**The Ontario Securities Commission**

# OSC Bulletin

April 8, 2005

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

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# Chapter 1

# Notices / News Releases

## 1.1 Notices

### 1.1.1 Current Proceedings Before The Ontario Securities Commission

**APRIL 8, 2005**

**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
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| Robert L. Shirriff, Q.C. | — | RLS |
| Suresh Thakrar, FIBC | — | ST |
| Wendell S. Wigle, Q.C. | — | WSW |

**SCHEDULED OSC HEARINGS**

| | |
|---|---|
| TBA | **Yama Abdullah Yaqeen**<br>s. 8(2)<br>J. Superina in attendance for Staff<br>Panel: TBA |
| TBA | **Cornwall *et al***<br>s. 127<br>K. Manarin in attendance for Staff<br>Panel: TBA |
| TBA | **Philip Services Corp. *et al***<br>s. 127<br>K. Manarin in attendance for Staff<br>Panel: TBA |
| April 11-14, 18, 20, 22, 25-29, 2005<br>May 12, 13, 16, 18, 20, 30, 2005<br>June 1-3, 2005<br>10:00 a.m.<br>May 19, 2005<br>1:00 p.m. | ATI Technologies Inc.^, **Kwok Yuen Ho, Betty Ho, JoAnne Chang, David Stone,** Mary de La Torre^, Alan Rae^ and Sally Daub*<br>s. 127<br>M. Britton in attendance for Staff<br>Panel: SWJ/HLM/MTM<br>* Sally Daub settled December 14, 2004.<br>^ Settled March 29, 2005 |
| April 15, 2005<br>10:00 a.m. | **Robert Patrick Zuk, Ivan Djordjevic, Matthew Noah Coleman, Dane Alan Walton, Derek Reid and Daniel David Danzig**<br>s. 127<br>J. Waechter in attendance for Staff<br>Panel: TBA |

April 26, 2005
10:00 a.m.

**Andrew Cheung**

s. 127

Y. Chisholm in attendance for Staff

Panel: TBA

April 26, 2005
10:00 a.m.

**Zoran Popovic & DXStorm.com Inc.**

s. 127

Y. Chisholm in attendance for Staff

Panel: TBA

May 17, 2005
10:00 a.m.

**Portus Alternative Asset Management Inc., and Portus Asset Management, Inc.**

s. 127

M. MacKewn in attendance for Staff

Panel: TBD

May 18, 2005
9:00 a.m.

**Hollinger Inc., Conrad M. Black, F. David Radler, John A. Boultbee and Peter Y. Atkinson**

s.127

J. Superina in attendance for Staff

Panel: TBA

May 24-27, 2005
10:00 a.m.

**Joseph Edward Allen, Abel Da Silva, Chateram Ramdhani and Syed Kabir**

s.127

J. Waechter in attendance for Staff

Panel: RLS/ST/DLK

May 30, June 1, 2, 6, 7, 8, 9 and 10, 2005
10:00 a.m.

**Buckingham Securities Corporation,** David Bromberg*, **Norman Frydrych,** Lloyd Bruce* **and Miller Bernstein & Partners LLP (formerly known as Miller Bernstein & Partners)**

s. 127

J. Superina in attendance for Staff

Panel: PMM/RWD/DLK

* David Bromberg settled April 20, 2004
* Lloyd Bruce settled November 12, 2004

June 14, 2005
2:30 p.m.
June 15–30, 2005
10:00 a.m.

**In the matter of Allan Eizenga,** Richard Jules Fangeat*, Michael Hersey*, Luke John McGee* and Robert Louis Rizzutto* **and In the matter of Michael Tibollo**

June 28, 2005
2:30 p.m.

s.127

T. Pratt in attendance for Staff

Panel: WSW/PKB/ST

* Fangeat settled June 21, 2004
* Hersey settled May 26, 2004
* McGee settled November 11, 2004
* Rizzutto settled August 17, 2004

June 29 & 30, 2005
10:00 a.m.

**Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton**

s. 127

J. Cotte in attendance for Staff

Panel: PMM/RWD/DLK

**ADJOURNED SINE DIE**

**Global Privacy Management Trust and Robert Cranston**

**Andrew Keith Lech**

**S. B. McLaughlin**

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

### 1.1.2 Notice of Application to Vary the Recognition and Designation of The Canadian Depository for Securities Limited

**NOTICE OF APPLICATION TO VARY THE RECOGNITION AND DESIGNATION OF THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED**

The Canadian Depository for Securities Limited ("CDS") has applied to the Ontario Securities Commission ("Commission") for an order pursuant to subsection 21.2(1) and section 144 of the *Securities Act* to vary the current recognition and designation order of CDS as a clearing agency.

The Commission is publishing the following documents for a 30-day comment period:

1. Notice and Request for Comment,
2. Application for variation of recognition and designation order,
3. Draft varied and restated recognition and designation order,
4. Draft rule protocol governing the review of CDS rules, and
5. Draft reporting obligations.

These documents can be found in Chapter 13 of this Bulletin.

### 1.1.3 RS Market Integrity Notice – Notice of Amendment Approval – Provisions Respecting a "Basis Order"

**MARKET REGULATION SERVICES INC.**

**AMENDMENT APROVAL TO THE UNIVERSAL MARKET INTEGRITY RULES -
PROVISIONS RESPECTING A "BASIS ORDER"**

**NOTICE OF AMENDMENT APPROVAL**

The Ontario Securities Commission has approved amendments to the Universal Market Integrity Rules ("UMIR") to incorporate a definition of a "Basis Order" and to provide that the execution of a Basis Order should not establish the "last sale price". In addition, the Alberta Securities Commission, the British Columbia Securities Commission, the Manitoba Securities Commission, and, in Quebec, the Autorité des marchés financiers (the "Recognizing Regulators") have also approved the amendments. A copy and description of the amendment was published on November 26, 2004 at (2004) 27 OSCB 9589. No comment letters were received and the final version of the amendment is published in Chapter 13 of this Bulletin.

### 1.1.4 Notice of Amended and Restated CPC Operating Agreement

**NOTICE OF AMENDED AND RESTATED CPC OPERATING AGREEMENT**

The Commission is publishing in Chapter 25 of today's Bulletin the Amended and Restated CPC Operating Agreement (the **Amended Agreement**) among the Commission, TSX Venture Exchange Inc., the British Columbia Securities Commission, the Alberta Securities Commission, the Saskatchewan Financial Services Commission, the Manitoba Securities Commission, and the Nova Scotia Securities Commission.

The Amended Agreement replaces the existing CPC Operating Agreement (the **Existing Agreement**) entered into by the Commission, the TSX Venture Exchange (then the Canadian Venture Exchange Inc.), the BCSC, the ASC, the Saskatchewan Securities Commission and the MSC in June, 2002. The Existing Agreement was made in connection with the introduction of the TSX Venture's capital pool company program into Ontario and the adoption of Commission Policy 41-601 *Capital Pool Companies*. The Existing Agreement sets out the procedures to be adopted by the parties in connection with this Program.

The purpose of the Amended Agreement is to allow the NSSC to be added as a signatory. In addition, the Amended Agreement also incorporates several other minor housekeeping amendments.

**Delivered to Minister**

The Amended Agreement has been delivered to the Chair of Management Board of Cabinet in accordance with subsection 143.10(1) of the *Securities Act*. (Ontario) **If the Minister approves the Amended Agreement, it will come into effect on the day it is approved. If the Minister does not approve or reject the Amendment Agreement, it will come into effect in Ontario on June 17, 2005.**

April 8, 2005

### 1.1.5 OSC Request for Comments 11-902 Regarding Statement of Priorities for Fiscal Year Ending March 31, 2006

**OSC REQUEST FOR COMMENTS 11-902 REGARDING STATEMENT OF PRIORITIES FOR FISCAL YEAR ENDING MARCH 31, 2006**

The *Securities Act* requires the Commission to deliver to the Chair of Management Board of Cabinet (the "Minister") and publish in its Bulletin by June 30 of each year a statement of the Chair 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 in Chapter 6. The Commission will consider the feedback, and make any necessary revisions prior to finalizing and publishing its 2005/2006 Statement of Priorities.

The Statement of Priorities, once approved by the Minister, will serve as the guide for the Commission's ongoing operations.

**Comments**

Interested parties are invited to make written submissions by June 6, 2005 to:

Robert Day
Manager, Business Planning
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
[416] 593-8179
rday@osc.gov.on.ca

## 1.3 News Releases

### 1.3.1 OSC Hearing Adjourned in the Matter of K. Y. Ho, Betty Ho, Jo-Anne Chang and David Stone

**FOR IMMEDIATE RELEASE**
**March 30, 2005**

**OSC HEARING ADJOURNED IN THE MATTER OF K. Y. HO, BETTY HO, JO-ANNE CHANG AND DAVID STONE**

**TORONTO –** The hearing in insider trading allegations by the Ontario Securities Commission (OSC) in the matter of K. Y. Ho, Betty Ho, Jo-Anne Chang and David Stone has been adjourned to 10 a.m. on April 11, 2005. A copy of the order and other documents related to the hearing are made available on the OSC's web site (www.osc.gov.on.ca).

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

Eric Pelletier
Manager, Media Relations
416-595-8913

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

### 1.3.2 In the Matter of Zoran Popovic and DXStorm.Com Inc.

**FOR IMMEDIATE RELEASE**
**April 4, 2005**

**IN THE MATTER OF ZORAN POPOVIC AND DXSTORM.COM INC.**

**Toronto –** On April 1, 2005, the Ontario Securities Commission ("OSC") issued a Notice of Hearing and related Statement of Allegations in respect of Zoran Popovic, sometimes known as Zoran Popowitsch ("Popovic") and DXStorm.Com Inc. ("DXStorm"). Staff of the OSC allege that Popovic, the President, Chief Executive Officer and a director of DXStorm, a reporting issuer in Ontario, failed to file reports in respect of insider trades. The allegations involve 103 trades by Popovic in shares of DXStorm in 2002. It is also alleged that DXStorm did not have in place a policy dealing with insider trading. The hearing will be held on April 26, 2005.

The Popovic and DXStorm matter is the fourth case brought under the OSC's simplified process. The simplified process was implemented in December 2004 in order to quickly identify, investigate and bring to a hearing those cases involving clear breaches of Ontario securities law. Simplified process cases involve violations of the Ontario *Securities Act* which are easily demonstrable, such as a failure to file or a failure to obtain required registration or certification. Once identified by front-line staff, these cases will be brought swiftly to a hearing.

The Notice of Hearing and Statement of Allegations are made available on the OSC's website (www.osc.gov.on.ca).

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

For Investor Inquiries: OSC Contact Centre
416-593-8314
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# Chapter 2

# Decisions, Orders and Rulings

## 2.1 Decisions

### 2.1.1 CFM Corporation - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – Exemption granted from requirement to include prospectus level disclosure in an information circular where redeemable preferred shares to be issued under an amalgamation – redeemable preferred shares used for tax purposes only and will be redeemed immediately following the amalgamation – amalgamation, in substance, a cash transaction.

**Applicable National Instruments**

National Instrument 51-102 – Continuous Disclosure Obligations, Form 51-102 F5 – Information Circular, Item 14.2.

**March 18, 2005**

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION**
**OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA,**
**ONTARIO, QUÉBEC, NOVA SCOTIA AND NEW BRUNSWICK**
**(THE "JURISDICTIONS")**

**AND**

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

**AND**

**IN THE MATTER OF**
**CFM CORPORATION (THE "APPLICANT")**

**MRRS DECISION DOCUMENT**

**Background**

The local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions has received an application from the Applicant for a decision under the securities legislation of the Jurisdictions (the "Legislation") for a decision that the Applicant be exempt from the requirement to include prospectus level disclosure in a management proxy circular of the Applicant relating to the meeting of its shareholders to consider, and if deemed advisable to approve, among other things, the amalgamation of the Applicant with another company in accordance with the Legislation (the "Requested Relief").

Under the Mutual Reliance Review System for Exemptive Relief Applications:

(a) the Ontario Securities Commission is the principal regulator for this application, and

(b) this MRRS decision document evidences the decision of each Decision Maker.

**Interpretation**

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

**Representations**

This decision is based on the following facts represented by the Applicant:

1. The Applicant is a corporation amalgamated under the OBCA. The common shares of the Applicant (the "**Common Shares**") are listed on the Toronto Stock Exchange.

2. The Applicant is a reporting issuer or the equivalent thereof in each of the Jurisdictions. Other than as set out in paragraph 3 below, the Applicant is not, to its knowledge, in default of its reporting issuer obligations under the Legislation.

3. The Applicant is in default under its obligations to file and mail its interim financial statements for the first fiscal quarter ended January 1, 2005 and its management's discussion and analysis ("**MD&A**") relating thereto. The Applicant is also in default of its obligation to file its interim certificates for the first fiscal quarter ended January 1, 2005 required to be filed under Multilateral Instrument 52-109 — *Certification of Disclosure in Issuers' Annual and Interim Filings* ("**MI 52-109**"). The Applicant is complying with OSC Policy 57-603 — *Defaults by Reporting Issuers in Complying with Financial Statement Filing Requirements* and CSA Staff Notice 57-301 — *Failing to File Financial Statements on Time — Management Cease Trade Orders.* The Applicant anticipates that it will file its interim financial statements for the first fiscal quarter ended January 1, 2005 and its MD&A relating thereto by March 31, 2005. In addition, the Applicant is required to deliver such statements prior to March 31, 2005 pursuant to the terms of an intercreditor and forbearance

agreement among the Applicant, the holders of its senior notes and its credit facility lender. Promptly upon filing its interim financial statements for the first fiscal quarter ended January 1, 2005 and its MD&A relating thereto, the Applicant will communicate such fact to the marketplace by way of a news release.

4. The Applicant is subject to a Management Cease Trade Order issued by the Ontario Securities Commission on March 1, 2005 as a result of the Applicant's failure to file its interim financial statements for the three-month period ended January 1, 2005.

5. The Applicant was previously in default under its obligations (i) to file and mail its annual financial statements for the fiscal year ended October 2, 2004 and its MD&A relating thereto, (ii) to file its annual information form for the fiscal year ended October 2, 2004 and (iii) to file its annual certificates for the fiscal year ended October 2, 2004 required to be filed under MI 52-109. The Applicant corrected such defaults on March 11, 2005.

6. On February 22, 2005, the board of directors of the Applicant approved the acquisition transaction by way of an amalgamation (the "**Amalgamation**") of the Applicant and 1650150 Ontario Inc. ("**Subco**") pursuant to Sections 174 and 175 of the *Business Corporations Act* (Ontario) (the "**OBCA**") (the amalgamated company to be formed by the Amalgamation being referred to as "**Amalco**"). The acquisition transaction was announced the next day before market opening.

7. Subco is a corporation incorporated under the OBCA and is a subsidiary of Ontario Teachers' Pension Plan Board ("**OTPPB**"), an independent corporation without share capital established by the *Teachers' Pension Act* (Ontario). Subco is not a reporting issuer in any province or territory of Canada. Subco was incorporated solely for the purpose of effecting the Amalgamation.

8. Pursuant to the terms and conditions of an amalgamation agreement dated February 22, 2005 among the Applicant, Subco and OTPPB (the "**Amalgamation Agreement**"), Applicant and Subco have agreed to amalgamate.

9. The Applicant proposes to hold its annual and special meeting of shareholders on or about April 8, 2005 (the "**Meeting**"). At the Meeting, the Applicant will seek the requisite approval of the shareholders of the Applicant in respect of a special resolution to approve the Amalgamation.

10. In connection with the Meeting, the Applicant expects to mail on or about March 14, 2005 to each shareholder of the Applicant (i) a notice of the Meeting, (ii) a form of proxy, and (iii) a management proxy circular (the "**Circular**") prepared in accordance with the OBCA and applicable securities laws.

11. Pursuant to the Amalgamation:

    (a) at the effective time of the Amalgamation, by virtue of the Amalgamation and without any further action on the part of Subco, the Applicant or the holders of common shares of the Applicant, (A) each common share of the Applicant (other than any common share of the Applicant held by a shareholder who has not effectively withdrawn or otherwise ceased to be entitled to such dissent rights pursuant to Section 185 of the OBCA (each a "**Dissenting Share**")) will be cancelled and converted automatically into one validly issued, fully paid and non-assessable redeemable preferred share in the capital of Amalco (each a "**Redeemable Preference Share**") and (B) each Dissenting Share will be cancelled and be converted automatically into the right to receive payment from Amalco with respect thereto in accordance with Section 185 of the OBCA;

    (b) each Class A share of Subco issued and outstanding prior to the effective time of the Amalgamation will be converted into and exchanged for one validly issued, fully paid and non-assessable Class A share of Amalco; and

    (c) each Class B share of Subco issued and outstanding prior to the Effective Time will be considered into and exchanged for one validly issued, fully paid and non-assessable Class B share of Amalco.

12. Immediately following the effective time of the Amalgamation, each Redeemable Preference Share will be redeemed by Amalco (the "**Redemption**") for a cash amount equal to $1.50 per share (subject to increase to $1.60 per share in certain circumstances to be determined 10 days prior to the Meeting) (the "**Redemption Amount**"). No new certificates evidencing the Redeemable Preference Shares will be issued to the holders of Common Shares who will continue to hold their Common Share certificates until exchanged for the aggregate Redemption Amount represented by such certificates as provided for in the Amalgamation Agreement.

13. The Redeemable Preference Shares to be issued by Amalco to the shareholders of the Applicant upon the Amalgamation will be outstanding for an instant in time following the Amalgamation and will automatically be redeemed for the Redemption

Amount in accordance with the terms of such Redeemable Preference Shares contained in the articles of amalgamation of Amalco. Holders of Common Shares are being issued the Redeemable Preference Shares for the purpose of transferring the tax accounts of the Applicant to Amalco.

14. All holders of Common Shares, including insiders of the Applicant, will receive identical consideration for their shares in the Amalgamation.

15. The consideration paid by Amalco on redemption of the Redeemable Preference Shares will be funded directly or indirectly by OTPPB and/or Subco.

16. OTPPB has advised the Applicant that it intends to ensure that Amalco will have sufficient funds to pay in full the aggregate Redemption Amount on the redemption of the Redeemable Preference Shares.

**Decision**

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 Requested Relief is granted provided that:

(a) the Applicant complies with all other provisions of the Legislation applicable to the Circular;

(b) the Applicant files copies of the following documents on its SEDAR profile no later than five days before the Meeting or any adjournment or postponement thereof:

(i) its interim financial statements for the first fiscal quarter ended January 1, 2005 and its MD&A relating thereto; and

(ii) its interim certificates for the first fiscal quarter ended January 1, 2005; and

(c) the Applicant, upon filing its interim financial statements for the first fiscal quarter ended January 1, 2005 and its MD&A relating thereto, communicates such fact to the marketplace by way of a news release.

"Erez Blumberger"
Assistant Manager, Corporate Finance
Ontario Securities Commission

### 2.1.2 Harvest Operations Corp. - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – operating subsidiary of reporting issuer – relief from continuous disclosure requirements - relief from certain oil and gas disclosure requirements – relief from certain certification requirements

**Applicable Statutory Provisions**

National Instrument 51-101 – Standards of Disclosure for Oil and Gas Activities
National Instrument 51-102 – Continuous Disclosure Obligations
Multilateral Instrument 52-109 – Certification of Disclosure in Issuers Annual and Interim Filings

**Citation**: Harvest Operations Corp., 2005 ABASC 109

**March 17, 2005**

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO,**
**QUÉBEC, NEW BRUNSWICK, NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR**
**AND YUKON (THE JURISDICTIONS)**

**AND**

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

**AND**

**IN THE MATTER OF**
**HARVEST OPERATIONS CORP. (THE FILER)**

**MRRS Decision Document**

**Background**

1. The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that:

1.1 except in Québec, the Filer be exempted from Part 2 (Annual Filing Requirements) and Part 3 (Responsibilities of Reporting Issuers and Directors) of National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities (NI 51-101)(the NI 51-101 Relief),

1.2 the Filer be exempted from National Instrument 51-102 Continuous Disclosure Obligations (NI 51-102) and from any

comparable continuous disclosure requirements under the Legislation that has not yet been repealed or otherwise rendered ineffective as a consequence of the adoption of NI 51-102 (the Comparable Continuous Disclosure Requirements) and in Québec that order 2004-PDG-0020 dated March 26, 2004 (the Québec Order) be revised to provide the same result (collectively, the Continuous Disclosure Relief),

1.3 except in British Columbia and Québec, the Filer be exempted from Multilateral Instrument 52-109 Certification of Disclosure in Issuer's Annual and Interim Filings (MI 52-109)(the MI 52-109 Relief), and

1.4 the exemptive relief regarding the NI 51-101 Relief, the Continuous Disclosure Relief and the MI 52-109 Relief that was previously granted to the Filer pursuant to sections 7.2, 7.3 and 7.4 of an MRRS decision document dated June 30, 2004 (the Previous Decision) be revoked.

2. Under the Mutual Reliance Review System for Exemption Relief Applications:

2.1 the Alberta Securities Commission is the principal regulator for this application, and

2.2 this MRRS decision document evidences the decision of each Decision Maker.

**Interpretation**

3. Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are otherwise defined in this decision.

**Representations**

4. This decision is based on the following facts represented by the Filer:

4.1 The Filer is an operating subsidiary of Harvest Energy Trust (Harvest) and was incorporated pursuant to the Business Corporations Act (Alberta).

4.2 The head and principal office of the Filer is located at Calgary, Alberta.

4.3 The Filer came into existence and became a reporting issuer in each of the Jurisdictions as a result of a plan of arrangement involving Storm Energy Ltd., Harvest, Harvest Operations Corp., Alterna Technologies Group Inc. and Rock Energy Inc. (the Arrangement).

4.4 The Filer does not carry on any operations other than operation of the properties owned by Harvest and Harvest's controlled entities and the management of Harvest's controlled entities.

4.5 The Filer is authorized to issue an unlimited number of common shares (Common Shares), an unlimited number of non-voting common shares issuable in series, an unlimited number of first preferred shares and an unlimited number of non-voting exchangeable shares issuable in series (the Exchangeable Shares) and exchangeable into trust units of Harvest (the Trust Units).

4.6 The Filer has the following securities issued and outstanding:

4.6.1 2 Common Shares, all of which are owned by Harvest,

4.6.2 547,275 Exchangeable Shares, series 1, and

4.6.3 USD $250 million of 7⅞% senior notes due October 15, 2011 (the Notes) that were issued pursuant to a private placement that was completed on October 14, 2004 (the Private Placement).

4.7 The Notes are unconditionally guaranteed by Harvest as well as by Harvest Sask. Energy Trust, Harvest Breeze Trust No. 1, Harvest Breeze Trust No. 2, Breeze Resources Partnership, Redearth Energy Inc., 1115638 Alberta Ltd. and 1115650 Alberta Ltd., all of the which are subsidiaries of Harvest (collectively, the Subsidiary Guarantors). The Notes have been assigned a rating of B- by Standard & Poor's and B3 by Moody's Investor Services.

