):

- Paragraph 11 of subsection 143(1) of the Act allows the Commission to make rules *regulating the* listing or *trading of publicly traded securities*, including requiring reporting of trades and quotations.

- Paragraph 2(i) of subsection 143(1) of the Act allows the Commission to make rules in respect of *standards of practice and business conduct of registrants in dealing with their customers and clients and prospective customers and clients*.

- Paragraph 12 of subsection 143(1) of the Act allows the Commission to make rules regulating recognized stock exchanges, recognized self-regulatory organizations, recognized quotation and trade reporting systems, and recognized clearing agencies.

VI. Alternatives to Proposed Instrument Considered

In proposing the Instrument, the CSA had considered as an alternative not implementing any regulatory requirement, relying instead on the SROs to impose trade comparison and matching by the end of T. We believe that market participants are looking for assurances that, before they invest in the necessary financial and technical resources to improve post-trade processing, a requirement to complete trade comparison and matching by the end of T will become a rule subject to compliance and enforcement by the securities regulatory authorities. We seek comment on this specific point. See, in particular, Question 4 and the related discussion in the Paper (under Part III: Mandating Requirements - CSA Response to Industry — B. Institutional trade matching on trade date — 3. CSA response: proposed National Instrument).

VII. Unpublished Materials

In proposing the Instrument and publishing the Paper, the CSA have not relied on any significant unpublished study, report, or other material.

VIII. Anticipated Costs and Benefits

Please refer to the Paper (under Part I: The Canadian Securities Clearing and Settlement System and Straight-through Processing — C. Why is STP important to the Canadian capital markets?)

In summary, the CSA are of the view that the Instrument offers several benefits to the Canadian capital markets, including but not limited to the following:

- Reduction of processing costs due to development of STP systems;

- Reduction of operational risk due to development of STP systems;

- Protection of Canadian market liquidity;

- Reduction of settlement risk;

- Overall mitigation of systemic risk in, and support for the global competitiveness of, the Canadian capital markets.

The CSA recognize, however, that implementing the Instrument may entail costs, which will be borne by market participants. In the CSA's view, the benefits of the Instrument justify its costs. General securities law requirements to match trades before the end of T and settle trades before the end of T+3 will augment the efficiency and enhance the integrity of capital markets. It promises to reduce both risk and costs, generally benefit the investor, and improve the global competitiveness of our capital markets. In addition, in assessing the anticipated costs and benefits of the Instrument to the industry, we carefully considered the industry's express desire for CSA regulatory action in this area.

IX. Regulations to be Amended or Revoked (Ontario)

None.

X. Comments and Questions

You are invited to comment on any aspect of the Documents. In particular, you are asked to respond or otherwise comment on the specific questions set out in the Paper. Please refer to the Paper (under Part IV: Conclusion and Request for Comments). Please submit your comments in writing before July 16, 2004.

Submissions should be sent to all securities regulatory authorities listed below in care of the Ontario Securities Commission in duplicate, as indicated below:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Securities Administration Branch, New Brunswick
Securities Office, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Nunavut
Registrar of Securities, Yukon Territory

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario
M5H 3S8
jstevenson@osc.gov.on.ca

Submissions should also be addressed to the *Autorité des marchés financiers (Québec)* as follows:

Madame Anne-Marie Beaudoin
Directrice du secrétariat de l'Autorité
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal (Québec) H4Z 1G3
Telephone: 514-940-2199 ext 2511
Fax: 514-864-6381
e-mail: consultation-en-cours@lautorite.qc.ca

A diskette containing the submissions should also be submitted. As securities legislation in certain provinces requires a summary of written comments received during the comment period be published, confidentiality of submissions cannot be maintained.

Questions may be referred to:

Randee Pavalow
Director, Capital Markets,
Ontario Securities Commission
(416) 593-8257
rpavalow@osc.gov.on.ca

Maxime Paré
Senior Legal Counsel, Market Regulation
Capital Markets,
Ontario Securities Commission
(416) 593-3650
mpare@osc.gov.on.ca

Emily Sutlic
Legal Counsel, Market Regulation
Capital Markets
Ontario Securities Commission
Tel: (416) 593-2362
esutlic@osc.gov.on.ca

April 16, 2004.

6.1.2 CSA Request for Comment - Discussion Paper 24-401 on Straight-through Processing

CANADIAN SECURITIES ADMINSTRATORS' REQUEST FOR COMMENT - DISCUSSION PAPER 24-401 ON STRAIGHT-THROUGH PROCESSING

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PART IV: CONCLUSION AND REQUEST FOR COMMENTS

EXECUTIVE SUMMARY

The continued success of Canada's capital markets depends on the ability of our markets to compete with global markets. This Discussion Paper and Request for Comments (Paper) discusses the importance of straight-through processing (STP) to the securities clearing and settlement system and the efficiency and global competitiveness of Canada's capital markets. The Canadian Securities Administrators (CSA or we) raise concerns about the risks of not achieving STP objectives in Canada on an industry-wide basis at the same time as the United States (U.S.) and seek comment on regulatory approaches to address these objectives. The Paper is organized into four parts.

I. Importance of an efficient clearing and settlement system to competitiveness of Canadian capital markets: Part I discusses the importance of the securities clearing and settlement system and STP to the Canadian capital markets.

The clearing and settlement process is a critical component of the financial market infrastructure. The process involves many market participants: central securities depositories, banks, custodians, dealers, issuers, transfer agents, investment advisers, investors and service providers.

Implementing straight-through processing will enable the direct capture of trade details from order taking at the front-end of trading systems to the complete automated processing of confirmation and settlement instructions without the need for the re-keying of data. A key reason for achieving industry-wide STP is to position the industry and market participants for future growth and to maintain the global competitive position of the Canadian capital markets. STP will reduce firm and systemic risk while enhancing operational efficiency.

II. Monitoring industry efforts: Part II sets out the industry's role in addressing STP and the CSA's observations of industry efforts.

Implementing STP throughout the industry requires changing business processes, identifying common technology, setting standards, and building interfaces and utilities. The solutions to implementing industry-wide STP must accommodate the complexity of the industry, particularly the significant differences in type and size of market participants. It is appropriate for the industry to identify the issues, the solutions and the critical path to achieving those solutions. The Canadian Capital Markets Association (CCMA) was founded in 2000 by the industry to provide the necessary leadership to achieve STP in Canada. The CSA have largely been depending on the CCMA to identify what needs to be achieved to implement STP across the industry and how to implement the various steps.

The CSA have been monitoring the CCMA efforts in their observer role in the CCMA committees as well as through industry surveys. The surveys raised concerns about the degree of STP preparation and readiness of market participants. Also, the CCMA has not responded to date to staff's request for information on the critical path to implement key STP goals and how the Canadian industry's efforts compare to U.S. industry efforts. The CSA believe this raises concerns about the industry's efforts to achieve industry-wide STP by June 2005, and increases risks to the competitiveness of the Canadian capital markets.

III. Mandating requirements – proposed institutional trade processing rule: Part III describes the CCMA's requests for regulatory action from the CSA, and the CSA's responses, in the context of the following key STP initiatives of the CCMA:

1. *Trade comparison and matching* - Improving the post-trade, pre-settlement processing of institutional trades in Canada, particularly the confirmation and affirmation process, whereby the details (including terms of settlement) of a securities trade executed on behalf of an institutional investor are agreed upon by all relevant parties on the date the trade is executed (or T).

2. *Corporate actions reporting* - Improving the process in Canada of disseminating entitlement (also known as *corporate actions*) information on publicly traded securities in a standardized or data-defined format received from issuers or offerors.

3. *Using the Large Value Transfer System for corporate entitlement payments* - Requiring issuers and offerors to make their entitlement payments (such as dividend, interest, redemption, repurchase or take-over bid payments) in funds transmitted by the *Large Value Transfer System (LVTS).*

4. *Addressing processing issues relating to client name model for investment funds* - Improving the post-trade processing of investment fund transactions in the context of the *client name* business model as compared to the *nominee name* business model.

5. *Furthering immobilization and dematerialization of securities* - Reducing the physical movement of securities certificates in connection with the settlement of transactions in publicly traded securities among market participants.

6. *Improving the processing of securities lending transactions* - Introducing electronic functionality for recalling loaned securities.

The CCMA has identified specific regulatory and legal measures that the industry believes are necessary to implement STP and improve the efficiency and soundness of the Canadian securities clearing and settlement system. In particular, the CCMA has identified the need for the CSA to mandate market participants to complete confirmation and affirmation, or matching, of institutional trades on T as the most important regulatory initiative to support the industry's STP milestones. The CSA agree that it is necessary to take regulatory action and propose to mandate a requirement that institutional trades be matched as soon as practicable after a trade is executed and in any event no later than the close of business on T. The CSA also propose to adopt general T+3 settlement cycle and *good delivery* rules.

Consequently, the CSA are publishing for comment, together with the Paper, proposed *National Instrument 24-101 — Post-Trade Matching and Settlement* (the Proposed Instrument) and Companion Policy 24-101CP — To National Instrument 24-101 — *Post-Trade Matching and Settlement* (the Companion Policy). The Proposed Instrument mandates dealers and portfolio advisers to take all necessary steps to match trades in depository eligible securities as soon as practicable after the trade is executed and in any event no later than the close of business on T. Dealers would be required to enter into a *trade-matching compliance agreement* with their institutional clients before they can execute trades in depository eligible securities on behalf of their clients on a delivery-versus-payment (DVP) or receive-versus-payment (RVP) basis.

Today the trade confirmation and affirmation process, or trade comparison and matching process, is a sequential and largely manual process involving institutional investors, dealers and custodians. The requirement in the Proposed Instrument to complete this process before the close of business on T will mean that institutional investors, dealers and custodians must change their technology systems and business processes. While not mandatory, the Proposed Instrument contemplates the use of centralized facilities operated by a recognized clearing agency, a recognized exchange, a recognized quotation and trade reporting system, or a *matching service utility* to perform the trade comparison and matching process. To the extent a matching service utility offers its services in the Canadian capital markets, it will be required to comply with certain filing, reporting and other requirements under the Proposed Instrument. The CSA hope that the Proposed Instrument will facilitate adoption of industry best practices and standards for institutional trade comparison and matching and encourage industry-wide inter-operability. Finally, the Proposed Instrument requires dealers to take all necessary steps to settle trades in depository eligible securities no later than the end of T+3 and permits dealers to settle client trades in depository eligible securities on a DVP/RVP basis only through the facilities of a recognized clearing agency.

In addition to the above, the CSA anticipate publishing for comment in the near future proposed technical amendments to National Instrument 81-102 — *Mutual Funds* (NI 81-102) and Companion Policy 81-102CP — To National Instrument 81-102 — *Mutual Funds* (CP 81-102CP) to facilitate the processing of investment fund transactions on a STP basis. Also, concurrent with those amendments, the Ontario and Alberta securities commissions (respectively, OSC and ASC) will propose amending OSC Policies 5.3 and 5.4 and ASC Policies 4.3 and 4.4 to remove the requirement for certain unincorporated closed-end investment funds to issue certificates to their security holders.

IV. Conclusion and requests for comments: Part IV summarizes the main points of the Paper, and reproduces the specific requests for comments set forth below. Certain capitalized terms used below have been defined in the National Instrument or this Paper.

Question 1: If the CSA were to implement mandatory STP readiness certificates, what should be the subject matter of such certificates?

Question 2: Is it important to the competitiveness of the Canadian capital markets to reach STP at the same time as the U.S.? Please provide reasons for your answer. Are there any factors or challenges unique to the Canadian capital markets?

Question 3: Should it be one of the CCMA's tasks to identify the critical path to reach specific STP goals? If so, what steps and goals should be included?

Question 4: Should the CSA require market participants to match institutional trades on trade date? Would amending SRO rules to require trade matching on T be more effective than the Proposed Instrument? Is the effective date of July 1, 2005 achievable?

Question 5: Is a close of business definition required? If so, what time should be designated as close of business?

Question 6: Should the Proposed Instrument expressly identify and require matching of each trade data element, or is it sufficient for the Proposed Instrument to impose a general requirement to match on T and rely on industry best practices and standards to address the details?

Question 7: Should the CSA rely on the best practices and standards established by the CCMA ITPWG?

Question 8: The CSA seek comments on the scope of the Proposed Instrument. Have we captured the appropriate transactions and types of securities that should be governed by requirements to effect trade comparison and matching by the end of T and settlement by the end of T+3? Have we appropriately limited the rule to *public* secondary market trades?

Question 9: Is the contractual method the most feasible way to ensure that all or substantially all of the *buy side* of the industry will match their trades by the end of T?

Question 10: Should an exception to the requirement to match a trade on T be allowed when parties are unable to agree to trade details before the end of T and are required, as a result, to correct the trade data elements before matching?

Question 11: Should registrants be required to report all exceptions from matching by the close of business on T? If so, who should receive the report (e.g. recognized clearing agency, SROs, and/or securities regulatory authorities)?

Question 12: Is it necessary to mandate the use of a *matching service utility* in Canada? If so, how would the appropriate centralized trade matching system be identified? Are there institutional investors or investment managers that may not benefit from being forced into an automated centralized trade matching system? Can STP trade matching be achieved without a matching service utility?

Question 13: Should the scope of functions of a matching service utility be broader?

Question 14: Are the filing and reporting requirements set out in the Proposed Instrument for a matching service utility sufficient, or should a matching service utility be required to be recognized as a clearing agency under provincial securities legislation?

Question 15: Can the Canadian capital markets support more than one matching service utility? If so, what should be the inter-operability requirements?

Question 16: Should the CSA mandate a T+3 settlement cycle? Should the CSA mandate a T+1 settlement cycle when the U.S. moves to T+1 and the SEC amends its T+3 Rule?

Question 17: Should the CSA require the reporting of corporate actions into a centralized *hub*? If not, is it more appropriate for exchanges and other marketplaces to impose this requirement through listing or other requirements? Who should pay for the development and maintenance of the central *hub*?

Question 18: Should the CSA wait until a *hub* has been developed by the industry before it imposes any requirements?

Question 19: Should the CSA require issuers and offerors to make their entitlement payments by means of the LVTS?

Question 20: If there is a CSA requirement to make entitlement payments in LVTS funds, should the requirement apply only to payments in excess of a certain minimum value? If so, what should that minimum value be?

Question 21: Should the CSA consider implementing any additional rules to encourage and facilitate the investment funds industry to move towards an STP business model? If so, what issues should be addressed by the CSA?

Question 22: Should the CSA develop rules that require the immobilization and, to the extent permitted by corporate and other law, dematerialization of publicly traded securities in Canada?

Question 23: To the extent DRS systems operate in Canada, should a securities regulatory authority regulate transfer agents that are operating or using such DRS systems?

Question 24: Should there be separate DRS systems and should they be required to be inter-operable?

Question 25: Is it sufficient for the Canadian capital markets to rely solely on existing SRO segregation rules? Or, given the growing reliance on the indirect holding system, should the CSA consider an active role in developing comprehensive rules on segregation of customer assets?

PART I: THE CANADIAN SECURITIES CLEARING AND SETTLEMENT SYSTEM AND STRAIGHT-THROUGH PROCESSING

A. Nature and Importance of the Securities Clearing and Settlement System

1. Nature of a securities clearing and settlement system

A *securities clearing and settlement system* comprises the spectrum of arrangements and activities in the capital markets for the confirmation, clearance and settlement of securities transactions, the safeguarding of securities and certain other *back-office* and *post settlement functions.*[1] The Group of Thirty (G-30) describes securities clearing and settlement as "a core financial function on which fundamental confidence in the financial markets depends".[2]

Clearing and settlement encompasses a process which commences immediately after a trade is executed and ends with the final transfer of the property interest in securities in exchange for the payment of a price between buyer and seller.[3] While it is generally recognized that the clearing and settlement process is central to all securities market activity, it rarely receives the same amount of attention as the front-office trade execution process, because the back-office processes of the markets are generally complex and invisible to the public.[4] The institutional arrangements that comprise a securities clearing and settlement system for a domestic market or a connected group of markets involve many players: central securities depositories, central counterparties, banks, custodians, dealers, issuers, transfer agents, investment advisors, investors and service providers.

2. Importance of the securities clearing and settlement process to efficiency and financial safety of market

The broad spectrum of functions and activities that comprise a securities clearing and settlement system are a "critical component of the infrastructure of global financial markets".[5] They have become increasingly important to the efficiency and financial safety of the capital markets.

According to the Committee on Payment and Settlement Systems of the Group of Ten central banks (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO), weaknesses in securities clearing and settlement systems can be a source of systemic disturbances to securities markets and to other components of a financial system.[6] Indeed, a major reason why clearance and settlement has become an important global public policy topic in recent years is that inadequacies in the securities clearing and settlement system can be one of the main vehicles by which the consequences of the failure of a market participant, no matter where situated, spread to others around the globe.[7] Therefore,

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1 The Committee on Payment and Settlement Systems (CPSS) defines *back-office* as the part of a firm that is responsible for post-trade activities. Depending upon the organizational structure of the firm, the back office can be a single department or multiple units (such as documentation, risk management, accounting or settlements). See Committee on Payment and Settlement Systems, *A glossary of terms used in payments and settlement systems*, January 2001, revised July 2001, Bank for International Settlements (the CPSS Glossary). The Canadian Capital Markets Association (CCMA) defines *post-settlement function* as the administrative functions connected with safekeeping securities, such as dividend payments; stock dividend, warrant, and bonus share processing; notification of warrants, rights and tender offers; and other corporate actions. See CCMA's *Canadian Securities Industry Glossary*, March 13, 2002, available on the CCMA's Web site at www.ccma-acma.ca (the CCMA Glossary). We note that our use of the expression *clearing and settlement system* in this Paper should not be confused with the specific definition given to this same expression in the federal *Payment Clearing and Settlement Act*, 1996 c. 6, sch. In this Paper, we use the expression in a broader context to generally describe the full set of institutional arrangements for confirmation, clearance and settlement of securities trades and safekeeping of securities (see *securities settlement systems* in the CPSS Glossary).

2 See *Global Clearing and Settlement: A Plan of Action,* report of the G-30 released on January 23, 2003; at page 1 - Executive Summary (G-30 report).

3 A *trade* executed on the facilities of a marketplace is merely the entering into a contract for the purchase and sale of securities. It is not the exchange of property for other property or money. The rules and customs of the marketplace will generally set the terms of the contracts that are formed through the trading of securities. For example, settlement of trades in most equity and long-term debt securities will usually occur on the third day after the date of the trade or *T+3*. See Rule 5-103 of the Toronto Stock Exchange (TSX) and Regulation 800.27 of the Investment Dealers Association of Canada (IDA). *Clearance* or *clearing* means the process of calculating the mutual obligations of market participants, usually on a net basis, for the exchange of securities and money. *Clearing* or *clearance* is also given a broader meaning to include the process of transmitting, reconciling and confirming payment orders or security transfer instructions prior to settlement, including the netting of instructions and the establishment of final positions for settlement. *Settlement* is the process by which the property right or entitlement to the securities is transferred finally and irrevocably from one investor to another, usually in exchange for a corresponding transfer of money.

4 G-30 report, at 2.

5 See *Recommendations for securities settlement systems - Report of the Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions (Joint Task Force) on securities settlement systems*, dated November 2001, at para. 1.1 (the CPSS-IOSCO report).

6 CPSS-IOSCO report, at para. 1.2.

7 See J.S. Rogers, "Policy Perspectives on Revised U.C.C. Article 8", (1996) 43 U.C.L.A. Rev. 1431, at page 1437.

improvements in the clearance and settlement process, including improvements to operational systems and processes and reforms to applicable laws and regulations, are an important component in a larger general initiative to reduce systemic risk.[8]

B. What is Straight-through Processing?

STP is defined as the passing of information seamlessly and electronically among all participants involved in a securities transaction process.[9] Implementing STP will enable the direct capture of trade details from order taking at the front-end of trading systems and complete automated processing of confirmations and settlement instructions without the need for the re-keying or re-formatting of data.[10] STP implies electronic rather than manual interfaces between market participants, market infrastructure entities and service providers.[11] Achieving STP can affect the entire life cycle of a trade, and will largely involve changes to processes and systems from the front offices to the back offices of market participants.

Achieving STP also means achieving *inter-operability* in the marketplace. Inter-operability in the marketplace means the ability of entities along the clearing and settlement chain to communicate and work with other entities without special effort on the part of users.[12] Inter-operability involves ensuring throughout the industry technical compatibility of systems (such as standardized communication, messaging, data, and timing) and compatible processes, business practices, controls, technologies, products, fee structures, and the like.[13]

C. Why is STP Important to the Canadian Capital Markets?

1. Competitiveness of the Canadian capital markets

A key reason for achieving industry-wide STP is to position the industry and market participants for future growth and maintain the global competitiveness of the Canadian capital markets.[14] The same conditions leading to the 1989 G-30 recommendations[15] and implementation in 1995 of a North American settlement cycle period of three days after the date of trade (T+3) were noted in 2000—that is, significantly increasing securities trading volumes, market volatility, and cross-border trading activity.[16] Although the decision to move to a settlement cycle period of one day after the date of trade (T+1) has been deferred, and T+1 initiatives have been generally replaced with STP initiatives,[17] we expect that the move to a T+1 settlement cycle period will again become the main focal point for efforts to reduce systemic risk in the financial system and improve the overall soundness of the securities clearing and settlement system.

In 2000, Charles River Associates released an economic analysis of the consequences for Canada of not moving to T+1 in a coordinated manner with the United States. The analysis demonstrated that, if Canada were to remain at T+3 while the U.S. moves to T+1, our markets would become uncompetitive vis-à-vis the U.S. markets and would suffer harm.[18] Canadian T+1 and STP initiatives have attempted to follow similar U.S. industry efforts because market practices in both countries are generally the

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8 *Ibid*.

9 CCMA, *Straight-through Processing (STP) is Everyone's Business*, November 2002 (STP is Everyone's Business), at 2, available on the CCMA's Web site at www.ccma-acma.ca.

10 See CPSS Glossary.

11 STP is Everyone's Business, at 2.

12 G-30 report, at 27.

13 *Ibid.*

14 See *Canadian Securities Marketplace Best Practices and Standards: Institutional Trade Processing, Entitlements and Securities Lending*; June 9, 2003, Canadian Capital Markets Association, at p. i (the CCMA Best Practices and Standards White Paper). On December 12, 2003, the CCMA released the final version of the CCMA Best Practices and Standards White Paper. The proposed best practices and standards are minimum requirements that Canadian participants must meet to achieve cross-industry STP in the areas of institutional trade processing, entitlements/corporate actions, and securities lending activities. A final version of the CCMA Best Practices and Standards White Paper dated December 2003 is available on the CCMA Web site at www.ccma-acmc.ca.

15 Group of Thirty, *Clearance and Settlement Systems in the World's Securities Markets* (New York: Group of Thirty, March 1989) (1989 G-30 report).

16 See CCMA Institutional Trade Processing Working Committee*, Institutional Trade Processing T+1 White Paper,* March 8, 2001 (the ITPWG White Paper) at 3.

17 In July 2002, the securities industries in the United States and Canada announced that they would focus on straight-through processing in 2003 and 2004, rather than move to a T+1 trade settlement period in 2005.

18 Charles River Associates, *Free Riding, Under-investment and Competition: the Economic Case for Canada to Move to T+1: Executive Summary*, November 10, 2000, available on the Web site of the CCMA (www.ccma-acmc.ca). See also letter from David Brown, Q.C., Chair, Ontario Securities Commission, dated July 27, 2001, to Ontario registrant firms in connection with the need to move to T+1, available at http://www.osc.gov.on.ca/en/HotTopics/currentinfo/tplus1_nlttrfaq_011105.html.

same, and the securities clearing and settlement systems in both countries are closely integrated.[19] The Securities and Exchange Commission (SEC) has recently sought comment on the current operation of its T+3 rule and the costs and benefits of implementing a settlement cycle shorter than T+3.[20]

2. Reducing risk and enhancing operational efficiency

More importantly, however, is the fact that STP will achieve the key objectives of reducing firm and systemic risk as well as enhancing the operational efficiency of our securities clearing and settlement system.

Systemic risk is defined as the risk that the failure of one participant in a transfer system, or in financial markets generally, to meet its required obligations will cause other participants or financial institutions to be unable to meet their obligations (including settlement obligations in a transfer system) when due.[21]

A key to managing risk in the securities trading business is the effort to reduce the inevitable lag between contract formation and contract performance. A longer period between trade date and settlement means a greater volume and value of unsettled transactions.[22] A shorter period will reduce the risks inherent in settling securities transactions because it will reduce the number of unsettled trades in the clearance and settlement system at any give time.[23]

Another critical objective of STP and shortening trade settlement periods is to ensure that details of a trade are verified as soon as possible after the trade is executed (this objective is a subset of the broader objective to reduce risk in the securities clearing and settlement system). Mismatched trades or trades with incorrect or missing information result in human remediation. In high volume or market stress circumstances, this increases the probability of settlement risk because firms have only a limited number of staff who can remediate unmatched trades. Moreover, firms without effective STP processing are at higher risk for multiple trade settlement fails.

3. International efforts to reduce risk in clearing and settlement

Global efforts to reduce risk and increase efficiency in securities clearing and settlement systems, including concerns about the adequacy of the legal and regulatory frameworks that support such systems, have spawned a number of important international reports and industry and governmental initiatives.[24] A joint task force of the CPSS and IOSCO issued a report in November 2001 containing 19 recommendations that establish minimum standards for securities settlement systems operating in all markets.[25] The CPSS-IOSCO report was supplemented by a follow-up report of the CPSS-IOSCO joint task force in November 2002,[26] which provides a methodology for assessing whether jurisdictions are in compliance with the standards set out in the first report. These reports were soon followed by another important report released by the G-30 in January 2003, entitled *Global Clearing*

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19 The links between the Canadian and U.S. clearing agencies for processing cross-border transactions are the most extensive bilateral links among clearing agencies in the world. See Canadian Securities Administrators' Uniform Securities Transfer Act Task Force *Proposal for a Modernized Uniform Law in Canada Governing the Holding, Transfer and Pledging of Securities*, August 1, 2003, at 22-23 (CSA USTA Consultation Paper). The CSA USTA Consultation Paper is available on the Web site of the Ontario Securities Commission at http://www.osc.gov.on.ca/en/HotTopics/usta.html#open.

20 Concept Release: Securities Transactions Settlement; Securities and Exchange Commission; 17 CFR Part 240 [Release No. 33-8398; 3449405; IC-26384; File No. s7-13-04] (SEC Concept Release). We briefly discuss the SEC Concept Release below.

21 See CPSS Glossary.

22 See Bachmann Task Force, *Report of the Bachmann Task Force on Clearance and Settlement Reform in U.S. Securities Markets,* U.S. Securities and Exchange Commission, File No. S7-14-92, Release No. 34-30802, 17 CFR Part 240, June 15, 1992. The report stated: "The equation TIME = RISK became an inescapable truth as we processed the information".

23 Although T+1 is often the norm for transactions in government securities and commercial paper, T+3 remains largely the standard today in North America for equity and long-term corporate debt securities.

24 Efforts in Canada to improve the legal and regulatory frameworks that underpin the clearing and settlement process include the federal *Payment Clearing and Settlement Act*, 1996 c. 6, sch., which gives the Bank of Canada regulatory authority over designated clearing and settlement systems; the proposed provincial *Uniform Securities Transfer Act* (USTA), modeled on Revised Article 8 of the U.S. Uniform Commercial Code (see the discussion of the USTA in Part III of this Paper); and the Proposed Instrument discussed in Part III of this Paper. International efforts to improve and harmonize legal frameworks on a global scale include the completion and signing in December 2002 of the Hague Conference on Private International Law, Convention #36—*Convention On The Law Applicable To Certain Rights In Respect Of Securities Held With An Intermediary* and a UNIDROIT Study Group proposal to develop harmonised substantive rules regarding indirectly held securities. See the Web sites of the Hague Conference (http://www.hcch.net/e/conventions/text36e.html) and UNIDROIT (http://www.unidroit.org/english/workprogramme/study078/item1/studygroup/poisitionpaper-2003-08.pdf).