4.8 No securities of the Filer, including the Exchangeable Shares and the Notes, are listed or quoted on any exchange or marketplace.

4.9 Harvest is an open-end, unincorporated trust governed by the laws of the province of Alberta and created pursuant to an amended and restated trust indenture dated September 27, 2002

between Harvest and Valiant Trust Company, as trustee, as amended.

4.10 The head and principal office of Harvest is located at Calgary, Alberta.

4.11 Harvest is authorized to issue an unlimited number of Trust Units and an unlimited number of special voting rights (Special Voting Units). As at November 9, 2004, approximately 40,812,859 Trust Units were issued and outstanding and one (1) Special Voting Unit was outstanding (which Special Voting Unit relates to the Exchangeable Shares issued pursuant to the Arrangement).

4.12 The Trust Units are listed and posted for trading on the TSX.

4.13 Harvest is a reporting issuer in all of the Jurisdictions.

4.14 Harvest is not in default of the Legislation in any of the Jurisdictions.

4.15 The Previous Decision provided, among other relief granted in connection with the Arrangement, the 51-101 Relief, the Continuous Disclosure Relief and the MI 52-109 Relief on the conditions set forth in the Previous Decision which included that the Filer not issue any securities, other than Exchangeable Shares, securities issued to its affiliates, or debt securities issued to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions.

4.16 The Notes were initially issued under the Private Placement pursuant to a confidential offering memorandum dated October 7, 2004 to Morgan Stanley & Co. Incorporated, TD Securities (USA) Inc., NBF Securities (USA) Corp. and WestLB AG London Branch (the Initial Purchasers) who then resold all or a portion of the Notes to third parties.

4.17 Because not all of the Initial Purchasers or their clients constitute "banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions" as set forth in the Previous Decision, the Filer has been unable to rely on the Previous Decision for the 51-101 Relief, the Continuous Disclosure Relief and the 52-109 Relief since the date the Notes were issued. As such, the Filer became subject to the requirements of the Legislation unmodified by the Previous Decision.

4.18 The Filer is in default of the Legislation because it has not complied with the requirement to file:

4.18.1 interim financial statements as at and for the nine months ended September 30, 2004, on or before November 14, 2004, pursuant to the requirements of NI 51-102, the Comparable Continuous Disclosure Requirements and the Québec Order (collectively, the Continuous Disclosure Requirements),

4.18.2 management's discussion and analysis in respect of the financial statements referred to in section 4.8.1 of this decision pursuant to the Continuous Disclosure Requirements, and

4.18.3 an interim certificate in respect of the financial statements referred to in section 4.8.1 of this decision pursuant to MI 52-109.

4.19 Since the completion of the Private Placement on October 14, 2004 the Filer has complied with sections 7.2, 7.3 and 7.4 of the Previous Decision as if the Filer was able to rely on the relief provided by such sections of the Previous Decision. In particular, the Filer has filed under its SEDAR profile:

4.19.1 the interim financial statements of Harvest as at and for the nine months ended September 30, 2004,

4.19.2 management's discussion and analysis in respect of the financial statements referred to in section 4.18.1 of this decision,

4.19.3 interim certificates in respect of the financial statements referred to in section 4.18.1 of this decision, and

4.19.4 a letter dated November 29, 2004, advising the Decision Maker in each of the Jurisdictions that a press release of Harvest dated October 14, 2004, a material

change report of Harvest dated October 22, 2004, the note indenture dated October 14, 2004, in respect of the Notes and the registration rights agreement dated October 14, 2004, all of which relate to the Notes, the Private Placement or both, can be accessed under Harvest's SEDAR profile.

**Decision**

5. 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.

6. The decision of the Decision Makers under to the Legislation is that:

6.1 Sections 7.2, 7.3 and 7.4 of the Previous Decision are revoked,

6.2 The Continuous Disclosure Relief is granted for so long as:

6.2.1 Harvest is a reporting issuer in Québec and at least one of the jurisdictions listed in Appendix B of MI 45-102 and is an electronic filer under National Instrument 13-101 System for Electronic Data Analysis and Retrieval (SEDAR),

6.2.2 Harvest sends concurrently to all holders of Exchangeable Shares resident in the Jurisdictions all disclosure material furnished to holders of Trust Units pursuant to the Continuous Disclosure Requirements,

6.2.3 Harvest sends concurrently to all holders of the Notes resident in the Jurisdictions all disclosure material furnished to holders of non-convertible debt of Harvest that has an approved rating pursuant to the Continuous Disclosure Requirements,

6.2.4 Harvest files with each Decision Maker copies of all documents required to be filed pursuant to the Continuous Disclosure Requirements,

6.2.5 Harvest files, at the same time as such documents are required to be filed pursuant to the Continuous Disclosure Requirements by Harvest, a notice in electronic format under the SEDAR profile of the Filer indicating that the:

6.2.5.1 interim filings,

6.2.5.2 annual filings,

6.2.5.3 interim certificates, and

6.2.5.4 annual certificates,

of Harvest have been filed on the SEDAR profile of Harvest,

6.2.6 Harvest is in compliance with the requirements of any marketplace on which the securities of Harvest are listed or quoted in respect of making public disclosure of material information on a timely basis, and immediately issues and files any news release that discloses a material change in its affairs,

6.2.7 The Filer issues a news release and files a material change report in accordance with Part 7 of NI 51-102 for all material changes in respect of the affairs of the Filer that are not also material changes in the affairs of Harvest,

6.2.8 Harvest includes in all mailings of proxy solicitation materials to holders of Exchangeable Shares a clear and concise statement that explains the reason the mailed material relates solely to Harvest, indicates the Exchangeable Shares are the economic equivalent to the Trust Units, and describes the voting rights associated with the Exchangeable Shares,

6.2.9 Harvest remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of the Filer,

6.2.10 The Filer does not carry on any operations other than operation of the properties owned by Harvest and Harvest's controlled entities and the management of Harvest's controlled entities, and

6.2.11 The Filer does not issue any securities other than:

6.2.11.1 non-convertible debt that has an approved rating in respect of which Harvest has provided a full and unconditional guarantee of the payments to be made by the Filer on the securities, as stipulated in the terms of the securities agreement governing the rights of holders of the securities, that results in the holder of such securities being entitled to receive payment from Harvest in the event of any failure by the Filer to make a payment,

6.2.11.2 non-convertible preferred shares that have an approved rating in respect of which Harvest has provided a full and unconditional guarantee of the payments to be made by the Filer on the securities, as stipulated in the terms of the securities agreement governing the rights of holders of the securities, that results in the holder of such securities being entitled to receive payment from Harvest in the event of any failure by the Filer to make a payment,

6.2.11.3 securities issued to its affiliates, or

6.2.11.4 debt securities issued to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions.

6.3 The NI 51-101 Relief is granted for so long as:

6.3.1 Harvest files with each Decision Maker copies of all documents required to be filed by under NI 51-101, and

6.3.2 The Filer is exempt from or otherwise not subject to the Continuous Disclosure Requirements other than the requirement contained in section 6.2.7 of this decision.

6.4 The MI 52-109 Relief is granted for so long as:

6.4.1 the Filer is not required to, and does not, file its own interim and annual filings (as those terms are defined under MI 52-109), and

6.4.2 the Filer is exempt from or otherwise not subject to the Continuous Disclosure Requirements other than the requirement contained in section 6.2.7 of this decision.

7. This decision takes effect on March 17th , 2005.

"Glenda A. Campbell, Q.C."
Vice-Chair
Alberta Securities Commission

"Stephen R. Murison"
Vice-Chair
Alberta Securities Commission

### 2.1.3 Goodman & Company, Investment Counsel Ltd. - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Extension of lapse date for mutual fund prospectus to allow for completion of fund mergers.

**Statutes Cited**

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

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NEW BRUNSWICK, 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**
**GOODMAN & COMPANY, INVESTMENT COUNSEL LTD.**

**AND**

**CARTIER MONEY MARKET FUND, CARTIER BOND FUND,**
**CARTIER CDN. EQUITY FUND, CARTIER SMALL CAP CDN. EQUITY FUND,**
**CARTIER U.S. EQUITY FUND, CARTIER GLOBAL EQUITY FUND,**
**CARTIER GLOBAL LEADERS RSP FUND AND**
**CARTIER MULTIMANAGEMENT PORTFOLIO**
**(COLLECTIVELY, THE "FUNDS")**

**MRRS DECISION DOCUMENT**

**WHEREAS** the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia and Prince Edward Island (the "Jurisdictions") has received an application (the "Application") from Goodman & Company, Investment Counsel Ltd. (the "Manager") and the Funds for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the time limits for the renewal of the simplified prospectus of the Funds dated April 13, 2004 (the "Prospectus") be extended to those time limits that would be applicable if the lapse date of the Prospectus were May 31, 2005.

**AND WHEREAS** pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Authorité des marchés financiers is the principal regulator for this application;

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

(a) The Manager is the manager of the Funds.

(b) The Funds are open-ended investment trusts established under the laws of Quebec.

(c) The Funds are currently qualified for distribution in all of the provinces and territories of Canada under the simplified prospectus of the Funds dated April 13, 2004 (the "Prospectus"), as amended.

(d) In each province of Canada, provided a pro forma simplified prospectus is filed 30 days prior to April 13 (23 in Quebec), 2005 a final version of the simplified prospectus is filed by April 23, (May 3 in Quebec) 2005, and a receipt for the simplified prospectus is issued by the securities regulatory authorities by May 3 (13 in Quebec) 2005, the units of the Funds may be distributed without interruption throughout this prospectus renewal period.

(e) The Funds are reporting issuers under the Legislation. None of the Funds is in default of any of the requirements of the Legislation.

(f) The Manager is contemplating various fund mergers that may affect the Funds, and which, should they occur, will commence on or about May 24, 2005. Any fund mergers that occur will be effected in accordance with the requirements of National Instrument 81-102 including, without limitation, filing appropriate amendments to the Prospectus and seeking unitholder approval where necessary.

(g) If the requested relief is not granted, a prospectus must be filed in accordance with the existing time limits for the renewal of the Prospectus, and must be receipted by May 3 (13 in Quebec), 2005. Such a prospectus may need to be substantially revised shortly after the issuance of a final receipt should the fund mergers commence on or about May 24, 2005. The financial costs and time involved in preparing, filing and printing a revised prospectus for the Funds would be unduly costly.

(h) Given the continued accuracy of the Prospectus, as amended, and the disclosure obligations of the Manager and the Funds should any fund mergers be proposed, the extension requested will not affect the currency or accuracy of the information contained in the Prospectus, as amended, and as may be further amended in accordance with disclosure obligations, and, accordingly, will not be prejudicial to the public interest.

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

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

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the time limits provided by Legislation as they apply to a distribution of securities under a prospectus are hereby extended to the time limits that would be applicable if the lapse date for the Prospectus of the Funds were May 31, 2005 and that units of the Funds may continue to be distributed provided that a final simplified prospectus is filed no later than 10 days after May 31, 2005 and that a receipt for the simplified prospectus is obtained no later than 20 days after May 31, 2005.

March 14, 2005.

"Josée Deslauriers"
Director of Capital Market

### 2.1.4 EMJ Data Systems Ltd. - 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.

March 30, 2005

**Blake, Cassels & Graydon LLP**
Box 25, Commerce Court West
199 Bay Street, Suite 2800
Toronto, Ontario M5L 1A9

Attention: Chris Javornik

Dear Sirs / Mesdames:

**Re: EMJ Data Systems Ltd. (the "Applicant")**

**Application to cease to be a reporting issuer under the securities legislation of Alberta, Saskatchewan, Ontario, Québec, New Brunswick, Nova Scotia and Newfoundland and 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:

1. 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;

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

3. 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

4. the Applicant is not in default of any 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"
Manager, Corporate Finance
Ontario Securities Commission

### 2.1.5 Premium Canadian Income Fund - MRRS Decision

**Headnote**

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

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

Securities Act R.S.O. 1990, c. s.5, as am., s. 83.
CSA Staff Notice 12-307 - Ceasing to be a Reporting Issuer under the Mutual Reliance Review System for Exemptive Relief Applications. (2003) 26 OSCB 6348.

March 30, 2005

**Fasken Martineau DuMoulin LLP**
66 Wellington Street West
Suite 4200, Toronto Dominion Bank Tower
Box 20, Toronto-Dominion Centre
Toronto, Ontario M5K 1N6

Attention: Munier Saloojee

Dear Mr. Saloojee:

**Re: Premium Canadian Income Fund (the "Fund") - application to cease to be a reporting issuer under the securities legislation of the provinces of Alberta, Saskatchewan, Ontario, New Brunswick, Nova Scotia, and Newfoundland and Labrador (collectively, the "Jurisdictions")**

Mulvihill Fund Services Inc. ("Mulvihill"), the manager of the Fund has applied for and on behalf of the Fund to the local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions for an order under the securities legislation (the "Legislation") of the Jurisdictions to be deemed to have ceased to be a reporting issuer in the Jurisdictions.

As Mulvihill has represented for and on behalf of the Fund to the Decision Makers that,

- the outstanding securities of the Fund, including debt securities, are beneficially owned, directly or indirectly, by one securityholder;
- no securities of the Fund are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;
- the Fund 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 Fund is not in default of any of its obligations under the Legislation as a reporting issuer; and

- the one existing securityholder of the Fund is an institutional investor and has been provided notice of the Fund's request to cease to be 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 Fund is deemed to have ceased to be a reporting issuer.

"Rhonda Goldberg"
Acting Director, Investment Funds

### 2.1.6 Argo Energy Ltd. - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – Relief from the requirement to provide certain financial statements for a business that constitutes a significant acquisition in an information circular – Relief subject to certain conditions.

**Ontario Rules**

National Instrument 51-102 – Continuous Disclosure Obligations.
Ontario Securities Commission Rule 41-501 – General Prospectus Requirements.
CSA Staff Notice 42-303 – Prospectus Requirements.

**March 24, 2005**

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

**AND**

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

**AND**

**IN THE MATTER OF**
**ARGO ENERGY LTD. AND LIGHTNING ENERGY LTD.**

**MRRS DECISION DOCUMENT**

**Background**

1. The local securities regulatory authority or regulator (the "**Decision Maker**") in each of Alberta, British Columbia, Ontario, New Brunswick and Québec (the "**Joint Jurisdictions**") and in each of Saskatchewan, Manitoba, and Nova Scotia (the "**Lightning Jurisdictions**"), has received an application from Argo Energy Ltd. ("**Argo**") and Lightning Energy Ltd. ("**Lightning**") (collectively, the "**Filers**") for a decision under the securities legislation of the Joint Jurisdictions and the Lightning Jurisdictions, as applicable, (the "**Legislation**") that Argo and Lightning in the Joint Jurisdictions and Lightning in the Lightning Jurisdictions be exempted, subject to certain conditions:

   1.1 from the requirements to provide audited statements of income, retained earnings and cash flow and a full proforma income statement and a balance sheet in respect to certain acquisitions made by Argo and Lightning within the last three financial

years, each of which would be considered to be "significant acquisitions" to Argo and Lightning respectively, as required by the Legislation; and

1.2 in Quebec by a revision of the general order that will provide the same result as an exemption order, which (i) requires Argo and Lightning to include three years of audited financial statement in an information circular in respect of a business for which securities are being distributed in connection with a restructuring transaction; and (ii) requires Lightning to include three years of audited financial statements in an information circular in respect of a business being acquired in connection with a restructuring transaction

(collectively the "**Disclosure Requirements**")

2. Under Mutual Reliance Review System for Exemptive Relief Applications (the "**System**"), the Alberta Securities Commission is the principle regulator of this application.

3. Under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "**Decision**").

**Interpretation**

4. Unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 – Definitions.

**Representations**

5. Argo has represented to the Decision Maker that:

5.1 Argo and Lightning entered into an arrangement agreement dated February 2, 2005 (the "**Arrangement Agreement**") as amended and restated on March 18, 2005 providing for the merger of Argo and Lightning pursuant to which the two corporations have agreed to combine under a plan of arrangement (the "**Arrangement**") whereby they will be reorganizing their businesses to create Sequoia Oil and Gas Trust, a new oil and gas trust (the "**Trust**") and White Fire Energy Ltd. a public exploration-focused oil and gas producer ("**White Fire**"). Under the Arrangement, Argo securityholders will receive for each Argo common share held, 0.17125 of one unit of the Trust and 0.17125 of one common share of White Fire and Lightning securityholders with receive for each Lightning common share held, 0.25 of one unit of the Trust and 0.25 of one common share of White Fire.

5.2 Lightning and Argo are currently preparing a joint information circular (the "**Information Circular**") to be distributed to their respective securityholders. Argo and Lightning have each set an annual and special meeting of their respective shareholders, each to be held on or about April 21, 2005 (the "**Shareholders' Meetings**") at which the securityholders will be given the opportunity to vote on the Arrangement, among other things.

5.3 Argo was incorporated on February 23, 1995 as "Pegaz Energy Inc." pursuant to the *Canada Business Corporations Act*. Argo subsequently changed its name and amended its share capital. Its authorized share capital currently consists of an unlimited number of common shares, Class B common shares and preferred shares, issuable in series. On June 17, 2004 Argo was continued as a corporation organized and existing under the *Business Corporations Act* (Alberta). Argo's principal business address is Suite 1200, 500-4th Avenue S.W., Calgary, Alberta, T2P 2V6. Argo's registered office is the same address.

5.4 Argo is a reporting issuer in Alberta, British Columbia, Ontario, New Brunswick, and Quebec. Its common shares have been listed for trading on the TSX since August 3, 2004.

5.5 On December 5, 2003 Argo acquired (the "**Share Acquisition**") all of the issued and outstanding common shares of Advantage Energy Corporation ("**Advantage**"), which constituted a "significant acquisitions" in accordance with Ontario Securities Commission ("**OSC**") Rule 41-501 ("**OSC Rule 41-501**").

5.6 At the time of the Share Acquisition, the only asset of any material value in Advantage was the right to purchase certain oil and gas properties (the "**Gift/Little Horse Assets**") from a third party vendor.

5.7 On December 5, 2003, Argo also acquired the Gift/Little Horse Assets (the "**Asset Acquisition**"), which also constituted a "significant acquisition" in accordance with OSC Rule 41-501.

5.8 On July 30, 2004, Argo acquired all of the outstanding securities of Energy North Inc. (the "**Energy North Acquisition**"), which also constituted a "significant acquisition" in accordance with OSC Rule 41-501.

5.9 Lightning was incorporated under the *Business Corporations Act* (Alberta) on December 4, 2001. Lightning's registered office is located at 1400, 350 – 7th Avenue SW, Calgary, Alberta T2P 3N9. The authorized capital of Lightning consists of an unlimited number of common shares.

5.10 Lightning is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia, New Brunswick and Ontario and its common shares have been listed for trading on the TSX since June 3, 2004.

5.11 On August 31, 2004, Lightning acquired all of the issued and outstanding common shares of Archean Oil & Gas Ltd. ("**AOGL**"), which constituted a significant acquisition under OSC Rule 41-501.

5.12 Pursuant to the Arrangement, White Fire will acquire certain assets (the "**White Fire Assets**") which will constitute a significant acquisition in accordance with OSC Rule 41-501.

5.13 Argo proposes to include in the Information Circular the audited operating statements for the five-month period ended April 30, 2004 and for the eight-month period ended November 30, 2003; information with respect to reserve estimates and estimates of future net revenues and production volumes; and production volumes the 12-month period commencing April 1, 2003 and ending March 31, 2004 for the Gift/Little Horse Assets in respect to both the Share Acquisition and the Asset Acquisition (as referred in and in accordance with Part 3, section 3.3(2) of OSC Rule 41-501 Companion Policy).

5.14 Argo proposes to include in the Information Circular two years of audited financial statements for the Energy North Acquisition for the periods ended December 31, 2002 and 2003 in accordance with the Canadian Securities Administration Staff Notice 42-303 ("**CSA Staff Notice 42-303**") Prospectus Requirements. These financial statements are those specified in Section 8.5 of NI 51-102 in connection with a Business Acquisition Report.

5.15 Lightning proposes to include in the Information Circular two fiscal years of audited financial statements of AOGL, in accordance with CSA Staff Notice 42-303. These financial statements are those specified in Section 8.5 of NI 51-102 in connection with a Business Acquisition Report.

5.16 White Fire proposes to include in the Information Circular two years of audited operating statements (as referred in and in accordance with Part 3, section 3.3(2) of OSC Rule 41-501 Companion Policy) in respect of the probable acquisition by White Fire of the White Fire Assets. These financial statements are those specified in Section 8.5 of NI 51-102 in connection with a Business Acquisition Report and Section 3.3(2) of the Companion Policy to OSC Rule 41-501.

5.17 White Fire proposes to include information with respect to reserve estimates of future net revenue and production volumes, actual production volumes for the two year period with respect to the White Fire Assets and other relevant material information relating to the White Fire Assets.
(the proposed inclusions above in section 5.13, 5.14, 5.15, 5.16 and 5.17 are collectively referred to as the "**Alternative Financial Disclosure**").

5.18 The Trust and White Fire propose to include in the Information Circular pro forma disclosure as required under OSC Rule 41-501.

**Decision**

6. 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 in the Joint Jurisdictions and the Decision of the Decision Makers under the Legislation in the Lightning Jurisdictions for the purposes of the Information Circular is that the requirement contained in the Legislation which requires Argo or Lightning in the Joint Jurisdictions as applicable, and Lightning in the Lightning Jurisdictions, respectively to include financial statement disclosure in an information circular prepared in connection with a plan of arrangement, including audited statements of income, retained earnings and cash flow and a full

proforma income statement and a balance sheet in respect to the Share Acquisition, the Asset Acquisition, the Energy North Acquisition, by Argo and the acquisition of AOGL by Lightning and the White Fire Assets by White Fire for a three year period as required by the Disclosure Requirements, shall not apply to either Argo or Lightning in the Joint Jurisdictions and to Lightning in the Lightning Jurisdictions provided that the Alternative Financial Disclosure for Argo and Lightning as applicable is included in the Information Circular.

"Mavis Legg"
Manager, Securities Analysis
Alberta Securities Commission

### 2.1.7 Stuart Energy Systems Corporation - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Issuer has only one security holder - Issuer deemed to cease to be a reporting issuer under applicable securities laws.

**Applicable Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., s. 83.
National Instrument 51-102 Continuous Disclosure Obligations.

**March 31, 2005**

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**ONTARIO, ALBERTA, SASKATCHEWAN,**
**MANITOBA, QUÉBEC, NOVA SCOTIA,**
**NEWFOUNDLAND AND LABRADOR,**
**NEW BRUNSWICK, YUKON TERRITORY AND**
**NUNAVUT**
**(the Jurisdictions)**

**AND**

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

**AND**

**IN THE MATTER OF**
**STUART ENERGY SYSTEMS CORPORATION (the Filer)**

**MRRS DECISION DOCUMENT**

**Background**

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision that the Filer is deemed to have ceased to a reporting issuer under the Legislation.