25 See the CPSS-IOSCO report.

26 See *Assessment methodology for "Recommendations for securities settlement systems",* November 2002. Both the CPSS-IOSCO report and the follow-up assessment methodology report are available on the IOSCO Web site at www.iosco.org and on the Web site of the Bank for International Settlements at www.bis.org.

and Settlement: A Plan of Action.[27] The G-30 report makes 20 wide-ranging recommendations that establish best practices for clearing and settlement in the major mature markets, including creation of global standards in technological and operational areas, improvements in risk management practices, further harmonization of global legal and regulatory environments, and improved corporate governance for providers of clearing and settlement services. Within the European Union (EU), the problems with securities clearing and settlement have been described and addressed by two reports of the Giovannini Group.[28] A report issued in 2001 identified 15 barriers to efficient cross-border clearing and settlement in the EU, while a report released in 2003 recommends the actions to be taken to resolve those barriers. The 2003 report advocates harmonization in this area consistent with the G-30 and CPSS-IOSCO recommendations.

In the United States, the SEC released last month a Concept Release entitled *Securities Transactions Settlement* that seeks comment on methods to improve the safety and operational efficiency of the U.S. clearance and settlement system and to help the U.S. securities industry achieve STP.[29] In particular, the SEC is seeking comment on whether it should adopt a new rule or U.S. self-regulatory organizations should be required to amend existing rules to require the completion of the confirmation and affirmation process on T when a broker-dealer provides DVP or RVP privileges to a customer. It is also seeking input on the benefits and costs associated with implementing a settlement cycle for most broker-dealer transactions that is shorter than T+3. Finally, the SEC is seeking comment on methods to reduce the use of physical securities.

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27 See the G-30 report. The G-30 is a private organization sponsored by central banks and major commercial and investment banks that, over the years, has assembled a number of international task forces to study and report on the state of global clearing and settlement. For information on how to order G-30 reports and papers, see the G-30's Web site at www.group30.org.

28 See The Giovannini Group, *Cross-Border Clearing and Settlement Arrangements in the European Union*, (2001 Report), Brussels, November 2001; The Giovannini Group, *Second Report on EU Clearing and Settlement Arrangements*, (2003 Report), Brussels, April 2003. Both these reports are available at http://www.europa.eu.int/comm/economy_finance/giovannini/clearing_settlement_en.htm. The Giovannini Group was formed in 1996 to advise the European Commission on issues relating to EU financial integration and the efficiency of euro-denominated financial markets.

29 SEC Concept release, at 1. The release is available on the SEC Web site at: http://www.sec.gov/rules/concept/33-8398.htm.

PART II: THE CANADIAN INDUSTRY'S ROLE IN ADDRESSING STP AND CSA OBSERVATIONS ON INDUSTRY EFFORTS

Each of the CSA jurisdictions has a mandate to promote investor protection and efficient capital markets. The clearance and settlement process is one of the core processes that underlies a securities market and determines, to a large extent, its efficiency and effectiveness.[30] The regulation of clearing and settlement processes, including the implementation of STP, is directly related to our mandate. With that in mind, the CSA established a staff committee (CSA STP Committee) to monitor industry STP efforts and make recommendations to the CSA jurisdictions on initiatives that would facilitate implementation of STP, remove any regulatory barriers, and develop rules where appropriate. We describe in this Part the industry's STP efforts and our observations of industry achievements as a result of our monitoring.

A. The Canadian Industry's Commitment to and Role in Addressing Straight-through Processing

Since the early 1970's, many initiatives have been implemented by the Canadian securities industry to enhance the efficiency of the securities clearing and settlement process and reduce risk in our capital markets. These initiatives include developing and requiring the use of a central securities depository and central counterparty (CSD/CCP) utility,[31] encouraging the immobilization of securities and the use of *book-based* systems, and requiring that trades be settled within T+3. These initiatives have rendered the process of clearing and settlement of securities trades in Canada one of the most efficient and safest in the world. However, some aspects of securities clearing and settlement need to be improved, particularly outside the scope of operations of a CSD/CCP utility.

In the past decade, trade volumes and dollar values of securities traded in Canada and globally have grown substantially. The increasing volumes mean existing back-office systems and procedures of market participants are challenged to meet post-trade processing demands, exacerbating the risk that a transaction may not be completed or that one of the parties to a transaction may fail.

Implementing industry-wide STP will largely resolve these processing problems. However, market participants are reluctant to invest in upgrading systems and improving processes without industry coordination because it is difficult to justify the investment solely on an individual return-on-investment basis. The decision to invest will only make sense if all market participants make a concerted effort to act together. As noted by the G-30:

> The amount of change needed to achieve consistently safe and efficient performance on a global basis is substantial: the problem is extremely complicated, and there are no simple fixes. Because change in one system or market segment will not yield the promised benefits unless all systems and segments change as well, the proposed changes must be pursued comprehensively.[32]

A coordinated and comprehensive effort to achieve STP on a market-wide basis has become a necessity.

B. Leadership Role of Industry in Identifying Issues, Solutions and Critical Path for Implementation

Implementing STP throughout the industry requires changing business processes, identifying common technology, setting standards, and building interfaces and utilities. Although much of this work is done on an individual firm level, co-ordination is required because of the nature of the securities industry—a high level of integration and interaction is essential among different parties such as dealers, marketplaces, clearing agencies, banks, custodians, investors, investment advisers, issuers, transfer agents, and service providers.

The level of co-ordination must be balanced with the fact that market participants need to implement solutions tailored to their specific business needs. Due to wide differences in size and type of market participants, scope of business activities, and back office structures, it is unrealistic to suggest that there exists a one-size-fits-all solution to the issues. Because of this complexity, the industry as a whole agreed that it should take the lead in implementing STP. The CSA agree that it is appropriate for the industry to identify the issues, the solutions and the critical path to achieving those solutions.

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30 See *Towards a Legal Framework for Clearing and Settlement in Emerging Markets*, Emerging Markets of the International Organization of Securities Commissions; IOSCO paper November 1997, at 1.

31 Canada's CSD/CCP utility for debt and equity securities is The Canadian Depository for Securities Limited (CDS). CDS is subject to extensive regulation and oversight by the Bank of Canada, OSC and Autorité des marchés financiers (Québec). A CSD/CCP utility is generally known as a *clearing agency*, a defined term in certain provincial securities legislation.

32 G-30 report, at 15.

C. Formation of the Canadian Capital Markets Association

Industry leadership was established through the formation of the CCMA. The CCMA was founded in 2000 by industry groups and participants in the financial services industries to promote and lead STP initiatives. The CCMA's primary objectives in the STP initiatives are to lower operational, market and settlement risks and maintain the global competitiveness of the Canadian capital markets.

The CCMA has a wide range of industry members, including representatives of dealers, custodians, transfer agents, banks, credit unions, investment managers, clearing agencies, insurance companies and industry associations and self-regulatory organizations (SROs). The CCMA operates through a Steering Committee and has created a number of subcommittees or *working groups*. The working groups consist of (1) an Institutional Trade Processing Working Group; (2) a Corporate Actions Working Group; (3) a Retail Trade Processing Working Group; (4) a Dematerialization Working Group; (5) a Securities Lending Working Group; (6) a Legal and Regulatory Working Group; and (7) a Communications and Education Working Group. The CSA, Bank of Canada, Office of the Superintendent of Financial Institutions, Canadian Payments Association (CPA), and federal and Quebec ministries of finance participate as observers on the CCMA Steering Committee and some of its working groups.

D. CCMA's Work

The CCMA and its working groups have prepared numerous white papers, newsletters, and other publications, made a number of submissions, and organized various conferences to alert the industry, government and government agencies to the STP efforts in Canada.[33]

1. ITPWG White Papers

The CCMA released on June 9, 2003 for public comment a document entitled *Canadian Securities Marketplace Best Practices and Standards: Institutional Trade Processing, Entitlements and Securities Lending* (CCMA Best Practices and Standards White Paper) that sets out, among other things, best practices and standards for the processing for settlement of institutional trades. The document states that the ultimate goal is to achieve by June 2005 one hundred per-cent industry-wide electronic trade delivery rate for domestic trades and 99 per-cent industry-wide matching of domestic trades on T.[34] The institutional trade processing standards and best practices contained in the CCMA Best Practices and Standards White Paper are derived from a white paper and an addendum to the white paper published in 2001 and 2002, respectively, by the Institutional Trade Processing Working Group (ITPWG).[35]

2. LRWG White Paper

On December 19, 2002, the CCMA Legal and Regulatory Working Group (LRWG) released for public comment a list of proposed legal and regulatory measures, including amendments to existing CSA and SRO rules, required to facilitate STP in Canada.[36] The LRWG identified 107 specific amendments to or new measures for provincial and federal laws, regulations and policies and the by-laws, rules, standards and conventions of SROs, marketplaces and clearing agencies.[37]

3. CAWG White Paper

The CCMA Corporate Actions Working Group (CAWG) published a white paper in 2002 and issued best practices and standards in 2003 in the CCMA Best Practices and Standards White Paper.[38] A major goal of the CAWG's best practices and

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33 All CCMA publications and other material referred to in this Paper are available on the CCMA Web site at www.ccma-acmc.ca.

34 See CCMA Best Practices and Standards White Paper at 1.

35 See the ITPWG White Paper and *Addendum to Institutional Trade Processing White Paper*, November 5, 2002 (the ITPWG White Paper Addendum). The ITPWG White Paper and ITPWG White Paper Addendum are available on the Web site of the CCMA at www.ccma-acmc.ca. See also CSA Notice 33-401 *Canadian Capital Markets Association T+1 White Paper*, (March 2001) 24 OSCB 2069. The CSA Notice is also available at http://www.osc.gov.on.ca/en/HotTopics/currentinfo/tplus1.

36 The LRWG originally released the *Legal/Regulatory White Paper: General Issues List – Legal* (GILL) and *Detailed Required Amendments List* (DRAL) on November 7, 2001. On December 19, 2002, the LRWG released a revised GILL, listing functional changes required to support STP; a revised DRAL, listing legal and regulatory changes required to support STP; and a list of DRAL Inactive/Deleted Items, listing legal and regulatory issues specific to T+1, items believed at this time to require no change and deleted items. The CSA assisted the LRWG in developing the DRAL and GILL. In 2002, the CSA provided a preliminary list of potential securities regulatory amendments to remove barriers to and facilitate the implementation of STP in Canada.

37 Proposed measures or amendments in the DRAL are listed by type of statute or regulation, and include rules or regulations of the CSA, IDA, Mutual Fund Dealers Association (MFDA), Toronto Stock Exchange/TSX Venture Exchange, Market Regulation Services Inc., Canadian Payments Association (CPA), and CDS.

38 The CAWG released on October 22, 2002 the *Corporate Actions White Paper to Reduce Risk, Errors and Costs for Intermediaries and Investors.* See also *CSA Notice 51-305 Canadian Capital Markets Association – Corporate Actions and Other Entitlements White Paper* (October 2002) 25 OSCB 7971. The CSA Notice is also available on the OSC Web site at

standards is to facilitate the electronic distribution of entitlement and corporate action information from issuers to beneficial security holders, through the multi-tier level of securities intermediaries of the indirect holding system, by way of a *central hub*.[39] Another important goal of the CAWG best practices and standards is to require all entitlement payments on securities immobilized with a central securities depository to be made in LVTS funds.[40]

4. DWG White Paper

The Dematerialization Working Group (DWG) released for public comment on January 31, 2003 an addendum to a 2001 white paper (the DWG White Paper Addendum).[41] The DWG White Paper Addendum describes the need to reduce the physical movement of securities to achieve STP and sets out the following assumptions and objectives about securities ownership:

- The *immobilization* of securities, and consequential use of the *indirect holding system* and central securities depositories, continues to be the main choice of financial intermediaries and their clients for holding securities;[42]
- The *dematerialization* of securities, and proposed use of Direct Registration Systems (DRS systems), are effective alternatives for investors wishing to hold their securities in a *direct book-entry* uncertificated form; and
- The right of an individual to request and receive a physical certificate should continue.[43]

5. RTPWG White Papers

On September 16, 2003 the CCMA's Retail Trade Processing Working Group (RTPWG) published an addendum to a 2002 white paper.[44] The addendum focuses primarily on retail post-trade processing issues relating to investment funds rather than other typical retail products, such as debt and equity, because a significant portion of investment fund securities in Canada are held in *client name*.[45] The RTPWG suggests retail transactions in debt and equity securities are processed mostly in the *nominee name* model, which is essentially already an STP model.[46] The *nominee name* model generally refers to the holding of securities in the *indirect holding system*, that is, through a securities account maintained with a securities intermediary. In contrast to this model, the *client name* model refers to holding securities in the *direct holding system*, where the security holder has a direct legal relationship with the issuer (whether holding securities in certificated or uncertificated form).

The addendum makes a number of recommendations to increase efficiency, minimize risks, reduce trade processing costs and improve customer service through STP in the context of *client name* business model. It outlines the following goals by June 2005:

- 100 per-cent industry participant compliance with industry best practices and standards
- 99 per-cent STP (electronic transaction processing)

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http://www/osc.gov.on.ca/en/Regulation/Rulemaking/Notices/csanotices/2002/csan_51-305_20021129_ccma.htm. The CAWG also participated in the drafting of the CCMA Best Practices and Standards White Paper.

39 See CCMA Best Practices and Standards White Paper at 35.

40 *Ibid*. at 35.

41 The Dematerialization Working Group (DWG) (formerly Elimination of Certificates Working Group) released their *Dematerialization White Paper* on November 5, 2001(the DWG White Paper). This was followed by the release of *comments* from stakeholders on June 14, 2002 and later by an *Addendum* on January 31, 2003 (the DWG White Paper Addendum).

42 For a discussion of the *direct* and *indirect* holding systems, see the CSA USTA Consultation Paper, at 13-20. In the context of the indirect holding system, the expression *holding* of securities should be given a broad meaning to include an intermediary maintaining for an investor a securities account to which securities and other financial assets are credited, and which are backed by securities accounts maintained by a higher-tier intermediary on behalf of the lower-tier intermediary, and so on up the chain of the indirect holding system until some intermediary (usually a clearing agency) is the direct holder of the securities or financial assets. See the CSA USTA Consultation Paper at 13-20.

43 CCMA News Release, *CCMA Recommendations for Certificateless Securities Endorsed by Public* (February 13, 2003).

44 See CCMA *Retail Trade Processing Working Group White Paper*, April 16, 2002 (the RTPWG White Paper) and *Retail Trade Processing Working Group White Paper Addendum-Investment Funds and Other Products*, September 16, 2003 (the RTPWG White Paper Addendum).

45 See the RTPWG White Paper Addendum, at 5.

46 RTPWG White Paper Addendum (Executive Summary) at i.

The RTPWG has defined STP for retail investment fund products as the electronic processing of an investment fund transaction among the parties involved from the time a transaction is initiated with a dealer through to settlement, meeting industry timelines and data quality standards for completeness and accuracy. Like the other STP initiatives, the successful achievement of STP for investment fund transactions is considered a necessary prerequisite to moving to a T+1 settlement cycle period.

6. SLWG White Paper

The CCMA Securities Lending Working Group (SLWG) released on January 31, 2003 a white paper recommending ways to allow for the STP of securities lending transactions[47] and proposed a number of best practices and standards in the CCMA Best Practices and Standards White Paper. The goal of the SLWG is to have all securities lending and borrowing transactions (specifically recalls and acknowledgements) processed electronically between the borrower, lender and central securities depository.[48]

E. CSA Surveys of Market Participants

In May 2003, the CSA asked approximately one thousand Canadian registrant firms and certain other market participants to complete a *STP Readiness Assessment Survey* to assess the preparedness of the industry in Canada for STP.[49] Of these, 732 responded to and completed the survey. While some 52 per cent of survey respondents reported that they feel their organization is prepared or somewhat prepared for STP, their assessment is not supported by the responses to many of the specific quantitative *progress* questions. In other words, a large number of organizations believe they are further ahead than they actually are. There is some concern with the apparent disconnect between firms' self-assessments of their readiness, and the actual amount of preparations they have underway. Achieving industry-wide STP by mid 2005 is a lengthy and complex undertaking that will likely be unsuccessful unless firms are already expending time and effort.

The CSA will undertake a second survey later this year of the same group to determine the progress made by market participants towards achieving STP.

The CSA also conducted a separate survey with twenty key *infrastructure* participants, consisting of custodians, transfer agents, exchanges, third party service providers and clearing agencies. The objectives of the survey were to identify the relative significance of the issues from the perspective of the infrastructure of the Canadian capital markets that need to be addressed to achieve STP, and assess the current commitment of the infrastructure resources to STP. The results of the infrastructure survey show that infrastructure participants are well ahead of the overall industry in achieving STP compliance. However, this gap is significantly reduced if only large industry respondents are considered.[50] We also conducted follow-up interviews with ten infrastructure companies. These participants said that their current internal operations and systems are either compliant or almost compliant, or they have major projects underway to become compliant.

During the late 1990's, the Canadian securities industry went through a similar effort as it prepared technology systems for the transition to Year 2000. In order to monitor progress and encourage firms to commit resources to preparing for Y2K, the CSA implemented a requirement for all registrant firms to file a certificate of preparedness for the Year 2000.[51] Those certificates were mandatory and required the signature of the chief executive officer of the registrant firm. The CSA are considering whether a similar approach should be used for STP.

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47 See CCMA *Securities Lending Working Group, Securities Lending White Paper,* January 31, 2003 (the SLWG White Paper).

48 See CCMA Best Practices and Standards White Paper at 48.

49 See OSC Staff Notice 33-371-*CSA/OSC STP Readiness Assessment Survey,* (February 21, 2003) 26 OSCB 1568; CSA News Release-*Regulators Survey Industry's Straight-through Processing Readiness*, (May 16, 2003) 26 OSCB 3717; CSA Staff Notice 33-307-*List of Canadian Registrant and Non-Registrant Firms that Completed the CSA STP Readiness Assessment Survey*, (July 18, 2003) 26 OSCB 5473; CSA Staff Notice 33-308-*the CSA STP Readiness Assessment Survey Report (Survey Report) is Now Available on the OSC Web Site,* (September 19, 2003) 26 OSCB 6429; CSA News Release –*Regulators Report on Industry's Straight-through Processing Readiness,* (September 19, 2003) 26 OSCB 6575; and CSA Staff Notice 33-309-*the CSA STP Infrastructure Survey Report is Now Available on the OSC Web Site*, (December 19, 2003) 26 OSCB 8149. The notices, news releases and survey reports are available at

http://www.osc.gov.on.ca/en/HotTopics/marketplace.html#stptdp1.

50 Large industry participants are those with 100 or more employees.

51 See Statement of National Instrument 33-106—*Year 2000 Preparation Reporting* and National Instrument 33-106—*Year 2000 Preparation Reporting* (1998) 21 OSCB 6595.

Question 1: If the CSA were to implement mandatory STP readiness certificates, what should be the subject matter of such certificates?

F. Benchmarking the Canadian Industry's Efforts

As part of our monitoring, we believe it is necessary to evaluate the industry's efforts to achieve STP and how it compares to the U.S. industry's similar efforts. The CSA STP Committee sent a letter on November 7, 2003 asking the CCMA to identify the key tasks in the critical path to STP, the goals for 2003 and 2004, and how they compare to the industry efforts of the U.S. The CCMA has indicated it will not be able to respond to the letter until the second quarter of 2004. The CSA believe that it is essential for the CCMA to identify a critical path, monitor its progress against the steps identified in the critical path, and compare its progress to the U.S. industry progress. The U.S. industry has indicated they will reconsider later this year whether to move to T+1. If the CCMA is unable to determine its progress, or if it determines that Canada is at least twelve months behind the U.S, the Canadian capital markets are unlikely to reach their STP goals at the same time as the U.S. markets.

Question 2: Is it important to the competitiveness of the Canadian capital markets to reach STP at the same time as the U.S.? Please provide reasons for your answer. Are there any factors or challenges unique to the Canadian capital markets?

Question 3: Should it be one of the CCMA's tasks to identify the critical path to reach specific STP goals? If so, what steps and goals should be included?

PART III: MANDATING REQUIREMENTS – CSA RESPONSE TO INDUSTRY

A. Introduction—Legal and Regulatory Barriers to STP

The CCMA has made numerous submissions to the CSA, governments, government agencies, and other groups identifying key legal and regulatory measures that the industry believes are necessary to implement key STP goals and improve the efficiency and soundness of the Canadian securities clearing and settlement system.[52] Although some of these measures are proposed new rules, many are amendments to existing rules, such as proposed amendments to NI 81-102 relating to investment funds and to the definition of *security* in the Ontario, Alberta and British Columbia *Securities Acts*. These new measures and amendments are intended to facilitate the following six key STP initiatives in Canada:

1. Institutional trade matching - Improving the post-trade, pre-settlement processing of institutional trades, particularly the *confirmation and affirmation* process, whereby the details of a securities trade executed on behalf of an institutional investor are agreed upon by all relevant parties on the date the trade is executed (or T). This is also known as trade *comparison and matching* on T.

2. Corporate action reporting - Improving the process of disseminating *entitlement* (also known as *corporate actions*) *information* on publicly traded securities in a standardized or data-defined format received from issuers or offerors,[53] through intermediaries, to beneficial security owners.

3. LVTS for entitlement payments - Requiring issuers and offerors to make their *entitlement payments* (such as dividend, interest, redemption, repurchase or take-over bid payments) in funds transmitted by the Large Value Transfer System (LVTS), whenever such entitlement payments are being made to a clearing agency (or a nominee of the clearing agency) as a registered or bearer holder of publicly traded securities.

4. Improving client-name processing for investment funds - Improving the post-trade processing of investment fund transactions in the context of the *client name* business model as compared to the *nominee name* business model.

5. Dematerialization and immobilization – Furthering the *immobilization* and moving towards the *dematerialization* of publicly traded securities to reduce the physical movement of securities certificates in connection with the settlement of transactions in such securities among market participants.

6. Securities lending - Improving the processing of securities lending transactions, in particular, introducing electronic functionality for recalling loaned securities.

We discuss in the following sections of the Paper the CCMA's requests for regulatory or legal measures in the context of these six key initiatives.

B. Institutional Trade Matching on Trade Date

Improving the post-trade, pre-settlement processing of institutional trades, particularly the *confirmation*[54] and *affirmation*[55] process, is critical to facilitating STP in Canada. In the confirmation and affirmation process, or *comparison and matching* process, the trade details (including terms of settlement) of a securities trade executed on behalf of an institutional investor are compared and agreed upon by all relevant parties before the trade is submitted for clearing and settlement at the CSD/CCP. The CCMA is suggesting that the confirmation and affirmation process be completed on T.

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52 Since 2000, the CCMA has written to many governments, governmental agencies, regulators, committees and other organizations, including the following: the CSA, and separately to each of the OSC, British Columbia Securities Commission, Commission des valeurs mobilières du Québec (now known as the Autorité des marchés financiers), Alberta Securities Commission, Manitoba Securities Commission, Nova Scotia Securities Commission, Prince Edward Island Securities Commission and Saskatchewan Securities Commission; the CPA; the Toronto Stock Exchange; the Wise Persons' Committee appointed by the Federal Government; the Five Year Review Committee appointed by the Ontario Ministry of Finance; the First Ministers' Inter-Provincial Securities Framework Initiative; the B.C. Provincial Treasury; the House of Commons Standing Committee on Finance; the Prince Edward Island Government; the New Brunswick Government; the Nova Scotia Government; and the Quebec Ministry of Finance. The CCMA and the CSA have also had several meetings since 2000 to discuss the STP and T+1 initiatives.

53 The term *offeror* is presumed to be within the meaning of s. 89(1) of the *Securities Act* (Ontario) (OSA).

54 Confirmation is generally considered to be the process by which a dealer notifies its institutional customer (e.g. an investment manager) of the details of a trade and allows the customer to agree with or question the trade. See CCMA Glossary.

55 Affirmation is generally considered to be the process following confirmation of trade details between the dealer and institutional customer by which a trade is submitted, reviewed and corrected (if necessary) before it is submitted for settlement. See CCMA Glossary.

1. Current problems with institutional trade processing

Institutional trades are much more complicated than retail transactions since they involve far larger amounts of money and securities, more parties, and more processing steps between the initiation of the order and final settlement. The CCMA's ITPWG has analyzed the current post-execution and pre-settlement activities of investment managers,[56] dealers, custodians and the Canadian Depository of Securities Limited (CDS), the primary parties involved in institutional trade processing. The ITPWG identified four key problem areas that result in delayed transaction processing and inefficiencies and contribute to increased settlement risk:

- inadequate technology;
- timing of activities (e.g., missing or late allocations, missing or late notices of execution);
- data integrity; and
- accounting (e.g., settlement by underlying allocations rather than by block).[57]

(i) Inadequate technology

According to the ITPWG, inadequate technology is the leading cause of the problems relating to institutional trade processing in Canada. Inadequate technology means too much reliance on manual processing, lack of real-time functionality, lack of standard interfaces and inter-operability, and poor communication mechanisms. Many messages sent by investment managers and dealers are sent manually by telephone or fax.[58] Moreover, the recipient of these messages must manually re-key the information, which increases the likelihood of error, which in turn requires manual intervention to repair the error. Thus, the entire process to clear and settle a trade is delayed. Lack of real-time functionality is an issue that must be resolved. Most messages between the parties to an institutional trade are largely processed in batch, at the end of the day, rather than real-time or near real-time.

Currently, many of the parties use different communication protocols, which have different message standards and may not be inter-operable. Consequently, messages received by incompatible protocols have to be processed manually, resulting in a greater chance of error and processing delay. Further, the means of communication between many institutional parties are ineffective. For example, an investment manager does not have online access to CDS to monitor the status of his or her trade nor the ability to prevent a failed trade by correcting the settlement details online.[59] The investment manager must rely on the dealer or custodian, who has online access to CDS, to notify him or her of the failed trade verbally or by fax before he or she can correct the details.[60]

(ii) Timing of activities

The second cause of problems in institutional trade processing relates to the timing of different steps in the trade process, specifically, missing or late notices of execution and missing or late allocations. According to the ITPWG, five per-cent of trades fail to settle in a timely fashion because the investment manager provides the allocations or block instructions to the broker relatively late.[61] This delay by the investment manager results in delaying the entire processing and settlement of the trade since the custodian will not process the trade until the custodian receives instructions from the investment manager.[62]

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56 Investment managers is a term used by the industry to generally describe the *buy side* of the industry. Investment managers are also sometimes referred to as money managers. They provide investment advice to their clients and generally have discretionary authority over their clients' accounts. Some investment managers are registrants under provincial securities legislation.

57 See ITPWG White Paper at 18 to 22.

58 Specifically, almost all notices of execution are sent by telephone, approximately 20% of allocations are sent by telephone or fax, and most dealer confirmations, especially by smaller-sized dealers, are sent by mail (10 to 15%) or fax (40 to 60%). See ITPWG White Paper at 18.

59 ITPWG White Paper, at 19.

60 *Ibid*, at 19.

61 *Ibid*, at 19.

62 *Ibid*, at 20.

(iii) Data integrity and accounting issues

As noted by the ITPWG, data integrity related issues and accounting issues are also problems in the current institutional processing environment. Incorrect data is the leading cause of all failed trades in the Canadian marketplace. In order for an institutional trade to be processed and settled by T+3, all trade details or *trade data elements*[63] must be agreed to by all relevant parties involved in the post-trade processing of the trade. The relevant parties must take ownership of the data elements for which they are responsible. According to the ITPWG, the investment manager sometimes will not provide certain data elements, such as security identifiers, making settlement virtually impossible unless the dealer or custodian commits the necessary time and resources required to telephone the investment manager to retrieve the missing data elements.[64] Further, there are no industry-wide tolerance standards on how to resolve incorrect or incomplete data. In addition, settlement by *allocations* rather than by *block* results in processing delays since the investment manager usually breaks down the block trade into client account allocations, which the dealer must input into CDS as separate trades, each with its own identifiers. The dealer must then cross reference these identifiers with the data provided by the investment manager. This step causes processing delays and increases the possibility that an incorrect identifier (data element) will be used, resulting in a manual intervention to correct this error.[65]

2. CCMA request to mandate matching on T

The CCMA identified the need for the CSA to mandate market participants to complete confirmation and affirmation, or matching, on T as the most important regulatory initiative required to support the institutional trade processing milestones. According to the CCMA Best Practices and Standards White Paper, the ultimate goal of the CCMA is to achieve 99 per-cent industry-wide trade matching of domestic trades on trade date by June 2005. Currently, on average only 4.6 per-cent of domestic trades are confirmed and affirmed, or matched, on trade date as opposed to 23 per-cent in the United States.[66]

The CCMA has argued that a CSA rule is required for three reasons. First, there are currently no CSA rules or regulations that govern post-trade matching between all three parties to an institutional trade. Second, institutional trades have no formal mechanism or system that would facilitate trade comparison or matching. (This is in contrast to the different systems and processing and settlement practices that have evolved in Canada's capital markets for non-institutional trades, such as: (1) *broker-to-broker* trades, frequently associated with retail trades of exchange-listed securities which are generally matched or *locked-in* at a stock exchange or other marketplace; (2) direct trades between two participants of CDS of non-exchange traded securities which are effectively matched through the facilities of CDS' trade confirmation and affirmation system;[67] and (3) mutual and segregated fund transactions, where FundSERV[68] facilities provide a mechanism for matching, leading to the settlement of investment fund units for retail clients.) Third, the U.S. marketplace is further ahead in achieving the matching of institutional trades because of available trade comparison and matching systems such as the DTCC ID system.[69]

The CCMA has looked at the role of a utility that would provide centralized facilities for the confirmation and affirmation of institutional trades in the Canadian marketplace. The CCMA has concluded that a *Matching Utility* or *MU*[70] is optional. Consequently, the CCMA has not requested a rule requiring the use of a MU. This view is reflected in the CCMA Best Practices

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63 Essential trade details or data elements include security identifiers, dealer identifiers (e.g. executing dealer as opposed to clearing dealer), price, commission and client account number. Often these details do not match between what the dealer inputs to CDS and the instructions received by the custodian from the investment manager.