Under the Mutual Reliance Review System for Exemptive Relief Applications

(a) the Ontario Securities Commission is the principal regulator for this application, and

(b) this MRRS decision document evidences the decision of each Decision Maker.

**Interpretation**

Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in the decision.

**Representations**

This decision is based on the following facts represented by the Filer:

1. The Filer was continued under the *Canadian Business Corporations Act* (the CBCA) by Certificate and Articles of Continuance effective July 28, 2000. The Filer's principal executive office is located at 5101 Orbitor Drive, Mississauga, ON L4W 4V1.

2. The authorized capital of the Filer consists of an unlimited number of common shares (the Shares) and an unlimited number of preference shares. As of February 18, 2005, there were no preference shares issued and outstanding and Hydrogenics Corporation (Hydrogenics) was the sole and direct beneficial owner of all of the issued and outstanding Shares by virtue of the Offer (as defined under paragraph 4 below).

3. The Filer is a reporting issuer in each of the Jurisdictions.

4. On November 30, 2005, Hydrogenics Corporation (Hydrogenics) made an offer (the Offer) by way of share exchange take-over bid in accordance with Part XX of the *Securities Act* (Ontario) to purchase all of the issued and outstanding Shares at an exchange ratio of 0.74 common shares of Hydrogenics for every Share. The Offer was initially scheduled to expire at 12:01 a.m. (Toronto time) January 6, 2005.

5. On January 6, 2005, Hydrogenics took up and paid for 86% of the Shares which had been deposited to the Offer and extended the Offer until 6:00 p.m. (Toronto time) January 20, 2005 to enable those shareholders of the Filer that had not yet tendered their Shares to the Offer to tender their Shares.

6. On January 20, 2005, the Offer expired and Hydrogenics took up and paid for those Shares that had been deposited to the Offer during the extension period, bringing Hydrogenics' total holdings in the Filer to more than 93% of the issued and outstanding Shares on a fully diluted basis. Accordingly, Hydrogenics exercised its right to effect a compulsory acquisition under subsection 206(3) of the CBCA to acquire the remaining Shares by delivering an offeror's notice to the remaining shareholders of the Filer on January 21, 2005.

7. Hydrogenics completed the compulsory acquisition of the remaining Shares on February 17, 2005. As a result, Hydrogenics is the sole and direct beneficial owner of all of the issued and outstanding Shares.

8. The Shares of the Filer were available for trading on the Toronto Stock Exchange (the TSX) until February 18, 2005 under the symbol HHO. The Shares have now been delisted from the TSX and no securities of the Filer are traded on a marketplace as defined in National Instrument 21-101 – *Marketplace Operation*. The Filer does not have any debt securities issued and outstanding.

9. The Filer does not intend to offer its securities to the public.

10. Pursuant to Part 4 of National Instrument 51-102 – *Continuous Disclosure Obligations* (NI 51-102), the Filer was required to file its interim financial statements for the three-month period ended December 31, 2004 by no later than February 15, 2005 (the Financial Statement Deadline).

11. As the compulsory acquisition of the Filer and delisting of the Shares were not completed until February 17 and 18, 2005, respectively, the Filer's failure to file its interim financial statements by the Financial Statement Deadline constitutes a technical violation of Part 4 of NI 51-102.

12. Other than as described in paragraph 11. above, the Filer is not otherwise in default of any of its reporting issuer (or equivalent) obligations under the Legislation.

**Decision**

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 Filer be deemed to have ceased to be a reporting issuer in each of the Jurisdictions.

"Paul M. Moore"
Vice-Chair
Ontario Securities Commission

Wendell S. Wigle"
Commissioner
Ontario Securities Commission

### 2.1.8 Enbridge Inc. - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - director who is the Chair of the issuer's audit committee, has an adult son who does not share a home with the director, adult son is a partner of firm that audits the issuer, adult son has not participated in firm's audit and assurance or tax compliance practices, nor worked on the issuer's audit, the director would be independent under New York Stock Exchange rules until issuer's first annual meeting after June 30, 2005, director not barred from being independent as a result of adult child's partnership with audit firm, subject to conditions, including sunset clause.

**Rules Cited**

Multilateral Instrument 52-110 Audit Committees

**Citation:** Enbridge Inc., 2005 ABASC 201

**March 2, 2005**

**IN THE MATTER OF**

**THE SECURITIES LEGISLATION OF ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, NEW BRUNSWICK, NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR (THE "JURISDICTIONS")**

**AND**

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

**AND**

**IN THE MATTER OF ENBRIDGE INC. (THE "FILER")**

**MRRS DECISION DOCUMENT**

**Background**

The local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions has received an application from the Filer for a decision (the "Decision") under the legislation of the Jurisdictions (the "Legislation") that the provision of Multilateral Instrument 52-110, *Audit Committees* which deems a director to be not independent if an adult child of that director has a prescribed relationship with the Filer's external auditor does not apply to the Filer (the "Requested Relief").

Under the Mutual Reliance Review System for Exemptive Relief Applications:

(a) the Alberta Securities Commission is the principal regulator for this application, and

(b) this MRRS decision document evidences the decision of each Decision Maker.

**Interpretation**

Defined terms contained in National Instrument 14-101, *Definitions* have the same meaning in this decision unless they are defined in this decision. The term "PwC" means PricewaterhouseCoopers LLP.

**Representations**

This Decision is based on the following facts represented by the Filer:

1. The Filer is a corporation subsisting under the laws of Canada with its head office located in Calgary, Alberta. The Filer is a reporting issuer (or equivalent) in the Jurisdictions, and is not in default of its obligations under the Legislation. The common shares of the Filer are listed on the Toronto Stock Exchange and the New York Stock Exchange.

2. The Filer will be required to comply with the provisions of Multilateral Instrument 52-110, including the requirement that its audit committee be comprised solely of "independent directors", commencing with their annual meetings to be held in 2005.

3. PwC is the auditor of the Filer.

4. A director (the "Director") who is the Chair of the Filer's audit committee has an adult son (the "Son") who does not share a home with the Director. The Son is a partner of PwC. The Son has not participated in PwC audit and assurance or tax compliance practices, nor worked on the Filer's audit.

5. The Director would be considered to be an "independent director" for the purposes of SEC Rule 10A-3 and until the first annual meeting of the Filer after June 30, 2005, the independence standards of the New York Stock Exchange.

**Decision**

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 Requested Relief is granted, provided that:

(i) the Son does not share a home with the Director;

(ii) the Son does not participate in PwC's audit and assurance or tax compliance

practices, nor work on the Filer's audit; and

(iii) the Requested Relief expires with respect to the Filer upon the date of the Filer's first annual meeting of shareholders after June 30, 2005.

"Mavis Legg, CA"
Manager, Securities Analysis
Alberta Securities Commission

### 2.1.9 Kewl Corporation - 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 4, 2005

**KEWL Corporation**
388 Carlaw Avenue, Suite 202
Toronto, ON M4M 2S9

Dear Sirs,

**Re: KEWL Corporation (the "Applicant") - Application to Cease to be a Reporting Issuer under the securities legislation of the Provinces of Ontario and Alberta (together, 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"
Manager, Corporate Finance
Ontario Securities Commission

### 2.1.10 Anthem Works Ltd. - 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.

**March 31, 2005**

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION**
**OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, QUÉBEC,**
**NEW BRUNSWICK, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR**
**(THE JURISDICTIONS)**

**AND**

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

**AND**

**IN THE MATTER OF ANTHEM WORKS LTD. (THE FILER)**

**MRRS DECISION DOCUMENT**

**Background**

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer be deemed to have ceased to be a reporting issuer under the Legislation.

Under the Mutual Reliance Review System for Exemptive Relief Applications

(a) the British Columbia Securities Commission is the principal regulator for this application, and

(b) this MRRS decision document evidences the decision of each Decision Maker.

**Interpretation**

Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

In this decision,

"Acquisitionco" means Anthem Acquisitionco Ltd.;

"Arrangement" means the arrangement between the Filer and Acquisitionco under which Acquisitionco agreed to acquire all of the Filer's outstanding common shares;

"Debentureholders" means the holders of the Debentures;

"Debentures" means subordinated debentures issued by the Filer; and

"Trust Indenture" means the trust indenture dated September 30, 1998 in respect of the Debentures.

**Representation**

This decision is based on the following facts represented by the Filer:

1. the Filer is continued under the laws of Canada with its head office in Vancouver, British Columbia;

2. the Filer is a reporting issuer in each of the Jurisdictions and is not in default of its obligations under the Legislation;

3. the Filer's authorized share capital consists of 250,000,000 common shares and 250,000,000 preferred shares, of which 3,055,369 common shares and no preferred shares are outstanding as of March 22, 2005;

4. the Filer also has approximately $4.44 million principal amount of Debentures outstanding as at March 22, 2005;

5. as a result of the Arrangement, which was effective May 31, 2004, Acquisitionco now owns, directly or indirectly, all of the Filer's outstanding common shares;

6. effective June 4, 2004, the common shares of the Filer were delisted from the Toronto Stock Exchange;

7. none of the Debentures are, or ever have been, listed on a public exchange;

8. as of March 22, 2005, there are 153 Debentureholders, of which 145 are resident in British Columbia, 5 are resident in Alberta, one is resident in Saskatchewan and one is resident in Ontario;

9. section 6.1(f) of the Trust Indenture provided that the Filer "will use its best efforts to maintain its status as a reporting issuer not in default in the province of British Columbia and in all other provinces where it has such status";

10. at a meeting of the Debentureholders held on March 17, 2005, the Debentureholders passed a resolution in accordance with the Trust Indenture approving the amendment of the Trust Indenture

to delete section 6.1(f); the resolution was approved by 83% of the votes cast on the resolution;

11. for as long as there are Debentures outstanding, the Filer will continue to deliver to the trustee under the Trust Indenture annual and interim financial statements and MD&A prepared in accordance with National Instrument 51-102 Continuous Disclosure Obligations; and

12. the Filer does not presently intend to seek public financing by way of an offering of its securities.

**Decision**

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 Filer is deemed to have ceased to be a reporting issuer.

"Martin Eady, CA"
Director, Corporate Finance
British Columbia Securities Commission

### 2.1.11 Quebecor Inc. - MRRS Decision

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – Application by parent company of direct and indirect subsidiaries that are reporting issuers for exemption from the requirement that the parent company file material contracts that are already filed by its subsidiaries – exemption granted subject to certain conditions.

**Instruments Cited**

National Instrument 51-102 Continuous Disclosure Obligations

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NEW BRUNSWICK, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR,**
**(the Jurisdictions)**

**AND**

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

**AND**

**IN THE MATTER OF**
**QUEBECOR INC. (Quebecor or the Filer)**

**MRRS DECISION DOCUMENT**

**Background**

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) and in Québec by a revision of a general order that will provide the same results as an exemption order (the Requested Relief) for an exemption from the requirements in regards to filing of material contracts of the Filer that it or certain of the Filer's subsidiaries are parties to (the Material Contracts).

Under the Mutual Reliance Review System for Executive Relief Applications:

(a) the Autorité des marchés financiers is the principal regulator for this application, and

(b) this MRRS decision document evidences the decision of each Decision Maker.

**Interpretation**

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

**Representations**

This decision is based on the following facts represented by the Filer:

1. Quebecor was incorporated under Part I of the *Companies Act* (Québec) (the Companies Act) by letters patent dated January 8, 1965 and was continued under Part IA of the Companies Act by certificate of continuance dated June 6, 1983. Quebecor is a reporting issuer in all of the provinces of Canada where such concept exists. The securities of Quebecor are listed on the Toronto Stock Exchange (the TSX) under the trading symbol "QBR".

2. The registered office of the Filer is located at 612, Saint-Jacques Street, Montréal, Québec, H3C 4M8.

3. Quebecor is a publicly-traded holding company whose investments include:

   (i) a 84.44% interest in Quebecor World Inc. (QWI), a Canadian reporting issuer in all of the provinces of Canada where such concept exists, whose shares are listed on the TSX under the trading symbol "IQW";

   (ii) a 54.72% in Quebecor Media Inc. (Quebecor Media), which itself has:

   - a 99.91% interest in TVA Group inc. (TVA), a Canadian reporting issuer in all of the provinces of Canada where such concept exists, whose shares are listed on the TSX under the trading symbol "TVA"; and
   - a 57.26% interest in Nurun Inc. (Nurun), a Canadian reporting issuer in all of the provinces of Canada where such concept exists, whose shares are listed on the TSX under the trading symbol "IFN".

4. None of Quebecor, QWI, Quebecor Media, TVA or Nurun are in default of any of their respective obligations under the Legislation as reporting issuers.

5. The Filer is a publicly-traded holding company whose assets include significant interests in Canadian publicly-traded companies that are subject to the same reporting requirements as the Filer.

6. The direct and indirect subsidiaries of the Filer relevant to this application are QWI, TVA, Nurun and their respective subsidiaries.

7. Under the Legislation, the Filer is required to file a copy of any contract material to the Filer that it or any of its subsidiaries, including QWI, TVA and Nurun, is a party to.

8. Under the Legislation, QWI, TVA and Nurun, all direct or indirect subsidiaries of the Filer and Canadian reporting issuers, are also required to file a copy of any contract material to them that they or any of their respective subsidiaries are parties to.

9. The relief requested would not be prejudicial to the public interest as the public will have access to copies of the Material Contracts filed by QWI, TVA and Nurun.

10. In absence of an exemption, the Filer would be responsible for filing those of the Material Contracts which are material to the Filer resulting in unnecessary duplication and added expense while at the same time providing no additional disclosure to the public.

**Decision**

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

The decision of the Decision Makers under the Legislation is that:

(a) the Filer shall be exempt from the requirement of the Legislation to file a copy of any contract material to the Filer that QWI or any of QWI's subsidiaries is a party to, provided that QWI is (i) a reporting issuer that is required to file contracts material to QWI that QWI or any of its subsidiaries is a party to; and (ii) listed on the TSX;

(b) the Filer shall be exempt from the requirement of the Legislation to file a copy of any contract material to the Filer that TVA or any of TVA's subsidiaries is a party to, provided that TVA is (i) a reporting issuer that is required to file contracts material to TVA that TVA or any of its subsidiaries is a party to; and (ii) listed on the TSX;

(c) the Filer shall be exempt from the requirement of the Legislation to file a copy of any contract material to the Filer that Nurun or any of Nurun's subsidiaries is a party to, provided that Nurun is (i) a reporting issuer that is required to file contracts material to Nurun that Nurun or any of its

subsidiaries is a party to; and (ii) listed on the TSX;

(d) the exemptions provided in this decision to the Filer are subject to the further condition that the Filer shall disclose in each of its Annual Information Forms that (i) QWI, TVA and Nurun, major direct and indirect subsidiaries of the Filer, are reporting issuers under Canadian securities Legislation; (ii) QWI, TVA and Nurun are subject to the same continuous disclosure obligations as is the Filer and that these obligations include the requirement to file annual and interim financial statements, material change reports and copies of material contracts; and (iii) investors who wish to do so may view such documents under the respective company profiles at www.sedar.com;

(e) the exemptions provided in this decision to the Filer are subject to the further condition that the Filer shall disclose in a material change report required to be filed under the Legislation that the material contract is available on SEDAR, under QWI, TVA or Nurun's profile, as applicable.

March 30, 2005.

"Jean St-Gelais"
Président-directeur général

**2.2 Orders**

**2.2.1 Merrill Lynch, Pierce, Fenner & Smith Incorporated - s. 147 of the Act and ss. 116, 117 and 118 of the Regulation**

**Headnote**

**MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED**

Relief pursuant to section 147 of the Securities Act (Ontario) from the requirements relating to segregation of funds and securities in section 116, 117 and 118 of the Regulation. Previous order granted U.S. applicant permission to act as custodian for its Ontario clients. Subsequent order granting limited market dealer status to applicant, despite non-residency, required compliance with Regulations, including sections 116, 117 and 118. Therefore sections 116,117 and 118 continue to apply to the applicant despite designation as a limited market dealer which would normally exempt it from those requirements. Compliance with U.S. SEC requirements and additional safeguards, considered equivalent to requirements of the Regulations and exempted was granted.

**IN THE MATTER OF**

**THE SECURITIES ACT**
**R.S.O. 1990, c. S. 5, as amended (the Act)**

**AND**

**IN THE MATTER OF**
**MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED**

**EXEMPTION ORDER**

**UPON** the application of Merrill Lynch, Pierce, Fenner & Smith Incorporated (**Merrill Lynch**) for an exemption order pursuant to section 147 of the Act from the requirements with respect to segregation of funds and securities found in sections 116, 117 and 118 of the Regulation (the **Application**);

**AND UPON** considering the Application;

**AND UPON** Merrill Lynch having represented that:

1. Merrill Lynch is a corporation formed under the laws of the State of Delaware and is a wholly owned subsidiary of Merrill Lynch & Co., Inc. (**ML&Co**.). The head office of Merrill Lynch is located in New York, New York.

2. Merrill Lynch provides investment, financing, and related services to individuals and institutions on a global basis. Services provided to clients include securities brokerage, trading, and underwriting; investment banking, strategic services, including mergers and acquisitions, and other corporate finance advisory activities; origination, brokerage,

dealer and related activities; securities clearance and settlement services and investment advisory and related record keeping services.

3. Merrill Lynch is registered under the *Securities Act* (Ontario) as an international dealer and an international adviser. Merrill Lynch is also registered as a broker-dealer and an investment adviser with the United States Securities and Exchange Commission.

4. Merrill Lynch has applied for registration under the Act as a limited market dealer. Section 213 of the Regulation provides that a registered dealer that is not an individual must be a company incorporated, or a person formed or created, under the laws of Canada or a province or territory of Canada. Merrill Lynch does not have an office in Ontario or any directors, officers or employees resident in Ontario. Accordingly, Merrill Lynch applied for and on June 25, 2004, obtained, an order of the Commission exempting it from the residency requirement in section 213 (the **Residency Order**).

5. Merrill Lynch has filed an application for registration under the Act as a non-Canadian investment counsel and portfolio manager.

6. On March 28, 2003, Merrill Lynch obtained an order of the Commission permitting it to act as custodian for its Ontario clients. Sections 116, 117 and 118 of the Regulation provide certain requirements with respect to the segregation of client funds and securities where a registrant holds client assets. Pursuant to subsection 2.3(2) of Ontario Securities Commission Rule 31-503 a limited market dealer is exempted from the requirements of sections 116, 117 and 118 of the Regulation. However, a condition of the Residency Order is that if client securities, funds or other assets are held by a custodian or sub-custodian that is Merrill Lynch or an affiliate of Merrill Lynch, that custodian must hold such securities, funds and other assets in compliance with the requirements of the Regulation.

7. In connection with its potentially broader customer base and services to be offered in Ontario, Merrill Lynch seeks an exemption from the requirements of sections 116, 117 and 118 of the Regulation to ensure that its existing global custody services and processes can be used with respect to Ontario clients.

8. As a broker-dealer regulated by the Securities and Exchange Commission (the **SEC**), Merrill Lynch must comply with the SEC's regulations with respect to protection of customer's cash and securities. Merrill Lynch has a number of additional safeguards in place to protect client funds and securities over which it has custody.

9. Merrill Lynch is a member of the Securities Investor Protection Corporation (**SIPC**) which was established by the United States Congress under the Securities Investor Protection Act of 1970, as amended (**SIPA**). SIPA was passed to protect customers of securities firms and to promote public confidence in the United States securities markets.

10. Merrill Lynch has also obtained additional protection by purchasing a policy (the **Policy**) from Lloyd's of London for potential losses in excess of SIPC's limits.

11. The protections under SIPC and the Policy apply to clients of Merrill Lynch, including clients resident in Ontario.

**IT IS ORDERED**, pursuant to section 147 of the Act that Merrill Lynch is exempted from the requirements in sections 116, 117 and 118 of the Regulation provided that:

a) the SEC's regulations with respect to protection of clients' cash and securities continue to apply to Merrill Lynch; and

b) it maintains additional safeguards to protect client funds and securities over which it has custody, including insurance coverage, in substantially the same form as at present.

March 29, 2005.

"Robert L. Shirriff" "Wendell S. Wigle"

### 2.2.2 Ontario Financing Authority - s. 144

**Headnote**

**ONTARIO FINANCING AUTHORITY**

Application pursuant to section 144 of the Securities Act (Ontario), to revoke a previous ruling and order and its subsequent amending order. The previous ruling and orders are superceded by the new Ontario Regulation 85/05 made under the Act, Exemptions Respecting the Ontario Financing Authority.

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

**AND**

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

**AND**

**IN THE MATTER OF THE**
**ONTARIO FINANCING AUTHORITY**

**ORDER**

**(Section 144 of the Act)**

**UPON** the application (the **Application**) of the Ontario Financing Authority (**OFA**) to the Ontario Securities Commission (the **Commission**) for an order, pursuant to section 144 of the Act, to revoke the Ruling and Order of the Commission, made under section 211 of the Regulation and section 74(1) of the Act, dated September 23, 1994, *In the Matter of Ontario Financing Authority* (collectively the **1994 Decision**), as varied by an order of the Commission, made under section 144 of the Act, dated March 27, 1997, *In the Matter of the Ontario Financing Authority* (the **1997 Variation Order**)(the 1994 Decision, as varied by the 1997 Variation Order, is referred to as the **Existing Decision**);

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

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

1. The Applicant was established as a corporation without share capital under the *Capital Investment Plan Act*, S.O. 1993, c. 23 (the **CIPA**).

2. The CIPA was enacted by the Government of Ontario to establish a capital investment plan for Ontario in which the Government, municipalities, other public bodies and the private sector would work together to invest in the province's infrastructure. The CIPA applies to four Crown corporations, one of which is the OFA.

3. The administration of the OFA is the responsibility of the Minister of Finance.

4. Subject to a proviso, the 1994 Decision provided that:

   (a) pursuant to subsection 74(1) of the Act, trades by the OFA of interests in two investment pools (described in the 1994 Decision) with Public Bodies are not subject to section 25 or 53 of the Act;

   (b) pursuant to subsection 74(1) of the Act, the OFA is not subject to the requirements of paragraph 25(1)(c) of the Act to register as an adviser in connection with its investment advisory activities in relation to Public Bodies and the Province of Ontario; and

   (c) pursuant to section 211 of the Regulation, the OFA is exempt from the provisions of subsection 206(1) of the Regulation in connection with any trades by the OFA in portfolio securities of the two investment pools.

5. The 1997 Variation Order amended the 1994 Decision by, among other things:

   (a) replacing paragraph 9 of the representations in the 1994 Decision, which described the investments which comprise the two investments pools, with a new description;

   (b) adding to the representations in the 1994 Decision the following:

      17. "under Part II.1 s.16.5(2) of the Financial Administration Act, R.S.O. 1990, c. F12 as amended, (the "Financial Administration Act") which came into force on December 9, 1996 under the Good Financial Administration Act, S.O. 1996, c. 29, ministries, as such term is defined in the Financial Administration Act ("Ministries"), are empowered to invest money held outside the Consolidated Revenue Fund and belonging to them or held by them in trust for the Crown, in any investment pool administered by the OFA which (i) restricts its investments to Ontario investments; and (ii) receives and manages funds invested only by Public Bodies and Ministries;"

(c) replacing the operative portion of the 1994 Decision to provide, subject to a proviso, that:

(i) pursuant to subsection 74(1) of the Act, trades by the OFA of interests in the two investment pools with Public Bodies and Ministries are not subject to section 25 or 53 of the Act;

(ii) pursuant to subsection 74(1) of the Act, the OFA is not subject to the requirements of paragraph 25(1)(c) of the Act to register as an adviser in connection with its investment advisory activities in relation to Public Bodies and the Province of Ontario; and

(iii) pursuant to section 211 of the Regulation, the OFA is exempt from the provisions of subsection 206(1) of the Regulation in connection with any trades by the OFA in portfolio securities of the two investment pools.

6. On March 4, 2005, Ontario Regulation 85/05 made under the Act, *Exemptions Respecting the Ontario Financing Authority* (the **New OFA Regulation**) was filed with the Registrar of Regulations.

7. The full text of the New OFA Regulation is set out in the attached Schedule A.

8. The OFA has requested that the Existing Decision be revoked on the basis that the New OFA Regulation has made it no longer necessary.

**AND UPON** the Commission being of the opinion that to make this Order would not be prejudicial to the public interest;

**IT IS ORDERED**, pursuant to section 144 of the Act, that the Existing Decision is revoked.

March 18, 2005.

"Susan Wolburgh Jenah"
Commissioner
Ontario Securities Commission

"Paul K. Bates"
Commissioner
Ontario Securities Commission

**SCHEDULE A**

**ONTARIO REGULATION 85/05**
**made under the**
**SECURITIES ACT**
**EXEMPTION RESPECTING THE ONTARIO FINANCING AUTHORITY**

**Definition**

1. In this Regulation,

"public body" has the same meaning as in section 29 of the *Capital Investment Plan Act*, *1993*.

**Exemption re investment advice**

2. The Ontario Financing Authority is not required to be registered under the Act in order to act as an adviser in the provision of investment advice to the Crown in right of Ontario and to public bodies.

**Exemptions re investment pool**

3. (1) The Ontario Financing Authority is not required to be registered under the Act in connection with the issue of units of any investment pool that is created by the Authority for the purpose of facilitating investment by the Crown in right of Ontario and by public bodies, if the portfolio securities that comprise the investment pool are restricted to bonds, debentures, commercial paper and other debt instruments in which the Minister of Finance is authorized to invest under the *Financial Administration Act*.

(2) No prospectus is required to be filed under the Act in connection with the issue of units of an investment pool described in subsection (1).

### 2.2.3 EMJ Data Systems Ltd. - ss. 1(6) of the OBCA

**Headnote**

Issuer deemed to have ceased to be offering its securities to the public under the OBCA.

**Statute Cited**

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 1(6).

**IN THE MATTER OF**
**THE BUSINESS CORPORATIONS ACT**
**R.S.O. 1990, c. B.16, AS AMENDED (THE "OBCA")**

**AND**

**IN THE MATTER OF**
**EMJ DATA SYSTEMS LTD.**

**ORDER**
**(Subsection 1(6) of the OBCA)**

**UPON** the application of EMJ Data Systems Ltd. (the Applicant) to the Ontario Securities Commission (the Commission) for an order pursuant to subsection 1(6) of the OBCA that the Applicant be deemed to have ceased to be offering its securities to the public;

**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 corporation governed by the laws of the Province of Ontario. Its head office is located in Guelph, Ontario;

2. The Applicant is an "offering corporation" as defined in the OBCA;

3. 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;

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

5. The Applicant has applied 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

6. The Applicant is not in default of any of its obligations as a reporting issuer under the *Securities Act* (Ontario) or the rules and regulations made thereunder.

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

**IT IS HEREBY ORDERED**, pursuant to subsection 1(6) of the OBCA, that the Applicant is deemed to have ceased to be offering its securities to the public for the purposes of the OBCA.

March 24, 2005.

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

### 2.2.4 Strategic Advisors Corp., Strategic Capital Partners Inc. and Strategic Value Trust - ss. 74(1), s. 113, ss. 117(2) and cl. 121(2)(a)(ii) of the Act

**Headnote**

Relief from the dealer registration and prospectus requirements of the Act to permit the distribution of pooled fund units to fully managed accounts on an exempt basis – Relief from the mutual fund conflict of interest investment prohibitions of the Act to allow pooled funds to make and hold investments in related issuers – Relief from management company reporting requirements of the Act in respect of investments made by pooled fund in related issuers – Relief from self-dealing prohibition of the Act to allow in-species transfers between pooled funds and managed accounts.

**Statutes Cited**

Securities Act, R.S.O. 1990, c. S.5, as am., sections 25, 53, 74(1), 111(2)(c), 111(3), 113, 117(1)(a), 117(1)(d), 117(2), 118(2)(b), 121(2)(a)(ii).

**Rules Cited**

OSC Rule 45-501 – Exempt Distributions.

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

**AND**

**IN THE MATTER OF
STRATEGIC ADVISORS CORP.
AND
STRATEGIC CAPITAL PARTNERS INC.**

**AND**

**IN THE MATTER OF
STRATEGIC VALUE TRUST**

**RULING AND ORDER
(Subsection 74(1), section 113, subsection 117(2)
and clause 121(2)(a)(ii) of the Act)**

**UPON** the application of Strategic Advisors Corp. ("SAC") and Strategic Capital Partners Inc. ("SCPI", and together with SAC, the "Applicants"), on their behalf and on behalf of the Strategic Value Trust (the "Existing Fund") and any other pooled fund established and managed by one or both of the Applicants after the date hereof (a "Future Fund", together with the Existing Fund, the "Funds"), to the Ontario Securities Commission (the "Commission") for

(i) a ruling, pursuant to subsection 74(1) of the Act, that the sale to a Managed Account (as hereinafter defined) of units of the Funds will not be subject to the dealer registration requirement and the prospectus requirement in sections 25 and 53, respectively, of the Act;

(ii) an order, pursuant to section 113 of the Act relieving the Funds from the prohibitions in paragraph 111(2)(c) and subsection 111(3) of the Act which prohibit mutual funds in Ontario from knowingly making and holding an investment in an issuer in which

a. any officer or director of the mutual fund, its management company or distribution company or an associate of any of them, or

b. any person or company who is a substantial security holder of the mutual fund, its management company or its distribution company,

has a significant interest (the "Mutual Fund Conflict of Interest Investment Prohibitions");

(iii) an order, pursuant to subsection 117(2) of the Act relieving the Applicants from the requirement in paragraphs 117(1)(a) and 117(1)(d) to file a report of every transaction of purchase or sale of securities between the Funds and any related person or company and any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the Funds are joint participants with one or more of their related persons or companies (the "Management Company Reporting Requirements"); and

(iv) an order, pursuant to clause 121(2)(a)(ii) of the Act relieving the Applicants from the prohibition in paragraph 118(2)(b) of the Act which prohibits a portfolio manager from knowingly causing an investment portfolio managed by it to purchase or sell the securities of any issuer from or to the account of a responsible person, any associate of a responsible person or the portfolio manager (the "Self-Dealing Prohibition").

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

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

1. SAC and SCPI are affiliated entities, each of which is incorporated under the laws of the

province of Ontario. Their respective head offices are in Toronto, Ontario.

2. SAC is registered under the legislation in Ontario in the categories of "investment counsel and portfolio manager, and limited market dealer". SAC is also registered under the legislation of Alberta, British Columbia, Manitoba, Saskatchewan, and Nova Scotia (collectively, the "Other Jurisdictions") in the categories of "investment counsel" and "portfolio manager" (or the equivalent).

3. SCPI is registered under the legislation of Ontario as a dealer in the category of "investment dealer (equities, options and managed accounts)", and is authorized to act as an adviser, pursuant to an exemption from the "adviser registration requirement" (as defined in National Instrument 14-101 – *Definitions*) that is made available to dealers who are members of the Investment Dealers Association of Canada.

4. The Applicants offer discretionary portfolio management services to individuals, corporations and other entities (each, a "Client") seeking wealth management or related services ("Managed Services") through a managed account ("Managed Account"). Pursuant to a written agreement ("Managed Account Agreement") made between the respective Applicant and the Client, the Applicant makes investment decisions for the Managed Account and has full discretionary authority to trade in securities for the Managed Account without obtaining the specific consent of the Client to the trade.

5. The Managed Services are provided by employees of the Applicants who meet the proficiency requirements of an advising officer or advising representative (or associate advising officer or associate advising representative) in the case of SAC, or as a Portfolio Manager (or Associate Portfolio Manager) in the case of SCPI, under the legislation of Ontario. Certain individuals are officers of both SAC and SCPI and are dually registered by the Commission to provide Managed Services at both SAC and SCPI.

6. The Managed Services provided by the Applicant consist of the following:

   (a) each Client who accepts Managed Services executes a Managed Account Agreement whereby the Client authorizes the respective Applicant to supervise, manage and direct purchases and sales, at the Applicant's full discretion on a continuing basis;

   (b) the respective Applicant's qualified employees perform investment research, securities selection and management functions with respect to all securities, investments, cash equivalents or other assets in the Managed Account;

   (c) each Managed Account holds securities as selected by the respective Applicants; and

   (d) each Applicant retains overall responsibility for the Managed Services provided to its respective Clients and has designated a senior officer to oversee and supervise the Managed Services.

7. Each Applicant's minimum account size is $500,000, which may be waived at the Applicant's discretion. From time to time, the Applicants accept certain Clients for Managed Accounts with less than $500,000 under management. Managed Accounts may not be ideal for such Clients since they may not receive the same asset diversification benefits and may incur disproportionately higher brokerage commissions relative to other Clients, due to minimum commission charges.

8. In order to improve the diversification and cost benefits to Managed Accounts with less than $500,000 under management, the Applicants wish to distribute units of the Funds to those Managed Accounts. The Client would thereby be able to partake of the Applicants' investment management expertise, regarding both asset allocation and individual stock selection, as well as receive the benefits of lower costs and broader asset diversification associated with pooled investments relative to direct holdings of individual securities.

9. The Applicants may also distribute units of the Funds by subscription agreements to persons who do not have Managed Accounts.

10. The Existing Fund is an open-end mutual fund trust managed by SAC that was established under the laws of the province of Ontario on January 1, 2005. The Future Funds will consist of open-end mutual fund trusts or limited partnerships of which SAC or SCPI will be appointed portfolio manager, with full discretionary authority, and in most cases will be appointed administrative manager as well.

11. Certain of the Funds will fit within the definition of either "mutual fund" or "non-redeemable investment fund" under the Act. The Funds are not, or will not be, reporting issuers under the Act. The Funds are, or will be, sold in Ontario under applicable statutory exemptions from the prospectus and dealer registration requirements.

12. In the absence of the ruling requested, the Applicants would be prohibited from selling units of the Funds to a Managed Account in Ontario for

the reason that Ontario Securities Commission Rule 45-501 – *Exempt Distributions* ("OSC Rule 45-501") stipulates that a managed account is an "accredited investor" only if it is acquiring a security that is not a security of a mutual fund or non-redeemable investment fund. Currently, under OSC Rule 45-501, a Managed Account is allowed to invest in the Funds on an exempt basis only where either (i) the Client holding the Managed Account personally qualifies as an accredited investor, or (ii) the Managed Account makes a purchase of not less than $150,000 in securities of the Fund.

13. The majority of Clients holding Managed Accounts with less than $500,000 under management would not qualify as accredited investors under OSC Rule 45-501, since they do not meet the financial assets test ($1,000,000) or the net income test ($200,000, or $300,000 together with their spouse) under OSC Rule 45-501.

14. There is no restriction on the ability of Managed Accounts to purchase securities, including investment fund securities, on an exempt basis under the exempt distribution rule applicable in the Other Jurisdictions. Under Multilateral Instrument 45-103 - *Capital Raising Exemptions* ("MI 45-103"), the Funds would be permitted to be sold to Managed Accounts in the Other Jurisdictions pursuant to exemptions from the prospectus and dealer registration requirements.

15. Since units of the Funds will not be sold pursuant to a prospectus, and since it is intended that sales of units of the Funds to Managed Accounts managed by SAC will be sold through SAC (a limited market dealer) and not through SCPI (a registered investment dealer), units of the Funds will only be sold pursuant to an exemption from both the dealer registration and prospectus requirements of sections 25 and 53 of the Act.

16. Managed Services provided by an Applicant under a Managed Account are covered by a base management fee calculated as a fixed percentage of the assets under administration in the Managed Account ("Base Management Fee"). The Base Management Fee includes investment research, portfolio selection, management with respect to all securities or other assets in the Managed Account, and reporting. The Base Management Fee is not intended to cover brokerage commissions and other transaction charges in respect of each transaction which occurs in a Managed Account, nor does it cover interest charges on funds borrowed or charges for minor administrative services provided in connection with the operation of the Managed Account, such as account transfers, withdrawals, safekeeping charges, service charges, and wire transfer requests. In addition, the Client typically pays an annual performance-based fee ("Performance Fee") in the event that the performance in the Managed Account exceeds a certain minimum appreciation in the net asset value of the Managed Account. Terms of both the Base Management Fee and Performance Fee are detailed in the Managed Account Agreement.

17. The Applicants will waive any Base Management Fee and/or Performance Fee typically applicable under a Managed Account Agreement, where the Applicant invests on behalf of a Managed Account in Funds which pay an administration fee and/or performance-based fee to one of the Applicants as an advisor. Accordingly, there will be no duplication of fees between a Managed Account and the Funds.

18. There will be no commission payable by a Client on the sale of units of the Funds to a Managed Account.

19. An individual who is an officer and director of both SAC and SCPI is also Chairman of St Andrew Goldfields Ltd. ("St Andrew"), a company listed on the Toronto Stock Exchange, and holds a "significant interest", as such term is defined in subsection 110(2) of the Act, in shares of St. Andrew.

20. In addition, SAC, SCPI and their associates beneficially own or exercise control or direction (through securities held in managed accounts at SAC and SCPI) over more than 10% of the outstanding common shares of St Andrew. As a result of these holdings, St Andrew is a related and connected issuer of each of SAC and SCPI, as those terms are defined in the Act.

21. Certain Managed Accounts of the Applicants currently hold securities of St Andrew. Similarly, Managed Accounts of the Applicants may in the future hold securities of other issuers (the "Other Issuers") in which an officer or director of SAC and/or SCPI, or a substantial security holder thereof, may have a significant interest. Where possible, the Applicants wish to manage the Funds consistent with their direct investments for Managed Accounts. Accordingly, it is expected that the Funds will hold securities of St Andrew and of the Other Issuers.

22. Investments in securities of St Andrew and of Other Issuers by the Funds will represent the business judgment of the Applicants and their respective portfolio managers, uninfluenced by considerations other than the best interests of the Funds.

23. Certain of the Funds will fit within the definition of "mutual fund in Ontario" in subsection 1(1) of the Act. In the absence of the Order requested, the Funds would be prohibited by the Mutual Fund Conflict of Interest Investment Prohibitions from

investing in securities of St Andrew and of Other Issuers. In addition, the Applicants would, in the absence of the Order, be required by the Management Company Reporting Requirements to file with the Commission a report of every purchase or sale of securities of St Andrew and of Other Issuers within thirty days after the end of the month in which the purchase or sale occurs.

24. Both SAC and SCPI include in their respective Statement of Policies (as required by the conflict of interest provisions of Part XIII of the Regulation made under the Act) a list of related and connected issuers and obtain from Clients the written consent to the exercise of discretionary authority with respect to such issuers.

25. In addition, both SAC and SCPI provide Clients with disclosure as to the relationships between any of their respective directors, officers and employees and any issuers whose securities may be purchased for Clients, and the Client's consent is obtained to the exercise of discretionary authority with respect to such issuers (as required by paragraph 118(2)(a) of the Act).

26. The Applicants may permit payment, in whole or in part, for Fund units purchased by a Managed Account to be made by making good delivery of securities, held by such Managed Account, to a Fund, provided those securities meet the investment criteria of the Fund. Effecting such internal cross-trades of securities between a Managed Account and a Fund reduces market impact costs, which can be detrimental to the clients. Cross-trading also allows a portfolio manager to efficiently retain within its control institutional-size blocks of securities that otherwise would need to be broken and re-assembled. Such securities often are those that trade in lower volumes, with less frequency, and have larger bid-ask spreads.

27. Similarly, following a redemption of units of a Fund by a Managed Account, the Applicants may permit payment, in whole or in part, of redemption proceeds to be satisfied by making good delivery of securities held in the investment portfolio of a Fund to such Managed Account, provided those securities meet the investment criteria of the Managed Account (the transactions described in paragraphs 26 and 27 shall hereinafter be individually referred to as an "In-Species Transfer"). The Applicants anticipate In-Species Transfers following a redemption of units of a Fund where a Managed Account invested in such Fund has experienced a change in circumstances, which results in the Managed Account being an ideal candidate for direct holdings of individual securities rather than Fund units.

28. It is anticipated that the internal cross trades involved in each In-Species Transfer will be executed by SCPI. The only cost which will be incurred by a Managed Account entering into each such internal cross trade is the minimum commission charge ("Ticket Charge") paid to SCPI for each transaction, as compensation for administrative expenses incurred by SCPI.

29. Since the Applicants are portfolio managers of their respective Managed Accounts, they would be considered a "responsible person" within the meaning of subsection 118(1) of the Act with respect to such Managed Accounts. Furthermore, each of the Funds is or will be an associate of SAC and/or SCPI within the meaning of paragraph (c) of the definition of "associate" contained in subsection 1(1) of the Act because SAC and/or SCPI serves, or will serve, in the capacity of trustee in respect of the Funds.

30. In the absence of the order, the Applicants would be prohibited by the Self-Dealing Prohibition from causing a Managed Account to make an In-Species Transfer of securities of any issuer to or from a Fund, as such Fund would be an associate of the Applicants.

**AND UPON** the Commission being satisfied that the tests contained in subsection 74(1), section 113, subsection 117(2) and clause 121(2)(a)(ii) of the Act have been met;

**IT IS RULED**, pursuant to subsection 74(1) of the Act, that the sale by the Applicants of units of the Funds to the Managed Accounts shall not be subject to sections 25 and 53 of the Act,

**PROVIDED THAT** this Ruling will terminate upon the coming into force of any legislation or rule of the Commission exempting a trade by a fully managed account in securities of mutual funds or non-redeemable investment funds from the dealer registration requirements and prospectus requirements in the Act.

**AND IT IS ORDERED**, (i) pursuant to section 113 of the Act, that the Mutual Fund Conflict of Interest Investment Prohibitions shall not apply so as to prevent the Funds from making and holding investments in securities of St Andrew and of the Other Issuers, and (ii) pursuant to subsection 117(2) of the Act, that the Management Company Reporting Requirements shall not apply so as to require the Applicants to file a report relating to each purchase or sale by the Funds of securities of St Andrew and of the Other Issuers,

**PROVIDED THAT** units of the Funds are purchased and held only by the Managed Accounts of the Applicants.

**AND IT IS FURTHER ORDERED** pursuant to clause 121(2)(a)(ii) of the Act that the Self-Dealing Prohibition shall not apply to the Applicants in connection with the payment of the purchase or redemption price of

units of a Fund by In-Species Transfers between the Managed Accounts and the Funds, provided that:

i) in connection with the purchase of units of a Fund by a Managed Account:

(a) the Applicants obtain the prior written consent of the relevant Managed Account Client before it engages in any In-Species Transfers in connection with the purchase of units;

(b) the Fund would at the time of payment be permitted to purchase those securities;

(c) the securities are acceptable to the portfolio advisor of the Fund and consistent with the Fund's investment objective;

(d) the value of the securities is at least equal to the issue price of the securities of the Fund for which they are payment, valued as if the securities were portfolio assets of the Fund;

(e) the statement of portfolio transactions next prepared for the Managed Account shall include a note describing the securities delivered to the Fund and the value assigned to such securities; and

ii) in connection with the redemption of units of a Fund by a Managed Account:

(a) the Applicants obtain the prior written consent of the relevant Managed Account Client to the payment of redemption proceeds in the form of an In-Species Transfer;

(b) the securities are acceptable to the portfolio advisor of the Managed Account and consistent with the Managed Account's investment objective;

(c) the value of the securities is equal to the amount at which those securities were valued in calculating the net asset value per security used to establish the redemption price;

(d) the holder of the Managed Account has not provided notice to terminate its Managed Account Agreement with the Applicant;

(e) the statement of portfolio transactions next prepared for the Managed Account shall include a note describing the securities delivered to the Managed Account and the value assigned to such securities; and

iii) the Applicants do not receive any compensation in respect of any sale or redemption of units of a Fund and, in respect of any delivery of securities further to an In-Species Transfer, the only charges paid by the Managed Account are the Ticket Charges.

January 25, 2005.

"Paul M. Moore" "Theresa McLeod"

### 2.2.5 TradeWeb LLC - ss. 211 of the Regulation

**Headnote**

**TRADEWEB LLC**

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

**Statutes Cited**

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

**Regulations Cited**

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

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

**AND**

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

**AND**

**IN THE MATTER OF**
**TRADEWEB LLC**

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

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

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

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

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

2. The Applicant is a limited liability company formed under the laws of the State of Delaware in the United States and its principal place of business is located in Jersey City, New Jersey.

3. The Applicant is registered as a broker-dealer with the U.S. Securities and Exchange Commission and is a member of the U.S. National Association of Securities Dealers Inc.

4. The Applicant is also regulated as an alternative trading system in the U.S. pursuant to Regulation ATS promulgated under the *Securities Exchange Act of 1934*.

5. The Applicant carries on the business of a broker-dealer in the U.S.

6. The Applicant does not currently act as an underwriter in the U.S. or in any other jurisdiction outside of the U.S.

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

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

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

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

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

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

April 1st, 2005.