64 ITPWG White Paper, at 21.

65 *Ibid*, at 22.

66 *CCMA June 2003 Report Card: Affirmation of Domestic Institutional Transactions.* The data excludes same-day-settled trades that settle through CDS (e.g. money market securities, etc.). It is intended that equities will be included in future report cards. Approximately 90 per-cent of institutional trades in the U.S. are currently affirmed on the date following trade date (T+1). This contrasts with Canada, where an estimated 45 per-cent of trades are affirmed on T+1. See letter dated May 27, 2003 from CCMA Chair Tom MacMillan to CSA Chair Stephen Sibold (letter explaining why the CCMA believes that there should be securities commission rules requiring matching of trade details on trade date); available on the CCMA Website at www.ccma-acmc.ca.

67 The IDA is proposing a rule that will require their members to confirm and affirm *broker-to-broker* trades in non-exchange traded securities within one hour of the execution of the trade through CDS' confirmation and affirmation system. See proposed IDA Regulation 800.49 (February 13, 2004) 27 OSCB 2038.

68 For more information on FundSERV, see www.fundserv.ca.

69 The DTCC ID system in the U.S. generally facilitated trade matching between investment manager, broker-dealer and custodian. The DTCC ID system was operated by the Depository Trust and Clearing Corporation (DTCC), which wholly owns the Depository Trust Company and National Securities Clearing Corporation, both registered clearing agencies in the U.S. The system, now known as the Omgeo OASYS TradeMatch system, is currently operated by Omgeo, a joint venture entity formed by DTCC and Thomson Financial in 2001. See Global Joint Venture Matching Services – US, LLC; Order Granting Exemption from Registration as a Clearing Agency, SEC Release No. 34-44188; File No. 600-32, April 17, 2001.

70 The CCMA has defined a MU as a software model that allows for seamless real-time matching of trade data from post-execution to transmission of a matched trade to settlement at a CSD/CCP. See CCMA Glossary.

and Standards White Paper, where the CCMA has identified best practices and standards under two alternative future state scenarios: one without connectivity to a MU and the other with connectivity to a MU.

3. CSA response: proposed National Instrument

The CSA share the CCMA's view that the institutional post-trade processing inefficiencies are the most pressing operational efficiency concerns facing the Canadian capital markets today. The CSA are also concerned that insufficient progress has been made due to the lack of explicit objectives, implementation guidelines, regulatory direction, and business incentives to encourage market participants to adopt STP. Agreement of trade details or *trade data elements* must occur as soon as possible so that errors and discrepancies in the trades can be discovered early in the clearing and settlement process. Errors in recording trade details could result in inaccurate books and records, increased costs, and increased market risk and credit risk, which in turn could lead to systemic disturbances in the market. The CPSS-IOSCO report suggests that accurate verification of trades and matching settlement instructions is an essential precondition for avoiding settlement failures, especially when the settlement cycle is relatively short.[71] The CSA are proposing a rule that would require dealers and advisers involved in an institutional trade to ensure the details of the trade are confirmed and affirmed, or matched, no later than the close of business on T. The Proposed Instrument and Companion Policy are being published together with this Paper and are summarized below.

(i) Mandating trade matching

The Proposed Instrument requires dealers and portfolio advisers (that is, advisers that have discretionary trading authority over client accounts) to take all necessary steps to match a trade as soon as practicable after the trade has been executed and in any event no later than the close of business on T.[72] The *close of business* is not defined in the Proposed Instrument, but could be defined to provide greater certainty, such as 5:00 p.m. or 8:00 p.m. (the latest time at which CDS accepts end-of-day trade affirmations for the last batch settlement cycle of the day). To enable matching of trades executed on behalf of institutional clients on T, dealers, advisers and custodians will need to compare the trade data elements as soon as practicable after the trade is executed. We are recommending that the Proposed Instrument become effective on July 1, 2005.

The CSA have noted that certain existing SRO rules impose obligations on dealers to ensure prompt confirmation and affirmation of trades executed on behalf of institutional clients, including a requirement that dealers obtain agreement from their clients to facilitate prompt confirmation and affirmation of trades.[73] Since the SROs perform the lead compliance function for their members, they may be in a better position to monitor compliance with a trade matching rule.

Question 4: Should the CSA require market participants to match institutional trades on trade date? Would amending SRO rules to require trade matching on T be more effective than the Proposed Instrument? Is the effective date of July 1, 2005 achievable?

Question 5: Is a close of business definition required? Is so, what time should be designated as close of business?

The Proposed Instrument and Companion Policy provide guidance on what we mean by the process of *comparing trade data*.[74] The Companion Policy states that the trade data elements are those identified in best practices and standards established by the industry, and include those trade data elements required to be included in customer trade confirmations pursuant to securities legislation[75] and the rules of the marketplace or SRO.[76] Many of these items are also part of the CSA electronic audit trail requirements set out in National Instrument 23-101— *Trading Rules*.[77]

Question 6: Should the Proposed Instrument expressly identify and require matching of each trade data element, or is it sufficient for the Proposed Instrument to impose a general requirement to match on T and rely on industry best practices and standards to address the details?

Question 7: Should the CSA rely on the best practices and standards established by the CCMA ITPWG?

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71 CPSS-IOSCO report, at para. 3.10.

72 Sections 3.1 and 3.3 of the Proposed Instrument.

73 See, for example, IDA regulation 800.31.

74 Section 1.2 of the Proposed Instrument and Section 1.5 of the Companion Policy.

75 See, for example, section 36 of the OSA.

76 See, for example, TSX Rule 2-405 and IDA Regulation 200.1(h).

77 See Part 11 of National Instrument 23-101.

The application of the Proposed Instrument is limited to depository eligible securities and excludes special terms trades, trades involving the distribution of a security, trades in mutual fund securities, and trades in securities settled outside of Canada.[78]

Question 8: The CSA seek comments on the scope of the Proposed Instrument. Have we captured the appropriate transactions and types of securities that should be governed by requirements to effect trade comparison and matching by the end of T and settlement by the end of T+3 (see the discussion below)? Have we appropriately limited the rule to *public* secondary market trades?

(ii) Trade-matching compliance agreement

Dealers are required to enter into a *trade-matching compliance agreement* with each institutional client before they can open an account or execute trades on behalf of the institutional client on a delivery-versus-payment (DVP) or receive-versus-payment (RVP) basis.[79] The trade-matching compliance agreement is intended to require all institutional investors to match trades by the close of business on T.

Registered portfolio advisors are affected by the Proposed Instrument. Pursuant to the Proposed Instrument, a portfolio adviser who gives an order to a dealer to trade in a depository eligible security on behalf of one or more clients of the portfolio adviser must take all necessary steps to match the trade as soon as practicable after the trade has been executed and in any event no later than the close of business on T.[80] The Proposed Instrument prohibits a portfolio adviser from opening an account with or giving an order to a dealer to trade in a depository eligible security on behalf of one or more underlying clients pursuant to a DVP/RVP arrangement unless the portfolio adviser has entered into a trade-matching compliance agreement with the dealer.[81] These requirements of portfolio advisers are the mirror image of the requirements in relation to dealers. Because the Canadian securities regulatory authorities regulate portfolio advisers, the provisions directly require portfolio advisers to take all necessary steps to enable trades to be matched no later than the close of business on T. It is not necessary, in this case, to rely only on the terms of a trade-matching compliance agreement and the enforcement of contract law by a dealer. Institutional investors that are not registered or otherwise regulated by the securities regulatory authorities (such as pension funds and insurance companies) will be bound only by contract law through the trade-matching compliance agreement.

Question 9: Is the contractual method the most feasible way to ensure that all or substantially all of the *buy side* of the industry will match their trades by the end of T?

The Proposed Instrument provides an exception to trade matching on T where corrections to trade data elements are required, provided the match takes place no later than the close of business on T+1.[82]

Question 10: Should an exception to the requirement to match a trade on T be allowed when parties are unable to agree to trade details before the end of T and are required, as a result, to correct the trade data elements before matching?

Question 11: Should registrants be required to report all exceptions from matching by the close of business on T? If so, who should receive the report (e.g. recognized clearing agency, SROs, and/or securities regulatory authorities)?

(iii) Matching service utility

The Proposed Instrument allows for trade comparison and matching to be undertaken through facilities or services operated by a recognized clearing agency, a recognized exchange, a recognized quotation and trade reporting system, or a matching service utility.[83] A matching service utility or MU is defined in the Proposed Instrument as a person or company that provides centralized facilities for the process of comparing trade data and has filed required information, but does not include a recognized clearing agency, a recognized exchange, or a recognized quotation and trade reporting system.[84] A matching service utility is not meant to include a dealer who offers *local* matching services to its institutional clients.

Although we believe many institutional investors will want to use the central facilities of a matching service utility as a business necessity because they will find it difficult to operate in a STP environment in any other way, some institutional investors, particularly small ones, may be able to operate more efficiently using their existing or enhanced proprietary communication links. We believe that the mandatory use of a matching service utility remains an open issue.

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78 Section 2.1 and definition of *depository eligible security* in Section 1.1 of the Proposed Instrument.

79 Section 3.2 of the Proposed Instrument.

80 Section 3.3 of the Proposed Instrument.

81 Section 3.4 of the Proposed Instrument.

82 Section 3.5 of the Proposed Instrument. See also subsection 1.4(3) of the Proposed Instrument.

83 Section 3.6 of the Proposed Instrument.

84 Section 1.1 of the Proposed Instrument.

Question 12: Is it necessary to mandate the use of a *matching service utility* in Canada? If so, how would the appropriate centralized trade matching system be identified? Are there institutional investors or investment managers that may not benefit from being forced into a centralized trade matching system? Can STP trade matching be achieved without a matching service utility?

Commitment to participate in matching utility development and use is needed from all market participants and types of organizations involved in institutional trade processing.[85] The G-30 suggests that, with the adoption of standards for matching, complete inter-operability between matching utilities needs to be achieved to maximize the potential efficiency gains and encourage adoption and use of such utilities, particularly on the *buy side* where otherwise there will be continued reluctance to use a matching utility whose model may in time become redundant or not provide access to a full range of other market participants.[86]

The CCMA has identified the optional need for using a matching service utility. The CSA are of the view that matching service utilities should have the following characteristics:

- provide electronic connectivity among investment managers/portfolio advisers, dealers and custodians;
- provide an electronic means for each of these parties to enter trade details (including settlement instructions), correct details of trades and ultimately match trades in an entirely synchronous manner;
- when there is agreement on these details, they should submit the matched trade and trade details to a CSD/CCP;
- provide the ability to perform operations in real-time and near-real time via interactive and possibly batch means;
- inter-operate with other matching service providers in terms of connectivity (protocols - e.g., ISO 15022), trade information details (messages, fields and format as defined in the CCMA Best Practices and Standards White Paper), and billing;[87]
- provide reporting of statistics on matching effectiveness to allow participants and regulators to determine bottlenecks by security type and by participant for possible enforcement measures and other regulatory purposes; and
- provide fair access to, and fair pricing for, their facilities and services for both their clients and non-clients who use matching facilities of another entity.

Question 13: Should the scope of functions of a matching service utility be broader?

(iv) Regulating matching service utilities

To the extent that a matching service utility offers its services to the Canadian capital markets, we propose that the matching service utility be required to comply with filing and reporting requirements that will allow the CSA to determine whether it would be contrary to the public interest for a person or company who has filed the information to act as a matching service utility. Ongoing filing and reporting requirements will allow the CSA to monitor the operational performance and management of risk, progress of inter-operability in the market, and any negative impact on access to the markets. Further, the matching service utility will report information relating to systems and operations (means of access, description of current and future capacity estimates, reasonable contingency plans, etc). We believe the filing and reporting requirements are appropriate to ensure minimal oversight, including (i) compliance with the Automation Review Program (ARP) of the Ontario Securities Commission (OSC)[88] and (ii) ensuring inter-operability with other matching service utilities.[89]

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85 G-30 report, at 81.

86 *Ibid.*

87 In practical terms, a firm should only need to belong to one matching service utility to process all Canadian trades, each participant should only be charged for one match per trade, and one matching service utility need ultimately transmit the final matched trade to the CSD/CPP.

88 The OSC Capital Markets Branch published its *Automation Review Program For Market Infrastructure Entities in the Canadian Capital Markets* (ARP) on October 18, 2002. See (2002) 25 OSCB 6789 and 6941. The OSC's ARP is intended to apply to *specified market infrastructure entities* that operate key technology systems in the Canadian securities markets. The ARP provides a framework for compliance with the general *systems capacity and integrity* requirements of certain regulated marketplaces, including Alternative Trading Systems, found in the various recognition orders and Part 12 of National Instrument 21-101 *Marketplace Operation* (2001) 24 OSCB 11.

89 In the U.S., section 17A of the *Securities Exchange Act of 1934* (the 34 Act) requires matching service utilities to obtain registration as a clearing agency or request an exemption from registration as a clearing agency. Under the 34 Act, the scope of the definition of *clearing agency* is wide and includes anyone "…who provides facilities for comparison of data respecting the terms of settlement of

As a critical infrastructure system involved in the clearing and settlement of securities transactions, the CSA believe a matching service utility operating in the Canadian markets raises certain regulatory concerns. Matching is a complex process that is inextricably linked to the clearance and settlement process. A central trade matching utility concentrates processing risk in the entity that performs matching instead of dispersing that risk among the dealers and their institutional customers. The CSA believe that the breakdown of a matching service utility's ability to accurately compare trade information from multiple market participants involving large numbers of securities transactions and sums of money could have adverse consequences for the efficiency of the Canadian securities clearing and settlement system. Accordingly, we believe that regulatory oversight of the operational risks inherent in the use of a matching service utility is necessary.

Question 14: Are the filing and reporting requirements set out in the Proposed Instrument for a matching service utility sufficient, or should a matching service utility be required to be recognized as a clearing agency under provincial securities legislation?

Question 15: Can the Canadian capital markets support more than one matching service utility? If so, what should be the inter-operability requirements?

C. Trade Settlement

1. Mandating T+3

In the U.S., a general requirement to settle transactions by T+3 is set out in SEC Rule 15c6-1 (SEC T+3 Rule).[90] Similar measures were adopted by the SROs in Canada in 1995, when the SEC T+3 Rule was implemented.[91] The Proposed Instrument sets out a basic rule that will complement the SRO rules. A dealer who executes a trade in depository eligible securities must take all necessary steps to settle the trade no later than the end of T+3.[92] This requirement is not necessarily limited to trades executed on behalf of institutional clients. Although current SRO rules already mandate a minimum T+3 settlement cycle period for most equity and long term debt securities, we believe a general T+3 settlement cycle rule in provincial securities legislation will strengthen the clearing and settlement system in Canada. The CPSS-IOSCO report recommends that, as a minimum standard applicable to all markets, final settlement of trades in securities should occur no later than T+3.[93]

The CCMA and the U.S. securities industry will be reconsidering the move to T+1 later this year. Such a move will depend on a number of factors, and in particular the extent to which the industries have become STP compliant. The CSA anticipate that, if the U.S. securities industry is prepared to move to T+1, the SEC will amend the SEC T+3 Rule to mandate a standard T+1 settlement cycle period. The SEC is currently seeking comment on the scope of the SEC T+3 Rule and the impact that a shorter settlement cycle would have on the operations and costs to market participants in the United States. The SEC Concept Release asks 14 specific questions on this important topic.[94]

Question 16: Should the CSA mandate a T+3 settlement cycle? Should the CSA mandate a T+1 settlement cycle when the U.S. moves to T+1 and the SEC amends its T+3 Rule?

2. Mandating good delivery

The Proposed Instrument sets out a general *good delivery* rule that exists to some extent in current SRO rules.[95] The rule provides that a dealer is not permitted to grant DVP or RVP trading privileges to a client in respect of trades in depository eligible securities unless settlement of the trade is effected through the facilities of a recognized clearing agency.[96] Like the proposed T+3 rule, we believe a *good delivery* rule enshrined in provincial securities legislation will strengthen the clearing and settlement system in Canada.

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securities transactions…". The SEC has confirmed that these words include the trade matching function and that any person performing such functions must apply to be registered, or to be granted an exemption from registration, as a clearing agency. The SEC notes that an entity that provides only *central matching services* would be eligible to apply for an appropriate exemption. See Securities Exchange Act Release No. 34-39829, '*Interpretation: Confirmation and Affirmation of Securities Trades; Matching*', April 6, 1998.

90 17 C.F.R. §240.15c6-1 (1995).

91 See, for example, IDA Regulation 800.27.

92 Section 5.1 of the Proposed Instrument.

93 See CPSS-IOSCO report Recommendation 3: Settlement cycles. See also CPSS-IOSCO report, at para. 3.14.

94 SEC Concept Release, at 15-17.

95 See IDA Regulations 800.30C and 800.31.

96 Section 5.2 of the Proposed Instrument.

D. Reporting of Entitlement Events (Corporate Actions) Into a Central Hub

1. CCMA request for regulatory action

The CCMA notes that the extensive use of manual and paper-based processes for entitlements leads to errors and delays. It highlights the lack of industry processing standards and best practices, and the challenges in communicating with numerous stakeholders in the entitlements processing chain within the indirect holding system, i.e., from issuer through intermediaries to investor and back.[97] Currently, there is no central *hub* that a dealer or other intermediary can access to obtain complete, accurate and timely entitlement information on all securities in Canada. A dealer or other intermediary may need to search for an obscure notice in a newspaper in order to obtain entitlement information on a given security. Indeed, market participants in Canada must look to a range of sources in order to find entitlement information on a given security including: mailings from an issuer or their agent; announcements in newspapers; vendor data feeds; stock exchanges and the CSA System for Electronic Document Analysis and Retrieval (SEDAR) and System for Electronic Disclosure for Insiders (SEDI). According to the CCMA, the SEDAR and SEDI systems contain data on only 22 entitlement events out of a total of 65. To complicate the process even further, once entitlement information is received it must be interpreted and disseminated, received, understood and acted upon in a timely manner.[98]

The CCMA has requested that the CSA mandate the reporting of entitlement events by issuers or offerors in a standard format into a centralized hub.[99] The CCMA gave three reasons for this request. First, informed trading cannot occur without the parties to a trade being fully aware of impending corporate actions that may impact the price (e.g., when a security is subject to a call). Second, an entitlement hub will be critical if the U.S. and Canada decide to shorten the settlement cycle period to T+1. Third, Canada's global competitiveness may be compromised if entitlement processing is not improved.

The CCMA envisions entitlement reporting to a central *hub* in a field based format with reference numbers, supplemented by the ability of information providers to extract and disseminate the entitlement information from the field based format in the hub.[100] The creation of the hub would result in the electronic dissemination of all entitlement and corporate action information from issuers or offerors to beneficial holders, through intermediaries, via a central hub. Where elections from security holders are required, the hub would facilitate electronic communication of the election through intermediaries to the issuer's or offeror's transfer agent.[101]

2. CSA response

Current CSA rules governing continuous disclosure obligations and general requirements to communicate information to beneficial security holders[102] do not cover the entire scope of entitlement events that should be reported. We recognize that entitlement processing in Canada must be improved. However, there are a number of outstanding questions with respect to the CCMA's request that remain largely unanswered.[103] The CSA raised concerns about how compliance with the rule would be accomplished and at what cost. For example, what infrastructure is required to implement this proposal and who will be responsible for the start-up costs and ongoing costs of this infrastructure? At this time, the CSA are not proposing to implement a rule to mandate the reporting of corporate actions, but will continue their dialogue with the CCMA to explore the options.[104] The CSA believe that the industry should provide a meaningful cost-benefit analysis to support the need for a rule and the development of a central hub.

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97 CCMA News Release, *CCMA Issues for Public Comment Corporate Actions White Paper to Reduce Risk, Error and Costs for Intermediaries and Investors*, October 22, 2002, at 1.

98 See letter from Tom MacMillan, Chair of the CCMA, dated July 18, 2003 to Stephen Sibold, Chair of the CSA; available on the CCMA Web site.

99 *Ibid.*

100 *Ibid.*

101 CCMA Best Practices and Standards White Paper, at 35.

102 Some corporate action events are subject to continuous disclosure and informational requirements under securities law, including the security holder communication procedures in National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* and related Companion Policy. See (2002) 25 OSCB 3361.

103 See letter from Doug Hyndman, CSA Chair, dated November 28, 2002 to Tom MacMillan, Chair of the CCMA (available at http://www.osc.gov.on.ca/en/HotTopics/currentinfo/tplus1_csa-ccma-letter_20021220.html); and reply letter from Mr. MacMillan dated July 18, 2003 to Stephen Sibold, Chair of the CSA, available on the CCMA Web site.

104 In certain CSA jurisdictions, the authority to make a rule to require issuers and offerors to report entitlement events is not very clear. In December 2003, the CSA published in the context of its Uniform Securities Legislation (USL) Project a consultation draft of a *Uniform Securities Act* (USA). The USA expressly provides for rule-making authority to prescribe requirements to disseminate continuous disclosure and *other information* for security holders, including requirements in respect of *entitlement events*. See proposed s. 11.3(7)(ix) of the consultative draft USA (*CSA Notice and Request for Comment 11-404 Consultation Drafts of the Uniform Securities Act and the Model Administration Act* at (2004) 27 OSCB (Supp-1) and available on the OSC Web site at www.osc.gov.on.ca).

Question 17: Should the CSA require the reporting of corporate actions into a centralized *hub*? If not, is it more appropriate for exchanges and other marketplaces to impose this requirement through listing or other requirements? Who should pay for the development and maintenance of the central *hub*?

Question 18: Should the CSA wait until a *hub* has been developed by the industry before it imposes any requirements?

E. Payment of Entitlements Through the Large Value Transfer System

1. CCMA request for regulatory action

An entitlement payment is a payment made in respect of issued and outstanding securities to holders of such securities. Entitlement payments include interest payments made on debt securities, cash dividend payments or other similar distributions made on equity securities, payments made upon redemptions, repurchases, or maturities of securities, and payments made by offerors to take up securities under a take-over bid or other offer to purchase to a group of holders of securities.

According to the CCMA, the current method of payment of entitlements is inefficient, costly and poses a risk to CDS. Many issuers pay their entitlements by uncertified cheque or other forms of paper-based payment items. The problem with such payments is that there is no finality of payment, as they can be reversed if there are insufficient funds in the account on which the cheque or other paper-based item is drawn. If an entitlement payment is reversed, this could have a domino effect on other participants where the payment has already been used by the recipient to fund further investments or payments.

The CCMA believes that, in order to have finality of payment, issuers and offerors must make their entitlement payments in funds transmitted by the *Large Value Transfer System* or LVTS. LVTS, launched in 1999 by the CPA, is an electronic wire payment system that allows financial institutions and their customers to send large payments securely in real time, with complete certainty that payment will settle.[105] The CPA has recently taken steps to migrate more large-value Canadian dollar payments to the LVTS in order to enhance the safety and soundness of Canada's payment system. A CPA rule change that became effective in August 2003 places a $25 million ceiling on cheques, bank drafts and other paper-based payments that can be processed through the Automated Clearing Settlement System (ACSS), effectively moving a significant number of large-value payments to the LVTS.

The CCMA requested that the CSA mandate the payment of corporate entitlements to depositories by using final irrevocable LVTS funds.[106] Essentially, the CCMA is requesting that a rule or regulation be adopted by securities regulators that would govern the method of cash payments made by an issuer or offeror, or any agent of an issuer or offeror, in respect of issued and outstanding securities. The rule would be limited to payments made to a *clearing agency* (or a nominee of the clearing agency[107]) as a registered or bearer holder of such securities. Payments made to other registered or bearer holders of such securities would presumably not be covered by the rule. The rule would require that payments to the clearing agency (or nominee) be made in funds transmitted by the CPA's LVTS by noon, Eastern Time, on payment date. In reality, such payments would be made through the payor's banker, who would likely be a direct LVTS clearer.

Although it is unclear from the CCMA's proposal, it is assumed that the scope of the rule would be limited to entitlement payments made in respect of securities issued by a *reporting issuer.*[108]

2. CSA response

We recognize the importance of using same-day, irrevocable final funds for payments into the CSD/CCP utility in Canada.[109] However, the securities regulatory authorities of most CSA jurisdictions may not have the authority to make a rule under current securities legislation to mandate the payment of corporate entitlements to clearing agencies in LVTS funds. For jurisdictions that do not have the rulemaking authority, it may be necessary to request from their applicable Ministry of Finance or other

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105 By 2001, the LVTS was processing an average of more than 14,000 payments a day totalling more than $100 billion. For more information on LVTS, see the Bank of Canada Web site at www.bank-banque-canada.ca/ and the CPA Web site at www.cdnpay.ca.

106 Letter from Tom MacMillan, Chair of the CCMA, dated May 12, 2003, to Stephen Sibold, CSA Chair (the letter was in response to the questions on this matter in our November 28, 2002 letter to the CCMA), available on the CCMA Web site at www.ccma-acmc.ca.

107 The bulk of registered securities deposited with CDS are registered in the name of CDS' nominee, CDS & Co.

108 In fact, it would be unnecessary for the rule to apply in other cases. Most entitlement payments in respect of government securities or commercial paper are required to be processed by an *Entitlements Processor,* who must be a CDS participant appointed by the issuer as fiscal agent. See CDS rules 2.5.1 and 2.5.5. Since CDS participants are bound by the CDS rules, the Entitlements Processor is obliged to make such entitlement payments in LVTS funds.

109 See CPSS-IOSCO report, at paras. 3.47 to 3.52. Recommendation 10: *Cash settlement assets* in the report states: "Assets used to settle the ultimate payment obligations arising from securities transactions should carry little or no credit or liquidity risk. If central bank money is not used, steps must be taken to protect CSD members from potential losses and liquidity pressures arising from the failure of the cash settlement agent whose assets are used for that purpose."

responsible ministry the enactment of a regulation, or cause a legislative amendment to the rule-making authority of the securities regulatory authority to address this area.[110]

Other options to address this area may include the following: (i) CDS could implement a rule or procedure that would effectively force all reporting issuers to agree to make their entitlement payments to CDS in LVTS funds before their securities are made eligible for deposit with CDS[111] and (ii) the CPA could amend its rules that currently restrict large value payments of $25 million or more through the ACSS by lowering the $25 million ceiling to, say, $5 or 1 million.

Question 19: Should the CSA require issuers and offerors to make their entitlement payments by means of the LVTS?

Question 20: If there is a CSA requirement to make entitlement payments in LVTS funds, should the requirement apply only to payments in excess of a certain minimum value? If so, what should that minimum value be?