"Wendell S. Wigle"
COMMISSIONER

"David L. Knight"
COMMISSIONER

# Chapter 3

# Reasons: Decisions, Orders and Rulings

**3.1 Reasons for Decision**

**3.1.1 Hollinger Inc. and Hollinger International Inc.**

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

**- AND –**

**IN THE MATTER OF**
**CERTAIN DIRECTORS, OFFICERS AND INSIDERS OF HOLLINGER INC.**

**- AND –**

**IN THE MATTER OF**
**CERTAIN DIRECTORS, OFFICERS AND INSIDERS OF HOLLINGER INTERNATIONAL INC.**

**(APPLICATION TO VARY UNDER SECTION 144 OF THE ACT)**

**Hearing**

March 21, 23, and 24, 2005

**Panel**

| | | |
|---|---|---|
| Susan Wolburgh Jenah | - | Vice-Chair (Chair of the Panel) |
| Robert W. Davis | - | Commissioner |
| Suresh Thakrar | - | Commissioner |

**Counsel**

| | | |
|---|---|---|
| Leah Price<br>Dale Denis<br>Avi Greenspoon<br>Elliot Vardin<br>Stephen Infuso<br>Norman May | - | For the Applicant Hollinger Inc. |
| Alan Mark<br>Steve Tenai<br>Conrad Black Capital<br>Ava Yaskiel | - | For the Applicants 1269940 Ontario Limited 2753421 Canada Limited, Corporation, Conrad M. (Lord) Black, The Ravelston Corporation |
| Harry Burkman | - | For the Applicants 509643 N.B. Inc., 509644 N.B. Inc., 509645 N.B. Inc., 509466 N.B. Inc., 509647 N.B. Inc., Argus Corporation Limited |
| Stephen Halperin<br>Jessica Kimmel | - | For the Independent Committee of the Board of Directors of Hollinger Inc. |
| Robert Staley<br>Julia E. Schatz<br>Jeff Kerbel<br>Alan Bell | - | For Hollinger International Inc. and the Special Committee for Hollinger International Inc. |
| Peter Howard<br>Brian Pukier | - | For Lawrence & Company Inc. |
| Chris Paliare<br>Gordon Capern<br>Jeffrey Larry | - | For Kenneth McLaren and other minority shareholders |
| David C. Moore<br>Kenneth G.G. Jones | - | For Catalyst Fund General Partner I Inc. |
| Johanna Superina<br>Naizam Kanji<br>Paul Hayward | - | For Staff of the Ontario Securities Commission |

**DECISION AND REASONS**

[1] The Applications, as described and defined below, are made pursuant to section 144 of the Securities Act (the "Act"). Section 144 provides that the Commission may make an order varying an order of the Commission if, in the Commission's opinion, to do so would not be prejudicial to the public interest. The Commission has been unable to form the opinion that it would not be prejudicial to the public interest to grant the requested relief.

**BACKGROUND**

[2] This matter relates to two applications dated March 15, 2005 ("the Applications") pursuant to section 144 of Act to vary the following Orders (the "MCTOs"):

(a) the Order of the Commission dated June 1, 2004, as varied by the Order of the Commission dated March 8, 2005 (the "Hollinger MCTO"), relating to certain directors, officers, and insiders of Hollinger Inc.; and

(b) the Order of the Commission dated June 1, 2004, as varied by the Order of the Commission dated March 8, 2005 (the "International MCTO"), relating to certain directors, officers, and insiders of Hollinger International Inc. ("International").

[3] The applicants in the matter (collectively, the "Applicants") are Hollinger Inc.; 1269940 Ontario Limited, 2753421 Canada Limited, Conrad Black Capital Corporation, Conrad M. (Lord) Black ("Black"), and The Ravelston Corporation Limited ("Ravelston"); and 509643 N.B. Inc., 509644 N.B. Inc., 509645 N.B. Inc., 509646 N.B. Inc., 509647 N.B. Inc., and Argus Corporation.

[4] Following preliminary motions on standing on March 21, 2005, the Panel granted standing to all parties who sought intervenor standing at the hearing. The Panel granted full standing to adduce evidence and make submissions at the hearing to: the Independent Committee of the Board Directors of Hollinger Inc. (the "IDC"); Lawrence & Company Inc. ("Lawrence"), which is a minority common shareholder of Hollinger Inc.; and Kenneth McLaren and other minority common shareholders of Hollinger Inc. (collectively, "McLaren"). The Panel granted modified Torstar standing to International and the Special Committee of International (the "Special Committee"), and to Catalyst Fund General Partner I Inc. ("Catalyst"). The Commission's reasons for its decision on intervenor standing will be issued in due course.

[5] Hollinger Inc. is in default of filing:

(a) its interim financial statements (and related interim MD&A) for the three-month period ended March 31, 2004, the six-month period ended June 30, 2004, and the nine-month period ended September 30, 2004;

(b) its annual audited financial statements (and related annual MD&A) for the year ended December 31, 2003; and

(c) its Annual Information Form for the year ended December 31, 2003.

[6] In June 2004, at the time of the issuance of the International MCTO, International was in default of filing:

(a) its interim financial statements (and related interim MD&A) for the three-month period ended March 31, 2004;

(b) its annual audited financial statements (and related annual MD&A) for the year ended December 31, 2003; and

(c) its Annual Information Form for the year ended December 31, 2003.

[7] International has partially satisfied its default by filing its 2003 Form 10-K with the United States Securities and Exchange Commission (the "SEC"), which form includes its audited financial statements for the fiscal year ended December 31, 2003 and related MD&A and will constitute International's 2003 Annual Information Form for the purposes of Ontario securities law. On January 21, 2005, International filed its audited financial statements for the fiscal year ended December 31, 2003 and related MD&A on the System for Electronic Document Analysis and Retrieval.

[8] International is currently in default of filing its interim financial statements (and related interim MD&A) for the three-month period ended March 31, 2004, the six-month period ended June 30, 2004 and the nine-month period ended September 30, 2004.

[9] International has publicly disclosed that it does not expect to file its 2004 Form 10-K prior to March 31, 2005.

[10] The MCTOs were imposed because Hollinger Inc. and International failed to comply with their obligations under Ontario securities law to file interim and annual audited financial statements, related Management's Discussion and Analysis, and Annual Information Forms (the "Required Disclosures"). The terms of the MCTOs provide that the MCTOs will remain in effect until two business days after all necessary filings have been made with the Commission.

[11] The effect of the MCTOs is to prohibit trading in the securities of Hollinger Inc. and International by those officers, directors, and insiders of the subject companies who are listed in Schedules to the MCTOs.

[12] Ravelston owns, directly or indirectly 78.3% of Hollinger Inc.'s common shares (the "Common Shares") and 3.9% of Hollinger Inc.'s Exchangeable Non-Voting

Preference Shares Series II (the "Series II Preference Shares"). Ravelston itself is indirectly controlled by Black, an Applicant in this matter.

[13] Hollinger Inc. and International remain in default of filing the Required Disclosures, although International has filed its audited financial statements and related disclosures for 2003.

[14] Hollinger Inc. has proposed a going private transaction (the "GPT" or the "Transaction"), initiated by Ravelston and Black, by way of consolidation. Pursuant to the GPT, the outstanding Common Shares and the Series II Preference Shares will be consolidated (the "Consolidations") at a ratio which will result in: (a) Ravelston being the sole holder of the Common Shares; and (b) the exchange of all Series II Preference Shares for Class A common stock of International.

[15] The GPT requires the approval of the holders of the Common Shares (the "Common Shareholders") and the Series II Preference Shares. A special meeting of Hollinger Inc.'s shareholders has been scheduled for March 31, 2005 for the purpose of putting the GPT to a vote of the shareholders (the "Vote").

[16] The GPT is described in the "Notice of Special Meeting and Management Proxy Circular in Connection with the Special Meeting of the Holders of Retractable Common Shares and Series II Preference Shares to be Held on Thursday, March 31, 2005 to Consider a Proposed Going Private Transaction by Way of a Consolidation" dated March 4, 2005 (the "Circular").

[17] In order for the Consolidation to proceed, it was necessary to obtain the consent of the holders of the Senior Secured Notes to amend the terms and conditions of the Indentures. The holders of the Senior Secured Notes provided the necessary consent in order to allow the Transaction to be presented to the Shareholders provided that a definitive date of March 31, 2005 was set for the Vote. Failing this, the Consolidations could not be implemented.

[18] The Common Shareholders are presented with three choices pursuant to the GPT: to submit their Common Shares for retraction and receive the current retraction price of $4.65 a share; dissent and be paid the fair value for their Common Shares, in accordance with the provisions of the Canada Business Corporations Act; or vote for the Transaction and receive $7.60 for each Common Share held. Page 29 of the Circular states that retractions of Common Shares submitted after May 31, 2004 are suspended at this time, due, apparently, to liquidity concerns. As of March 4, 2005, an aggregate of 395,665 Common Shares (approximately 1.1% of the Common Shares) had been submitted for retraction (and not processed), all with a retraction price of $9.00 per share. The current retraction price per Common Shares is fixed at $4.65.

[19] At the Effective Time of the Transaction, the Common Shareholders (but not those that exercise their right to dissent) will receive the Common Share Consideration, consisting of $7.60 and the Additional Amount per Share, if any, to be determined by the Updated Valuation, and the CCPR. Common Shareholders that exercise their right to dissent will only be paid the fair value of the Common Shares, and are excluded from receiving both the Additional Amount per Share, as determined by the Updated Valuation, and the CCPR. Those Common Shareholders who have previously submitted their Common Shares for retraction, at a retraction price of $9.00 per share, are able to obtain the Common Share Consideration and the CCPR provided they make arrangements to withdraw their retraction request prior to the Meeting. In other words, by withdrawing their retraction request, those Common Shareholders will be giving up a known additional $1.40 in exchange for an unknown Additional Amount per Share and CCPR.

[20] The Applicants are named as respondents in the Hollinger MCTO and the International MCTO and are therefore prohibited from trading in securities of Hollinger and International, except as permitted by the MCTOs. The Applicants are seeking to vary the MCTOs to permit any direct or indirect trades in the securities of Hollinger Inc. and International, including acts in furtherance of such trades that may occur in connection with the Consolidations under the GPT.

[21] The requested relief is required as the Consolidations under the GPT will involve, among other things, certain dispositions of securities held by certain of the Hollinger Respondents and International Respondents.

[22] The Circular describes the formal valuation of the Common Shares (the "GMP Valuation") prepared by GMP Securities Limited ("GMP") and the provision for a second formal valuation (the "Updated Valuation") of the Common Shares to be conducted after the release of International's 2004 audited financial statements, following which, if there is an increase in the valuation of the Common Shares, there will be an additional amount paid to Common Shareholders (the "Additional Amount Per Share").

[23] The Circular also describes a litigation trust (the "CCPR Trust") intended to address concerns about an ongoing Court-ordered inspection into Hollinger Inc.'s related party transactions (the "E&Y Inspection") and the value of potential claims that Hollinger Inc. and its shareholders may have against Hollinger Inc.'s related parties, including the related parties that initiated the GPT, Ravelston and Black (the "Additional Litigation Claims"). Under the terms of the GPT, any related party claims other than those included in the GMP Valuation will be pursued by the CCPR Trust and the Common Shareholders will have a proportionate interest in the proceeds of the litigation as described in the Circular and deposited in the CCPR Trust.

[24] A Statement of Allegations dated March 18, 2005 was issued by staff of the Enforcement Branch against Hollinger Inc., Black, F. David Radler, John A. Boultbee, and Peter Y. Atkinson alleging conduct contrary to the public interest in relation to the affairs of Hollinger Inc.

**Timing of the Applications**

[25] It appears from the record before us and the submissions we heard from all of the parties that discussions and negotiations with regard to the GPT have been ongoing since approximately October, 2004 as between Hollinger Inc., Ravelston, Black, the Independent Privatization Committee of Hollinger Inc. (as defined in the Circular), the IDC and their respective counsel and other advisors. Discussions with Staff of the Commission ("Staff") appear to have begun sometime shortly thereafter. Formal applications to lift the MCTOs were filed with the Secretary's Office of the Commission on March 11, 2005 in the case of the International MCTO and on March 14, 2005 in the case of the Hollinger MCTO. A Notice of Hearing was immediately issued upon receipt of the Applications.

[26] The submissions on standing were heard on March 21, 2005 and the Hearing on the Merits took place on March 23 and 24, 2005. In view of the March 31, 2005 deadline for the Vote to proceed in the event the MCTOs are lifted, we are issuing our Decision and Reasons.

[27] The oral and written submissions of the Applicants underscore their view that the relief they are requesting is "technical" in nature and that the nature of the Commission's inquiry should be limited in determining whether to exercise its discretion under section 144 of the Act to lift the MCTOs. In our opinion, there has been a failure to appreciate the scope and nature of the Commission's public interest jurisdiction under section 144 of the Act and the relevant considerations which should inform the exercise of that jurisdiction in, to borrow the words contained in Hollinger Inc.'s Proxy Circular, the "unique and unusual circumstances" of the GPT.

**Positions of the Intervenors**

[28] The IDC consists of five members of the six member Board of Hollinger Inc.. The five members are Paul A. Carroll, Q.C., Robert J. Metcalfe, Donald M.J. Vale, Allan Wakefield and Gordon W. Walker, Q.C. The members of the IDC are independent of and unrelated to the Applicants, except in respect of their positions with Hollinger Inc.. None of the members of the IDC owns any shares of Hollinger Inc. or has any interest in the outcome of the Transaction that differs from the interests of Hollinger's minority shareholders. The IDC believes that it is in the best interest of Hollinger and the minority shareholders for the Transaction to be considered by shareholders and, accordingly, supports the applications made and the relief sought. In oral submissions before us, Counsel for the IDC made it clear that the position of the IDC should not be equated with support for either Black or the Transaction.

[29] Lawrence holds approximately 6.5 percent of the shares held by the minority holders of the Common Shares. Lawrence would like to vote on the Transaction and, accordingly, supports the Applications and the relief sought.

[30] McLaren holds approximately 13 percent of the shares held by the minority holders of the Common Shares. McLaren takes the position that it would be contrary to the public interest for the Transaction to proceed and, accordingly, opposes the Applications and the relief sought.

[31] International is a Delaware corporation, a subsidiary of Hollinger Inc. and a public company in the United States. International is also a reporting issuer in Ontario and elsewhere in Canada, with public shareholders across Canada. The Special Committee was established by International's board of directors to investigate allegations of wrongdoing directed at Black and others made by shareholder Tweedy Browne Co., LLC. International and the Special Committee take the position that it would be contrary to the public interest for the Transaction to proceed mainly because of the impact it would have on International and its shareholders. Accordingly, they oppose the Applications and the relief sought.

[32] Catalyst is the majority shareholder of the Series II Preferred shares of Hollinger Inc. Catalyst takes the position that it would be contrary to the public interest for the Transaction to proceed and, accordingly, opposes the Applications and the relief sought.

[33] Staff strongly favour allowing the minority shareholders to vote on the Transaction and, accordingly, supports the Applications and the relief sought.

**ANALYSIS**

[34] In order to vary the MCTOs as requested, the Commission must be satisfied that it would not be prejudicial to the public interest to do so. This is the applicable test under section 144 of the Act pursuant to which these Applications have been brought.

[35] The right of the shareholder to vote is a fundamental right. The Commission must not interfere with it lightly. The Applicants, the IDC, Lawrence, and Staff support the right of the shareholders to vote on the GPT. They submit that the question before the Commission is a narrow one: should the shareholders have the right to vote on the GPT?

[36] McLaren, Catalyst and the Special Committee submit that the question before the Commission is a broader one: would it be fair to allow the GPT to proceed to a Vote in these circumstances?

[37] Not surprisingly, those who support the Applications to vary the MCTOs favour the narrower formulation while those who oppose the Applications to vary the MCTOs favour the broader formulation. The manner in which the question is framed bears directly on the onus which rests with the Applicants who seek the necessary discretionary relief.

[38] This case requires the Commission to consider both questions. The Commission is cognizant of the importance of shareholder choice and the right to vote. We

must also be satisfied, in these circumstances, that it would be reasonable to expect the shareholders to be in a position to make an informed decision. We emphasize the phrase "in these circumstances" because, as has been acknowledged by all parties, they are, indeed, unique and unusual.

[39] For the reasons discussed below, we are unable to conclude that it would be fair, in these circumstances, to put the GPT to a vote of the shareholders. Considered individually, none of the concerns outlined below would be determinative. When considered cumulatively, however, their impact is material.

**OSC Policy 57-603**

[40] The MCTOs do not, and are not intended to, restrain trading by shareholders of Hollinger Inc. and International generally. Pursuant to OSC Policy 57-605, the Commission will generally, where a company defaults in filing the Required Disclosure, impose an MCTO to prevent trades by those who may have material, undisclosed information. In other words, the Policy seeks to prevent trades by officers, directors and other insiders who may have an informational advantage.

[41] The Applicants submit that the Commission must find that the related parties who are proposing the GPT and who are subject to the MCTOs in fact have an informational advantage in the form of material, undisclosed information as a pre-condition to a refusal to vary the MCTOs. This attempt to shift the burden onto the Commission must fail.

[42] The MCTOs are prophylactic in nature. As noted above, they are generally imposed as a matter of course, not because the Commission has made a finding that the relevant subjects of the MCTOs have an informational advantage in fact, rather, because they may have such an advantage. To accept the Applicants' submissions in this regard would not only serve to shift the burden of proof onto the Commission, but would inappropriately fetter the Commission's discretion by creating a condition precedent to its exercise. These are applications to vary MCTOs under section 144 of the Act. The onus rests with the Applicants to demonstrate that the discretionary relief they seek would not be prejudicial to the public interest.

**Lack of Audited and Interim Financial Statements**

[43] Current audited and interim financial statements and related disclosures are unavailable with regard to Hollinger Inc., and current interim financial statements are unavailable with regard to International. It is expected that International's 2004 audited financial statements will be filed in the near future. One would normally expect such financial disclosures to be available to shareholders before asking them to consider a transaction such as the GPT. The provision of Default Status Reports cannot overcome this deficiency.

**The Valuation**

[44] A number of issues and concerns were raised by McLaren, Catalyst and the Special Committee with regard to the adequacy of the Valuation and the independence of GMP. We focus here only on those we found to be most significant.

[45] The GMP Valuation was prepared without the benefit of the required audited and interim financial statements for Hollinger Inc., and without the benefit of 2004 audited financial statements or the required interim financial statements for International. In this regard, the testimony of Gordon Walker, Chairman of the Board of Hollinger Inc., in cross examination in another proceeding on March 2, 2005 was tendered into evidence at the Hearing before us and is worth reproducing:

> Q: All right. I take it you would agree with me that that information would be important information to a shareholder considering any potential bid or offer for his or her or its shares, is that fair?
>
> A: Yes. In my opinion that is fair. I think that is the basis of any form of takeover privatization or otherwise to know what the company is worth. And it follows from that that having proper financials, audited financials is absolutely an essential ingredient.

[46] Mr. Paul Pew of GMP was a witness at the hearing. In response to a question from the Panel as to whether it was unusual to prepare a valuation without the benefit of current financial statements, Mr. Pew responded that he could not recall any other instance in which GMP was required to do so.

[47] While fairness and solvency opinions were requested in GMP's original retainer by Hollinger Inc., GMP subsequently advised Hollinger Inc. that it would be unable to provide such opinions in light of the circumstances surrounding Hollinger Inc. The GMP Valuation does not contain either a fairness or solvency opinion. GMP's inability to provide such opinions, although requested in the original retainer, raises questions as to the adequacy and reliability of the Valuation overall.

[48] In its Valuation, GMP noted various unique and unusual circumstances surrounding the GPT which are described at page 38 of the Circular. For example, at page C-5 of the Circular, GMP states as follows:

> *6. GMP has had no access to the operational and executive management of International*
>
> GMP requested the IPC to arrange to provide GMP with access to the operational and executive management of International and its subsidiaries in order to evaluate and project the future

> consolidated financial performance of International. In the normal course of preparing a Valuation, GMP would expect such access since International represents the most significant asset held by Hollinger. Access to books, records and management of International was not made available to GMP. GMP's inability to receive such access to management has made it extremely difficult to accurately project the future financial performance of International.

This qualification is indeed material given that International is the principal asset of Hollinger Inc.

[49] The Independent Privatization Committee listed, on page 34 of the Circular, the absence of a fairness opinion from GMP and the unique and unusual circumstances set out in the Valuation, among the factors that caused it to conclude that the Board would not make any recommendation with respect to how the shareholders should vote with regard to the GPT.

[50] There were legitimate questions raised as to why there was no disclosure in the Circular and/or the Valuation with respect to prior valuations. In this regard, we were referred to the following extract from the decision of Vice-Chancellor Strine in Hollinger Inc. v. Hollinger International Inc., 858 A.2d 342 (Del. Ch. 2004) at 370, 379-380 and 382 in which he stated as follows:

> Black's proposals included one to Cerberus… Notably, Black viewed this proposal as having a large economic payoff because of the value of the remaining assets – i.e., the core of the Chicago Group. In the same proposal, Black opined that the Chicago Group would generate annual EBITDA of $130 to $150 million within four years and be worth $1.5 billion [page 370]
>
> …
>
> When the bidding on the Chicago Group was halted, the highest bid received was $950 million. I consider these numbers good ones to use, even considering the circulation problems that later emerged at the Sun-Times. I do so because it is probable that the $950 million bid was not a final stretch bid as it was not a last round bid, but the ability to extract more from a final bidding round would, in light of circulation problems that arose, have been doubtful. [pages 379-380]
>
> ...
>
> Importantly, the record evidence regarding the future of both Groups also suggests that their cash flow-generating potential and sale value are not greatly disparate. To wit,
>
> ...
>
> - Lazard's DCF valuations of the Telegraph Group and the Chicago Group show a modestly higher value range for the Telegraph Group than the Chicago Group. [page 382]
>
> …
>
> As has been mentioned, [Hollinger] Inc. tried to sell itself to the Barclays earlier this year. In approving the agreement to sell itself to the Barclays, the Inc. board received advice from two different investment banking firms, Blair Franklin Capital Partners and Westwind. Both Walker and Rohmer were on the Inc. board by that time (albeit only for days) and both voted to approve the sale. The separate valuation analyses that Blair Franklin and Westwind presented to the Inc. board both showed the Chicago Group as being more valuable than the Telegraph Group. [page 382]

[51] We further noted that Staff's submission indicates only that the GMP Valuation "appears" to comply with the requirement of OSC Rule 61-501.

[52] Finally, the Companion Policy to Rule 61-501 ("CP 61-501") states that scope limitations in a Valuation should be limited to circumstances beyond the issuer's control that arise solely as a result of unusual circumstances. McLaren noted in his affidavit as follows:

> [37] While there are clearly unusual circumstances in this matter, certain of these circumstances are not beyond Hollinger's control but are, in fact, created by Hollinger's own actions and those of its insiders and related parties.
>
> [38] In my view, it cannot be the intent of the Rule that an issuer be entitled to create unusual circumstances through

> its own allegedly improper conduct and that of its insiders and then rely on such circumstances as the justification for the failure to provide the type of valuation ordinarily required under the Rule.

**CCPR Trust**

[53] The Applicants emphasize that the CCPR was negotiated as a "protective measure" for the minority shareholders in the unique circumstances of the GPT.

[54] The Circular discloses, at page 13, that: "The CCPR Declaration of Trust will declare that one CCPR will be created for each Common Share outstanding immediately prior to the Effective Time (including, for avoidance of doubt, directly and indirectly, RCL)". "RCL" is defined to mean Ravelston. Several of the parties, including McLaren and Catalyst, submitted that the CCPR will be fraught with potential conflicts of interest for a variety of reasons, including: Ravelston, and indirectly, Black, will be the largest beneficiary of the Trust, that they and affiliated entities may be defendants in litigation relevant to the CCPR Trust, including actions arising out of the E&Y Inspection, that they may be in a position to pursue strategies as defendants designed to frustrate the CCPR Trust to their own advantage, and that they may have a significant degree of control over the ultimate disposition of any claims in which they are defendants.

[55] We were advised that there is only one precedent for the use of such a litigation trust, the Cinar Litigation Trust. Unlike the present situation, Cinar was acquired by an arms-length third party that had not, allegedly, engaged in the conduct that the Cinar Litigation Committee was established to investigate and pursue. The Management Proxy Circular of Cinar dated January 14, 2004 (the "Cinar Circular") discloses the risk factors relating to the contingent cash entitlements. The Cinar Circular also describes in some detail the outstanding litigation in which Cinar is involved, including who the parties are, amounts claimed, nature and status of the litigation and an assessment of the likelihood of success.

[56] By contrast, the Circular devotes numerous pages to a complex description of the terms of the CCPR Trust. It does not describe in detail the relevant outstanding litigation. The Circular also fails to disclose the risks that may be associated with the CCPR Trust. For example, the Circular does not disclose that the proceeds from Specified Litigation will remain the property of Hollinger Inc. and cannot be transferred to the CCPR Trust until the consent of the holders of senior notes of Hollinger Inc. is obtained, and that the funding arrangements for the CCPR Trust, as set out in the Circular, may prove to be inadequate. In view of the importance Hollinger Inc. attaches to the CCPR Trust as a "protective measure" as evidenced by the emphasis it receives in the Circular, we believe that shareholders are entitled to a clear and balanced presentation so that they can make an informed assessment of the value they wish to place on the CCPR Trust.

[57] Pages 13 and 23 of the Circular state as follows:

> The Independent Committee will, pursuant to a court order, cause the CCPR to be formed. In the event that such court order is not obtained, the Independent Committee and the Corporation will explore mutually acceptable alternatives pursuant to which the CCPR Trust can be formed.

[58] During the Hearing, when we attempted to explore what the nature of the "mutually acceptable alternatives" might be, we received conflicting responses from Counsel for Ravelston and Counsel for the IDC. Counsel for Ravelston indicated that other arrangements might be possible while Counsel for the IDC indicated that a court order establishing the CCPR Trust was, in fact, a condition of the GPT.

[59] The Applicants have filed a motion returnable before Justice Campbell on Tuesday, March 29, 2005 for an order establishing the CCPR Trust. While it is unclear from the materials, it appears, based on oral submissions before us by counsel for the IDC, that the Court will not be asked to approve the merits of the CCPR Trust.

**The Updated Valuation**

[60] The Circular describes the mechanism of an Updated Valuation and an Additional Amount per Share, as those terms are defined in the Circular. These mechanisms are intended to address the lack of current financial disclosure with respect to Hollinger Inc. and International, its main asset. The definition of “updated Valuation” at page 11 of the Circular makes it clear that the GMP Valuation will be updated solely to reflect, to the extent necessary, new information set out in International’s Form 10-K to be filed with the SEC.

[61] The very existence of the Updated Valuation mechanism is an implicit acknowledgement by Hollinger and the IDC, who negotiated for its inclusion in the GPT package, that updated financial information about International, its largest asset, is vital for shareholders to make an informed decision about the GPT. Despite the importance of this information, it is proposed that shareholders be asked to vote on the GPT before knowing the content of the Updated Valuation, the methodology to be applied or even who will conduct the Updated Valuation.

**Recommendation by the Independent Privatization Committee or the Board**

[62] In the ordinary course, both 61-501 and CP 61-501 contemplate that directors of the issuer should disclose their reasonable beliefs as to the desirability or fairness of the proposed transaction and should make useful recommendations regarding the transaction.

[63] In this case, the Independent Privatization Committee and the Board of Hollinger Inc. (the “Board”) have not made any recommendation to the shareholders

as to how they should vote in respect of the GPT, having determined only that the shareholders should be given the opportunity to vote. In so doing, it is noted in the Circular that, in the absence of a fairness opinion from GMP and having regard to the unique and unusual circumstances set out in the Valuation, they were unable to reach a conclusion or make a recommendation as to whether the Common Share consideration is fair, from a financial point of view, to the minority shareholders.

[64] We appreciate the difficulty faced by the Independent Privatization Committee and the Board. However, we find it difficult to understand how it is that shareholders can be expected to make an informed decision on how to vote when faced with the same limited Valuation and unique and unusual circumstances which caused the directors, with their knowledge of the affairs of Hollinger Inc. and their detailed understanding of the Transaction, to be unable to formulate a recommendation to the shareholders.

[65] While we were referred to the Commission's decision in Re Canadian Jorex Limited (1992), 15 OSCB 257 at 266-67 in support of the principle of shareholder choice and the right of the shareholders to decide whether to dispose of their shares, this decision also underscores the importance of the advice a shareholder can expect to receive from the board of directors and other advisors:

> For us, the public interest lies in allowing shareholders of a target company to exercise one of the fundamental rights of share ownership – the ability to dispose of shares as one wishes – without undue hindrance from, among other things, defensive tactics that may have been adopted by the target board with the best of intentions, but that are either misguided from the outset or, as here, have outlived their usefulness.
>
> In Mr. Ward's view, therefore, the ultimate decision as to the value and appropriateness of a given bid, and thus as to whether or not it should be considered to be acceptable, should be left in the hands of the target board or its independent committee, and their professional advisers. Clearly, this is not the view that we take (nor does National Policy 38 [predecessor to NP 62-202 – Defensive Tactics], for that matter), since we have every confidence that the shareholders of a target company will ultimately be quite able to decide for themselves, with benefit of the advice they receive from the target board and others, including their own advisers, whether or not to dispose of their shares and, if so, at what price and on what terms. And to us the public interest lies in allowing them to do just that. (Emphasis Added)

[66] In the unique and unusual circumstances of this Transaction, legitimate concerns are raised as to how the shareholders of Hollinger Inc. will be in any better a position to make an informed decision on the merits of the GPT than were the directors of Hollinger Inc.

**E&Y Inspection**

[67] A Court-ordered inspection into Hollinger Inc.'s related party transactions with Ravelston, Black and others is ongoing. In his Endorsement relating to a motion heard on October 27, 2004, Justice Colin Campbell observed at paragraph 14, in respect of the investigation ordered into Hollinger Inc.'s going private transactions:

> …the investigation underway by the Inspector will continue. Since there are not and have not been any financial statements of Inc. available for shareholders for over a year, it may be that the valuation process anticipated in the privatization transaction may take some time. At the very least it would seem that shareholders should be entitled to receive the information from the Inspector's report and how it may affect the value of their shares before any transaction is put to them for approval. (Emphasis Added)

[68] This Endorsement prompted the IDC to bring a motion before Justice Campbell with regard to whether they ought to put the GPT before the shareholders for a vote. In his Endorsement dated March 7, 2005, Justice Campbell declined to provide such direction, stating that:

> ... in the circumstances it is not appropriate for the Court at this stage to make any other order than it appreciates the information provided by the Independent Directors and adjourns its motion for direction pending any further steps taken by any party based on the decisions that will be made by the Directors.

[69] The ultimate findings from the E&Y Inspection Report bear directly on the CCPR Trust mechanism. Staff take some comfort from the fact that the Circular states that the E&Y Inspection will continue. However, it was clear from the record before us that Justice Campbell has had to deal with the delays and difficulties that E&Y are encountering in completing its Inspection, including Black's refusal to answer the Inspector's questions. It would not be unreasonable to consider the past behaviour of those whose non-cooperation has apparently frustrated the Inspection to date in assessing the reliability of any undertaking they have given to cooperate in future. We further note that the issue in the context of a Court-ordered inspection should not be whether those who are the subject

of the inspection "will allow it to continue" but, rather, can they be relied upon to co-operate in future so that the Inspection can be completed in a timely and effective fashion.

***Re Cinar***

[70] The Applicants and Staff rely upon the decision of the Commission in Re Cinar Corporation (2004), 27 O.S.C.B. 1191 ("Cinar") in support of the relief sought. We find that Cinar is distinguishable from the present situation for the following reasons:

- Cinar was not a going private transaction within the meaning of Rule 61-501;
- Cinar involved the acquisition of Cinar by an arm's length party where the controlling shareholders were selling on the same basis as the minority shareholders;
- Cinar was an acquisition by way of arrangement pursuant to the provisions of the Canada Business Corporations Act where the court was required to address the "fairness and reasonableness" of the transaction;
- the board of Cinar received a fairness opinion; and
- the Board of Cinar made a recommendation to shareholders in support of the transaction.

**OSC Rule 61-501 and Companion Policy 61-501**

[71] The safeguards built into OSC Rule 61-501 (the "Rule") lie at the heart of the protections which the Rule affords security holders in the context of related party transactions. When a related party transaction, such as the GPT, is initiated, the safeguards of an independent valuation and a review of the proposed transaction by an independent committee of the board to assess the "desirability and fairness of the proposed transaction and to make useful recommendations regarding the transaction" (section 6.1(2) of CP 61-501) are triggered. The fundamental purpose of the Rule is to ensure that in connection with the disclosure, valuation, review and approval processes, "all security holders are treated in a manner that is fair and that is perceived to be fair" (section 1.1 of CP 61-501, emphasis added).

[72] In Re CDC Life Sciences Inc. (1988), 11 OSCB 2541 at 2557 the Commission discussed OSC Policy 9.1, the predecessor to the Rule, and commented on the rationale underlying the independent valuation requirements in going private transactions:

> Policy 9.1 recognizes that the controllers of an issuer, in their management or direction of the management of its affairs, necessarily know more about that issuer's business and its prospects than is known to passive investors. The policy seeks to redress that imbalance by requiring an independent valuation when the controllers initiate financial transactions between themselves directly, or indirectly by the issuer, and the public shareholders.

[73] We also have regard to the guidance concerning formal valuations in section 5.1(4) of the Rule, which includes the statement: "In addition, it is inappropriate for any interested party to exercise or attempt to exercise any influence over a valuator" (Emphasis Added).

[74] Having regard to the fundamental importance attached to the actual and perceived independence of the valuator, we reproduce the following exchange of emails dated February 13, 2005 which was introduced as evidence in these proceedings. First, Eugene McBurney, a principal of GMP sent Black a detailed email emphasizing the need for GMP to be allowed to maintain its independence in the valuation process:

> Conrad:
>
> …We are not taking sides not are we worried about any ulterior motives of the various parties. More importantly, we are not hoping or expecting to receive any future benefits or favours from anyone, including (without limitation) Catalyst, Ravelston, Hollinger or any other interested party. This is not "motherhood". We take pride in our independence and our professionalism. We have conducted an open process by speaking with any interested party; we expect to hear a certain amount of advocacy. If we determine that we can proceed, we will come to our own independent views exercising the highest standards of professional judgement and responsibility. This is a standard which everyone expects of us.

[75] Black replied:

> Dear Gene,
>
> Thanks for your message, which conforms entirely with my understanding. Of course your valuation must be independent in every respect and that is all I ever sought, as I trust I made clear on the three occasions on which we spoke…

[76] In a subsequent email sent the same day, from Black to Robert Metcalfe, a member of the Independent

Privatization Committee, Black forwarded his exchange with Eugene McBurney and stated:

> I assume it will be made clear to Gene that he won't get his million dollars unless he produces something that works for the Company.

[77] With regard to communications from Black to the independent directors of Hollinger Inc., an affidavit of Gordon Walker, Chairman of the Board of Hollinger Inc. was adduced into evidence at the Hearing. This affidavit was filed in connection with a Court application that the IDC made to Justice Campbell to seek the Court's direction on whether or not the GPT should be put to the shareholders for a Vote without the benefit of the E&Y Inspector's Report. Mr. Walker's affidavit sworn February 23, 2005 refers to threats made by shareholders related to Ravelston, as set out in paragraphs 11, 13 and 19 below:

> 11. Apart from potential actions by Independent securities holders, the Independent Directors have been directly threatened with litigation by shareholders who are related to Ravelston Corporation Ltd. ("Ravelston")… Much if not all of these threats have occurred in the context of the proposed going private transaction in respect of Hollinger.
>
> 13. The earliest of these threats was made by Lord Black in an e-mail to Mr. Paul Carroll, dated November 2, 2004 the day he resigned from the Board, wherein he made a number of allegations, and concluded, **"You should be in no doubt that if the directors botch privatization, the Common shareholders will finally rise from their torpor and hold those directors personally financially responsible for the severe and totally unnecessary erosion of their interest that will result".** [emphasis in the original]
>
> 19. Against the backdrop of these comments, we are very concerned about how our conduct in respect of the privatization proposal will be regarded. The Independent Directors will have to decide in early March whether they support the proposal and consider its terms fair. We are concerned that if for some reason we decline to support the proposal we will be sued by Black, Ravelston and potentially others, as Black has already accused us of "perpetuating our sinecures" at his expense. Conversely, if we do support the proposal, then we may be regarded as having simply "knuckled under" to pressure and threats.

[78] Evidence was introduced which purports to be a record, maintained by the Independent Privatization Committee on the advice of their Counsel, of all of the communications between the Independent Privatization Committee and Black and other non-independent parties to the GPT. (the "Contact Log"). The record of emails contained in the Contact Log raises questions with regard to the intended purpose and effect of such communications on the members of the Independent Privatization Committee. .

[79] These communications from Black to the members of the Independent Privatization Committee apparently prompted the Committee's Counsel to send a letter to Black's Counsel on December 21, 2004, indicating that all communications between Black and the Independent Privatization Committee relating to the proposed GPT and the business of Hollinger generally should only be initiated by the Independent Privatization Committee. The importance of maintaining the independence of the Independent Privatization Committee was also emphasized in this letter. The Independent Privatization Committee continued to receive emails from Black with regard to the GPT.

[80] The degree of reliance which minority shareholders are entitled to place upon the safeguards inherent in Rule 61-501 goes beyond bare compliance with their form. They are entitled to be satisfied, in all of the circumstances of a particular transaction, that there has been compliance with the spirit of the applicable requirements as well. GMP, the independent valuator, the Independent Privatization Committee of Hollinger Inc. and the IDC should have been permitted to carry out their responsibilities with the assistance of the related party at whose instance the related party transaction has been initiated, as needed, but free from undue influence, coercion or threats, whether express or implied.

[81] The minority shareholders are entitled to be certain that the safeguards which are so central to Rule 61-501 are permitted to work effectively. When a related party attempts to exert undue influence, examples of which are set out above, and regardless of whether such apparent attempts are successful, shareholders' confidence in the integrity of the safeguards may, justifiably, be undermined. On a macro level, such conduct, if tolerated or condoned through an exercise of discretion in favour of the responsible party, serves to undermine confidence in the fairness and integrity of the capital markets overall.

**CONCLUSION**

[82] The purposes of the Act are to provide protection to investors from unfair, improper, or fraudulent practices and to foster fair and efficient capital markets and confidence in those capital markets (section 1.1).

[83] In pursuing the purposes of the Act, the Commission is directed to have regard to, and balance in

specific cases, the fundamental principles which are set out in section 2.1 of the Act. The fundamental principles of the Act include: requirements for timely, accurate and efficient disclosure of information; restrictions on fraudulent and unfair market practices and procedures; and requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

[84] The Commission is guided by these purposes and principles in its administration of the Act.

[85] In the circumstances of this case, and for the reasons discussed above, the Commission has been unable to form the opinion that it would not be prejudicial to the public interest to grant the relief requested. Accordingly, the Applications to vary the MCTOs are denied.

March 27, 2005.

"Susan Wolburgh Jenah"

"Robert W. Davis"

"Suresh Thakrar"

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# Chapter 4

# Cease Trading Orders

### 4.1.1 Temporary, Extending & Rescinding Cease Trading Orders

| Company Name | Date of Temporary Order | Date of Hearing | Date of Extending Order | Date of Lapse/Revoke |
|---|---|---|---|---|
| Lions Petroleum Inc. | 23 Mar 05 | 04 Apr 05 | 04 Apr 05 | |
| Promax Energy Inc. | 28 Mar 05 | 08 Apr 05 | | |
| Unisphere Waste Conversion Ltd. | 05 Apr 05 | 15 Apr 05 | | |

### 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 |
|---|---|---|---|---|---|
| Argus Corporation Limited | 25 May 04 | 03 Jun 04 | 03 Jun 04 | | |
| Central Asia Gold Limited | 01 Apr 05 | 14 Apr 05 | | | |
| CFM Corporation | 16 Feb 05 | 01 Mar 05 | 01 Mar 05 | | |
| Hollinger Canadian Newspapers, Limited Partnership | 21 May 04 | 01 Jun 04 | 01 Jun 04 | | |
| Hollinger Inc. | 18 May 04 | 01 Jun 04 | 01 Jun 04 | | |
| Hollinger International Inc. | 18 May 04 | 01 Jun 04 | 01 Jun 04 | | |
| Kinross Gold Corporation | 01 Apr 05 | 14 Apr 05 | | | |
| Mamma.com Inc. | 01 Apr 05 | 14 Apr 05 | | | |
| MDC Partners Inc. | 05 Apr 05 | 18 Apr 05 | | | |
| Nortel Networks Corporation | 17 May 04 | 31 May 04 | 31 May 04 | | |
| Nortel Networks Limited | 17 May 04 | 31 May 04 | 31 May 04 | | |
| Stelco Inc. | 01 Apr 05 | 14 Apr 05 | | | |
| Thistle Mining Inc. | 05 Apr 05 | 18 Apr 05 | | | |
| Timminco Limited | 01 Apr 05 | 14 Apr 05 | | | |

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# Chapter 6

# Request for Comments

### 6.1.1 OSC Statement of Priorities for Fiscal 2005/2006 - Draft for Comment

**THE ONTARIO SECURITIES COMMISSION**

**STATEMENT OF PRIORITIES**
**FOR**
**FISCAL 2005/2006**

***Draft for Comment***

**Executive Summary**

The Ontario Securities Commission (OSC) remains committed to delivering its regulatory services in a highly professional manner and to working closely with our colleagues within the Canadian Securities Administrators (CSA) and with market participants to ensure the regulatory system remains relevant to the changing marketplace.

This year's Statement of Priorities:

- describes our vision, mandate and overall approach
- assesses key challenges, trends and risks facing capital markets and the OSC in the year ahead
- identifies our goals and the major activities planned to achieve these goals, as well as the measures we will use to gauge our success
- presents our financial outlook for 2005/2006
- reports on our progress against the priorities we set for 2004/2005

Our vision is Canadian financial markets that are attractive to domestic and international investors, issuers and intermediaries because they are cost efficient and have integrity.

Our mandate has two key elements:

- provide protection to investors from unfair, improper or fraudulent practices
- foster fair and efficient capital markets and confidence in their integrity

Our goals for 2005/2006 are:

1 Providing vigorous, fair and timely enforcement

2 Taking actions that better reflect the needs of the retail investor

3 Promoting a harmonized, simplified securities regulatory system for Canada

4 Contributing to Canada's role as an active and respected player in the global capital market

We will also continue to support the Ontario Government in responding to the recommendations set out in the report of the Standing Committee on Finance and Economic Affairs (SCFEA), including the recommendations focused on:

- protection and redress for consumers of financial services
- the role of self-regulatory organizations (SROs)

- establishing a new Ontario Securities Tribunal
- establishing an independent investment fund governance regime

Our ability to meet our objectives is affected by various external factors that are sources of risk within the global regulatory environment. Potential risks continue to emerge, and it is increasingly important to have a strong, visible and effective enforcement presence in order to detect, deter and prevent abuses in our capital market.

Competition for investors' savings is driving innovation of ever more sophisticated financial products, services and trading strategies. Additional effort needs to be focused on compliance activities and investor education to enhance the level and quality of information provided to investors and to improve their capability to understand this information when making investment decisions. To do this, securities regulators need to continually upgrade their internal expertise. Also, the changing functions of intermediaries continue to alter the structure of the global financial environment. Maintaining and enhancing the global competitiveness of our capital market is becoming increasingly vital because issuers and investors are attracted to opportunities for the best returns for the risks assumed.

As part of our commitment to operate in a transparent and accountable manner, the final section of this document details our performance against last year's plan. By showing leadership and co-operation, we engaged industry participants, investors and other regulators and supported the Ontario Government in making progress towards the goals of strengthening the regulatory system and fostering investor confidence. Our work with the CSA, SROs and international regulatory organizations advanced the development of harmonized best practices in securities regulation. The relationship between our Enforcement Branch and the RCMP has become a model for inter-agency cooperation. Also, the Communications Branch forged new partnerships in the community to expand the reach of our messages on protecting and educating investors.

The past year saw many notable events. Our comprehensive probe into mutual fund trading practices − the largest investigation in OSC history − resulted in enforcement proceedings and settlements totaling $205.6 million. We implemented and are actively enforcing compliance with the new continuous disclosure rule and our investor confidence rules, which include CEO/CFO certification and the audit committee and auditor oversight rules. A number of important projects related to registration were consolidated into one umbrella initiative, the CSA's Registration Reform Project, and the first phase of that project, the National Registration System, was approved for April 2005 implementation. In addition, we supported new initiatives by the Ontario Government that advance securities regulatory reform.

Our budget for 2005/2006 is $67 million, an increase of 8.1% over 2004/2005. This increase relates primarily to plans to add staff to our Enforcement, Investment Funds and Investor Communications groups, as required to address our 2005/06 goals while maintaining the high service standards that Ontario investors and other market participants expect.

**Introduction**

The *Securities Act* requires the Ontario Securities Commission 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 the current financial year. The OSC remains committed to delivering its regulatory services in a businesslike manner and to working closely with its colleagues within the Canadian Securities Administrators (CSA) and with market participants to ensure that the regulatory system remains relevant to the changing marketplace.

**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**

- Proactive, innovative and cost effective in carrying out our mandate
- Fair and rigorous in applying the rules to the marketplace
- Timely, flexible and sensible in applying our regulatory powers to a rapidly changing marketplace

**Key challenges, trends and risks**

Our ability to meet our objectives is affected by a range of external factors including economic conditions, the performance of financial markets and social and political developments within the global regulatory environment.

Securities regulators need to continue to improve the timeliness and transparency of enforcement activities so that the public and market participants better understand their actions. It is becoming increasingly important to have a strong, visible and effective enforcement presence in order to detect, deter and prevent abuses in our capital market. New risks continue to emerge. The incidence and awareness of financial crime (e.g., identity theft, internet fraud) has increased markedly. This is a major challenge that law enforcement authorities and securities regulators are working together to address.

The need to promote public confidence in our capital market is ongoing. The *Securities Act* was amended to include provisions that strengthen the regulatory framework and enhance investor confidence. We need to ensure that we apply and administer these powers in an appropriate and balanced fashion.