F. Modifying Investment Fund Transaction Processing Rules

1. CCMA request for regulatory action

The CCMA believes several issues need to be addressed to fully transfer processing of investment fund transactions from a manual environment to an electronic environment. They relate to: (1) the *client name* model that generally prevails in the investment fund industry; (2) electronic standards; (3) and money movements. The CCMA RTPWG's key recommendations are to:

- automate the processing of client name accounts through the use of *Documentation Agreements* and electronic trades;
- increase the use of the *FundSERV Net Settlement Messaging* (N$M) service to transfer funds to settle investment fund transactions; and
- initiate transaction orders and rejects electronically on order date.[112]

These recommendations will streamline the processing and settlement of investment fund transactions among industry participants. To implement these recommendations, the CCMA is seeking specific legislative and regulatory changes, including amendments to the *Securities Act* of all the provinces, NI 81-102, OSC Policies 5.3 and 5.4 and ASC Policies 4.3 and 4.4.

i) Client name issues

Today, it is estimated that 25 to 40 per cent of Canadian investment fund accounts are held in client name.[113] There are three major impediments to the processing of client name business in an STP environment:

1. *Reliance on receipt of documentation by fund companies to initiate or complete processing for the majority of transactions.* The documentation signed by the client is required because the securities are recorded as being held directly by the investor on the fund company records (client name).

2. *The practice of sending transactions directly to the fund company for processing as direct trades.* This is done because the distributor of a particular fund company does not support the placement of the order electronically or the distributor chooses to place the order manually simply because it is their business practice.

3. *Distributors send physical cheques to the fund companies for settlement.* The main reason for this is that some distributors do not have trust accounts or do not transmit funds electronically.

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110 The proposed USA expressly addresses this uncertainty. The USA permits the making of rules to prescribe "the methods by which cash entitlement payments may be made to a recognized clearing agency or nominee of it as registered or bearer holder of securities issued by a reporting issuer". See proposed s. 11.3(18) of the consultation draft USA.

111 CDS has suggested that this option is undesirable because it may have the unintended effect of discouraging immobilization of securities and increasing risk in the clearing and settlement system.

112 See RTPWG White Paper Addendum, at ii-iv.

113 The prevalence of the *client name* model in the mutual fund industry may be partially due to the fact that most mutual fund dealers in Canada are currently not participating in an adequate investor protection coverage plan, similar to the Canadian Investor Protection Fund (CIPF). CIPF covers investors holding securities and cash through an investment dealer up to a maximum of $1,000,000 per account for any combination of cash and securities. We understand that the MFDA is presently considering various alternatives for establishing a similar investor protection fund company. It is anticipated that it will cover customer's losses of mutual fund securities and cash balances that result from the insolvency of a MFDA member, up to a coverage limit of $100,000 per customer or customer account or accounts.

The RTPWG suggests that client name processing must become electronic[114] and that documentation exchanged between dealer and fund company must be minimized and, where possible, eliminated through the development and implementation of so called *Documentation Agreements*. According to the RTPWG, Documentation Agreements would allow the distributor to maintain the documentation on behalf of the fund company for transactions involving minimum liability and risk to the fund company, the fund or the client. However, this raises questions about the liability of the fund issuer in case of errors or fraudulent transactions, and its reluctance to rely on dealer indemnifications. The RTPWG suggests that under current provincial securities legislation, it is unclear *who owns the client*. At present, an advisor on a *front load* purchase acts as an agent for an investor. In contrast to *front load*, in *deferred load* purchases the advisor acts as an agent for the company. The RTPWG proposes that the advisor should always be seen as acting as the agent for the investor.

ii) Electronic standards

The CCMA believes all transaction orders and rejects should take place electronically on the date the order takes place at the distributor in order to facilitate STP requirements. Fund companies must use the correct error code to reject a transaction to support timely correction and processing of the trade.

Most of the legislative or regulatory amendments in this area deal with such practical matters as altering the definition of *security* in securities legislation (to include references to the intangible *interest* in securities and not just the physical embodiments of securities, such as certificates, instruments and other title documents), avoiding the reliance on physical securities certificates, and removing the delivery requirements of originating trade documents from distributor to fund company.

(A) altering the definition of security

The definition of *security* in the Ontario, Alberta and British Columbia *Securities Acts* may need to be amended since the structure and terminology in the various Acts focus more on the form of evidence of a security ("document, instrument or writing commonly known as a security") than on the underlying interest itself. The focus of the definition would need to be shifted equally towards the underlying interest itself.[115]

(B) avoiding reliance on physical certificates

In Ontario and Alberta, holders of units of non-redeemable income investment trusts and partnerships have a right to receive certificates evidencing their holdings. In order to achieve the *elimination of paper* objective, this right to receive the physical certificates would have to be altered. This would require an amendment to OSC Policies 5.3 and 5.4 and ASC Policies 4.3 and 4.4 by eliminating the requirement that the holders of units of *closed end* income investment trusts and partnerships are entitled to receive certificates evidencing their holdings.[116]

(C) removing delivery requirements

As stated above, in order to move to an STP environment, all transaction orders and rejects should take place electronically on the date the order takes place to facilitate STP.

Under NI 81-102, purchase orders may be sent to the dealers by same or next day courier or priority mail. Purchase orders would need to be made electronically in order to eliminate this reliance on paper. Similarly, redemption orders would need to be made by electronic means. Sections 9.1(1), 9.1(2), 10.2(1) and 10.2 (2) of NI 81-102 need to be amended to remove all

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114 RTPWG White Paper Addendum, at 25.

115 The USA defines *security* to include an "*interest,* record, share, unit or writing commonly known as a security." See proposed s. 1.2 of the consultation draft USA.

116 In addition, the CCMA identified the previous version of Multilateral Instrument 45-102 *Resale of Securities* as a barrier to STP because its legend requirements in effect required certification, thus forcing the use of paper certificates. The CSA subsequently released for public comment a revised Multilateral Instrument 45-102 *Resale of Securities* (New MI 45-102) on March 30, 2003, but did not address the legend issue. During the comment process, the CCMA suggested in a letter dated May 2, 2003 that the certification requirements in New MI 45-102, as initially published for comment, would create severe problems for STP and moving to a shorter settlement cycle should the Canadian industry decide to move to T+1. The CCMA suggested that DRS systems and nominee name book-entry options are an effective alternative to certification. In response to the comments received from the CCMA and other industry participants, the CSA broadened the language in section 2.5(2) of New MI-45-102 to accommodate electronic alternatives (including DRS or other electronic book-entry systems) to a paper certificate with a legend. New MI 45-102 was implemented on March 30, 2004 as a rule in British Columbia, Alberta, Manitoba, Ontario, Prince Edward Island, Nova Scotia, Newfoundland and Labrador; a commission regulation in Saskatchewan; and a policy or code in New Brunswick, the Northwest Territories, Nunavut and the Yukon. New MI 45-102 was not adopted in Quebec.

references to same or next day courier or priority post. It may also be necessary to eventually amend sections 9.4(1) and 9.4(2) of NI 81-102 to shorten the current processing cycle of an investment fund transaction.[117]

iii) Money movement

According to the CCMA, the use of physical cheques in retail transactions must be greatly reduced and ultimately eliminated in order to move to an STP environment. FundSERV's N$M service is seen as the most effective means to transmit funds supporting mutual fund trades. The RTPWG recommends consideration of the following two options to address those dealers unable to meet the minimum N$M participation requirements (both designs are based on the dealer's acceptance, verification and keying of an investor's banking information at point-of-sale):

1. Send the transaction order directly to the fund company for complete processing.

2. Send the transaction order to FundSERV, where banking information is routed to the financial institution for confirmation, the order (without banking information) is sent to the fund company for processing, and funds are netted at FundSERV and forwarded to the fund company.

Unless prohibited under SRO rules and provincial securities regulation, the use of trust accounts by dealers as set out in section 11.3 of NI 81-102 may also facilitate the money movement process.

2. CSA response

The CSA generally support the CCMA's STP initiatives for investment fund transaction processing, and will publish for comment in the near future proposed technical amendments to NI 81-102 and CP 81-102CP to facilitate the processing of investment fund transactions on a STP basis.[118] In addition, the OSC and ASC propose to amend OSC Policies 5.3 and 5.4 and ASC Policies 4.3 and 4.4 to remove the requirement for certain unincorporated closed-end investment funds to issue certificates to their security holders.

We agree with the CCMA that the retail securities market, specifically investment funds, must move towards STP to reduce risk and complexity of this market and avoid a loss of business while other segments of the market are settling transactions more rapidly. However, institutional trade processing is the current focus of regulatory action because it involves issues of a systemic nature. For the most part, the investment fund industry in Canada operates in a closed market. With a few exceptions, such as exchange traded funds, Canadian investors may only purchase Canadian funds that meet Canadian regulatory standards. There is less impetus for the investment fund industry to move to STP since it does not interact with other markets. The failure of a distributor or a mutual fund company would not necessarily spread to other market participants or market segments.

The investment funds industry in Canada also does not operate using a CSD/CCP. The distributors of non-exchange traded investment funds deal directly with the investment fund managers. With this business model, and the fact that approximately 40 per-cent of all transactions are manual, there remains a significant gap in achieving STP in the investment funds industry.

We support the industry's preference to maintain the client name model as an option for investors to hold their investment fund securities. Even in the equity and debt securities markets, where a vast majority of investors hold their securities in nominee name, investors have the option to hold or own their securities directly in client name with the issuer, whether in certificated or uncertificated form. Removing the ability of investors to hold or own their securities in a direct legal relationship with the fund issuer, and forcing them to hold or own their securities in nominee name only, would remove the investor's freedom to choose how to hold his or her personal investments.

The CSA propose to carefully review whether the use of Documentation Agreements and electronic payment processes will cause any investor protection or market efficiency concerns under securities regulatory law. We urge the industry to also carefully consider any implications under commercial, insolvency and privacy law with the use of Documentation Agreements and electronic alternatives for all market participants, particularly investors and fund companies.

Question 21: Should the CSA consider implementing any additional rules to encourage and facilitate the investment funds industry to move towards an STP business model? If so, what issues should be addressed by the CSA?

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117 We may also need to consider amending section 9.2 of NI 81-102 relating to initial trade rejections and section 7.2 of National Instrument 81-104 (Calculation of net asset value (NAV)).

118 The Autorité des marchés financiers (Québec) emphasizes that, in Quebec, it may not be possible to impose a requirement that all transaction orders and rejects take place electronically under the current *Act to establish a legal framework for information technology* (Quebec).

G. Immobilization and Dematerialization of Physical Securities

Ownership of securities has traditionally been evidenced by the possession of physical certificates. Physical certificates have also been used to record restrictions on trading of securities. Gradually, over the past several decades, there has been a movement towards using the electronic medium, particularly the *immobilization* of securities and the use of the indirect holding system, as a substitute to holding physical certificates. The DWG has identified a number of problems with the continued use of physical securities, including unnecessary costs resulting from the issuance, safekeeping, transfer and delivery of physical securities, and the costs associated with fraud and forgery.[119] The U.S. Securities Industry Association (SIA) has concluded that, in the U.S., the complete elimination of physical certificates for securities could save market participants more than U.S.$200 million annually.[120]

As noted above, most problems associated with physical certificates in Canada have been alleviated through immobilization of securities with a central securities depository, such that they are transferred electronically by book-entries on the records of the central securities depository, the participants of the central securities depository, and other intermediaries further down the chain of the indirect holding system.[121] The majority of trades in Canada today do not involve physical certificates—less than 0.03 per-cent of the value of trades originates with physical securities.[122] Despite that, according to the DWG "there are approximately 20 to 30 million certificates held by over five million investors holding in excess of $200 billion that are still held in physical form".[123]

The concept of the complete elimination of physical certificates is referred to as *dematerialization*. It is important to emphasize the distinction between dematerialization and immobilization.[124] While immobilization merely reduces the physical *movement* of certificates, dematerialization refers to the *elimination* of physical certificates entirely. Dematerialization is claimed by its proponents to be one of the main ways in which efficiency in the industry can be increased. This is a particularly relevant and important consideration within the context of STP in Canada.

1. CCMA request

As noted in Part II, the SIA and the CCMA announced in 2002 that they would focus on implementing STP before trying to implement T+1. In response to this shift in focus, the CCMA stated:

> While dematerialization of certificates was not critical to achieving T+1 settlement of institutional and retail transactions, it is critical to truly achieving straight-through processing as the handling of paper securities is by its nature manual, with the associated risks and costs that manual handling implies. Moreover, dematerialization of securities supports industry-wide STP of trading and settlement and contributes to the competitiveness of Canadian capital markets.[125]

Both the CCMA and SIA are promoting the advantages of dematerialization. However, the SIA appears to be pushing towards *complete* dematerialization[126] of securities issued by public corporations incorporated in those U.S. states that currently do not permit it (e.g. Delaware),[127] while the CCMA's recommendations to reform provincial company legislation do not go so far as to recommend removing the right of an individual to request a physical certificate from a corporate issuer.[128]

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119 DWG White Paper Addendum, at i.

120 See SIA letters dated March 24 and August 20, 2003 to the SEC's Division of Market Regulation regarding the immobilization and dematerialization of physical securities (SIA Letters to SEC re: Certificates); available on the Web site of the SIA at www.sia.com/stp/pdf/PhysSecCostAnalysis.pdf.

121 In Canada, physical certificates would be held by or on behalf of, or uncertificated securities would be registered in the name of, CDS & Co., a nominee of CDS. See the CSA USTA Consultation Paper, at 16.

122 DWG White Paper, at 2.

123 DWG White Paper Addendum, at 9.

124 For a description of the distinction between the *immobilization* and *dematerialization* of securities, see CSA USTA Consultation Paper, at 19-20.

125 DWG White Paper Addendum, at ii.

126 Complete dematerialization means that a security holder would not be entitled to request a certificate to evidence his or her securities of the issuer.

127 See the SIA Letters to SEC re: Certificates.

128 Not all provinces have corporate law provisions similar to section 54 of the *Business Corporations Act* (Ontario) and section 49 of the *Canada Business Corporations Act,* which expressly allow corporations to issue to a security holder a *non-transferable written acknowledgement* of the holder's ownership of securities of the company (the holder always has the right to obtain a certificate upon request). The CCMA is lobbying to reform certain provincial company law statutes that currently do not expressly permit security holders to own their securities in *uncertificated* form. In late 2003, the Province of British Columbia passed a new provincial *Business Corporations Act* to replace the existing B.C. *Company Act*. Section 107 of the new Act allows a B.C. incorporated company to issue *non-transferable written acknowledgements* instead of certificates. The new legislation came into force on March 29, 2004. With respect to reform of company law statutes in Quebec, Prince Edward Island and New Brunswick, see CCMA letters, respectively, to (i) the Minister of Finance, Government of Quebec, dated December 12, 2003, (ii) the Director, Consumer, Corporate and Insurance

The DWG is advocating the creation of DRS systems in Canada. A DRS is a system that enables an investor to electronically move its securities held in direct registration and uncertificated form back and forth between the issuer (or transfer agent) and the investor's dealer. A DRS provides an investor with a third alternative method of holding or owning securities.[129] Essentially, Canadian DRS systems operated by transfer agents would allow investors to register eligible securities electronically directly with the transfer agent.[130] In the DWG White Paper Addendum, the CCMA states that the DRS is a suitable solution for efficient electronic *alternative to nominee registration*.[131]

2. CSA response

Greater immobilization and the move to dematerialization of publicly traded securities are consistent with international standards[132] and should be encouraged. We believe the Proposed Instrument will encourage market participants to further immobilize physical securities,[133] although at this time we do not propose to require all new issues of publicly traded securities to be made depository eligible.[134] The CPSS-IOSCO report suggests that investors that insist on holding certificates should bear the costs of their decisions.[135]

Question 22: Should the CSA develop rules that require the immobilization and, to the extent permitted by corporate and other law, dematerialization of publicly traded securities in Canada?

Like other critical infrastructure systems involved in the clearing and settlement of securities transactions and the safeguarding of securities, the CSA believe DRS systems operating in Canada raise certain regulatory concerns. Transfer agent operated book-entry systems, including DRS systems, pose different and potentially increased risks to investors. For example, increased reliance on the records of transfer agents may place additional burdens on transfer agents and could increase the risks to investors arising from substandard transfer agent systems and performance. The evidence of legal ownership of uncertificated securities for a wide spectrum of investors who wish to hold their securities directly from the issuer (the direct holding system) would rest largely on the systems operated or used by transfer agents. To the extent that transfer agents in Canada operate or use DRS systems or other transfer agent operated systems in the Canadian capital markets, the CSA propose that such systems be subject to minimal oversight by the regulators.[136] We propose to require such transfer agent-operated systems to be approved by the regulators and subject to oversight, including compliance with the OSC's ARP.[137]

Question 23: To the extent DRS systems operate in Canada, should a securities regulatory authority regulate transfer agents that are operating or using such DRS systems?

Question 24: Should there be separate DRS systems and should they be required to be inter-operable?

Division, Government of P.E.I., dated October 28, 2003, and (iii) the Director, Corporate Affairs, Government of New Brunswick, dated October 16, 2003; available on the CCMA Web site.

129 The other two methods are (i) holding a physical certificate or (i) holding securities in *street name* or nominee name book-entry form through an account maintained on the investor's behalf by a securities intermediary—the indirect holding system.

130 In the U.S, DTCC would expand its central DRS, while in Canada, each transfer agent proposes to operate an independent DRS.

131 DWG White Paper Addendum, at 26.

132 See CPSS-IOSCO report, at paras. 3.27 to 3.31. Recommendation 6: *Central securities depositories (CSDs)* in the report states: "Securities should be immobilized or dematerialized and transferred by book entry in CSDs to the greatest extent possible".

133 See Section 5.2 of the Proposed Instrument.

134 All new issues of publicly traded securities in the U.S. must be made depository eligible. See SEC Order Approving on an Accelerated Basis Changes Regarding Depository Eligibility Requirements, Exchange Act Release No. 34,35798, 60 Fed. Reg. 30909 (1995) (order approving self-regulatory organization rules on new issue depository eligibility), as cited in J.S. Rogers, "Policy Perspectives on Revised U.C.C. Article 8", (1996) 43 U.C.L.A. Rev. 1431, at 1445.

135 CPSS-IOSCO report, at para. 3.31.

136 The USA expressly provides for rule-making authority to regulate "... any person that operates a system or network of systems used by market participants for the clearance and settlement of securities transactions, the maintenance of securities accounts, and the safeguarding of securities, including, without limitation, any system or network of systems operated or used by, (i) a transfer agent and registrar for securities of a reporting issuer for the registration of transfer of uncertificated securities and the recording of ownership and safeguarding of those securities, and (ii) a dealer, adviser and custodian for the clearance and settlement of securities transactions, the maintenance of securities accounts, and the safeguarding of securities." See proposed s. 11.3(17) of the consultative draft USA.

137 In the U.S., section 17A of the 34 Act requires a transfer agent to register with the SEC or a bank regulatory agency. Transfer agents also must comply with detailed SEC regulations. See SEC Rules 17Ab2-1 to 17Ad-21T. The SEC rules address such matters as the timely issuance and cancellation of certificates, record-keeping practices, and the safeguarding of securities and cash. In addition, the SEC regulates the DRS operated by DTCC for some 600 issuers and their transfer agents as part of its mandate to promote an efficient and safe national securities settlement system.

3. CSA USTA project

A critical factor in supporting further immobilization and dematerialization of securities in the marketplace is the need to modernize in Canada the commercial law rules that govern the property rights that exist whenever securities are bought, sold, or used as collateral. Current Canadian law is out of date and fundamentally flawed in several ways. First, it fails to deal adequately with modern securities market practices, particularly the holding and transfer of securities through the indirect holding system.[138] Second, it is found in a confusing array of provincial and federal statutes that do not cover the entire scope of securities traded in the markets. Third, in stark contrast to the United States where all 50 states have enacted commercial law on a uniform word-for-word basis, it is non-uniform throughout Canada.

On August 1, 2003 the CSA released for public comment a comprehensive proposal to modernize Canadian commercial and property-transfer law governing the holding, transfer, and pledging of securities. The proposal consists of several documents, including a consultative draft of a provincial *Uniform Securities Transfer Act* (USTA) with detailed Comments,[139] modeled on Revised Article 8 of the U.S. Uniform Commercial Code. The CCMA and the industry in general are seeking the implementation in Canada of modern uniform legislation like the USTA to improve the legal framework supporting the Canadian securities clearing and settlement system. The USTA proposal was developed by a Task Force of the CSA as a joint project with the Uniform Law Conference of Canada.

H. Securities Lending

1. CCMA's request

The SLWG defines securities lending as the temporary loan of securities for cash, or other near-cash assets of an equivalent or greater value, for collateral purposes, with a contractual obligation to re-deliver a like quantity of the same securities at a future date.[140]

The SLWG identified significant challenges in their white paper with current securities lending market practices, including the use of manual processes and reliance on paper (e.g., currently approximately 99 per-cent of loans recalled by lenders are communicated by fax and phone—an error prone and inefficient process)[141]. The SLWG also identified as problems incomplete standards and best market practices, the lack of incentives and compliance mechanisms, and inconsistent rules and regulations among Canadian jurisdictions. Furthermore, no single body brings borrowers and lenders together to facilitate improvements in securities lending transactions.[142]

The SLWG recommended a number of solutions to improve securities lending processing. They suggest removing manual and paper-based steps, identifying and agreeing on desirable standards and market practices, ensuring an effective legal regulatory framework, promoting communications among industry stakeholders, and working to harmonize where possible with the U.S.[143]

2. CSA response

At this time no regulatory action is being requested, so the CSA will focus its role on monitoring developments in this area. We note, however, that international minimum standards suggest that impediments to the development and functioning of securities lending markets should, as far as possible, be removed.[144] We believe this includes the need to promote the automation of the processing of securities lending transactions, possibly even encouraging the development of centralized lending facilities in the Canadian capital markets.[145]

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138 It is also ill prepared to support full dematerialization of securities and DRS systems because current rules are inadequate to govern the direct holding, transfer and pledging of uncertificated securities.

139 The USTA proposal also includes proposed conforming amendments to Ontario and Alberta Business Corporation Acts and Personal Property Security Acts, a Consultation Paper, and tables of concordance. For more information on the USTA proposal, see *Canadian Securities Administrators' Uniform Securities Transfer Act Task Force-Invitation for Comments Notice,* (2003) 26 OSCB 5819. The notice and materials are available on the OSC Website at http://www.osc.gov.on.ca/en/HotTopics/usta.html#open.

140 SLWG White Paper, at iv.

141 *Ibid*., at v.

142 *Ibid.,* at v and vi.

143 *Ibid*., at vi.

144 CPSS-IOSCO report, at para. 3.24.

145 *Ibid*.

I. Protection of Customer Assets in the Indirect Holding System

Dealers and custodians holding securities in custody for investors must have appropriate accounting and safekeeping procedures and robust systems to safeguard securities.[146] While not directly addressed by the industry's STP initiatives, we highlight this issue because of the growing reliance on book-entry ownership systems to evidence property interests in securities and the emphasis on furthering the immobilization and dematerialization of securities. We have already discussed our concerns with unregulated DRS systems operating in Canada in the context of the direct holding system.

While certain regulations exist under current Canadian securities legislation governing the segregation of funds and securities held by dealers,[147] there are no comprehensive CSA rules that are substantively comparable to the SEC rules in the U.S. on segregation of customer assets.[148] Comparable Canadian regulatory provisions dealing with the segregation of fully paid or excess margin securities and the segregation of funds are found in SRO rules.[149] The basic element of an appropriate segregation rule is that a dealer or other securities intermediary must promptly obtain and thereafter maintain all fully-paid and excess margin securities carried for the account of customers.[150] Dealers and other intermediaries should be required to verify on a daily basis the securities required to be segregated according to established procedures. In the event that a segregation deficiency exists, including securities purchased but not delivered within a certain period of time, then the dealer must promptly take steps to obtain such securities through a buy-in procedure or otherwise.[151]

Generally, in view of the greater reliance on securities intermediaries to hold securities, we believe it may be appropriate at this time to consider the role of the CSA to develop comprehensive rules governing the segregation of funds and securities by dealers and custodians involved in holding securities in the clearing and settlement system. Such rules would form part of provincial securities legislation, would complement existing federal bankruptcy and insolvency rules governing dealer insolvencies,[152] may enhance the operation of investor protection fund schemes like the Canadian Investor Protection Fund,[153] and may generally enhance the overall safety and efficiency of the Canadian securities clearing and settlement system. International standards suggest that it is important for domestic regulatory and supervisory authorities to enforce effective segregation of customer assets by securities intermediaries.[154]

In addition, like our proposal to oversee the use of DRS systems, it may be appropriate for such rules to provide for some oversight by the CSA of the systems used or operated by dealers and custodians for the clearance and settlement of securities transactions, the maintenance of securities accounts, and the safeguarding of securities.[155]

Question 25: Is it sufficient for the Canadian capital markets to rely solely on existing SRO segregation rules? Or, given the growing reliance on the indirect holding system, should the CSA consider an active role in developing comprehensive rules on segregation of customer assets?

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146 See CPSS-IOSCO report Recommendation 12: Protection of customers' securities: "Entities holding securities in custody should employ accounting practices and safekeeping procedures that fully protect customers' securities. It is essential that customers' securities be protected against the claims of a custodian's creditors."

147 See, for example, Regulations 116 to 122, R.R.O. 1990, Reg. 1015, enacted under the OSA. However, pursuant to Regulation 122, these provisions may not be applicable to SRO members.

148 For example, see SEC Rule 15c3-3 (also known as the *Customer Protection Rule*).

149 See, for example, IDA By-Law 17.3, Regulation 1200 *Clients' Free Credit Balances*, and Regulation 2000 *Segregation Requirements.*

150 See, in the U.S., § (b)(1) of 17 CFR 240.15c3-3 and, in Canada, IDA By-laws 17.3, 17.3A and 17.3B. This obligation is met by holding securities either directly (physical possession or direct registration on the issuer's register) or indirectly (through securities accounts maintained with upper-tier intermediaries, including a clearing agency).

151 See, in the U.S., § (d)(2) of 17 CFR 240.15c3-3 and, in Canada, IDA Regulation 2000.9.

152 See Part XII of the *Bankruptcy and Insolvency Act* (Canada).

153 CIPF covers investors up to a maximum of Cdn$1,000,000 per account for any combination of cash and securities, which appears to compare favourably with the U.S. Securities Investor Protection Corporation (SIPC). We understand that SIPC covers up to U.S.$500,000 in assets, but imposes a limit of up to $100,000 for cash. As a result, it is possible that the risk of holding a credit balance in a securities account maintained with a Canadian dealer is less than that with a U.S. broker-dealer.

154 See CPSS-IOSCO report, at para. 3.62.

155 The USA expressly provides for rule-making authority in this area. See proposed s. 11.3(17)(ii) of the consultation draft USA. It should be noted that the systems of CSD/CCP utilities in Canada, such as those of CDS, are already subject to rigorous regulation and oversight.

PART IV: CONCLUSION AND REQUEST FOR COMMENTS

As noted in this Paper, the continued success of Canada's capital markets depends on the ability of our markets to compete on a global scale. In order to compete globally, we must improve the clearing and settlement process in Canada, including improvements to operational systems and processes and reforms to applicable laws and regulation. The implementation of STP will achieve the key objectives of reducing firm and systemic risk as well as improving the operational efficiency of our securities clearing and settlement system.

Implementing STP on an industry-wide basis will require changing business processes, identifying common technology, setting standards, and building interfaces and utilities.

The CSA surveys have raised concerns about the degree of STP preparation and readiness of market participants. Market participants are reluctant to invest in upgrading back-office systems and improving processes without industry co-ordination because it is difficult to justify the investment solely on an individual return-on-investment basis. The decision to invest will make sense if all market participants make a concerted effort to act together. We believe that market participants will be prepared to invest in and implement STP within their firms with the proposals set out in this Paper.

The CSA agree that it is necessary to take regulatory action and, with the Proposed Instrument, propose to require dealers and institutional investors to match institutional trades as soon as practicable after a trade is executed, and in any event no later than the close of business on T. The purpose of the Proposed Instrument is to provide a framework in provincial securities legislation for ensuring more efficient post-trade processing of trades in publicly traded securities.

Achieving industry-wide STP by mid-2005 is a lengthy and complex undertaking that will likely not be achieved unless market participants are already expending time, resources and effort. All market participants and regulators must work together to implement STP in Canada by mid-2005.

You are encouraged to comment on any aspect of the Paper, the Proposed Instrument and Companion Policy. In particular, you are asked to respond or otherwise comment on the specific questions set out in the Paper and reproduced below. Your submissions should be sent in accordance with the instructions set forth in the accompanying notice published by each CSA jurisdiction with the Paper.

Question 1: If the CSA were to implement mandatory STP readiness certificates, what should be the subject matter of such certificates?