Competition for investors' savings is driving market innovation both in terms of major 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. The risk inherent in new products is magnified if disclosure from advisors to clients (e.g., about risks, fees or conflicts) is inadequate. Additional effort needs to be focused on compliance activities and investor education to enhance the level and quality of information disclosed to investors and to improve their capability to understand this information when making their investment decisions. To do this, securities regulators need to continually upgrade their internal expertise.

Financial markets are global. Recent removal of restrictions on foreign investments in registered retirement savings plans will increase the desire of Canadian investors to access these markets. Ease of access to marketplaces has been increased vastly by the changing structure of financial intermediaries. Trades can be executed directly from any location. The emergence of direct links into trading platforms, with less intermediation by investment dealers, and the proliferation of alternative marketplaces continue to alter the structure of the financial environment.

Technology is evolving quickly. This makes innovative products and services easier and cheaper to design, market and deliver to the consumer. Declining trading costs increase market liquidity. This has positive implications for the cost of capital and investor returns. Innovation has been the major driver in reducing trading costs and securities regulators need to ensure that the Canadian capital market keeps pace in a global context in order to ensure these benefits are passed on to domestic investors. However, our increased reliance on technology also brings a growing exposure to potential market disruption by external parties. Securities regulators need to be vigilant in their efforts to anticipate and respond to these potential threats.

Maintaining and enhancing the global competitiveness of our capital market is becoming increasingly vital because issuers and investors are attracted to opportunities for the best returns for the risks assumed. The fragmented Canadian regulatory environment is cumbersome, costly and frustrating for stakeholders. It negatively affects the competitiveness of our capital market and ultimately the ability of our market participants to raise capital on a cost-effective basis.

**Our goals for fiscal 2005/2006**

For Canadian financial markets to be attractive to all market participants, they must provide effective protection to investors while being and being seen to be fair and efficient. We need to operate in a transparent and accountable manner and enforce clear rules in a consistent fashion. Our decisions need to keep pace with changing markets.

Our mandate has two key elements:

- to protect investors from unfair, improper or fraudulent practices
- to foster fair and efficient capital markets and confidence in their integrity

Our 2005/2006 Statement of Priorities sets out our key priorities to fulfill our mandate, the major projects we will undertake, and the resources required to complete this work. We will also continue to work on a range of smaller projects as well as our ongoing operational activities to advance our regulatory agenda. We will fulfill our mandate by focusing our efforts on achieving the following goals:

1 Providing vigorous, fair and timely enforcement

2 Taking actions that better reflect the needs of the retail investor

3 Promoting a harmonized, simplified securities regulatory system for Canada

4 Contributing to Canada's role as an active and respected player in the global capital market

We will also continue to support the Government of Ontario in responding to the SCFEA Report including the recommendations focused on:

- protection and redress for consumers of financial services
- the role of SROs
- establishing a new Ontario Securities Tribunal
- establishing an independent investment fund governance regime

**Mandate: To provide protection to investors from unfair, improper or fraudulent practices**

We set rules for participation in our capital market. These rules exist to ensure that investors have fair access to qualified advice and timely information. Our first two goals are key to achieving the first element of our mandate.

**1) Providing vigorous, fair and timely enforcement**

A vigorous, fair and timely enforcement presence is critical to deter undesirable behaviour and, when necessary, to remove participants from our capital market who do not comply with securities laws. We will achieve this outcome by:

A Improving the effectiveness and transparency of our enforcement work, e.g. through reduced timelines for completing investigations and bringing regulatory proceedings and more timely disclosure of investigations where warranted

B Focusing additional resources on reducing illegal market conduct

C Actively monitoring compliance with new rules and devoting more resources to their enforcement

D Working with our regulatory partners to respond to the recommendations of the Insider Trading Task Force

E Contributing to effective enforcement through increased coordination with other enforcement agencies and regulators, including participation with the RCMP on Integrated Market Enforcement Teams (IMETs), which are designed to respond to major capital market fraud and market-related crimes. The OSC will refer cases to IMETs that are substantially criminal in nature and share expertise to increase the breadth of investigations.

*We will measure success in achieving this outcome by the following:*

- The current case assessment timeline, where 75% of cases are transferred within six months, will be reduced to less than four months.
- The current investigation timeline, where 75% of files closed without action are completed within six months, will be reduced to three months.
- For surveillance, the average timeline between detection and transfer to investigation/litigation will be reduced from twelve months to less than six months.
- Greater cooperation with IMETs will result in an increase in the number of capital markets offenders who are prosecuted.
- The number of foreign jurisdictions who become signatories to the IOSCO Multi-lateral Memorandum of Understanding (IOSCO MMOU) for cooperation will increase.

**2) Taking actions that better reflect the needs of the retail investor**

Investors face an environment of increasingly complex products with very different elements of risk. Diminishing returns, due to low interest rates on traditional "low risk" securities such as treasury bills and government bonds, are causing investors to seek alternative investments to improve their financial returns. Perceiving the level of risk in the equity markets to be higher, they are turning to securities that appear "debt-like" with much higher yields or that appear to promise limited downside risk with the potential for substantial gains. The risks involved in purchasing these new products are often not well understood by retail investors and are intensifying the need to better educate investors about various investment products and their risks.

Significant progress on enhancing the quality of information available has been achieved through the introduction of the Canadian Public Accountability Board rules as well as implementation and enforcement of our new continuous disclosure rule and investor confidence rules, which include CEO/CFO certification and the audit committee and auditor oversight rules. Efforts to educate investors will help to ensure that they are able to benefit from the level and quality of information, financial and non-financial, which is available to them.

We plan to increase our focus on retail investors and better understand their priorities and concerns. We plan to concentrate on activities that prevent harm to investors, including a proactive public education program and other actions that better respond to the needs of the retail investor. We see a clear need to improve the interface between investors and financial services professionals to better protect investors against improper, unfair or fraudulent practices. We will achieve this goal by:

A Implementing measures to engage the retail investor in the regulatory process, including holding Investor Town Hall meetings

B Considering the needs of all our constituents to ensure the promotion of a customer-focused approach in OSC communications and service delivery

C In conjunction with the Investor Education Fund, developing and distributing targeted, understandable and relevant public education resources designed to help investors protect themselves when making financial decisions

D Supporting the Ontario Government in responding to the SCFEA recommendation relating to the establishment of a workable mechanism that would allow investors to pursue restitution in a timely and affordable manner, including studying existing avenues that provide for redress for consumers of financial services and making recommendations to address any deficiencies that may exist in the current system

E Proposing rule 46-102: *Scholarship Plan Dealers*

F Working with our CSA colleagues and SROs to introduce principles to improve the interface between investors and financial services professionals including:

- Transparency of performance against promise
- Clarity of relationship (on both sides)
- Transparency of compensation and conflicts of interest

G Improving the transparency of SRO arbitration processes

*We will measure success in achieving this outcome by the following:*

- OSC service levels will continue to meet standards laid out in the OSC Commitment to Quality Service, as indicated by biennial surveys of public opinion and through internal measures (e.g., telephone inquiries quality score, retention rates for investor education etc.)
- Rule 46-102: *Scholarship Plan Dealers* will be in force
- Recommendations will be developed that will establish a more effective and efficient mechanism for consumers of financial services to seek redress for investor losses
- Changes will be made to SRO rules to create bylaws that improve the interface between investors and financial services professionals as set out above

**Mandate: To foster fair and efficient capital markets and confidence in their integrity**

The second component of our mandate is to foster fair and efficient capital markets and confidence in the integrity of those markets. Our work is influenced by the changing environment in which we operate. Fulfilling our mandate requires us to be responsive to short-term economic and market developments while maintaining an awareness of key longer-term trends and changes affecting market participants, exchanges and the global regulatory framework.

Our last two goals reflect our plans to pursue harmonization of regulatory systems both domestically and internationally. Wherever practical, we will continue to favour being less prescriptive and more flexible in our regulatory approach and to resort to regulation, as necessary, when it represents a cost-effective solution to address real market problems. Our focus will be to make our capital market safer, more efficient and easier to access for market participants.

**3) Promoting a harmonized, simplified securities regulatory system for Canada**

We will work with other securities regulators and market participants to make the Canadian securities regulatory system better by:

A Supporting the Ontario Government, in promoting measures that are consistent with creating a single regulator, single securities code and a single fee structure

B Working with the CSA to further harmonize securities legislation to create a more efficient and seamless single window access for market participants by:

- streamlining the Mutual Reliance Review System and improving the National Registration System (NRS) by harmonizing registration categories and market conduct requirements
- addressing issues relating to clarity of market participants' relationships with the investor and greater transparency of fees and conflicts of interest

C Proposing National Instrument 81-107: *Independent Review Committee for Investment Funds* to create an independent governance and oversight regime for investment funds

D Proposing National Instrument 81-106: *Investment Fund Continuous Disclosure* and implementing continuous disclosure compliance capability in the Investment Funds Branch

E Supporting the Ontario Government in its statutory mandate to review the *Commodity Futures Act*

F Examining "best execution", including assessing the impact of "soft dollar arrangements", market structure and market fragmentation and developing policies to address these issues

G Pursuing measures to strengthen the Canadian securities clearing and settlement system, including supporting the adoption of uniform securities transfer legislation and the implementation of fully electronic straight-through processing and electronic audit trails

H Lead a CSA project to review the recognized SROs and system of regulatory oversight to identify areas for improvement, reduce duplication and inconsistency and enhance effectiveness

*We will measure success in achieving this outcome by the following*:

- Rules will be developed to implement a revised and re-focused national regulatory regime for securities intermediaries
- National Instrument 81-107: *Independent Review Committee for Investment Funds* will be introduced
- National Instrument 81-106: *Investment Fund Continuous Disclosure* will be in force supported by implementation of a continuous disclosure compliance program for investment funds
- Cost benefit analysis will be completed for major initiatives to clearly identify costs and benefits for stakeholders
- We will be a leader in fostering and implementing non-legislative, non-rule alternatives where alternative solutions are appropriate and supported by a better cost/benefit relationship than new regulation

**4) Contributing to Canada's role as an active and respected player in the global capital market**

Through participation with international securities organizations we learn from the experiences of other regulators, we benefit from cooperation among jurisdictions and we participate directly in the development of international standards. We may tailor these standards to meet the needs of our capital market before adopting those standards into our jurisdiction. Our goal is to achieve a level of protection for investors that meets or exceeds the standards established internationally, while minimizing undue burdens on market participants. We will undertake the following initiatives towards achievement of this outcome:

A Play a leadership role in the work of International Organization of Securities Commissions (IOSCO), by supporting IOSCO's efforts to increase implementation levels of IOSCO standards across its membership and by participating in activities designed to:

- improve cooperation in cross-border investigations through the IOSCO MMOU
- develop best practices in a variety of areas applicable to investment funds
- improve the relevance and reliability of financial information available to investors by harmonizing and strengthening financial reporting and auditing standards and the related supporting infrastructure, including mechanisms for independent oversight of audit firms
- provide consistent guidance on the role and regulation of market intermediaries

B Play a leadership role with international regulatory associations such as the Council of Securities Regulators of the Americas (COSRA) and the national and international Joint Forums of Financial Regulators, including activities designed to:

- develop initiatives to enhance access to capital by small and medium sized enterprises in the Americas, while providing an appropriate level of investor protection
- develop high-level cross-sectoral business continuity principles for financial firms and their regulators
- assess differences in regulatory practices regarding risk management across the banking, insurance and securities sectors

C Foster inter-jurisdictional co-operation to reduce impediments to information sharing and enforcement support.

D Continue development of internal control guidelines as set out in MI 52-111: *Reporting on Internal Controls over Financial Reporting*

*We will measure success in achieving this outcome by the following:*

- Harmonized measures developed internationally will be implemented domestically
- OSC representatives will be leaders in important initiatives undertaken by international regulatory associations, such as IOSCO

**2005/2006 financial outlook**

Our goal is to ensure that fees paid by issuers and registrants reflect the costs of regulating each group. Surpluses have been generated since the fee schedule was introduced in March 2003. In March 2005, $15 million of this surplus was refunded to market participants.

Our revenue forecast for 2004/2005 was $67.3 million. This forecast reflected our projected ongoing revenue base of $58.8 million and the expected $8.5 million one-time impact of transitional payments related to the introduction Continuous Disclosure Rule 51-102. In 2004/2005, $76.4 million was collected under the *Securities Act* and the *Commodity Futures Act*. This amount exceeded our forecast by $9.1 million. The variance was primarily due to higher than expected participation fee revenues as we had more and larger issuers and registrants than originally forecast.

The OSC revenue forecast for 2005/2006 is $67.1 million, 12.1% lower than gross revenues collected in 2004/2005. This forecast includes the offsetting impacts of an increase in our base revenue forecast to reflect the higher level of issuer and registrant participation fees experienced in 2004/2005 and the removal of the one-time impact related to Rule 51-102.

Before setting fees for the three-year period ending March 2009, we will review each service activity and its related cost. Activity fees will be set based on the estimated cost to provide the service. Participation fees will be set at levels to recover costs, offset by the OSC's projected surplus as at March 2006. Our experience with the current fee structure positions us to better set fee levels going forward. Our data is now more complete, we have a better understanding of the variables which need to be estimated and the transitional issues in moving from the previous fee structure to the current fee structure no longer exist.

In delivering on our goals there remains an ongoing need for us to ensure that our operations are efficient and effective and to continually work to improve our client service delivery. The OSC has budgeted total 2005/2006 net operating expenditures of $67.0 million, an 8.1% increase over our 2004/2005 expenditures. The majority of the increase is in staffing costs. Salaries and benefits costs, which account for more than 70% of our costs, are projected to rise by 9.4% to $48.8 million. This reflects a decision to add a total of 18 new staff, primarily in our Enforcement, Investment Funds and Investor Communications groups.

These resources will allow us to deliver on our commitment to improve investigation timelines, to complete work related to the recent Mutual Fund Probe including implementation of a continuous disclosure regime for investment funds and to increase the effectiveness of our investor communications. Higher costs for employee benefits, the introduction of a new compliance program which relies on retired industry professionals and development of a knowledge management framework for the OSC are other key factors in the budget increase. Costs associated with our participation in CSA initiatives (net of internal staffing costs) are projected to exceed $1 million for 2005/2006.

**Report on 2004/2005 organizational priorities**

The four goals published in our 2004/2005 Statement of Priorities were taken from our 2004 – 2008 Business Plan. Under each goal we have set out in a table our progress against the success measures we identified last year. Following the table, each 2004/2005 initiative is presented in italics. Details on our progress towards completion of each initiative are provided below each initiative.

1. **Ontario's capital market and financial services regulatory system will be fully consolidated, harmonized nationally and coordinated internationally**.

***2004/2005 Success Measures***

| Measure | Progress | Status |
|---|---|---|
| Market participants will use fewer points to access the market conduct regulatory system in Canada | Quebec joined the National Registration Database (NRD) in January 2005.<br>A number of important projects related to registration were consolidated into one umbrella initiative, the CSA's Registration Reform Project, and the first phase of that project, the National Registration System, was approved for April 2005 implementation.<br>The CSA's proposed Uniform Securities Act contained several legal mechanisms (e.g. delegation of authority, mutual recognition) to enable "one stop" regulation for market participants. | Ongoing |
| As impediments to investigation and enforcement initiatives created by international boundaries are reduced, we will re-focus resources on other | Securities regulators in four countries committed to reform their laws to enable them to become IOSCO signatories and one regulator was accepted as a full signatory to the MMOU, raising the total number of full signatories to 26 (including the OSC). During 2004/2005 we responded to 38 requests and made 4 requests for information under the IOSCO MMOU.<br>Enforcement staff actively participated in several projects undertaken by IOSCO's Standing Committee 4 to improve cross-border cooperation. Further | Ongoing |

| | | |
|---|---|---|
| initiatives | work is required.<br>Discussions with a number of "secrecy" jurisdictions have led to a growing willingness to address our requests for information. | |
| Harmonized measures developed internationally will be implemented domestically. | IOSCO's *Principles for Addressing Sell-Side Analysts Conflicts of Interest* were adopted by the Investment Dealers Association of Canada (IDA) in Policy 11: *Analyst Standards*.<br>IOSCO's *Principles for Auditor Oversight* has been implemented with the creation of the CPAB. | Ongoing |

***2004/2005 Results***

***Engaging regulators, governments and industry participants in moving towards a single securities regulator or a more effective national securities regulatory system with a uniform securities code.***

In June 2004, the Government of Ontario released a discussion paper, Modernizing Securities Regulation in Canada, that outlines Ontario's proposal for securities regulatory reform in Canada. The proposal envisions provinces and territories working together to move to a new securities regulatory framework that features a common securities regulator, a common body of securities law and a single fee structure.

As part of the Five Year Review of the *Securities Act*, the SCFEA looked at the province's proposal for a single securities regulator and concluded that the Government of Ontario should continue to take a leadership role to move to a common regulator for Canada. We will continue to support the Government of Ontario in responding to the recommendations set out in the SCFEA report. On February 18, 2005, the Government of Ontario announced the appointment of a panel, chaired by Ronald Daniels, Dean of the University of Toronto Law School, to advance the design of a common securities regulator. The panel is expected to report by end of June 2005.

***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 Forums of Financial Regulators and, where appropriate, providing leadership on initiatives. Fostering inter-jurisdictional co-operation to reduce impediments to information sharing and enforcement support.***

We continued to participate actively in these international organizations. Our international activities give us opportunities to increase cooperation among jurisdictions, participate directly in developing international standards and learn through other regulators' experiences. For example, we used a checklist developed internationally to create the framework for the CPAB.

The OSC was selected by IOSCO's Technical Committee (consisting of regulators from most of the world's largest and most developed capital markets) to chair its Standing Committee 3 (SC3) on Market Intermediaries. Under the OSC's leadership, SC3 developed international standards for outsourcing of financial services by securities firms and coordinated its work with the international Joint Forum, which developed high-level cross-sectoral outsourcing principles for the banking, insurance and securities sectors.

The OSC was elected to IOSCO's Executive Committee for a two-year term. This election constitutes recognition by IOSCO members of the contribution that the OSC has made, and is expected to make, to the development of harmonized, internationally recognized best practices in securities regulation.

During 2004/2005, the OSC participated in IOSCO committees and task forces that,

- developed a Code of Conduct for credit rating agencies
- produced a comprehensive report and action plan for combating financial fraud in capital markets
- issued international standards for client identification and beneficial ownership in the securities industry
- published a report and recommendations for improving transparency in corporate bond markets
- completed a comprehensive multi-jurisdictional survey regarding the implementation of international best practices for auditor oversight
- developed international best practice standards applicable to the fees and expenses of investment funds

The OSC also participated in IOSCO committees and task forces that published consultation reports on error trade policies in regulated securities markets, anti-money laundering guidance for investment funds and international standards to combat

market timing in investment funds. We also participate in a task force that develops tools and delivers training to help regulators in emerging markets understand and implement IOSCO standards.

The OSC hosted delegations from European, Asian and African countries interested in learning about the Ontario securities regulatory system, as well as responding to numerous requests for information from regulators in other countries. We also developed and hosted an international conference, Intelligence-Led Regulation: Organized Crime in the Financial Markets, which brought together participants from 19 countries to discuss techniques for detecting and derailing financial crime before it causes harm. These meetings and conferences are used to develop relationships and generally lead to greater cooperation with other regulators. They also provide an opportunity for jurisdictions to share their experiences in dealing with problems.

***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.***

Enforcement staff actively participate in an IOSCO screening group that evaluates applications by securities regulators to become signatories to the IOSCO MMOU and provides advice to applicants on how to amend their laws and procedures to improve their ability to cooperate in cross-border investigations. Enforcement staff also actively participated in several projects undertaken by IOSCO's Standing Committee 4 to facilitate enforcement-related cooperation among international jurisdictions, including jurisdictions that have not been cooperative in the past. Discussions with a number of “secrecy” jurisdictions have lead to a growing willingness to address our requests for information. During 2004/2005 we responded to 38 MMOU requests for information from other jurisdictions and made four requests for information.

The relationship between our Enforcement Branch and IMETs has been viewed as a model for cooperation. The Enforcement Branch has referred several cases to IMETs which are now under active investigation. Enforcement staff seconded to IMETs is assisting in the investigation of a number of cases. In addition, Enforcement staff is working directly with the Royal Canadian Mounted Police (RCMP) and the Ontario Provincial Police (OPP) on two major investigations. In addition, our Enforcement Branch is working on several very substantial matters with police forces and regulators in other countries.

***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***

Improvements to the National Registration Database (NRD) continue. Quebec joined the NRD in January 2005 and all registrants in Canada are now on the system. The NRS was approved by all Commissions in December 2004 and will be implemented by April 2005. The NRS is the first step in the Registration Reform project which is a CSA initiative to harmonize, modernize and streamline the registration system in Canada. The OSC Executive Director is leading this project that will lead to both uniform categories of registration and uniform conduct rules for registrants. The project will incorporate some of the key concepts of the Fair Dealing Model and is being managed by a steering committee with representation from the Alberta Securities Commission (ASC), British Columbia Securities Commission (BCSC), the IDA, the Mutual Fund Dealers Association of Canada (MFDA), the Autorite des Marches Financiers (AMF) and three industry representatives. Non-employment relationships and the establishment of a flexible business model for mutual fund sales representatives will be addressed as part of the registration reform project.

We implemented various changes to improve the System for Electronic Disclosure by Insiders (SEDI), System for Electronic Document Analysis and Retrieval (SEDAR) and NRD and contributed $1 million from revenues generated by late filing fees to improve SEDI’s user-friendliness. We also performed a targeted review of certain insider reports filed on SEDI, our newest system, to assess the quality of insider reporting, improve compliance with insider filing requirements and ensure the completeness of SEDI filings. A notice to be published in the spring of 2005 will present our findings and recommendations for best practices to assist various market participants with their filing obligations.

***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.***

The OSC continued to lead the CSA Task Force on the Uniform Securities Transfer Act (USTA). A consultation draft of the USTA and consequential *Ontario Business Corporations Act/Personal Property Security Act* amendments was republished in May 2004. In August 2004, the Uniform Law Conference endorsed the USTA. The SCFEA also unanimously recommended that the Ontario Government introduce securities transfer legislation modeled on legislation in place in the United States.

In September 2004 the CSA published responses to public comments received in connection with the proposed *Uniform Securities Act* and *Model Securities Administration Act* published as part of the CSA's Uniform Securities Legislation (USL) initiative. The CSA's proposed *Uniform Securities Act* contains several legal mechanisms to enable "one stop" regulation for market participants including provisions that would permit delegation among provincial securities commissions, mutual recognition, and adoption of another provincial securities commission's decisions.

Significant progress was made towards implementation of straight through processing as CSA staff published various documents in April 2004 (Discussion Paper 24-401: *Straight Through Processing*, Proposed National Instrument 24-101: *Post Trade Matching and Settlement* and Companion Policy 24-101CP). Responses to these documents were received in February 2005.