Question 2: Is it important to the competitiveness of the Canadian capital markets to reach STP at the same time as the U.S.? Please provide reasons for your answer. Are there any factors or challenges unique to the Canadian capital markets?

Question 3: Should it be one of the CCMA's tasks to identify the critical path to reach specific STP goals? If so, what steps and goals should be included?

Question 4: Should the CSA require market participants to match institutional trades on trade date? Would amending SRO rules to require trade matching on T be more effective than the Proposed Instrument? Is the effective date of July 1, 2005 achievable?

Question 5: Is a close of business definition required? If so, what time should be designated as close of business?

Question 6: Should the Proposed Instrument expressly identify and require matching of each trade data element, or is it sufficient for the Proposed Instrument to impose a general requirement to match on T and rely on industry best practices and standards to address the details?

Question 7: Should the CSA rely on the best practices and standards established by the CCMA ITPWG?

Question 8: The CSA seek comments on the scope of the Proposed Instrument. Have we captured the appropriate transactions and types of securities that should be governed by requirements to effect trade comparison and matching by the end of T and settlement by the end of T+3? Have we appropriately limited the rule to *public* secondary market trades?

Question 9: Is the contractual method the most feasible way to ensure that all or substantially all of the *buy side* of the industry will match their trades by the end of T?

Question 10: Should an exception to the requirement to match a trade on T be allowed when parties are unable to agree to trade details before the end of T and are required, as a result, to correct the trade data elements before matching?

Question 11: Should registrants be required to report all exceptions from matching by the close of business on T? If so, who should receive the report (e.g. recognized clearing agency, SROs, and/or securities regulatory authorities)?

Question 12: Is it necessary to mandate the use of a *matching service utility* in Canada? If so, how would the appropriate centralized trade matching system be identified? Are there institutional investors or investment managers that may not benefit from being forced into an automated centralized trade matching system? Can STP trade matching be achieved without a matching service utility?

Question 13: Should the scope of functions of a matching service utility be broader?

Question 14: Are the filing and reporting requirements set out in the Proposed Instrument for a matching service utility sufficient, or should a matching service utility be required to be recognized as a clearing agency under provincial securities legislation?

Question 15: Can the Canadian capital markets support more than one matching service utility? If so, what should be the inter-operability requirements?

Question 16: Should the CSA mandate a T+3 settlement cycle? Should the CSA mandate a T+1 settlement cycle when the U.S. moves to T+1 and the SEC amends its T+3 Rule?

Question 17: Should the CSA require the reporting of corporate actions into a centralized *hub*? If not, is it more appropriate for exchanges and other marketplaces to impose this requirement through listing or other requirements? Who should pay for the development and maintenance of the central *hub*?

Question 18: Should the CSA wait until a *hub* has been developed by the industry before it imposes any requirements?

Question 19: Should the CSA require issuers and offerors to make their entitlement payments by means of the LVTS?

Question 20: If there is a CSA requirement to make entitlement payments in LVTS funds, should the requirement apply only to payments in excess of a certain minimum value? If so, what should that minimum value be?

Question 21: Should the CSA consider implementing any additional rules to encourage and facilitate the investment funds industry to move towards an STP business model? If so, what issues should be addressed by the CSA?

Question 22: Should the CSA develop rules that require the immobilization and, to the extent permitted by corporate and other law, dematerialization of publicly traded securities in Canada?

Question 23: To the extent DRS systems operate in Canada, should a securities regulatory authority regulate transfer agents that are operating or using such DRS systems?

Question 24: Should there be separate DRS systems and should they be required to be inter-operable?

Question 25: Is it sufficient for the Canadian capital markets to rely solely on existing SRO segregation rules? Or, given the growing reliance on the indirect holding system, should the CSA consider an active role in developing comprehensive rules on segregation of customer assets?

6.1.3 CSA Request for Comment Proposed National Instrument 24-101 Post-trade Matching and Settlement

CANADIAN SECURITIES ADMINISTRATORS' REQUEST FOR COMMENT
PROPOSED NATIONAL INSTRUMENT 24-101
POST-TRADE MATCHING AND SETTLEMENT

TABLE OF CONTENTS

PROPOSED
NATIONAL INSTRUMENT 24-101
POST-TRADE MATCHING AND SETTLEMENT

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions - In this Instrument,

"counterparty", in relation to a trade in a security by a buyer or a seller, means the opposite party to such trade;

"custodian" means a person or company[1] that holds securities for the benefit of another under a custodial agreement or other custodial arrangement, but does not include a dealer;[2]

"DVP" means delivery-versus-payment;

"delivery-versus-payment", in relation to a purchase or sale of a security, means a service available to the buyer which allows him, her or it to pay for the security when the security is delivered at settlement;

"depository eligible security" means a publicly traded security in respect of which settlement of a trade in the security may be performed through the facilities or services of a recognized clearing agency;

"institutional client" means a person or company, including a portfolio adviser, that appoints a custodian to hold securities on his, her or its behalf;

"matching service utility" means a person or company that provides centralized facilities for the process of comparing trade data and has filed Form 24-101F1, but does not include a recognized clearing agency, a recognized exchange, or a recognized quotation and trade reporting system;

"portfolio adviser" means an adviser registered under securities legislation[3] for the purpose of managing the investment assets of one or more clients of the adviser through discretionary authority granted to the adviser by the clients;

"RVP" means receive-versus-payment;

"receive-versus-payment", in relation to a purchase or sale of a security, means a service available to the seller which allows him, her or it to deliver the security when payment is received at settlement;

"recognized clearing agency" means,

(a) in Ontario, a clearing agency[4] recognized by the securities regulatory authority[5] to carry on business as a clearing agency;

(b) in Quebec, a clearing agency recognized by the securities regulatory authority as a self-regulatory organization, and

(c) in every other jurisdiction,[6] a clearing agency in Canada that is otherwise subject to regulation under securities legislation by the securities regulatory authority or by a securities regulatory authority of another jurisdiction in Canada;[7]

"recognized exchange" has the meaning ascribed to that term in National Instrument 21-101 – Marketplace Operation;

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1 The term "person or company" is defined for clarification in certain jurisdictions in National Instrument 14-101 — Definitions.

2 This definition of custodian is derived in part from the definition found in OSC Rule 14-501 - Definitions.

3 The term "securities legislation" is defined in National Instrument 14-101 — Definitions.

4 The term "clearing agency" is defined in the securities legislation of certain jurisdictions (see, for example, s. 1(1) of the *Securities Act* (Ontario)).

5 The term "securities regulatory authority" is defined in National Instrument 14-101 — Definitions.

6 The term "jurisdiction" is defined in National Instrument 14-101 — Definitions.

7 There are only two clearing agencies in Canada that are regulated under provincial securities legislation, The Canadian Depository for Securities Limited (CDS) and Canadian Derivatives Clearing Corporation (CDCC). CDS is recognized as a clearing agency in Ontario and as a self-regulatory organization in Quebec. CDCC is recognized as a self-regulatory organization in Quebec. No other CSA jurisdiction regulates CDS or CDCC.

"recognized quotation and trade reporting system" has the meaning ascribed to that term in National Instrument 21-101 – Marketplace Operation;

"relevant party" means a person or company involved in the process of comparing trade data that must agree to the details of a trade in securities;

"settlement", in relation to a trade in a security, means the completion of the trade, whereby the seller transfers the security to the buyer and the buyer transfers the payment to the seller, and includes, in the context of completion of a trade through the facilities or services of a clearing agency acting as central counterparty, the discharge of obligations in respect of funds or securities, computed on a net basis, between and among the clearing agency and the participants of the clearing agency;

"T" means the day on which a trade is executed;

"T+1" means the next clearing or settlement day following the day on which a trade is executed;

"T+3" means the third clearing or settlement day following the day on which a trade is executed;

"trade-matching compliance agreement" means the agreement described in section 1.4.

1.2 Interpretation — Comparing Trade Data

(1) In this Instrument, comparing trade data is a process by which details and settlement instructions of a trade in securities executed on behalf of an institutional client are being transmitted or compared among,

(a) the institutional client,

(b) the dealer acting for the institutional client in the trade,

(c) the counterparty to the trade if the dealer was not acting as principal in the trade,

(d) the custodian or custodians of the institutional client, and

(e) any service provider performing services for one or more of the parties referred to in paragraphs (a) to (d) to facilitate the settlement of the trade.

(2) Without limiting the generality of subsection (1), the process of comparing trade data includes any one or more of the following steps:

(a) The dealer notifies the institutional client of the execution of the trade.

(b) The institutional client advises the dealer and each custodian how the securities are to be allocated among,

(i) the underlying client accounts managed by the institutional client, or

(ii) each custodian.

(c) The dealer confirms to the institutional client certain details of the trade pursuant to securities legislation or the rules of a self-regulatory organization and submits trade details to the clearing agency.

(d) Each custodian verifies the trade details and settlement instructions against available securities or funds held for the institutional client.

1.3 Interpretation — Institutional Trade Matching — In this Instrument, a trade executed on behalf of an institutional client is matched when,

(a) the process of comparing trade data is completed,

(b) the relevant parties have agreed to the details of the trade, and

(c) either the custodian of the institutional client or a matching service utility is in a position to notify a recognized clearing agency of the trade.

1.4 Interpretation — Trade-Matching Compliance Agreement

(1) In this Instrument, a trade-matching compliance agreement is a written agreement between a dealer and an institutional client pursuant to which they agree, as a condition of accepting an order from the institutional client to trade in a depository eligible security on a DVP or RVP basis, to take all necessary steps to complete the process of comparing trade data and matching the trade as soon as practicable after the trade has been executed and in any event no later than the close of business on T.

(2) Subject to subsection (3), a trade-matching compliance agreement may expressly permit a party to the agreement to complete the process of comparing trade data and matching the trade after T if, during the process of comparing trade data, the details of the trade are found to be incorrect or incomplete and the party, acting reasonably, is unable to agree to the details of the trade with another relevant party by the close of business on T.

(3) A trade-matching compliance agreement shall expressly require the party referred to in subsection (2) to take all necessary steps to correct the details of the trade and match the trade as soon as practicable and in any event no later than the close of business on T+1.

PART 2 APPLICATION

2.1 Application — This Instrument does not apply to,

(a) a trade in respect of which the terms of settlement have been expressly agreed upon by the counterparties at the time of the trade;

(b) a trade that is a distribution of a security;

(c) a trade in a security of a mutual fund to which National Instrument 81-102 Mutual Funds applies;

(d) a trade in a security to be settled outside Canada.

PART 3 TRADE MATCHING

3.1 Trade Matching Compliance by Dealer — A dealer who executes a trade in a depository eligible security shall take all necessary steps to match the trade as soon as practicable after the trade has been executed and in any event no later than the close of business on T.

3.2 Trade-Matching Compliance Agreement — A dealer shall not accept instructions to open an account or an order to trade in a depository eligible security from an institutional client pursuant to an arrangement under which,

(a) the payment for the security purchased is to be made on a DVP or RVP basis by a custodian or

(b) the delivery of the security sold is to be made on a DVP or RVP basis by a custodian,

unless the dealer has entered into a trade-matching compliance agreement with the institutional client.

3.3 Trade Matching Compliance by Adviser — A portfolio adviser who gives an order to a dealer to trade in a depository eligible security on behalf of one or more clients of the portfolio adviser shall take all necessary steps to match the trade as soon as practicable after the trade has been executed and in any event no later than the close of business on T.

3.4 Trade-Matching Compliance Agreement — A portfolio adviser shall not open an account with or give an order to a dealer to trade in a depository eligible security on behalf of one or more clients of the portfolio adviser pursuant to an arrangement under which,

(a) the payment for the security purchased is to be made on a DVP or RVP basis by a custodian, or

(b) the delivery of the security sold is to be made on a DVP or RVP basis by a custodian,

unless the portfolio adviser has entered into a trade-matching compliance agreement with the dealer.

3.5 Correcting Trade Details

(1) A dealer subject to section 3.1 or a portfolio adviser subject to section 3.3 is exempt from the requirements of that section if, during the process of comparing trade data, the details of the trade are found to be incorrect or incomplete and the dealer or adviser, acting reasonably, is unable to agree to the details of the trade with another relevant party by the close of business on T.

(2) Despite subsection (1), a dealer or portfolio adviser exempted under that subsection shall take all necessary steps to correct the details of the trade and match the trade as soon as practicable and in any event no later than the close of business on T+1.

3.6 Matching Service Utility — A person or company subject to section 3.1, 3.3 or 3.5 or bound by a trade-matching compliance agreement may use the facilities or services of a recognized clearing agency, a recognized exchange, a recognized quotation and trade reporting system, or a matching service utility to comply with the section or the trade-matching compliance agreement if the facilities or services are reasonably designed to accomplish the matching of trades by the end of T.

PART 4 REQUIREMENTS FOR A MATCHING SERVICE UTILITY

4.1 Initial Filing Requirements

(1) A person or company that intends to carry on business as a matching service utility shall file Form 24-101F1 at least 90 days before the person or company begins to carry on business as a matching service utility.

(2) During the 90 day period referred to in subsection (1), a person or company that files Form 24-101F1 shall inform in writing the securities regulatory authority immediately of any change to the information provided in Form 24-101F1 and the person or company shall file an amendment to the information provided in Form 24-101F1 in the manner set out in Form 24-101F1 no later than seven days after a change takes place.

4.2 Change in Material Information — At least 45 days before implementing a material change involving a matter set out in Form 24-101F1, a matching service utility shall file an amendment to the information provided in Form 24-101F1 in the manner set out in Form 24-101F1.

4.3 Ceasing to Carry on Business as a Matching Service Utility

(1) If a matching service utility intends to cease carrying on business as a matching service utility, the matching service utility shall file a report on Form 24-101F2 at least 30 days before ceasing to carry on that business.

(2) If a matching service utility involuntarily ceases to carry on business as a matching service utility, the matching service utility shall file a report on Form 24-101F2 as soon as practicable after it ceases to carry on that business.

4.4 Ongoing Filing and Other Requirements

(1) A matching service utility shall file quarterly the information provided in Form 24-101F3 in the manner set out in Form 24-101F3 no later than 45 days after the end of each quarter of the calendar year.

(2) A matching service utility shall keep such books, records and other documents as are reasonably necessary for the proper recording of its business.

4.5 System Requirements – A matching service utility shall

(a) on a reasonably frequent basis, and in any event, at least annually,

(i) make reasonable current and future capacity estimates for each of its systems,

(ii) conduct capacity stress tests of critical systems to determine the ability of those systems to process information in an accurate, timely and efficient manner,

(iii) develop and implement reasonable procedures to review and keep current the development and testing methodology of those systems,

(iv) review the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters, and

(v) establish reasonable contingency and business continuity plans;

(b) annually, cause to be performed an independent systems review and prepare a report, in accordance with established audit procedures and standards, of its controls for ensuring that it is in compliance with paragraph (a), and conduct a review by senior management of the report containing the recommendations and conclusions of the independent review; and

(c) promptly notify the securities regulatory authority of any material systems failures.

PART 5 TRADE SETTLEMENT

5.1 Trade Settlement by Dealer — A dealer who executes a trade in a depository eligible security shall take all necessary steps to settle the trade no later than the end of T+3.

5.2 Good Delivery Rule — A dealer shall not accept an order to trade in a depository eligible security pursuant to an arrangement under which,

(a) the payment for the security purchased is to be made on a DVP or RVP basis, or

(b) the delivery of the security sold is to be made on a DVP or RVP basis,

unless settlement of the trade is effected through the facilities of a recognized clearing agency.

PART 6 EXEMPTION

6.1 Exemption

(1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

PART 7 EFFECTIVE DATE

7.1 Effective Date – This Instrument comes into force on July 1, 2005.

NATIONAL INSTRUMENT 24-101

PROPOSED
FORM 24-101F1

INITIAL FORM FOR A MATCHING SERVICE UTILITY

DATE: _____ (DD/MMM/YYYY)

TYPE OF FILING: O INITIAL FORM O AMENDMENT

GENERAL INFORMATION

1. Full name of matching service utility:

2. Main street address (do not use a P.O. box):

3. Mailing address (if different):

4. Address of head office (if different from address in item 2):

5. Business telephone and facsimile number:

   (Telephone) (Facsimile)

6. Website address:

7. Contact employee:

   (Firm Name) (Contact Name)

   (Telephone Number) (Facsimile)

   (E-mail address)

8. Counsel:

   (Firm Name) (Contact Name)

   (Telephone Number) (Facsimile)

   (E-mail address)

9. Date of financial year-end: _____ (DD/MMM/YYYY)

10. Legal status: O CORPORATION O SOLE PROPRIETORSHIP
    O PARTNERSHIP O OTHER (SPECIFY):

    Except where the matching service utility is a sole proprietorship, indicate the date and place where the matching service utility obtained its legal status (e.g., place of incorporation, place where partnership agreement was filed or where matching service utility was formed):

    (a) Date: _____ (DD/MMM/YYYY)

    (b) Place of formation:

11. From the following list, specify the types of securities for which information will be collected and processed by the matching service utility for transmission of matched trades to a Central Securities Depository (CSD).

Exchange-traded securities:

Domestic traded	O	EQUITY SECURITIES	O	DEBT SECURITIES
	O	OPTIONS		
Foreign traded	O	EQUITY SECURITIES	O	DEBT SECURITIES
	O	OPTIONS		

OTC securities: O GOVERNMENT DEBT O CORPORATE DEBT
O EQUITY

Specify other types of securities:

EXHIBITS

File all Exhibits with the Initial Form. For each Exhibit, include the name of the matching service utility, the date of filing of the Exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a full statement describing why that Exhibit is inapplicable shall be furnished as the respective Exhibit.

If the matching service utility files an amendment to the information provided in its Initial Form, and the information relates to an Exhibit filed with the Initial Form or a subsequent amendment, the matching service utility must, in order to comply with Part 4.2 of National Instrument 24-101, provide a description of the change and file a complete and updated Exhibit.

1. CORPORATE GOVERNANCE

Exhibit A - Constating documents

A copy of the constating documents, including corporate by-laws and other similar documents, and all subsequent amendments.

Exhibit B – Ownership

List any person or company who owns 10 percent or more of the matching service utility's voting shares or who, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of the matching service utility. Provide the full name and address of each such person or company and attach a copy of the agreement or, if there is none written, briefly describe the agreement or basis through which such person or company exercises or may exercise such control or direction.

Exhibit C – Officials

A list of the partners, officers, directors or persons performing similar functions who presently hold or have held their offices or positions during the previous year, indicating the following for each:

1. Name.

2. Title.

3. Dates of commencement and expiry of present term of office or position and length of time the office or position held.

4. Type of business in which each is primarily engaged and current employer.

5. Type of business in which each was primarily engaged in the preceding five years, if different from that set out in item 4.

6. Whether the person is considered to be an independent director.

Exhibit D - Organizational structure

A narrative or graphic description of the organizational structure of the matching service utility.

Exhibit E - Affiliated entities

For each affiliated entity (person or company) of the matching service utility, provide the following information:

1. Name and address of affiliated entity.

2. Form of organization (e.g., association, corporation, partnership, etc.)

3. Name of location and statute citation under which organized.

4. Date of incorporation in present form.

5. Brief description of nature and extent of affiliation or contractual or other agreement with the matching service utility.

6. Brief description of business services or functions.

7. If a person or company has ceased to be an affiliated entity of the matching service utility during the previous year or ceased to have a contractual or other agreement relating to the operation of the matching service utility during the previous year, provide a brief statement of the reasons for termination of the relationship.

2. FINANCIAL VIABILITY

Exhibit F - Audited financial statements

Audited financial statements for the latest financial year of the matching service utility and a report prepared by an independent auditor.

3. FEES

Exhibit G – Fee list, fee structure

A complete list of all fees and other charges imposed, or to be imposed, by or on behalf of the matching service utility for use of its information service processing, including the cost of establishing a connection with the matching service utility.

4. ACCESS

Exhibit H – Users

List of all users (person or company) and identify the type(s) of business of each user (e.g., custodian, dealer, advisor, clearing agency or other party) for which the matching service utility is acting or for which it proposes to act as a matching service utility. For users operating in multiple capacities, list each user's respective capacity.
For each instance during the past year in which any person, company, or user has been prohibited or limited in respect of access to services offered by the matching service utility, indicate the name of each such person or company and the reason for the prohibition or limitation.

Exhibit I - User contract

A copy of the form of contract(s) governing the terms by which users may subscribe to the services of a matching service utility.

5. SYSTEMS AND OPERATIONS

Exhibit J - System description

Describe the manner of operation of the system (the System) of the matching service utility that collects and processes trade information for transmission of matched trades to a central securities depository (CSD) in accordance with National Instrument 24-101. This description should include the following:

1. The hours of operation of the System, including CSD communication.

2. Locations of operation (e.g., countries, cities where computers are operated, primary and backup).

3. A brief description in narrative form of each service or function performed by the matching service utility.

6. SYSTEMS COMPLIANCE

Exhibit K - Security

A brief description of the measures or procedures implemented by the matching service utility to provide for the security of any system employed to perform the functions of a matching service utility.

Exhibit L - Capacity planning and measurement

1. A brief description of capacity planning/performance measurement techniques and system and stress testing methodologies.

2. Brief description of testing methodologies with users. For example, when are user tests employed? How extensive are these tests?

Exhibit M - Incidents and business continuity

1. A brief description of business continuity plans in the event of a catastrophe.

2. A brief description of procedures for reporting of serious incidents which last for more than thirty minutes during the normal period of business operation.[8]

Exhibit N - Independent systems audit

1. Briefly describe plans to provide an annual independent systems audit of system operations.

2 Please provide a copy of the last external systems operations audit report.

7. INTER-OPERABILITY

Exhibit O – Inter-operability agreements

List all other matching service utilities for which the matching service utility has an inter-operability agreement. Provide a copy of all contracts with the matching service utility.

8. OUTSOURCING

Exhibit P - Outsourcing firms

For each person or company (firm) with whom the matching service utility has a contractual or other (outsourcing) agreement relating to the clearing and other customer business type operations of the matching service utility, provide the following information:

1. Name and address of person or company.

2. Brief description of business services or functions of the outsourcing firm.

9. CONFIDENTIALITY

Please label all confidential material as "**Confidential."** In submissions, please do not include detailed, sensitive operational security information such as IP addresses of nodes.

[8] Procedures to immediately report each interruption of the matching process, which has lasts for more than thirty minutes. Include the date of the interruption, cause, duration and the general impact on users. This should be provided within one hour from the time the incident was identified as being serious.

CERTIFICATE OF MATCHING SERVICE UTILITY

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this _____ day of _____ 20____

_____
(Name of Matching Service Utility)

_____
(Name of director, officer or partner - please type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity - please type or print)

NATIONAL INSTRUMENT 24-101

PROPOSED
FORM 24-101F2

CESSATION OF OPERATIONS REPORT FOR A MATCHING SERVICE UTILITY

DATE: _____ (DD/MMM/YYYY)

IDENTIFICATION:

1. Full name of matching service utility:

2. Name(s) under which business is conducted, if different from item 1A:

TYPE OF FILING:

O VOLUNTARY CESSATION	O INVOLUNTARY CESSATION
Date matching service utility proposes to cease carrying on business. Date:	Date matching service utility ceased to carry on business. Date:

EXHIBITS

File all Exhibits with the Cessation of Operations Report. For each Exhibit, include the name of the matching service utility, the date of filing of the Exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect shall be furnished instead of such Exhibit.

Exhibit A The reasons for the matching service utility ceasing to carry on business.

Exhibit B

1. List of all users and identify the type(s) of business of the user (e.g., custodian, dealer, advisor, clearing agency or other party - such as trustee) for which the matching service utility provided matching service functionality.

2. List all other matching service utilities and service bureaus for which an interoperability agreement was/is in force prior to cessation.

CERTIFICATE OF MATCHING SERVICE UTILITY

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this_____ day of _____ 20____

_____
(Name of Matching Service Utility)

_____
(Name of director, officer or partner - please type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity - please type or print)

NATIONAL INSTRUMENT 24-101

PROPOSED
FORM 24-101F3

QUARTERLY OPERATIONS REPORT OF
MATCHING SERVICE ACTIVITIES

DATE: _____ (DD/MMM/YYYY)

MATCHING SERVICE UTILITY

Name: _____

Period covered by this report: _____ to _____

IDENTIFICATION

A. Full name of matching service utility (if sole proprietor, last, first and middle name):

B. Name(s) under which business is conducted, if different from item A:

C. Matching service utility's main street address:

SCHEDULES

File all Schedules on a quarterly basis, covering the previous quarter of the calendar year. If any Schedule required is inapplicable, a full statement describing why that Schedule is inapplicable shall be furnished as the respective Schedule.

1. SUMMARY OF MATERIAL AND OTHER CHANGES OVER PERIOD

Schedule 1 – Summary of Material Changes

Briefly summarize all material changes to the information provided in Form 24-101 F1 that was required to be filed pursuant to subsection 4.2 of National Instrument 24-101.

Schedule 2 – Description of Other Changes

Describe all changes to information set out in Form 24-101F1 during the quarterly period, other than a change referred to in Schedule 1.

2. SYSTEMS REPORTING

Schedule 3 – External systems audit

If an external systems audit was issued this quarter, provide a copy of the report.

Schedule 4 – Incident reporting

Provide a list with a summary of all incidents where normal operation could not be maintained with users and CSDs during the period.

3. DATA REPORTING

Schedule 5 – Matching Service Utility Operating Data

For securities listed in Exhibit “A” of 24-101F1 that are settled in Canada, provide the monthly summary set out below for each type of security processed by the matching service utility during the period. Each row should contain the monthly summary of the daily average values for the respective category within the security type. The data should be provided in an electronic file, for each of the security types in the following format.

Period: _____ through _____ (DD/MMM/YYY)

Period monthly summary of the daily average values for security type: _____

Date	Daily average number of transactions (#) | Daily average sum of transactions' value ($)													
	Trades reported		Match on T		Match on T+1		Match on T+2		Match on T+3 or greater		Unmatched		Cancelled	
	#	$	#	$	#	$	#	$	#	$	#	$	#	$
Month 1														
Month 2														
Month 3														

For each month (row), include the average of the daily total values of the respective category as of the end of processing for each date. For example, "Match on T" would include the average number of trades matched during the respective month and the average of the sum of trade values for those respective trades as reported to the Canadian Depository for Securities Limited (CDS) for that security type. For the number of trades and the dollar amounts in the columns "Reported", "Unmatched" and "Cancelled", use values as reported by brokers, for consistency and to avoid double counting.

Schedule 6 - Exceptions

Electronically provide the names of users which failed to match for 2% or more of the total number of trades transacted by the user, by the end of T using the following format.

User	**% of trades unmatched at the end of T for the period (where =/> 2%)**	**# of trades**

4. CONFIDENTIALITY

Please label all confidential material as "**Confidential."** In submissions, please do not include detailed, sensitive operational security information such as IP addresses of nodes.

CERTIFICATE OF MATCHING SERVICE UTILITY

The undersigned certifies that the information given in this report relating to the matching service utility is true and correct.

DATED at _____ this ____ day of _____ 20___

_____
(Name of Matching Service Utility)

_____
(Name of director, officer or partner - please type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity - please type or print)

COMPANION POLICY 24-101CP TO PROPOSED NATIONAL INSTRUMENT 24-101
POST-TRADE MATCHING AND SETTLEMENT

TABLE OF CONTENTS

PROPOSED
COMPANION POLICY 24-101CP TO NATIONAL INSTRUMENT 24-101
POST-TRADE MATCHING AND SETTLEMENT

PART 1 INTRODUCTION AND DEFINITIONS

1.1 Introduction

(1) National Instrument 24-101 — *Post-Trade Matching and Settlement* (the Instrument) has been adopted to provide a framework in provincial securities legislation for ensuring more efficient post-trade processing for settlement of trades in publicly traded securities. In the past decade, volumes and dollar values of securities traded in Canada and globally have grown substantially. The increasing volumes mean existing back-office systems and procedures of market participants are challenged to meet post-trade processing demands, and new requirements are needed to address the increasing risks.

(2) The Instrument is being adopted as part of the broader initiatives to implement straight-through processing (STP) in the Canadian securities markets. STP is the passing of information seamlessly and electronically among all participants involved in a securities transaction process. Implementing STP will enable the direct capture of trade details from order taking at the front-end of trading systems and complete automated processing of confirmations and settlement instructions without the need for the re-keying or re-formatting of data. STP implies electronic rather than manual interfaces between market participants, market infrastructure entities and service providers. It also implies achieving *inter-operability* in the marketplace, which refers to the ability of entities along the clearing and settlement chain to communicate and work with other entities without special effort on the part of users.

1.2 Purpose of Companion Policy — The purpose of this Companion Policy is to state the views of the Canadian securities regulatory authorities on various matters related to the Instrument, including:

(a) a discussion of the general approach taken by the Canadian securities regulatory authorities in, and the general regulatory purpose for, the Instrument; and

(b) the interpretation of various terms and provisions in the Instrument.

1.3 Trade Matching

(1) A first step in settling a securities trade is to ensure that the buyer and the seller agree on the details of the transaction, a process referred to as trade confirmation and affirmation or *trade comparison and matching*. A dealer who executes trades on behalf of others is required to confirm trade details, not only with the counterparty to the trade (if the trade is not automatically matched at the marketplace), but also with the client for whom it acted. Agreement of trade details (sometimes referred to as *trade data elements*) must occur as soon as possible so that errors and discrepancies in the trades can be discovered early in the clearing and settlement process.

(2) The typical institutional trade involves at least three parties: an investment manager or portfolio adviser (institutional client), usually acting on behalf of one or more underlying client accounts, who decides what securities to buy or sell and how the assets should be allocated among the client accounts; a dealer to execute the resulting trades; and one or more financial institutions appointed as custodian to hold the institutional client's assets. After placing an order with, and receiving a notice of execution of a trade from, a dealer, the institutional client must provide the dealer and custodian(s) with certain details to facilitate the settlement of the trade. In particular, the institutional client must provide details with respect to the underlying client accounts managed by it, and must instruct the custodian(s) to release funds and/or securities to the clearing agency. The dealer must also issue a customer trade confirmation to the institutional client containing required information pertaining to the trade pursuant to securities legislation or the rules of a self-regulatory organization (SROs).

1.4 Trade Settlement

(1) A trade is the entering into of a contract for the purchase or sale of securities. If the facilities of a marketplace are used, the marketplace is not directly involved with the exchange of property for other property or money. The rules and customs of a marketplace or an SRO will generally set the terms of the contracts that are formed through the trading of securities.

(2) Settlement is to be distinguished from clearance. Clearing is the process which begins immediately after the execution of a trade, and includes the process of comparing trade data elements. It also includes the calculation of the mutual obligations of market participants, usually on a net basis, for the exchange of securities and money—a process which occurs within the operations of a clearing agency. The concept of *clearing* or *clearance* is given a broad meaning to

include the process of transmitting, reconciling and confirming payment orders or security transfer instructions prior to settlement. *Settlement* is, on the other hand, the moment when the property right or entitlement to the securities is transferred finally and irrevocably from one investor to another, usually in exchange for a corresponding transfer of money. In the context of settlement of a trade through the facilities or services of a clearing agency acting as central counterparty, settlement is viewed as the discharge of obligations in respect of funds or securities, computed on a net basis, between and among the clearing agency and the participants of the clearing agency. Through the operation of novation and set-off in law or by contract, the clearing agency becomes a counterparty to each trade so that the mutual obligation to settle the trade is between the clearing agency and a participant.

1.5 The Process of Comparing Trade Data

(1) The process of comparing trade data relating to a trade executed on behalf of an institutional client is explained in Section 1.2 of the Instrument. It includes the following activities:

(a) The dealer notifies the institutional client of the execution of the trade.

(b) The institutional client advises the dealer and custodian or custodians how the securities in the trade are to be allocated among the underlying client accounts managed by the institutional client. For so-called *block settlement trades*, the dealer may not necessarily need such allocation information, or may receive allocation information from the institutional client based solely on the number of custodians used by the institutional client instead of on the actual underlying client accounts managed by the institutional client.

(c) The dealer confirms to the institutional client the trade details, and submits trade data details to the clearing agency.

(d) The custodian or custodians of the assets of the institutional client verify the trade details and settlement instructions against available securities or funds held for the institutional client.

(2) There is a difference between the process of comparing trade data, as described in Section 1.2 of the Instrument, and the moment an institutional trade is *matched*, as indicated in Section 1.3 of the Instrument (see also Section 3.5 of the Instrument). Comparing trade data is a necessary process to achieve the matching of a trade executed on behalf of an institutional client. Matching occurs when the relevant parties to a trade executed on behalf of an institutional client have, after comparing trade data, reconciled or agreed to the details of the trade. Matching also requires that the custodian holding the institutional client's assets be in a position to report the trade to a recognized clearing agency. At that point, the trade is ready for the clearing and settlement process through the facilities of the clearing agency.

(3) The distinction between the process of comparing trade data and matching is made partly because of the scope of the trade matching requirement in Section 3.1 of the Instrument. A dealer is required *to take all necessary steps* to match the trade as soon as practicable after its execution, and in any event no later than the close of business on T, irrespective of whether the trade was executed on behalf of an institutional client. This implies that, in the context of an institutional trade, the dealer must promptly complete the process of comparing trade data so as to enable trade matching no later than the close of business on T. However, if there is an error with respect to a detail of a trade or the details of the trade are incomplete, the relevant parties involved in settling the trade may not be in a position to match the trade by T. In that case, exception processing will apply, but the parties nevertheless have an obligation *to take all necessary steps* to correct the details of the trade and match the trade as soon as practicable thereafter and in any event no later than the close of business on T+1. See Sections 1.4 and 3.5 of the Instrument and Section 3.4 of this Policy.

(4) Trade data elements that must be compared and agreed upon are those identified in the best practices and standards for institutional trade processing established and generally accepted by the industry as a whole. See Section 3.5 of this Policy. They include those trade data elements required to be included in customer trade confirmations pursuant to securities legislation[1] and the rules of the marketplace or SRO.[2] Thus, trade data elements that must be transmitted, compared and agreed upon may include the following, where applicable:

(a) Security identification: ISIN, currency, strike date, issuer, type/ class/series, strike price, market ID.

(b) Order and trade information: dealer ID, account ID, account type, buy/sell indicator, order status, order type, unit price/face amount, number of securities/quantity, message date time, trade transaction type, commission, accrued interest (fixed income), broker settlement location, block reference, net amount, settlement type,

1 See, for example, section 36 of the *Securities Act* (Ontario).

2 See, for example, TSX Rule 2-405 and Investment Dealers Association of Canada (IDA) Regulation 200.1(h).

allocation sender reference, custodian, payment indicator, IM portfolio/account ID, quantity allocated, and settlement conditions.

1.6 Definitions of *Depository Eligible Security* and *Recognized Clearing Agency* — The trade matching and settlement requirements of the Instrument are limited to trades in depository eligible securities. Section 1.1 of the Instrument defines *depository eligible security* as a publicly traded security in respect of which settlement of a trade in the security may be performed through the facilities or services of a recognized clearing agency. Thus, securities that are not eligible for deposit at The Canadian Depository for Securities Limited (CDS) are not securities that would be covered by the Instrument. Generally, most publicly traded securities in Canada are eligible for deposit in, and are cleared and settled through the facilities and services of, CDS. The definition of *recognized clearing agency* takes into account the fact that only the provinces of Ontario and Quebec have recognized or otherwise regulate clearing agencies under provincial securities legislation.[3] The term *clearing agency* is defined in the securities legislation of certain jurisdictions (see, for example, s. 1(1) of the *Securities Act* (Ontario)).

1.7 Definitions of DVP and RVP — Section 1.1 of the Instrument defines *delivery-versus-payment* (DVP) as a service available to a buyer of a security which allows the buyer to pay for the security when the security is delivered at settlement. The definition of *receive-versus-payment* (RVP) is essentially the mirror image of DVP. RVP means, in relation to a sale of a security, a service available to the seller which allows it to deliver the security when payment is received at settlement.

1.8 Definitions of *Custodian*, *Institutional Client* and *Portfolio Adviser* — The definition of custodian in Section 1.1 of the Instrument expressly excludes a dealer, and is an important component of the definition of *institutional client*. This latter term is defined as a person or company that appoints a custodian to hold securities on his, her or its behalf. It expressly includes a *portfolio adviser*, which, in turn, is defined as an adviser registered under securities legislation for the purpose of managing the investment assets of one or more clients of the adviser through discretionary authority granted to the adviser by the clients. While most institutional clients are investment, pension or other types of funds or entities, an individual can be an institutional client. Some individuals, usually *high net-worth* individuals, hold their investment assets through securities accounts maintained with a custodian rather than with a dealer.

1.9 Trade-Matching Compliance Agreement — This term is described in detail in Section 1.4 of the Instrument. A trade-matching compliance agreement contractually binds all institutional clients, even those that the Canadian securities regulatory authorities do not regulate, such as pension and insurance funds. Institutional clients are required by agreement to *take all necessary steps* to complete the process of comparing trade data and matching a trade as soon as practicable after the trade is executed and in any event no later than the close of business on T.

1.10 Trade Matching and Trade Settlement — Sections 1.3 of the Instrument describes when a trade executed on behalf of an institutional client is *matched*. The term *settlement* is defined in Section 1.1 of the Instrument and means the completion of a trade, whereby the seller transfers the security to the buyer and the buyer transfers the payment to the seller. The term also includes, in the context of completion of a trade through the facilities or services of a clearing agency acting as central counterparty, the discharge of obligations in respect of funds or securities, computed on a net basis, between and among the clearing agency and the participants of the clearing agency. The Instrument does not describe when an institutional trade is executed.

PART 2 APPLICATION OF INSTRUMENT

2.1 Application of Instrument — Part 2 of the Instrument largely defines the scope of the Instrument. It will not apply to certain types of trades, such as a trade that is a distribution of a security and a trade in a security of a mutual fund to which National Instrument 81-102 Mutual Funds applies. Nor will the Instrument apply to a trade in a security where the parties expressly agreed from the outset to *special settlement terms*. In addition, a trade in a security to be *settled outside Canada* is not subject to the Instrument.

PART 3 TRADE MATCHING REQUIREMENTS

3.1 Trade Matching Compliance by Dealer — Pursuant to Section 3.1 of the Instrument, a dealer who executes a trade in depository eligible securities must *take all necessary steps* to match the trade as soon as practicable after the trade has been executed and in any event no later than the close of business on T. This requirement is not necessarily limited to trades executed on behalf of institutional clients. However, the obligation to take all necessary steps to match trades by T for non-institutional trades, such as retail equity trades listed or traded on a marketplace, is not particularly onerous, as most non-institutional trades are usually automatically matched, or locked-in, or can easily be confirmed

[3] CDS is also regulated by the Bank of Canada pursuant to the *Payment Clearing and Settlement Act* (Canada).

and affirmed on T through the facilities of a marketplace or CDS.[4] With respect to institutional trades, however, a dealer's obligation to take all necessary steps to match a trade as soon as practicable, but no later than the close of business on T, will necessarily imply an obligation to promptly complete the process of comparing trade data. See the interpretation rules in Sections 1.2 and 1.3 of the Instrument, which describe the process of comparing trade data and when a trade executed on behalf of an institutional client is matched.

3.2 **Trade-Matching Compliance Agreement** — Section 3.2 of the Instrument prohibits a dealer from accepting instructions to open an account or an order to trade in a depository eligible security from an institutional client pursuant to an arrangement under which (a) the payment for the security purchased is to be made on a DVP or RVP basis by a custodian, or (b) the delivery of the security sold is to be made on a DVP or RVP basis by a custodian, unless the dealer has entered into a trade-matching compliance agreement with the institutional client. A dealer and institutional client need only enter into one trade-matching compliance agreement at the time of opening one or more trading accounts with a dealer for all future trades in relation to such accounts. A trade-matching compliance agreement should form part of the dealer's institutional account opening documentation. Moreover, a dealer should use reasonable efforts to monitor and enforce compliance with a trade-matching compliance agreement. It should, for example, suspend any DVP or RVP trading privileges of an institutional client that materially breaches a trade-matching compliance agreement until such time as the breach has been remedied.

3.3 **Trade Matching Compliance by Adviser** — Pursuant to Section 3.3 of the Instrument, a portfolio adviser who gives an order to a dealer to trade in a depository eligible security on behalf of one or more clients of the portfolio adviser must take all necessary steps to match the trade as soon as practicable after the trade has been executed and in any event no later than the close of business on T. Section 3.4 of the Instrument further prohibits a portfolio adviser from opening an account with or giving an order to a dealer to trade in a depository eligible security on behalf of one or more underlying clients pursuant to an arrangement under which (a) the payment for the security purchased is to be made on a DVP or RVP basis by a custodian, or (b) the delivery of the security sold is to be made on a DVP or RVP basis by a custodian, unless the portfolio adviser has entered into a trade-matching compliance agreement with the dealer. These requirements are the mirror image of the combined provisions of Sections 3.1 and 3.2 of the Instrument in relation to dealers. Because the Canadian securities regulatory authorities regulate portfolio advisers, Section 3.3 directly requires portfolio advisers to take all necessary steps to match trades as soon as practicable. It is not necessary, in this case, to rely only on the terms of a trade-matching compliance agreement and the enforcement of contract law by a dealer.

3.4 **Exception Processing** — As mentioned in subsection 1.5(3) of this Policy, a person or company subject to Section 3.1 or 3.3 of the Instrument or bound by a trade-matching compliance agreement is relieved from the requirement to match on T if, after comparing trade data, the details of the trade are found to be incorrect or incomplete and the person or company, acting reasonably, is unable to agree on the details of the trade with another relevant party before the close of business on T. However, the terms of a trade matching compliance agreement (see subsections 1.4(2) and (3) of the Instrument) and Section 3.5 of the Instrument require the person or company to nevertheless take all necessary steps to correct the details of the trade and match the trade as soon as practicable thereafter, but no later than the close of business on T+1.

3.5 **Trade Data** — The description of a trade-matching compliance agreement in Section 1.4 and the provisions of Sections 3.1, 3.3 and 3.5 of the Instrument use the expression *take all necessary steps* (or a variation of such expression). These provisions describe the obligation of a person or company to complete the process of trade-matching as quickly as possible—by the close of business on T as a general rule or by the close of business on T+1 where exception processing is required to correct the details of a trade. The Canadian securities regulatory authorities are of the view that a person or company will be presumed to have taken all necessary steps to match a trade as soon as practicable after a trade has been executed if the person or company has complied with the best practices and standards for institutional trade processing established and generally accepted by the industry as a whole.[5] Current industry best practices and standards contemplate two future state scenarios for the Canadian marketplaces:

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4 Non-institutional trades in non-exchange traded securities, including government debt securities, by direct participants of CDS can be matched through the facilities of CDS' trade confirmation and affirmation system. The IDA is proposing a rule that will require their members to confirm and affirm *broker-to-broker* trades in non-exchange traded securities within one hour of the execution of the trade through CDS' trade confirmation and affirmation system. See proposed IDA Regulation 800.49, February 13, 2004, 27 OSCB 2038.

5 The Canadian Capital Markets Association (CCMA) released on June 9, 2003 for public comment a document entitled *Canadian Securities Marketplace Best Practices and Standards: Institutional Trade Processing, Entitlements and Securities Lending* ("CCMA Best Practices and Standards White Paper") that sets out best practices and standards for the processing for settlement of institutional trades, the processing of entitlements (corporate actions), and the processing of securities lending transactions. The final version of the CCMA Best Practices and Standards White Paper dated December 2003 can be found on the CCMA website at www.ccma-acmc.ca.

(a) where institutional trade comparison and matching is achieved through connectivity to centralized facilities of a matching service utility, and

(b) where institutional trade comparison and matching is achieved without connectivity to centralized facilities of a matching service utility.[6]

See subsection 1.5(4) of this Companion Policy for a brief discussion of some of the trade data elements that must be compared and agreed upon by the relevant parties to process a trade executed on behalf of an institutional client. Current industry best practices and standards contemplate confirmation and affirmation of up to 26 trade data elements.

3.6 Matching Service Utility - The Instrument takes a neutral position on whether market participants should use the facilities of a matching service utility to accomplish comparison of trade data and trade matching. Section 3.6 of the Instrument stipulates that a person or company subject to Section 3.1, 3.3 or 3.5 of the Instrument or bound by a trade-matching compliance agreement may use the facilities or services of a recognized clearing agency, a recognized exchange, a recognized quotation and trade reporting system, or a matching service utility to comply with the Section or the trade-matching compliance agreement if the facilities or services are reasonably designed to accomplish the matching of trades by the close of business on T.

PART 4 REQUIREMENTS FOR A MATCHING SERVICE UTILITY

4.1 Matching Service Utility

(1) Part 4 of the Instrument sets out filing, reporting, systems capacity, and other requirements of a matching service utility. Section 1.1 of the Instrument defines a "matching service utility" as a person or company that provides centralized facilities for the comparison of trade data and has filed Form 24-101 F1. The term expressly excludes a recognized clearing agency, a recognized exchange, or a recognized quotation and trade reporting system (see definitions of these terms in Section 1.1 of the Instrument). Thus a recognized clearing agency, a recognized exchange, or a recognized quotation and trade reporting system are not subject to the requirements of Part 4 of the Instrument because, as a matter of policy, they are generally subject to similar requirements under the terms of their recognition. A matching service utility is a system operated by an entity that provides the services of a post-trade central comparison and matching facility for dealers, institutional investors, and custodians that clear and settle institutional trades. The entity uses technology to match in real-time trade data elements throughout a trade's processing lifecycle. A matching service utility is not meant to include a dealer who offers "local" matching services to its institutional clients.

(2) A matching service utility would be viewed as a critical infrastructure system involved in the clearing and settlement of securities transactions and the safeguarding of securities. The securities regulatory authorities believe that, while a matching service utility operating in Canada would largely enhance operational efficiency in the capital markets, it would raise certain regulatory concerns. Comparing and matching trade data are complex processes that are inextricably linked to the clearance and settlement process. A central matching utility concentrates processing risk in the entity that performs matching instead of dispersing that risk more to the dealers and their institutional clients. Accordingly, we believe that the breakdown of a matching service utility's ability to accurately compare trade information from multiple market participants involving large numbers of securities transactions and sums of money could have adverse consequences for the efficiency of the Canadian securities clearing and settlement system.

4.2 Initial Filing Requirements for a Matching Service Utility

(1) Section 4.1 of the Instrument requires any person or company that intends to carry on business as a matching service utility to file Form 24-101F1 at least 90 days before the person or company begins to carry on business as a matching service utility. Form 24-101F1 is attached to the Instrument.

(2) The securities regulatory authorities will review Form 24-101F1 to determine whether it is contrary to the public interest for the person or company who filed the form to act as a matching service utility. The Canadian securities regulatory authorities will consider a number of factors when reviewing the form filed, including,

(a) the performance capability, standards and procedures for the transmission, processing and distribution of details of trades in securities executed on behalf of institutional clients;

(b) whether market participants generally may obtain access to the facilities and services of the matching service utility on fair and reasonable terms which are not unreasonably discriminatory;

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[6] See the CCMA Best Practices and Standards White Paper, at 12.

(c) personnel qualifications;

(d) whether the matching service utility has sufficient financial resources for the proper performance of its functions;

(e) the existence of another entity performing the proposed function for the same type of security;

(f) the systems report referred to in subsection 4.5(b) of the Instrument.

(3) The securities regulatory authorities request that the forms and exhibits be filed in electronic format, where possible.

4.3 Change to Material Information - Under subsection 4.2 of the Instrument, a matching service utility is required to file an amendment to the information provided in Form 24-101F1 at least 45 days before implementing a material change involving a matter set out in Form 24-101F1. In the view of the Canadian securities regulatory authorities, a material change includes a change to the information contained in the General Information items 1-11 and Exhibits I and O of the Form 24-101F1.

4.4 Ongoing Filing and Other Requirements Applicable to a Matching Service Utility

(1) Ongoing quarterly filing requirements will allow regulators to monitor a matching service utility's operational performance and management of risk, the progress of inter-operability in the market, and any negative impact on access to the markets. A matching service utility will also provide trade matching data (e.g., number of trades matched on T) and other information to the securities regulatory authorities so that they can monitor industry compliance.

(2) The Form 24-101F3 completed by a matching service utility will provide information on whether it is:

(a) developing fair and reasonable linkages between its systems and the systems of any other matching service utility in Canada that, at a minimum, allow parties to executed trades that are processed through the systems of both matching service utilities to communicate through appropriate effective interfaces;

(b) negotiating with other matching service utilities in Canada fair and reasonable charges and terms of payment for the use of interface services with respect to the sharing of trade and account information; and

(c) unreasonably charging its customers more for use of its facilities and services when one or more counterparties to trades are customers of other matching service utilities than the matching service utility would normally charge its customers for use of its facilities and services when all counterparties to trades are customers of the matching service utility.

4.5 Capacity, Integrity and Security System Requirements

(1) Subsection (a) of section 4.5 of the Instrument requires a matching service utility to meet certain systems, capacity, integrity and security standards. Subsections (b) and (c) of section 4.5 of the Instrument require a matching service utility to meet certain additional systems, capacity, integrity and security standards.

(2) The activities in subsection (a) of section 4.5 of the Instrument must be carried out at least once a year. The Canadian securities regulatory authorities would expect these activities to be carried out even more frequently if there is a material change to trading volumes that necessitates that these functions be carried out more frequently in order to ensure that the matching service utility can appropriately service its clients.

(3) The independent review contemplated by subsection (b) of section 4.5 of the Instrument should be performed by competent, independent audit personnel, following established system audit procedures and standards.

PART 5 TRADE SETTLEMENT REQUIREMENTS

5.1 Trade Settlement by Dealer — Section 5.1 of the Instrument sets out a basic rule that, to some extent, already exists through market practices and the rules of marketplaces and SROs. A dealer who executes trades in depository eligible securities must *take all necessary steps* to settle the trades no later than the end of T+3. Like Section 3.1 of the Instrument, this requirement is not necessarily limited to trades executed on behalf of institutional clients. Although current SRO rules already mandate a minimum T+3 settlement cycle period for most equity and long term debt securities,[7] the Canadian securities regulatory authorities believe a general T+3 settlement cycle requirement in provincial securities legislation will strengthen the clearing and settlement system in Canada.

[7] See IDA Regulation 800.27.

5.2 **Good Delivery Rule** — Section 5.2 of the Instrument sets out a *good delivery* rule that, to some extent, already exists in SRO rules.[8] The rule provides that a dealer is not permitted to grant DVP or RVP trading privileges to a client in respect of trades in depository eligible securities unless settlement of the trade is effected through the facilities of a recognized clearing agency. Like the T+3 rule, the Canadian securities regulatory authorities believe a *good delivery* rule enshrined in provincial securities legislation will strengthen the clearing and settlement system in Canada.

[8] See IDA Regulations 800.30C and 800.31.

6.1.4 Request for Comments Regarding Statement of Priorities for Fiscal Year Ending March 31, 2005

REQUEST FOR COMMENTS
REGARDING STATEMENT OF PRIORITIES
FOR FISCAL YEAR ENDING MARCH 31, 2005

The *Securities Act* requires the Commission to deliver to the Minister and publish in its Bulletin by June 30 of each year a statement of the Chairman setting out the proposed priorities of the Commission for its current fiscal year in connection with the administration of the Act, the regulations and rules, together with a summary of the reasons for the adoption of the priorities.

In an effort to obtain feedback and specific advice on the proposed objectives and initiatives, the Commission is publishing a draft of the Statement of Priorities which follows this Request for Comments. The Commission will consider the feedback, and make any necessary revisions prior to finalizing and publishing its 2004/2005 Statement of Priorities.

The Statement of Priorities, once approved by the Minister of Finance, will serve as the guide for the Commission's ongoing operations.

Comments

Interested parties are invited to make written submissions by June 15, 2004 to:

Robert Day
Manager, Business Planning
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
[416] 593-8179

6.1.5 OSC Statement of Priorities for Fiscal 2004/2005 – Draft for Comment

THE ONTARIO SECURITIES COMMISSION

STATEMENT OF PRIORITIES
FOR
FISCAL 2004/2005

Draft For Comment

April 2004

The *Securities Act* requires the Ontario Securities Commission (OSC) to deliver to the Minister, and to publish in its Bulletin by June 30 of each year, a statement by the Chair setting out the proposed priorities for the Commission for its current financial year. The OSC remains committed to delivering its regulatory services in a businesslike manner and to working closely with its CSA colleagues and market participants to ensure that the regulatory system remains relevant to the changing marketplace. The Statement of Priorities articulates the business strategy and priorities the OSC has set for 2004/2005 to accomplish these goals.

Our Vision Canadian financial markets that are attractive to domestic and international investors, issuers and intermediaries because they are cost efficient and have integrity.

Our Mandate To provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in their integrity.

Our Approach We will be:

- Proactive, innovative and cost effective in carrying out our mandate,
- Fair and rigorous in applying the rules to the marketplace, and
- Timely, flexible and sensible in applying our regulatory powers to a rapidly changing marketplace.

Key challenges

The OSC recognizes that we must address a number of key trends and changes affecting our business environment, capital markets, market participants and the global regulatory framework.

Enhancing public confidence in capital markets

The need to promote public confidence in our capital market continues to exist. In March 2004, the OSC finalized three rules as part of its investor confidence initiative. We need to ensure that we actively monitor compliance with these new requirements. The *Securities Act* has been amended to include provisions that strengthen the regulatory framework and enhance investor confidence. The OSC will also need to ensure that we apply and administer these powers appropriately.

Streamlining the securities regulatory process

The costs and complexities associated with doing business with as many as 35 different regulators with differing rules and regulations across Canada are generating increasing dissatisfaction with the structure of financial services regulation, and in particular, securities regulation, in Canada. This fragmented regulatory environment is cumbersome, costly and frustrating for stakeholders. It is having a negative impact on the competitiveness of our capital market and ultimately the ability of our market participants to raise capital on a cost effective basis.

Global integration of markets and market participants

Financial markets are global. Borders no longer serve as barriers to capital flows. Those seeking to invest and those seeking capital go where they see the opportunity for the best returns for the risks assumed. As capital flows become global, so do the market intermediaries and infrastructure servicing the business. Many of the largest intermediaries are global conglomerates combining banking, insurance and securities services in one entity.

Changing investor demographics

The past decade has seen significant growth in the investor community in Canada. Institutional investors are becoming larger and more sophisticated, while investment in the markets by retail investors has grown significantly - both directly and through the purchase of investment funds. Both groups need to have confidence in the integrity of the capital market, but their informational and educational needs may be very different.

Rapid pace of innovation

Competition is driving market innovation both in terms of radical changes to the form, risk profile and presentation of traditional products as well as in the creation of ever more sophisticated financial products, trading techniques and strategies. Technology facilitates these changes, making innovative products and services easier and cheaper to design, market and deliver to the consumer. The functions of intermediaries are changing. Trades can be executed directly from any location. The emergence of direct links into existing trading platforms, bypassing investment dealers, and the proliferation of alternative marketplaces have fundamentally altered the structure of the financial environment.

What this means for the OSC

For Canadian financial markets to be attractive to all market participants, they must be and be seen to be fair and efficient while still protecting investors. Given the trends and challenges outlined above, we need to find creative and innovative solutions to new issues, be willing to re-evaluate existing practices in light of changing circumstances and to make decisions at the pace at which our markets are changing. We need to operate in a transparent and accountable manner and to enforce clear rules in a consistent and visible manner.

To meet the challenges facing our capital market, we will focus on:

- Maintaining a globally competitive regulatory regime that effectively addresses investor protection,
- Developing and distributing targeted, understandable and relevant public education programs and resources designed to help investors with financial decision making so they can protect themselves,
- Insisting that investors have access to understandable, accurate and complete disclosure they need to make informed investment decisions,
- Eliminating unfair risk by preventing, detecting and deterring abuses in our capital market,
- Ensuring that our reliance on SRO's is providing appropriate results for market participants,
- Fostering cohesive regulation to minimize the burden on market participants,
- Facilitating the fair and efficient operation of exchanges, clearing and settlement functions and other elements of the market infrastructure,
- Building on our relationships in the regulatory community, both domestic and international, making use of the best lessons from each and relying on their expertise when practical.

The identified trends and challenges also underscore the ongoing need for us to ensure that our operations are efficient and effective and to continuously work to improve our client service delivery. As part of this process we will work to develop appropriate responses to the issues identified in the Report of the Five Year Review Committee, the Insider Trading Task Force Report and the Regulatory Burden Task Force Report.

Our goals

The OSC is committed to achieving our vision. To do so, we have developed a four-year strategic plan. In implementing it, we will at all times act consistently with our mandate.

Fundamentally, the OSC will focus on making our capital market safer, more efficient and easier to access and use for market participants. Our plan calls for stepping up our efforts in the following areas:

- Promoting harmonization of regulatory systems both domestically and internationally, including pursuing a single securities regulator administering a Canada-wide securities code,
- Undertaking prevention-oriented activities, including proactive public education,

- Taking a risk-based approach to regulation, and
- Being less prescriptive and more flexible in our regulatory approach wherever practical.

Across the planning horizon we will strive to achieve the following outcomes:

1. Ontario's capital market and financial services regulatory system will be fully consolidated, harmonized nationally, and coordinated internationally.

We will achieve this outcome by:

a) Completing the CSA Uniform Securities Law project by 2005,

b) Engaging regulators, governments and industry participants in moving towards a single securities regulator or a more effective national securities regulatory system,

c) Participating actively in the International Organization of Securities Commissions (IOSCO), the Council of Securities Regulators of the Americas (COSRA) and the national and international Joint Forum of Financial Regulators and, where appropriate, providing leadership on initiatives. Fostering inter-jurisdictional co-operation to reduce impediments to information sharing and enforcement support.

d) Providing an effective enforcement deterrent through increased coordination with other enforcement agencies and regulators, including participation with the RCMP on Integrated Market Enforcement Teams (IMETs) designed to respond to major capital markets fraud and market-related crimes.

e) Continuing to improve the national electronic information systems (e.g. SEDI, SEDAR, NRD) and to lever these investments to facilitate the activities of market participants, and

f) Pursuing measures to strengthen the Canadian securities clearing and settlement system, including leading CSA initiatives to support implementation of a Uniform Securities Transfer Act and regulatory measures to facilitate the implementation of fully electronic, straight-through processing of securities by June 2005.

We will measure success in achieving this outcome by the following:

- Market participants will use fewer points to access the market conduct regulatory system in Canada
- As impediments to investigation and enforcement initiatives created by international boundaries are reduced, we will re-focus resources on other initiatives.
- Harmonized measures developed internationally will be implemented domestically.

2. Market participants and investors will have confidence in the integrity of Ontario's capital market.

We will achieve this outcome by:

a) Working with the provincial government and our CSA colleagues to respond to the Report of the Five Year Review Committee and to develop legislative initiatives to strengthen our regulatory system and improve investor confidence.

b) Appropriately applying the rules and new powers arising from changes to the *Securities Act*,

c) Placing increased resources into enforcement and by adopting project management techniques to increase the efficiency of the investigation process.

d) Working with our regulatory partners to respond to the recommendations of the Insider Trading Task Force by March 2007,

e) Developing and proposing a revised framework for regulating mutual funds and their managers that relies on independent oversight as a means to address conflicts of interest,

f) Examining the "best execution" issue, including assessment of the impact of "soft dollars", market structure, and market fragmentation and developing strategies to address the findings.

g) Developing a revised regulatory approach to address the emergence of alternative investment products, and

h) Working with our CSA colleagues to develop and propose a Fair Dealing Model by 2008.

We will measure success in achieving this outcome by the following:

- Public surveys of market participants will show an increase in confidence.
- The revised framework for regulating mutual funds will significantly update and simplify product regulation for mutual funds in the area of conflicts of interest and result in fewer requests for exemptions.

3. Regulatory interventions in Ontario will be balanced and merit-based.

We will achieve this outcome by:

a) Making appropriate changes to our practices as a result of the recommendations of the Regulatory Burden Task Force,

b) Employing a risk-based approach in enforcement to ensure cases that are brought forward have been subject to consistent scrutiny, that they involve significant breaches of Ontario securities law, and give appropriate consideration to Commission priorities, and

c) Improving accountability through the use of rigorous cost benefit analysis, impact analysis and risk based assessments for all proposed initiatives.

We will measure success in achieving this outcome by the following:

- It will be clear to investors, issuers and intermediaries that the benefits of regulation measurably and significantly outweigh the costs of regulation.
- We will be a leader in fostering and implementing non-regulatory alternatives where such action is supported by a better cost/benefit relationship than new regulation.
- The effective cost and burden of regulation will be competitive with our peers, without undermining investor protection and confidence.

4. Our stakeholders will be confident that the OSC is a fair and effective regulator with superior and transparent governance and accountability mechanisms and strong investor education programs.

We will achieve this outcome by:

a) Continuing to promote a customer focused approach to our communications and service delivery,

b) Expanding the use of partnerships to deliver investor education products to target groups,

c) Continuing to enhance the transparency of OSC corporate governance practices, adjudicative policies and accountability mechanisms,

d) Continuing to tailor the form and method of access to OSC communications to the needs of OSC constituents, including implementing predominantly electronic-based communications vehicles, and

e) Completing the re-design of the OSC website in 2004.

We will measure success in achieving this outcome by the following:

- Investors, issuers and other market participants who use the Ontario capital market will be afforded access, protection, education and information at levels similar or superior to those of the best of our peer group.
- OSC governance practices and policies meet or exceed disclosure requirements for public issuers
- Public surveys of market participants will sustain positive ratings for OSC customer service.
- 100% of OSC communications will be accessible electronically by 2005.

2004/2005 Financial Outlook

The OSC has budgeted total 2004/2005 operating expenditures of $62.0 million, a 5.6% increase over the 2003/2004 budget. The key budget component is salaries and benefits costs, which are projected to rise by 8.0% to $43.9 million. This increase reflects the annualized cost impact of previous hiring as well as new staff in enforcement and the investment funds area. Total staffing is projected to increase by nine.

The OSC introduced a rule which sets out a revised fee structure effective April 2003. The OSC also adopted a multi-year fee setting approach where fee revenues are managed across a three-year horizon. Any deficits incurred are funded either through any surpluses previously generated or from the OSC's reserve. Any surpluses or deficits arising during the three year period will be incorporated when calculating fee levels for the next three year period.

The OSC revenue forecast for 2004/2005 is $72.7 million, which is 3.7% higher than the $70.1 million received in 2003/2004. Since the introduction of the revised fee structure the OSC has collected more fees than projected. This surplus has arisen due to lower than expected expenditures as well as due to higher than projected revenues (in part due to timing issues). The OSC plans to use all surplus fees collected in the three years following the introduction of the new fee structure to reduce the revenue requirements for the following three year period.

Report on 2003/2004 organizational priorities

A summary of our performance in meeting the goals and priorities identified in the 2003/2004 Statement of Priorities is provided below.

1. Ontario's capital market and financial services regulatory system will be fully consolidated, harmonized nationally and coordinated internationally.

2003/2004 Initiatives

a) Complete the CSA project to propose Uniform Securities Laws,

b) Work with regulators, governments and industry participants in moving towards a more effective national securities regulatory system,

c) Participate actively in International Organization of Securities Commissions (IOSCO) and Council of Securities Regulators of the Americas (COSRA) initiatives and, where appropriate, provide leadership,

d) Continue to work with the Financial Services Commission of Ontario (FSCO) on initiatives to coordinate our regulatory activities and on the proposed creation of a new regulatory structure,

e) Initiate and foster initiatives which reduce the use of off shore trading to circumvent securities laws,

f) Reduce inter-jurisdictional impediments to information sharing and enforcement support,

g) With the Joint Forum of Financial Regulators, develop and implement harmonized financial services regulatory solutions,

h) Continue development of national electronic information systems to facilitate the activities of market participants,

i) In accord with the plan made in 2002, continue to work with industry through the Bond Market Transparency Committee to ensure implementation of ATS Rules with respect to application to fixed income markets that achieves effective regulation and also supports innovation and efficiency in the bond markets, and

j) In accord with the plan for completion by 2004, develop a model to permit flexibility in the business models that registrants can use.

During 2003/2004 the OSC will focus resources on restructuring the registration system. As part of this process, the OSC will continue work towards harmonizing categories of registration and conditions of registration across Canada and to creating a passport system permitting a registrant in one province to trade or advise in another. The OSC will also work to effectively manage the starting-up of the National Registration Database.

2003/2004 Results

In December 2003, the CSA published for comment consultation drafts of a Uniform Securities Act and a Model Administration Act. The Act would also permit regulators across Canada to implement "one stop access" for registrants and issuers through mechanisms of legal delegation and mutual recognition. Consultations on the Uniform Securities legislation (USL) proposals were held in February 2004. Market participants are generally supportive of the USL initiative as a significant improvement to our current securities regulatory regime.

The Wise Persons' Committee released their report in December 2003 recommending a single securities regulator built on a joint federal-provincial model. The report concluded that there is broad industry support across Canada for a single regulator and a single code for securities legislation. The OSC made a submission to the Committee outlining concerns with the current securities regulatory structure and supporting a single regulator. The Ontario government has also signaled its support and is pursuing actively with other governments the creation of a single regulator.

OSC staff participated actively on IOSCO Standing Committee 2 (Regulation of Secondary Markets) and provided input to a paper focused on a Corporate Bond Transparency mandate. The OSC now chairs Standing Committee 3 (Regulation of Market Intermediaries) which produced a paper on factors to consider for firms conducting cross-border activities.

Staff continue to work with the Financial Services Commission of Ontario (FSCO) on initiatives of common concern through the Joint Forum of Financial Market Regulators. Progress on joint initiatives included the development of principles and practices for the sale of products and services in the financial sector; point of sale disclosure for segregated funds and mutual funds; and guidelines for capital accumulation plans. The next steps are for the constituent groups of the Joint Forum to propose implementation of these initiatives.

Substantial work has been done through IOSCO to reduce the abusive use of offshore havens to perpetrate capital market offences. The ongoing development of the IOSCO Memorandum of Understanding (MOU) will provide a list of jurisdictions that are able to cooperate with international investigations, and by omission from the MOU, highlight those that are non-cooperating jurisdictions. We have worked with IOSCO, and informally with many jurisdictions which historically have been uncooperative, to improve processes for information sharing. These processes include developing protocols for the provision of assistance by conducting investigations on behalf of regulators from foreign jurisdictions.

Our staff worked with the Investment Dealers Association (IDA) to identify rule changes and better practices that will reduce the use of brokerage firms by insider traders in their illegal conduct. The IDA has proposed rules (IDA Regulation 1300 - Beneficial ownership of institutional accounts) that reflect certain recommendations of the Financial Action Task Force on Money Laundering, and the Insider Trading Task Force. Staff are working closely with the IDA and CSA to ensure that the appropriate recommendations are taken into account.

In recent investigations into insider trading activity significant success was achieved in piercing the secrecy provisions of several jurisdictions. Lessons learned from those processes will assist future investigations. The OSC has also partnered with the RCMP to form investigative units to strengthen enforcement action and to target those who use privileged information in illegal insider trading.

During the year, the MFDA has made a number of changes to its governance structure and has strengthened its enforcement and disciplinary process. Specifically, the MFDA amended its corporate governance structure to ensure that the public and different MFDA members are properly represented on its board. It has also clarified the functions of its regional councils with respect to enforcement and policy matters. The composition of these councils and hearing panels are amended to ensure their effectiveness in the conduct of enforcement proceedings. These amendments were effected by changes in the MFDA By-laws, which were approved by the Commission. The Commission has also amended and restated its order that recognizes the MFDA as a self-regulatory organization to reflect these developments.

The System for Electronic Disclosure by Insiders (SEDI) was launched in June, 2003. SEDI is an electronic insider reporting system that replaces paper-based reporting for most issuers. SEDI requires insiders to file insider reports electronically using the SEDI website. The public can search and view insider reporting information over the same website.

The National Registration Database (NRD) was implemented in April. There has been good feedback from the industry relating to the ease of use of the NRD. An Operational Procedures and Policy Committee, comprised of representatives from Ontario, Manitoba, Alberta, British Columbia, New Brunswick and the IDA, has been established. The Committee is chaired by the OSC and is responsible for making decisions relating to harmonized registration processes, information recording and interpretations of the NRD forms.

In Fall 2003, a Registration Advisory Committee was established. The committee is comprised of representatives from the bank owned dealers, large and small investment dealers, mutual fund dealers, and advisers, as well as representatives from the IDA, the Mutual Funds Dealers Association, and the Canadian Depository for Securities (CDS). The committee meets each month to discuss and recommend solutions to registration related issues. Members of the CSA join by conference call on quarterly basis to discuss national issues.

The National Registration System (NRS) proposal was approved by all jurisdictions and was published for comment in January 2004. It is expected that the NRS will be approved June 2004. A two-stage implementation may be required to facilitate changes to the NRD. This will allow individual registrations to continue to be completely electronic while firms will be able to submit applications in paper format.

Industry committees were established to reconsider data consolidation and market integration requirements for equity markets and fixed income issues. Amendments to ATS rules were implemented to reflect the work of these advisory committees.

The non-employment relationships project, which will establish a flexible business model for mutual fund sales representatives, was deferred this year because of staff commitments to the USL project. Work on the project will resume in 2004/2005.

2. Market participants and investors will have confidence in the integrity of Ontario's capital market.

2003/2004 Initiatives

a) Work with the provincial government and our CSA colleagues on legislative initiatives to strengthen our regulatory system and improve investor confidence:

- in response to the Report of the Five Year Review Committee, and
- in response to U.S. initiatives (e.g., Sarbanes-Oxley and the new NYSE listing standards),

b) Respond to the introduction of Keeping the Promise for a Strong Economy Act (Budget Measures), 2002 including developing and proposing any necessary rules and enforcement protocols,

c) Work with our CSA and SRO colleagues to develop and implement strategies to reduce unlawful insider trading in Canada,

d) Coordinate with foreign regulators to identify and close "gaps" in regulation between jurisdictions that may be used to support illegal market conduct,

e) Develop and propose a revised framework for regulating mutual funds and their managers that relies on independent oversight as a means to address conflicts of interest and focuses on the responsibilities of the fund manager in managing mutual funds, and

f) Complete development of a Fair Dealing Model proposal.

During 2003/2004 the OSC plans to publish draft rules for comment to address the following issues:

- Auditor Oversight
- CEO/CFO Certification of Financial Information
- Composition and Responsibilities of Audit Committees

The OSC will also examine potential approaches to address issues related to Board independence including guidelines for committees (nominating, compensation etc.).

2003/2004 Results

Three new rules were implemented in March 2004 to respond to the U.S. investor confidence initiatives. National Instrument 52-108 requires financial statements of reporting issuers to be audited by a public accounting firm that participates in the oversight program of the Canadian Public Accountability Board. Multilateral Instrument 52-109 requires chief executive officers and chief financial officers (or persons performing similar functions) of all reporting issuers (other than investment funds) to certify their issuers' annual and interim filings. Multilateral Instrument 52-110

prescribes the composition, responsibilities and reporting obligations for audit committees of reporting issuers (other than investment funds). In order to raise awareness about the instruments, staff delivered a series of speeches and participated in a webcast that is available through the Commission website.

In addition, proposed Multilateral Policy 58-201 *Effective Corporate Governance* and Multilateral Instrument 58-101 *Disclosure of Corporate Governance Practices* were published for comment on January 16, 2004. The purpose of the proposed policy is to confirm as best practice certain governance standards and guidelines that have evolved through legislative and regulatory reforms and the initiatives of other capital market participants. The purpose of the proposed instrument is to provide greater transparency for the marketplace regarding the nature and adequacy of issuers' corporate governance practices. The comment period expires on May 31, 2004.

Operationally, we have restructured the Corporate Finance Branch to better reflect the continually increasing emphasis on continuous disclosure. Under the revised structure, all three teams in the Branch carry out a mix of prospectus and continuous disclosure related work. Previously, the continuous disclosure review function was the responsibility of only one team. In addition, each team manager is now supported by an assistant manager in order to facilitate an effective, efficient and consistent review process throughout the Branch.

The OSC Chief Economist (OCE) participated in the policy development and completed cost-benefit analyses for each of these rules. The OCE also contributed a paper on the empirical impact of insider trading and consulted with the Insider Trading Task Force to inform policy on insider trading and as part of the OSC submission to the Federal Government on Bill C-13.

OSC staff has overseen the publication by the Investment Dealers Association of new standards to reduce or eliminate analysts' conflicts of interest.

OSC staff also worked with the Canadian Institute of Chartered Accountants to promulgate new rules governing auditor independence.

Staff developed and published Staff Notice 21-702, a framework for dealing with foreign exchanges. The notice addresses investor protection, market integrity and regulatory efficiency issues.

The Five Year Review Committee made many recommendations for strengthening enforcement through legislative changes. Through the USL process, enforcement staff did a considerable amount of work on enforcement related initiatives. The draft USL provisions not only incorporate recommendations of the Committee, they also incorporate best legislation from across CSA jurisdictions, as well as new provisions that would further strengthen enforcement and enhance inter-jurisdictional cooperation and support.

The Insider Trading Task Force, which was comprised of staff of several Commissions and Self Regulatory Organizations (SRO), produced thirty-two recommendations for preventing, detecting and deterring insider trading in Canada. The OSC is taking the lead in working with other Canadian Securities Administrator (CSA) jurisdictions in the analysis and, where appropriate, development and implementation of those recommendations.

OSC enforcement staff is organizing an international conference to be held in Toronto in September 2004, which would bring together offshore jurisdictions with North American regulators and enforcement officials to discuss ways of identifying and preventing market abuses.

With the goal of reaffirming investor confidence in the mutual fund industry, the OSC initiated a three stage probe of mutual fund firms in Ontario in order to determine whether illegal and improper trading practices such as late trading and market timing are occurring in mutual funds sold in Ontario. An initial questionnaire was sent to 105 mutual fund managers in November 2003. Based on the responses received and a sampling of the industry, 32 fund managers were selected in February 2004 to provide specified trading data. Following statistical analysis of this data, certain fund managers will be subject to an on-site review by OSC staff. The findings of the third phase of our probe will assist us in determining what corrective measures, if any, the OSC needs to take.

A concept paper for independent oversight of mutual funds was released in January 2004 along with preliminary results of the cost-benefit analysis.

The proposed Fair Dealing Model (FDM) was released in stages over the year. Industry feedback was received through the use of an innovative interactive website. A concept paper which included an analysis of the results of the website survey, and further developed the ideas of how the FDM would work in practice, was published for comment. The release of the concept paper attracted very favourable media attention. Seven industry working groups have been established to provide feedback on implementation issues and data for a cost benefit analysis. The next phase of the project will build on the results of the working groups and comment process, and will also provide more detail on the

single service provider license concept, proficiency requirements, and the role of industry governance bodies, including SROs, and accreditation bodies. A series of FDM round table industry discussions in CSA jurisdictions led by senior OSC officials has been arranged with the CSA.

3. Regulatory interventions in Ontario will be balanced and merit based.

2003/2004 Initiatives

a) Make appropriate changes to our practices as a result of the recommendations of the Regulatory Burden Task Force,

b) Assess the impact of "soft dollars" on market efficiency, analyst bias and competitiveness,

c) Improve accountability through the use of rigorous Cost Benefit Analysis and risk-based assessments for all proposed initiatives,

d) Monitor changes in the regulation of the structure of investment banks and research units in other countries to determine the need (if any) for change in Canada.

2003/2004 Results

Changes to our practices as a result of the recommendations of the Regulatory Burden Task Force will be presented in our 2003 Annual Report.

A decision was made to combine soft dollar analysis with a study of best execution under the leadership of the Capital Markets branch. A preliminary quantitative report on the cost of execution in Canada relative to other jurisdictions will be completed by April 2004. Through industry conferences and research, the OCE has monitored regulatory developments in primarily the US and UK and the potential impact of those developments has been used to inform the policy development process.

The OCE developed a series of Risk Criteria for Earnings Manipulation which is being used by Corporate Finance as a basis for Continuous Disclosure Review. These statistical criteria will be refined based on further research by the OCE and feedback from Corporate Finance.

The Compliance team implemented a risk-based approach to compliance field reviews of non-SRO members in April 2003. A "sweep" was performed of all market participants identified as high risk in Spring 2003. The approach to Compliance field reviews has been amended so that resources are focused on higher risk market participants and the higher risk areas of their operations.

4. The OSC will have superior and transparent governance and accountability mechanisms.

2003/2004 Initiatives

a) Adopt a more customer focused approach to our communications and service delivery,

b) Improve the transparency of OSC corporate governance practices and accountability mechanisms, and

c) Tailor the form and method of access to OSC communications to the needs of OSC constituents, including implementing predominantly electronic-based communications vehicles and redesigning the OSC Website.

2003/2004 Results

The OSC Investor Communications team continued to implement community outreach and public awareness initiatives, with success measured by feedback from exit surveys and retention data gleaned from follow-up telephone calls. During the past year the OSC fulfilled requests for more than 59,000 printed brochures and Investor Kits and directly reached more than 12,000 Ontario investors through events and trade shows including the following programs:

- *Protect Your Money*, a joint project with the Ontario Senior Secretariat on fraud awareness for senior investors which is delivered by senior volunteers from the Volunteer Centre of Toronto. Twenty-nine "Protect Your Money" presentations were hosted by Members of Provincial Parliament across Ontario during the fiscal year

- *OSCAR* (Ontario Securities Commission Agent Representative) an investor education outreach program designed to engage community leaders who, on behalf of the OSC, speak to audiences in their community on

fraud awareness and investor protection. The OSC ran fifty-five *OSCAR* sessions in communities across Ontario during the fiscal year.

- Staff Ambassadors, a program to train OSC staff to deliver messages on investor protection, fraud awareness and regulatory issues, to high school students and community and industry groups across Ontario. Since the Staff Ambassadors launch in November 2003, the OSC has expanded outreach capabilities by training 56 Ambassadors and delivering 9 presentations.

A new, powerful search engine was installed on the OSC website in September 2003. The engine will be integrated into the second generation web-site, which is in the final stages of development. User testing is planned for April 2004, with launch in early June 2004.

The OSC has enhanced the transparency of its corporate governance practices and accountability mechanisms through greater public disclosure including the introduction of a revised corporate governance disclosure section on the OSC website. The OSC has reviewed and updated the mandates of each Board committee and has appointed a Part-time Commissioner as the Lead Director with responsibility for enhancing the Board's capacity for independent oversight of the Commission's corporate and business operations. A new Adjudicative Committee was established to monitor the Commission's adjudicative procedures and practices and to recommend improvements in the Commission's adjudicative functions. The OSC currently solicits advice from sixteen advisory committees made up of accomplished professionals in the marketplace from a broad range of backgrounds and disciplines who actively represent the views of various stakeholders.

An audit of key stakeholders was completed by IPSOS Reid. The results showed strong support for OSC investor confidence measures; a majority of respondents viewed the OSC as being weak in enforcement. This issue will be probed in more detail in the stakeholder satisfaction survey this year.

Chapter 7

Insider Reporting

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

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

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

Chapter 8

Notice of Exempt Financings

Exempt Financings

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

REPORTS OF TRADES SUBMITTED ON FORM 45-501F1

Transaction Date	Purchaser	Security	Total Purchase Price ($)	Number of Securities
19-Mar-2004	J.A. Garth Thomson	Acuity Pooled Balanced Fund - Trust Units	150,000.00	8,100.00
23-Mar-2004 to 26-Mar-2004	Cockburn Family Trust;John Smits	Acuity Pooled Canadian Equity Fund - Trust Units	300,000.00	12,893.00
25-Mar-2004 to 30-Mar-2004	Margaret Henderson;Ian Ihnatowycz	Acuity Pooled Growth and Income Fund - Trust Units	750,000.00	70,573.00
18-Mar-2004 to 23-Mar-2004	3 Purchasers	Acuity Pooled High Income Fund - Trust Units	250,000.00	13,420.00
18-Mar-2004	Bill Robertson	Acuity Pooled High Income Fund - Trust Units	140,000.00	7,481.00
31-Mar-2004	3 Purchasers	Alternum Capital - Enriched Long-Short Fund - Limited Partnership Units	250,000.00	500.00
31-Mar-2004	7 Purchasers	Alternum Capital - North American Value Hedge Fund - Limited Partnership Units	130,117.65	207.00
12-Dec-2003	14 Purchasers	Asia Now Resources Limited - Units	865,975.00	1,574,500.00
25-Mar-2004	4 Purchasers	Azure Resources Corp. - Units	75,150.00	82,000.00
01-Jan-2003 to 31-Dec-2003	2 Purchasers	Barclays Global Investors Canada Limited Canadian Alpha Bond Fund - Units	394,936.81	34,083.00
01-Jan-2003 to 31-Dec-2003	52 Purchasers	Barclays Global Investors Canada Limited Daily Active Canadian Equity Fund - Units	56,280,192.48	6,375,413.00

01-Jan-2003 to 31-Dec-2003	75 Purchasers	Barclays Global Investors Canada Limited Daily Aggressive Balanced Index Fund - Units	2,403,761.16	242,364.00
01-Jan-2003 to 31-Dec-2003	87 Purchasers	Barclays Global Investors Canada Limited Daily Conservative Balanced Index Fund - Units	23,240,375.81	2,243,301.00
01-Jan-2003 to 31-Dec-2003	338 Purchasers	Barclays Global Investors Canada Limited Daily EAFE Equity Index Fund - Units	1,453,729.50	219,747.00
01-Jan-2003 to 31-Dec-2003	139 Purchasers	Barclays Global Investors Canada Limited Daily Moderate Balance Index Fund - Units	13,894,266.27	1,370,283.00
01-Jan-2003 31-Dec-2003	117 Purchasers	Barclays Global Investors Canada Limited Daily Short Term Investment Fund - Units	4,028,782.86	376,091.00
01-Jan-2003 to 31-Dec-2003	290 Purchasers	Barclays Global Investors Canada Limited Daily Synthetic U.S. Equity Index Fund - Units	13,707,144.62	1,049,290.00
01-Jan-2003 to 31-Dec-2003	271 Purchasers	Barclays Global Investors Canada Limited Daily S&P/TSX Composite Index Fund - Units	53,355,623.59	5,603,309.00
01-Jan-2003 to 31-Dec-2003	347 Purchasers	Barclays Global Investors Canada Limited Daily Universe Bond Index Fund - Units	42,199,694.75	3,196,746.00
01-Jan-2003 to 31-Dec-2003	79 Purchasers	Barclays Global Investors Canada Limited Daily US Equity Index Fund - Units	5,689,212.75	848,819.68
01-Jan-2003 to 31-Dec-2003	Norman Wells	Barclays Global Investors Canada Limited EX BBB Universe Bond Index Fund - Units	3,428,765.65	322,184.00
01-Jan-2003 to 31-Dec-2003	3 Purchasers	Barclays Global Investors Canada Limited Short Term Investment Fund - Units	2,219,644.86	174,936.00
01-Jan-2003 to 31-Dec-2003	6 Purchasers	Barclays Global Investors Canada Limited S&P/TSX Composite Index Fund - Units	547,912.32	23,895.00
01-Jan-2003 to 31-Dec-2003	4 Purchasers	Barclays Global Investors Canada Limited Unhedged Synthetic EAFE Index.Fund - Units	35,874.26	5,601.00
01-Jan-2003 to 31-Dec-2003	BGICL CTBF	Barclays Global Investors Canada Limited Unhedged Synthetic U.S. Equity Index Fund - Units	104,983.20	3,978.00

01-Jan-2003 to 31-12-2003	10 Purchasers	Barclays Global Investors Canada Limited Universe Bond Index Fund - Units	3,267,477.20	212,564.00
01-Jan-2003 to 31-Dec-2003	4 Purchasers	Barclays Global Investors Canada Limited U.S. Equity Index Fund Canada - Units	808,870.58	109,184.00
01-Mar-2004	7 Purchasers	Blair Franklin MultiStrategy Fund LP - Limited Partnership Units	2,163,000.00	2,163.00
18-Mar-2004	Front Street F.T. 2004-1 LP	Cambior Inc. - Common Shares	488,004.00	110,910.00
22-Mar-2004	CIBC WMV;Inc.	CashEdge Inc. - Preferred Shares	5,236,870.94	4,094.00
19-Mar-2004	27 Purchasers	CGI Group Inc. - Subscription Receipts	115,700,000.00	14,462,500.00
19-Mar-2004	Rosalyn Roberts	Contact Exploration Inc. - Units	12,000.00	30,000.00
22-Mar-2004	Siwash Holdings;John Magee	Crosshair Exploration & Mining Corp. - Units	30,000.00	120,000.00
27-Feb-2003 to 01-Feb-2004	TD Asset Management Inc.	Emerald Canadian Bond Index Fund - Units	312,436,653.00	312,436,653.00
27-Feb-2003 to 01-Feb-2004	TD Asset Management Inc.	Emerald Canadian Equity Index Fund - Units	222,018,239.00	222,018,239.00
27-Feb-2003 to 01-Feb-2004	TD Asset Management Inc.	Emerald Canadian Large Cap Pooled Fund Trust - Units	37,057,539.00	37,057,539.00
27-Feb-2003 to 01-Feb-2004	TD Asset Management Inc.	Emerald Global Government Bond Index Fund - Units	9,362,375.00	9,362,375.00
27-Feb-2003 to 01-Feb-2004	TD Asset Management Inc.	Emerald International Equity Index Fund - Units	74,198,494.00	74,198,494.00
27-Feb-2003 to 01-Feb-2004	TD Asset Management Inc.	Emerald U.S. Market Index Fund - Units	68,485,811.00	68,485,811.00
01-Apr-2004	Credit Risk Advisory	Exco Resources, Inc. - Notes	1,371,534.21	1.00
24-Mar-2004	Gerry Doyle	Goldbrook Ventures Inc. - Units	7,500.00	15,000.00
06-Nov-2003	Canada Dominion Resources LP XI;Casurina Limited	International Uranium Corporation - Flow-Through Shares	2,200,000.00	20,000,000.00
25-Mar-2004	47 Purchasers	Ivernia West Inc. - Units	8,298,750.00	33,195,000.00
07-Jan-2003 to 19-Nov-2003	155 Purchasers	KJH Strategic Investors Fund - Units	1,705,432.30	14,610,549.00

13-Jan-2003 to 24-Dec-2003	137 Purchasers	KJH Strategic Investors RRSP Fund - Units	71,361.90	6,246,542.00
23-Mar-2004	10 Purchasers	Lifebank Cryogenics Corp. - Units	92,500.00	462,500.00
24-Mar-2004	3 Purchasers	Maple Mortgage Trust Advisors - Notes	30,000,000.00	3.00
01-Mar-2004	5 Purchasers	MCAN Performance Strategies - Limited Partnership Units	1,082,000.00	10,286.00
01-Mar-2004	5 Purchasers	MCAN Performance Strategies - Limited Partnership Units	1,010,000.00	9,194.00
18-Mar-2004	Euro Credit Investment Limited	Microbix Biosystems Inc. - Convertible Debentures	500,000.00	500,000.00
26-Mar-2004	Wes Durie	Microsource Online, Inc. - Common Shares	18,000.00	3,000.00
26-Mar-2004	Pino Di Stefano	Microsource Online, Inc. - Common Shares	6,000.00	1,000.00
19-Mar-2004	7 Purchasers	NetDriven Solutions Inc. - Common Shares	871,409.44	5,075,789.00
19-Mar-2004	11 Purchasers	NetDriven Solutions Inc. - Common Shares	140,000.00	610,000.00
26-Mar-2004	3 Purchasers	Norske Skog Canada Limited - Notes	53,759,397.00	3.00
28-Mar-2004	Frank Alden;O'Donnell Capital Group	O'Donnell Emerging Companies Fund - Units	37,082.09	4,689.00
03-Mar-2004 to 12-Mar-2004	7 Purchasers	Oilexco Incorporated - Units	195,000.00	780,000.00
15-Mar-1004	Credit Risk Advisors L.P.;Bank of Montreal	Omega Healthcare Investors, Inc. - Notes	1,333,400.00	2.00
18-Mar-2004	46 Purchasers	PetroFalcon Corporation - Special Warrants	14,069,000.00	6,395,000.00
01-Jul-2003 to 27-Feb-2004	11 Purchasers	Promittere Asset Backed Securities Fund - Units	343,859.83	65,147.00
26-Mar-2004	Nursing Homes and Related Industries Pension Plan	Real Assets US Social Equity Index Fund - Units	10,451.01	1,467,426.00
23-Mar-2004	Michael G. Westcott	Rimfire Minerals Corporation - Units	9,000.00	10,000.00
23-Mar-2004	11 Purchasers	Spectrum Signal Processing Inc. - Units	2,124,225.00	1,573,500.00
23-Mar-2004	12 Purchasers	Swiss Water Decaffeinated Coffee Income Fund - Units	18,056,000.00	1,220,000.00

16-Jan-2003 to 25-Aug-2003	312 Purchasers	The KJH Balanced RRSP Fund - Units	145,052.93	15,100,615.00
23-Mar-2004	1350659 Ontario Inc.	Treat Systems Inc. - Units	9,900.00	22,500.00
12-Mar-2004	CI Funds Signature	West Japan Railway Company - Shares	248,188.41	50.00

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

Seller	Security	Number of Securities
Larry Melnick	Champion Natural Health.com Inc. - Shares	429,665.00
Lee Heitman	Partner Jet Corp. - Common Shares	2,703,544.00
Michael R. Faye	Spectra Inc. - Common Shares	400,000.00

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Chapter 9

Legislation

9.1.1 Ontario Regulation 72/04 Amending Reg. 1015

ONTARIO REGULATION
made under the
SECURITIES ACT
Amending Reg. 1015 of R.R.O. 1990
(General)

Note: Regulation 1015 has previously been amended. Those amendments are listed in the Table of Regulations (Legislative History) which can be found at www.e-laws.gov.on.ca.

1. Subsections 1 (3) and (4) of Regulation 1015 of the Revised Regulations of Ontario, 1990 are revoked and the following substituted:

(3) Subject to subsection (4), for the purposes of the Act and this Regulation,

(a) where the terms "generally accepted accounting principles", "auditor's report" and "generally accepted auditing standards" are used in reference to a financial statement to which National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currencies* applies, those terms have the meanings provided for in that Instrument; and

(b) in all other cases, where a recommendation has been made in the Handbook of the Canadian Institute of Chartered Accountants which is applicable in the circumstances, the terms "generally accepted accounting principles", "auditor's report" and "generally accepted auditing standards" mean the principles, report and standards, respectively, recommended in the Handbook.

(4) Except as otherwise provided in National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currencies*, in National Instrument 71-101 *The Multijurisdictional Disclosure System* and in Ontario Securities Commission Rule 71-*801 The Multijurisdictional Disclosure System*, where an issuer is incorporated or organized in a jurisdiction other than Canada or a province or territory of Canada, "generally accepted accounting principles" may, at the option of the issuer, mean such principles as prescribed in the incorporating jurisdiction by or pursuant to applicable legislation or where a recommendation has been made by an association in that jurisdiction equivalent to the Canadian Institute of Chartered Accountants, the principles recommended by that association, but where an option is exercised under this subsection, the notes to the financial statements shall state which option has been applied in the choice of generally accepted accounting principles.

2. Subsection 2 (3) of the Regulation is revoked.

3. This Regulation comes into force on March 30, 2004.

ONTARIO SECURITIES COMMISSION:

"David A. Brown", Chair

"Paul Moore", Vice-Chair

Dated on November 13, 2003.

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Binscarth PVC Ventures Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated April 5, 2004
Mutual Reliance Review System Receipt dated April 6, 2004
Offering Price and Description:
$ * - * Common Shares Price: $ 0.25 per Common Share
Underwriter(s) or Distributor(s):
First Associates Inc.
Promoter(s):
Nelson Smith
Project #628240

Issuer Name:
Blizzard Energy Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Prospectus dated April 7, 2004
Mutual Reliance Review System Receipt dated April 7, 2004
Offering Price and Description:
$ * - * Common Shares Price: $ * per Common Share
Underwriter(s) or Distributor(s):
Orion Securities Inc.
GMP Securities Ltd.
BMO Nesbitt Burns Inc.
Canaccord Capital Corporation
Salman Partners Inc.
Promoter(s):
John R. Rooney
James S. Artindale
Michael Machalski
Project #629122

Issuer Name:
Brookfield Properties Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated April 13, 2004
Mutual Reliance Review System Receipt dated April 13, 2004
Offering Price and Description:
$150,000,000.00 - 6,000,000 Class AAA Preference Shares, Series Price: $25.00 per Series J Preference Share
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
HSBC Securities (Canada) Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
Raymond James Ltd.
Trilon Securities Corporation
Promoter(s):
-
Project #630273

Issuer Name:
Holiday Income Fund
Principal Regulator - Quebec
Type and Date:
Amended and Restated Preliminary dated April 6, 2004
Mutual Reliance Review System Receipt dated April 7, 2004
Offering Price and Description:
$ * - * Units Price: $10.00 per Unit
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
TD Securities Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
Promoter(s):
North American Accessories Ltd.
Project #623542

Issuer Name:
Marathon PGM Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated April 2, 2004
Mutual Reliance Review System Receipt dated April 6, 2004
Offering Price and Description:
Minimum Offering: * Common Shares ($ *)
Maximum Offering: * Common Shares ($ *)
$ * per share (the "Offering Price") (expressed in Canadian dollars unless otherwise indicated)
Up to 1,804,000 Special Warrant Shares issuable upon the exercise of 1,640,000 previously issued Special Warrants
Underwriter(s) or Distributor(s):
Northern Securities Inc.
Promoter(s):
James D. Frank
Project #628415

Issuer Name:
Niko Resources Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated April 6, 2004
Mutual Reliance Review System Receipt dated
Offering Price and Description:
$69,000,000.00 - 2,000,000 Common Shares Price: $34.50 per Common Share
Underwriter(s) or Distributor(s):
FirstEnergy Capital Corp.
Canaccord Capital Corporation
Orion Securities Inc.
Octagon Capital Corporation
Maison Placements Canada Inc.
Promoter(s):
-
Project #628658

Issuer Name:
North American Palladium Ltd.
Type and Date:
Preliminary Short Form Shelf Prospectus dated April 7, 2004
Receipted on April 7, 2004
Offering Price and Description:
$100,000,000.00 - Common Shares Special Shares Warrants Stock Purchase Contracts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #628719

Issuer Name:
North American Palladium Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary, Amended and Restated Preliminary Short Form Shelf Prospectus dated April 8, 2004
Mutual Reliance Review System Receipt dated April 8, 2004
Offering Price and Description:
CDN$100,000,000.00 - Common Shares Special Shares Warrants Stock Purchase Contracts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #628719

Issuer Name:
NovAtel Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Prospectus dated April 5, 2004
Mutual Reliance Review System Receipt dated April 6, 2004
Offering Price and Description:
$50,000,000.00 - * Common Shares Price: $ * per Common Share
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Scotia Capital Inc.
Promoter(s):
-
Project #628298

Issuer Name:
PrimeWest Energy Trust
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated April 6, 2004
Mutual Reliance Review System Receipt dated April 6, 2004
Offering Price and Description:
$142,020,000.00 - 5,400,000 Trust Units Price: $26.30 per Trust Unit
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
TD Securities Inc.
Canaccord Capital Corporation
HSBC Securities (Canada) Inc.
Desjardins Securities Inc.
GMP Securities Ltd.
Promoter(s):
-
Project #628569

Issuer Name:
Ribbon Capital Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated April 12, 2004
Mutual Reliance Review System Receipt dated April 12, 2004
Offering Price and Description:
Minimum Offering: $600,000 or 4,000,000 Common Shares
Maximum Offering: $750,000 or 5,000,000 Common Shares
Price: $0.15 per Common Share
Underwriter(s) or Distributor(s):
First Associates Investments Inc.
Promoter(s):
-
Project #629968

Issuer Name:
Rogers Communications Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Shelf Prospectus dated April 7, 2004
Mutual Reliance Review System Receipt dated April 7, 2004
Offering Price and Description:
US$750,000,000.00 - Class B Non-Voting Shares
Preferred Shares Debt Securities
Warrants Share Purchase Contracts Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #628852

Issuer Name:
Acclaim Energy Trust
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated April 7, 2004
Mutual Reliance Review System Receipt dated April 7, 2004
Offering Price and Description:
$54,000,000.00 - 4,500,000 Trust Units Price: $12.00 per Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
National Bank Financial Inc.
Scotia Capital Inc.
FirstEnergy Capital Corp.
Canaccord Capital Corporation
Promoter(s):
-
Project #626633

Issuer Name:
AIC Total Yield Corporate Class
AIC World Equity Corporate Class
AIC Global Advantage Corporate Class
AIC Value Corporate Class
AIC Money Market Corporate Class
AIC Canadian Balanced Corporate Class
AIC Diversified Science & Technology Corporate Class
AIC Global Diversified Corporate Class
AIC Diversified Canada Corporate Class
AIC Canadian Focused Corporate Class
AIC American Balanced Corporate Class
AIC American Focused Corporate Class
AIC American Advantage Corporate Class
AIC Advantage II Corporate Class
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated March 25, 2004
Mutual Reliance Review System Receipt dated April 7, 2004
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #614671

Issuer Name:
Alexis Nihon Real Estate Investment Trust
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated April 8, 2004
Mutual Reliance Review System Receipt dated April 8, 2004
Offering Price and Description:
$66,885,000.00 - 4,900,000 Units Price: $13.65 per Offered Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Desjardins Securities Inc.
TD Securities Inc.
Promoter(s):
-
Project #627164

Issuer Name:
Altruista Fund Inc.
Type and Date:
Amendment #1 dated March 31, 2004 to Final Prospectus dated January 6, 2004
Receipted on April 12, 2004
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Altruista Inc.
Project #587390

Issuer Name:
Canadian Public Venture Finance I Inc.
Principal Regulator - Quebec
Type and Date:
Final CPC Prospectus dated April 1, 2004
Mutual Reliance Review System Receipt dated April 6, 2004
Offering Price and Description:
$750,000.00 - 3,000,000 common shares Price: $0.25 per common share
Underwriter(s) or Distributor(s):
Desjardins Securities Inc.
Octagon Capital Corporation
Canaccord Capital Corporation
Promoter(s):
Roberts E. Brown
Alain Lambert
William L. Hess
Peter M. Koziez
Project #615063

Issuer Name:
Canadian Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated April 13, 2004
Mutual Reliance Review System Receipt dated April 13, 2004
Offering Price and Description:
$59,500,000.00 - 3,500,000 Units Price: $17.00 per Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Scotia Capital Inc.
CIBC World Markets Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Canaccord Capital Corporation
Promoter(s):
-
Project #627596

Issuer Name:
All - Canadian CapitalFund
All - Canadian Resources Corporation
Coleford Private Balanced Fund
Type and Date:
Final Simplified Prospectuses dated April 6, 2004
Receipted on April 12, 2004
Offering Price and Description:
Series A and Series F Shares
Underwriter(s) or Distributor(s):
All-Canadian Management Inc.
All - Canadian Management Inc.
All - Canadian Management Inc
Promoter(s):
-
Project #613448

Issuer Name:
Draxis Health Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated April 13, 2004
Mutual Reliance Review System Receipt dated April 13, 2004
Offering Price and Description:
$20,000,005.00 - 3,053,436 Units Price: $6.55 per Unit
Underwriter(s) or Distributor(s):
Desjardins Securities Inc.
CIBC World Markets Inc.
Promoter(s):
-
Project #627642

Issuer Name:
Fording Canadian Coal Trust
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated April 8, 2004
Mutual Reliance Review System Receipt dated April 8, 2004
Offering Price and Description:
$105,000,000.00 - 2,000,000 Units Price: $52.50 per Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
HSBC Securities (Canada) Inc.
National Bank Financial Inc.
TD Securities Inc.
Salman Partners Inc.
Promoter(s):
-
Project #626782

Issuer Name:
Four Seasons Hotels Inc.
Type and Date:
Final Short Form Shelf Prospectus dated April 6, 2004
Receipted on April 8, 2004
Offering Price and Description:
US$250,000,000.00 - Debt Securities (unsecured)
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #622111

Issuer Name:
LAURENTIAN BANK OF CANADA
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated April 6, 2004
Mutual Reliance Review System Receipt dated April 6, 2004
Offering Price and Description:
$110,000,000.00 - (4,400,000 shares) Non-Cumulative Class A Preferred Shares Series 10 Price: $25.00 per Preferred Share Series 10 to yield 5.25%
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Laurentian Bank Securities Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
TD Securities Inc.
Dundee Securities Corporation
Promoter(s):
-
Project #626062

Issuer Name:
Mavrix Fund Management Inc.
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated April 8, 2004
Mutual Reliance Review System Receipt dated April 8, 2004
Offering Price and Description:
$ 18,750,000.00 - 5,000,000 Common Shares Price: $3.75 per Common Share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Canaccord Capital Corporation
GMP Securities Ltd.
Promoter(s):
-
Project #614990

Issuer Name:
OPTI Canada Inc.
Principal Regulator - Alberta
Type and Date:
Final Prospectus dated April 6, 2004
Mutual Reliance Review System Receipt dated April 7, 2004
Offering Price and Description:
$300,000,000.00 - * Common Shares Price: $ * per Common Share
Underwriter(s) or Distributor(s):
TD Securities Inc.
Scotia Capital Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
HSBC Securities (Canada) Inc.
Dundee Securities Corporation
FirstEnergy Capital Corp.
Raymond James Ltd.
Tristone Capital Inc.
Peters & Co. Limited
Richardson Partners Financial Ltd.
Promoter(s):
-
Project #615573

Issuer Name:
OPTI Canada Inc.
Principal Regulator - Alberta
Type and Date:
Final Prospectus dated April 8, 2004
Mutual Reliance Review System Receipt dated April 8, 2004
Offering Price and Description:
38,852,813 Common Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #624041

Issuer Name:
Osprey Media Income Fund
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated April 6, 2004
Mutual Reliance Review System Receipt dated April 6, 2004
Offering Price and Description:
$200,000,000.00 - 20,000,000 Units Price: $10.00 Per Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
TD Securities Inc.
Westwind Partners Inc.
Promoter(s):
Osprey Media Group Inc.
Project #619147

Issuer Name:
Royal Host Real Estate Investment Trust
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated April 7, 2004
Mutual Reliance Review System Receipt dated April 7, 2004
Offering Price and Description:
$35,000,000.00 - 7.90% Convertible Unsecured Subordinated Debentures, Series A, due 2009
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Promoter(s):
-
Project #626614

Issuer Name:
TD Private Canadian Bond Income Fund
TD Private Canadian Bond Return Fund
TD Private Canadian Corporate Bond Fund
TD Private North American Equity Fund
TD Private Canadian Equity Fund
TD Private Canadian Dividend Fund
TD Private Income Trust Fund
TD Private U.S. Equity Fund
TD Private RSP U.S. Equity Fund
TD Private Small/Mid-Cap Equity Fund
TD Private International Equity Fund
TD Private RSP International Equity Fund
TD Private Canadian Strategic Opportunities Fund
TD Private Global Strategic Opportunities Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated April 2, 2004
Mutual Reliance Review System Receipt dated April 6, 2004
Offering Price and Description:
Mutual Fund Units @ Net Asset Value per Unit
Underwriter(s) or Distributor(s):
-
Promoter(s):
TD Asset Management Inc.
Project #617729

Issuer Name:
TransCanada Power, L.P.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated April 7, 2004
Mutual Reliance Review System Receipt dated April 7, 2004
Offering Price and Description:
$300,070,000.00 - 8,110,000 Subscription Receipts, each representing the right to receive one Limited Partnership Unit
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
TD Securities Inc.
FirstEnergy Capital Corp.
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Promoter(s):
-
Project #626688

Issuer Name:
TUNDRA SEMICONDUCTOR CORPORATION
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated April 12, 2004
Mutual Reliance Review System Receipt dated April 13, 2004
Offering Price and Description:
$44,190,000.00 - 1,800,000 Common Shares PRICE: $24.55 per Common Share
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Orion Securities Inc.
Paradigm Capital Inc.
Promoter(s):
-
Project #626530

Issuer Name:
YPG Holdings Inc.
Principal Regulator - Quebec
Type and Date:
Final Short Form Shelf Prospectus dated April 7, 2004
Mutual Reliance Review System Receipt dated April 8, 2004
Offering Price and Description:
$1,000,000,000.00 - Medium Term Notes (Unsecured)
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
National Bnak Financial Inc.
HSBC Securities (Canada) Inc.
Promoter(s):
Yellow Pages Group Co.
Project #625888

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 RS Market Integrity Notice – Request for Comments – Order Entry During a Regulatory Halt

April 16, 2004 No. 2004-010

REQUEST FOR COMMENTS

ORDER ENTRY DURING A REGULATORY HALT

Summary

The Board of Directors of Market Regulation Services Inc. ("RS") has approved an amendment to the Universal Market Integrity Rules ("UMIR") to repeal the restriction on order entry on a marketplace during a regulatory halt.

Rule-Making Process

RS has been recognized as a self-regulatory organization by the Alberta Securities Commission, British Columbia Securities Commission, Manitoba Securities Commission, Ontario Securities Commission and in Quebec by the Autorité des marchés financiers (the "Recognizing Regulators") and, as such, is authorized to be a regulation services provider for the purposes of the National Instrument 21-101 and National Instrument 23-101.

As a regulation services provider, RS will administer and enforce trading rules for the marketplaces that retain the services of RS. RS has adopted, and the Recognizing Regulators have approved, UMIR as the integrity trading rules that will apply in any marketplace that retains RS as its regulation services provider. Presently, RS has been retained to be the regulation services provider for: the Toronto Stock Exchange ("TSX") and TSX Venture Exchange ("TSX VN), as recognized exchanges; for Bloomberg Tradebook Canada Company, as an alternative trading system; and Canadian Trading and Quotation System ("CNQ") as a recognized quotation and trade reporting system.

On the initiative of the Rules Advisory Committee of RS ("RAC"), RAC requested the proposed amendment related to removing the inhibition on order entry during a regulatory halt, delay or suspension. RAC have reviewed the proposed amendment and has recommended its adoption by the Board of Directors. RAC is an advisory committee comprised of representatives of each of: the marketplaces for which RS acts as a regulation services provider; Participants; institutional investors and subscribers; and the legal and compliance community.

The amendment to UMIR will be effective upon approval of the changes by the Recognizing Regulators following public notice and comment. Comments on the proposed amendment should be in writing and delivered by **May 17, 2004** to:

James E. Twiss,
Senior Counsel,
Market Policy and General Counsel,
Market Regulation Services Inc.,
Suite 900,
P.O. Box 939,
145 King Street West,
Toronto, Ontario. M5H 1J8

Fax: 416.646.7265
e-mail: james.twiss@rs.ca

A copy should also be provided to Recognizing Regulators by forwarding a copy to:

Cindy Petlock
Manager, Market Regulation
Capital Markets Branch
Ontario Securities Commission
Suite 1903, Box 55,
20 Queen Street West
Toronto, Ontario. M5H 3S8

Fax: (416) 595-8940
e-mail: cpetlock@osc.gov.on.ca

Background to the Proposed Amendment

Currently, subsection (1) of Rule 9.1 provides that no order for the purchase or sale of security be entered on a marketplace during the period of a regulatory halt or suspension. A regulatory halt or suspension is imposed by RS to ensure a fair and orderly market. The regulatory halt or suspension imposed by RS is applicable in all marketplaces that have adopted UMIR. A delay, halt or suspension imposed by a marketplace, including the TSX, TSX VN or CNQ, is not governed by subsection (1) of Rule 9.1 of UMIR and, in accordance with subsection (3) of Rule 9.1, orders may be entered on any marketplace in accordance with the market quality rules of the marketplace on which the order is entered.

The prohibition on order entry was initially introduced in effect to prevent person, who may obtain specific information about an issuer before another person, from gaining an advantage by entering order first during the period of the regulatory halt or delay. Where marketplaces have a system of time priority, it was assumed that this order entry would provide the persons receiving the information an advantage over others. It had been anticipated that the receipt of orders would be random following the lifting of the ban such that no "identifiable group" would systematically benefit from the imposition or lifting of a regulatory halt, delay or suspension.

RAC requested the amendment to the current rule to remove the prohibition on order entry during a regulatory halt inasmuch as the rule, in practice, is not achieving its intended result. Presently, all retail client orders that have been entered directly must be manually re-entered following the lifting of the halt. The re-entry requirements provide an unintended an advantage to certain traders or account holders whose access to the market is more direct.

If the order inhibition during a regulatory halt is removed, RS will be able to continue to monitor the entry of the orders and will be in a position to more accurately determine if any person is attempting to take advantage of undisclosed material information during the period of time that the execution of orders is prohibited. Unusual orders or patterns of orders can be questioned by RS prior to RS reopening of the security for trading.

Summary of the Proposed Amendment

The amendment would allow orders for a particular security to be entered on a marketplace during the period of time that there was a regulatory halt, delay or suspension in effect regarding that particular security. Order execution with respect to a particular security would continue to be prohibited on all marketplaces during a regulatory halt, delay or suspension affecting the particular security.

Appendices

The text of the amendment to the Rules respecting the restriction on order entry on a marketplace during a regulatory halt is set out in Appendix "A". Appendix "B" contains the text of the relevant provisions of the Rules as they would read on the adoption of the amendment. Appendix "B" also contains a marked version of the current provisions highlighting the change being introduced by the amendment.

Questions

Questions concerning this notice may be directed to:

James E. Twiss,
Senior Counsel,
Market Policy and General Counsel,
Market Regulation Services Inc.,
Suite 900,
P.O. Box 939,
145 King Street West,
Toronto, Ontario. M5H 1J8

Telephone: 416.646.7277
Fax: 416.646.7265
e-mail: james.twiss@rs.ca

ROSEMARY CHAN,
VICE PRESIDENT, MARKET POLICY AND GENERAL COUNSEL

Appendix "A"

Universal Market Integrity Rules

Amendment Related to Order Entry During a Regulatory Halt

The Universal Market Integrity Rules are amended as follows:

1. Subsection (1) of Rule 9.1 is amended by deleting the phrase "entered on a marketplace or".

Appendix "B"

Universal Market Integrity Rules

Text of Rule to Reflect Proposed Amendments
Related to Order Entry During a Regulatory Halt

Text of Provisions of Following Adoption of Proposed Amendments	Text of Current Provisions Marked to Reflect Adoption of Proposed Amendments
9.1 Regulatory Halts, Delays and Suspensions of Trading **(1) Regulatory Halts and Suspensions -** No order for the purchase or sale of a security shall be executed on a marketplace or over-the-counter, at any time while: (a) an order of a securities regulatory authority to cease trading in the security remains in effect; (b) in the case of a listed security, the Market Regulator of the Exchange on which the security is listed has halted or suspended trading in the security while such halt or suspension remains in effect; (c) in the case of a quoted security, the Market Regulator of the QTRS has halted or suspended trading in the security while such halt or suspension remains in effect; and (d) in the case of any security other than a listed security or a quoted security, a Market Regulator of an ATS on which such security may trade has halted trading for the purposes of the public dissemination of material information respecting such security or the issuer of such security.	**9.1 Regulatory Halts, Delays and Suspensions of Trading** (1) **Regulatory Halts and Suspensions -** No order for the purchase or sale of a security shall be ~~entered on a marketplace or~~ executed on a marketplace or over-the-counter, at any time while: (a) an order of a securities regulatory authority to cease trading in the security remains in effect; (b) in the case of a listed security, the Market Regulator of the Exchange on which the security is listed has halted or suspended trading in the security while such halt or suspension remains in effect; (c) in the case of a quoted security, the Market Regulator of the QTRS has halted or suspended trading in the security while such halt or suspension remains in effect; and (d) in the case of any security other than a listed security or a quoted security, a Market Regulator of an ATS on which such security may trade has halted trading for the purposes of the public dissemination of material information respecting such security or the issuer of such security.

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Chapter 25

Other Information

25.1 Approvals

25.1.1 Felcom Management Corp. - 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).

April 13, 2004

Weir Foulds LLP
The Exchange Tower, Suite 1600
P.O. Box 480, 130 King Street West
Toronto, Ontario
M5X 1J5

Attention: Wayne T. Egan

Dear Sirs/Mesdames:

Re: Felcom Management Corp. ("Felcom")
Application pursuant to clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario)
Application No. 357/04

Further to your application dated March 19, 2004, as supplemented by letter dated April 6, 2004 (collectively, the "**Application**") filed on behalf of Felcom and based on the facts set out in the Application, pursuant to the authority conferred upon the Ontario Securities Commission (the "**Commission**") in paragraph 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that Felcom act as trustee of the Galaxy Monthly Income Fund and other pooled funds which may be established and managed by Felcom in the future and offered pursuant to a prospectus exemption.

"Paul M. Moore" "S. Wolburgh-Jenah"

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