An industry committee provided recommendations regarding the implementation of the electronic audit trail as set out in Part II of National Instrument 23-101: *Trading Rules*. OSC and self-regulatory organizations (SROs) are working to develop a Request for Proposal (RFP) and will continue to consult the industry regarding the RFP and the implementation plan.

**2. Market participants and investors will have confidence in the integrity of Ontario's capital market.**

***2004/2005 Success Measures***

| Measure | Progress | Status |
|---|---|---|
| Public surveys of market participants will show an increase in confidence. | A benchmark measurement for mutual fund investors was established in 04/05. The impact on investor confidence of our recently completed mutual fund probe will be measured in our next survey which is scheduled to be completed in 2006. A broader range of investors will be covered with this survey. | Ongoing |
| 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. | Proposed National Instrument 81-107: *Independent Review Committee for Investment Funds* was published for consultation. The second comment period is to be completed early in 2005. | Rule is targeted for completion in 2005. |
| Implementation of a revised and re-focused national regulatory regime for securities intermediaries. | The OSC is leading a CSA group in drafting a national registration requirements rule to harmonize, streamline and modernize registration categories, proficiency requirements for intermediaries and conduct rules. We expect to present the rule to the Commissions for approval in December 2006. | Ongoing |

***2004/2005 Results***

***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.***

In June 2004, the SCFEA was directed by the Ontario Legislative Assembly to review the priority recommendations of the *Final Report of the Five Year Review Committee* including the recommendations relating to the need for a single regulator system and the appropriate structure for the adjudicative tribunal role of the Commission. In August 2004, the SCFEA held public hearings to review the Final Report of the Five Year Review Committee. The OSC Chair made oral and written submissions to SCFEA including a status report on OSC action taken to date with respect the Five Year Review Committee's recommendations. The OSC submission also recommended that SCFEA give priority to four initiatives requiring legislative attention:

- The need to proclaim amendments to the *Securities Act* that have been enacted that would create a regime for statutory civil liability for secondary market disclosure, and add express prohibitions against fraud, market manipulation and misrepresentation.

- The need for better and more flexible tools to deal effectively with securities regulators in other Canadian jurisdictions, including statutory amendments to facilitate inter-jurisdictional delegation of decision-making.

- The need to reduce the regulatory burden and facilitate quick responses to new situations by allowing the Commission to issue blanket rulings and orders that provide exemptive relief to market participants.

- The need to catch up to changes in how commercial law deals with the transfer and pledging of securities. This is an area where Canada lags the U.S. and the European Union.

Our submission also addressed the challenge faced by SCFEA in examining the Commission's structure and the need to balance the advantages and disadvantages of different models to determine if the current structure continues to be the best to serve Ontario investors and market participants. The OSC tabled a report on the structure of the Commission, which the OSC commissioned from a committee headed by Ontario's Integrity Commissioner, Coulter Osborne. The report examined the structure of the Commission and the potential for the perception of bias and the possibility that such perception would erode the

credibility of the Commission. While the report advised the OSC to undertake structural changes that will require authorizing legislation, the report found no legal impediment to the OSC continuing to fulfill its adjudicative responsibilities and functions on a business-as-usual basis.

In October 2004, SCFEA tabled its final report, containing 14 recommendations. Among other things, SCFEA endorsed the need for a single securities regulator, recommended that the Commission's adjudicative function be separated from its other functions, and recommended that the Ontario Government re-introduce the relevant provisions of former Bill 41 (containing technical amendments to the statutory civil liability regime for secondary market disclosure) and proclaim the civil liability provisions in force. The Ontario Government reintroduced the technical amendments, which received Royal Assent in December 2004 but have not been proclaimed in force yet. We are studying several of SCFEA's other recommendations that were addressed to us.

***Appropriately applying the new powers arising from changes to the Securities Act.***

Some of the proposed changes to the *Securities Act* recommended in the Five Year Review report and supported by the OSC were not endorsed in the SCFEA Report (e.g. blanket exemptive relief). SCFEA recommended that we jointly study options to allow the OSC to deal with recurring requests for discretionary relief.

***Actively monitoring compliance with new rules and placing increased resources into their enforcement.***

Our Corporate Finance and Enforcement branches have developed and implemented a process for "simplified proceedings" involving failures to comply with existing and new rules. Hearings have been conducted in relation to these matters. This approach offers an efficient vehicle to ensure compliance with all aspects of Ontario securities law, without interfering with the time the Commission needs to spend addressing highly complex and serious cases.

The Corporate Finance Branch's continuous disclosure review program again met its objective of reviewing 25% of Ontario reporting issuers annually. Full reviews focused on compliance with the continuous disclosure requirements in new NI 51-102. Targeted reviews addressed compliance with (1) the technical report requirements in National Instrument 43-101 *Standards of Disclosure for Mining Projects*, (2) certain aspects of Multilateral Instrument 52-110 *Audit Committees*, (3) the registration requirements in National Instrument 52-108 *Auditor Oversight*, (4) the Business Acquisition reporting requirements in NI 51-102 and (5) overall compliance with the insider reporting requirements.

***Adopting project management techniques to increase the efficiency of the investigation process.***

Project management techniques are in place for the management of the investigation process. Substantial technology advancements designed to enhance the project management function were put in place near the end of the year.

***Working with our regulatory partners to respond to the recommendations of the Insider Trading Task Force by March 2007.***

Our Enforcement Branch is taking a leadership role in the analysis and implementation of the Insider Trading Task Force's recommendations. All projects arising from the recommendations are on track.

***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.***

In January, 2004, the first draft of Proposed National Instrument 81-107: *Independent Review Committee for Investment Funds* was published for comment. This proposed rule is designed to promote investor protection in investment funds while fostering market efficiency. It proposes the requirement for publicly offered investment funds to have an independent governance body charged with reviewing conflicts of interest that may arise out of the management of the funds. Based on comments received, the CSA working group has been developing a revised draft rule that they expect to publish for second comment by June 2005.

***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.***

We completed an examination of "best execution" issues, specifically assessing the impact of "soft dollars" in the management of mutual funds, and published Concept Paper 23-402: *Best Execution and Soft Dollar Arrangements* in February 2005.

***Developing a revised regulatory approach to address the emergence of alternative investment products.***

Our Investment Funds Branch addressed the emergence of alternative investment products and strategies over the past year by: (1) requiring enhanced prospectus disclosure for exchange-traded alternative investment products; and (2) considering exemptive relief applications on an *ad hoc* basis to respond to the conventional mutual fund industry's requirements for

innovation. In 2005/06, the Branch intends to develop a more systematic approach to regulating alternative investment products and strategies by proposing revisions to long form prospectus requirements for all exchange-traded funds (including those using alternative investment strategies) and reviewing the existing rules to consider further accommodating alternative investment strategies.

***Working with our CSA colleagues and the SROs to put in place by 2006 the four pillars of a Fair Dealing Model which are: (1) clarity of relationship (on both sides); (2) transparency of compensation and conflict; (3) transparency of performance against promise; and (4) simplified, harmonized and streamlined approach to registration.***

After consultation with industry and the CSA, a number of registration related projects being worked on concurrently by OSC and CSA Staff were consolidated into one project. The Registration Reform Project is an umbrella CSA project which includes the National Registration System, implementing the core principles from the Fair Dealing Model and harmonizing, streamlining and modernizing registration requirements (including categories of registration). The Registration Reform Project is led by a steering committee chaired by the OSC Executive Director with representation from the AMF, ASC, BCSC, IDA, MFDA and three industry representatives.

The National Registration System will be implemented in April 2005. Three working groups were established and have prepared direction documents for the SROs to draft by-laws related to the core principles of the fair dealing model. The direction documents deal with Account Opening documentation, Transparency of Costs and Conflicts, and Performance Reporting. A separate CSA group is drafting a national registration requirements rule that will result in harmonized, streamlined and modernized registration categories, proficiency requirements for intermediaries and conduct rules. The rule is expected to be ready for presentation to the Commissions for approval in December 2006.

**3. Regulatory interventions in Ontario will be balanced and merit based.**

***2004/2005 Success Measures***

| Measure | Progress | Status |
|---|---|---|
| It will be clear to investors, issuers and intermediaries that the benefits of regulation measurably and significantly outweigh the costs of regulation. | Cost-benefit analyses were completed and published for major projects such as MI 52-111: *Reporting on Internal Controls over Financial Reporting*, the Joint Forum Point of Sales Disclosure and the Registration Projects. | Ongoing |
| 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 OSC participated in an IOSCO Task Force that developed a Code of Conduct for credit rating agencies (CRAs). It is expected that market pressure will induce CRAs to adopt the provisions of the Code of Conduct, thereby eliminating any need to introduce a more costly regulatory approach, such as a licensing or registration requirement.<br><br>Draft National Policy 58-201 *Corporate Governance Guidelines* provides guidance to issuers on corporate governance practices. These guidelines are not intended to be prescriptive and companies are encouraged to consider the guidelines in developing their own corporate governance practices. The policy is accompanied by a disclosure rule that will require reporting issuers to keep the market informed about those practices. | Ongoing |
| The effective cost and burden of regulation will be competitive with our peers, without undermining investor protection and confidence. | The OSC analyses the potential cost and benefits of new Rules prior to issuing them for comment. An important part of this analysis is the comparison to other jurisdictions. | Ongoing |

***2004/2005 Results***

***Making appropriate changes to our practices as a result of the recommendations of the Regulatory Burden Task Force.***

In response to the recommendations of the Regulatory Burden Task Force, OSC staff, in conjunction with other CSA staff and Market Regulation Services Inc. created a national Cease Trade Order Database. This centralized source of cease trade orders issued against issuers and individuals can be accessed at www.rs.ca.

The OSC published for comment an amended version of National Instrument 44-101 *Short Form Prospectus Distributions.* The amended rule would expand eligibility to the short form system, thereby simplifying the prospectus regime.

Amendments to National Instrument 55-101: *Exemption from Certain Insider Reporting Requirements* will come into force by April 30, 2005. These amendments will exempt certain individuals who hold the title of "senior officer" in a reporting issuer or subsidiary of a reporting issuer from insider reporting requirements if, among other things, they do not routinely have access to material, undisclosed information. These amendments will eliminate the need for such insiders to seek exemptive relief.

***Consistently applying risk-based criteria in enforcement cases to ensure matters pursued by staff give appropriate consideration to Commission priorities.***

The OSC is leading the CSA Insider Trading Task Force initiative, has established a project to investigate concerns about leakage of information in special warrant offerings, and has initiated steps to work with RS to streamline insider trading investigations. Currently 50% of the matters in investigation involve illegal insider trading. During the current fiscal year, the branch initiated five illegal insider trading proceedings (compared to three the year before). There are six additional illegal insider trading cases that have been transferred to litigation and are currently in the Enforcement Notice process.

***Improving accountability through the use of rigorous cost benefit analysis, impact analysis and risk based assessments for all proposed initiatives.***

The OSC conducted a thorough probe into mutual fund trading practices (in particular, market timing and late trading) that began in November 2003 and concluded in December 2004. The probe resulted in enforcement proceedings and settlements totaling $205.6 million with five fund managers. This was a cross-Branch initiative involving staff from Compliance, Enforcement, Investment Funds and the Office of the Chief Economist (OCE). Risk-based criteria were applied throughout the three phases of the probe to assess the information obtained from fund managers involved and to assess the potential harm to investors. We are now developing policy responses to our findings from the probe and have begun consultation with stakeholders in that process.

We completed a comprehensive cost-benefit analysis (CBA) of proposed MI 52-111 *Reporting on Internal Controls over Financial Reporting* and then developed an implementation schedule, based on statistical data about the distribution of listed Canadian issuers and the number and total size of the firms affected by the proposed instrument.

The OCE implemented and continues to support the Earnings Risk Criteria for continuous disclosure. Using the Earnings Risk Criteria, Corporate Finance staff have increased the rate at which they find deficiencies in disclosure from 70% to over 90% of companies examined.

Using risk-based criteria, the OCE has referred a significant number of cases, now under investigation, to our Enforcement branch. The OCE is also supporting our Enforcement Branch through the use of Event Studies.

The OCE continues to help staff in other branches carry out CBAs, as well as taking primary responsibility on major projects like proposed MI 52-111, the Joint Forum's Point of Sales Disclosure Project and the Registration Reform Project. The OCE will oversee the CBA for the parts of the Registration Reform Project to be implemented by the SROs.

**4. The OSC will have superior and transparent governance and accountability mechanisms.**

***2004/2005 Success Measures***

| Measure | Progress | Status |
|---|---|---|
| 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 staff is invited to speak at Investor Education training sessions because we are at the leading edge of our field. Positive free coverage of investor education content and resources has doubled over the last fiscal year confirming that we are continuing to provide information that's relevant and of interest to the general public. OSC investor education resources continue to be popular as measured by public requests (51,000 brochures and kits ordered), the number of investors reached directly at events (9000) and web traffic on www.investorED.ca (doubled over the fiscal year). Investors are extremely satisfied with the quality (92% satisfaction rating) and presentation (96% readability rating) of information available as measured by surveys. | Ongoing |
| OSC governance practices and policies meet or exceed disclosure requirements for public issuers. | We are continuing to examine our practices to determine where it is appropriate for a regulatory body to conform to the corporate governance requirements for public companies. We implemented a Lead Director with a mandate to oversee OSC Board governance practices and to facilitate adherence by the OSC Board to the highest standards of corporate governance. We have enhanced disclosure of our corporate governance | Ongoing |

| | | |
|---|---|---|
| | practices by publishing the composition and mandates of our Board, our Lead Director and our Board committees on our website. | |
| Public surveys of market participants will sustain positive ratings for OSC customer service. | Customer services standards were published in our 2004 Annual Report. Our performance against these standards will be assessed as part of our stakeholder survey to be completed in 2006. | To be completed in 2006. |
| 100% of OSC communications will be accessible electronically by 2005. | All publications are available electronically on our website. We provide a free, public-access twelve-week rolling on-line version of the OSC Bulletin (OSCB). We also post a weekly Table of Contents of the OSCB on our site, with links to all material that can be found on the OSC website. The Bulletin is available electronically through the Carswell service. | Complete |

***2004/2005 Results***

***Continuing to promote a customer focused approach to our communications and service delivery.***

The OSC is committed to communicating with many diverse stakeholder groups, including reporting issuers, registrants, investors and the general public regarding, among other things, major OSC and CSA policy initiatives and the impact of emerging issues on Ontario's capital markets and its participants.

Service to our stakeholders is a top priority for the OSC. The OSC Commitment to Quality Service, which was published for the first time in the 2004 Annual Report, documented standards already in place throughout the organization. All new staff in the Inquiries and Contact Centre participate in a tailored two-day, intensive customer service training program, with refreshers for all staff in the Centre. In addition, a call quality program assists in maintaining our service commitment and in identifying knowledge and skill areas for individual and team development.

The OSC's Inquiries and Contact Centre maintains a 24-hour telephone information service (with answers to six frequently asked questions), as well as a general inquiries voice mailbox, with responses to questions by end of next business day. The Centre receives and responds to inquiries and complaints in the delivery mode of choice - fax, mail, email or telephone.

The OSC recognizes the importance of a policy of openness and accessibility for all external communication. The Communications team continues to maintain a high level of accessibility to Canada's business reporters, as a way of communicating important information to investors and the general public. In Fiscal 04/05, the OSC Chair and Vice-Chairs presented at numerous Canadian capital markets events, on major policy initiatives and market issues. Through participation in these events, the OSC was able to reach representatives from all of the organization's major stakeholder groups.

In July 2004, we released a final report on the OSC Stakeholder Satisfaction Study Wave 3. Key stakeholders were surveyed on a broad range of topics, including service quality, fulfillment of mandate and success of major OSC initiatives. The results of this study were considered by the OSC in setting the priorities and goals for Fiscal 05/06.

***Expanding the use of partnerships to deliver investor education products to target groups and 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.***

The OSC Investor Communications team continued to implement community outreach and public awareness initiatives in Fiscal 04/05, through partnerships and paid and unpaid targeted media penetration. The OSC Staff Ambassadors program trains OSC staff from all branches to deliver messages on investor protection, fraud awareness and regulatory issues. Ambassadors speak to community groups, seniors, high school students and industry groups across Ontario. Since the program launch in November 2003, we have trained 87 OSC staff members, delivered more than 55 presentations and directly reached 2,811 Ontario investors. The OSC Staff Ambassadors program means that we can respond to more speaker requests, and promote investor education resources at targeted events.

The OSC Investor Communications team forged partnerships with community groups (e.g. Ontario Rotary Clubs), government agencies (e.g. the Ontario Council of Agencies Serving Immigrants), and media outlets (e.g. NewsCanada, City TV) to deliver investor protection messages to larger audiences.

***Continuing to enhance the transparency of OSC corporate governance practices, adjudicative policies and accountability mechanisms.***

Accountability and transparency were two of the many areas explored at this year's Dialogue with the OSC 2004, "Facing the Issues." Every session included at least one industry representative, with some sessions having a majority of external panelists. More than 400 people attended or directly participated in the event.

Transparency of the OSC's corporate governance practices, adjudicative policies and accountability mechanisms was addressed in the new *OSC Governance* section of the Annual Report. The section includes information on accountability and oversight, Board role and effectiveness, financial accountability, and the role of OSC Commissioners and Board Committees. The Report also included an *Accountability to our Stakeholders* section, with an overview of stakeholder accountability mechanisms and a progress report on the Regulatory Burden Task Force.

***Completing the re-design of the OSC website in 2004.***

The redesigned OSC website was launched in July 2004 with a significantly enhanced search engine and an advanced search feature. Ease of navigation was improved and content was significantly enhanced.
As part of the re-design of its website, the OSC created an International Affairs webpage, which is intended to increase OSC stakeholders' understanding of why the OSC participates in international organizations, to serve as an information resource for stakeholders, OSC staff and other Canadian regulators, and to facilitate the public consultation processes conducted by international organizations, such as IOSCO.

## 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

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

| Transaction Date | Purchaser | Security | Total Purchase Price ($) | Number of Securities |
|---|---|---|---|---|
| 22-Mar-2005 | 4 Purchasers | Absolute Software Corporation - Common Shares | 5,420,000.00 | 4,336,000.00 |
| 17-Mar-2005 | 31 Purchasers | Aecon Group Inc. - Units | 13,050,000.00 | 13,050.00 |
| 24-Mar-2005 | 5 Purchasers | AmberCore Software Inc. - Common Shares | 220,000.07 | 574,412.00 |
| 18-Mar-2005 | 43 Purchasers | Arawak Energy Corporation - Common Shares | 58,800,000.00 | 28,000,000.00 |
| 02-Jan-2004 to 31-Dec-2004 | 10 Purchasers | Arrow Australian Relative Value Fund - Shares | 3,791,844.27 | 575,852.00 |
| 30-Jan-2004 to 31-Dec-2004 | 7 Purchasers | Arrow BPI Long/Short Fund - Shares | 3,341,800.16 | 514,123.00 |
| 01-Jan-2004 to 31-Dec-2004 | 35 Purchasers | Arrow Clocktower Platinum Global Fund - Shares | 4,231,033.17 | 387,826.00 |
| 25-Oct-2004 to 30-Nov-2004 | Andrew Lefeuvre | Arrow Compass Fund - Shares | 120,525.00 | 5,500.00 |
| 16-Jan-2004 to 31-Dec-2004 | 22 Purchasers | Arrow Distressed Securities Fund - Shares | 4,134,900.03 | 272,951.00 |
| 09-Jan-2004 to 31-Dec-2004 | 42 Purchasers | Arrow Elkhorn US Long/Short Fund - Shares | 6,144,573.85 | 603,289.00 |
| 30-Jan-2004 to 31-Dec-2004 | 12 Purchasers | Arrow Enso Global Fund - Shares | 9,060,282.75 | 757,384.00 |
| 06-Feb-2004 to 10-Dec-2004 | 19 Purchasers | Arrow Epic Capital Fund - Shares | 4,907,103.02 | 302,770.00 |
| 09-Jan-2004 to 31-Dec-2004 | 39 Purchasers | Arrow Epic NA Diversified Fund - Shares | 11,020,895.04 | 1,268,739.00 |
| 02-Jan-2004 to 31-Dec-2004 | 22 Purchasers | Arrow Global Long/Short Fund - Shares | 157,706.16 | 153,686.00 |

| | | | | |
|---|---|---|---|---|
| 23-Jan-2004 to 31-Dec-2004 | 8 Purchasers | Arrow Global RSP Long/Short Fund - Shares | 106,218.22 | 10,495.00 |
| 16-Jan-2004 to 31-Dec-2004 | 32 Purchasers | Arrow Goodwood Fund - Shares | 3,505,623.66 | 317,475.00 |
| 30-Jan-2004 to 31-Dec-2004 | 8 Purchasers | Arrow Greater European Fund - Shares | 8,593,886.54 | 1,043,844.00 |
| 09-Jan-2004 to 31-Dec-2004 | 38 Purchasers | Arrow High Yield Fund - Shares | 26,757,471.61 | 2,826,708.00 |
| 30-Jul-2003 to 31-Dec-2004 | 4 Purchasers | Arrow MMCAP Risk Arbitrage Fund - Shares | 8,209,928.80 | 701,221.00 |
| 02-Jan-2004 to 31-Dec-2004 | 52 Purchasers | Arrow Multi-Strategy Fund - Shares | 23,721,758.80 | 2,160,920.00 |
| 02-Jan-2004 to 31-Dec-2004 | 8 Purchasers | Arrow Mulvaney Global Markets Fund - Shares | 1,966,713.78 | 158,007.00 |
| 16-Jan-2004 | George Buckley | Arrow North American Multi-Manager Fund - Shares | 75,000.00 | 6,899.00 |
| 23-Jan-2004 to 31-Dec-2004 | 29 Purchasers | Arrow Proxima Convertible Arbitrage Fund - Shares | 5,523,730.91 | 558,099.00 |
| 30-Jan-2004 to 31-Dec-2004 | House Account | Arrow Quant Market Neutral Fund - Shares | 202,528.32 | 20,804.00 |
| 02-Jan-2004 to 31-Dec-2004 | 11 Purchasers | Arrow RAB European High Yield Fund - Shares | 4,231,800.00 | 369,376.00 |
| 02-Jan-2004 to 31-Dec-2004 | 7 Purchasers | Arrow RAB Global Macro Fund - Shares | 3,779,362.80 | 433,908.00 |
| 02-Jan-2004 to 31-Dec-2004 | 12 Purchasers | Arrow RAB UK Long/Short Fund - Shares | 3,533,870.76 | 394,014.00 |
| 16-Jan-204 to 31-Dec-2004 | 25 Purchasers | Arrow Risk Arbitrage Fund - Shares | 4,337,556.00 | 326,979.00 |
| 02-Jan-2004 to 31-Dec-2004 | 10 Purchasers | Arrow Rogge Enhanced Income Fund - Shares | 4,002,943.00 | 395,413.00 |
| 02-Jan-2004 to 31-Dec-2004 | 35 Purchasers | Arrow RSP Multi-Strategy Fund - Shares | 2,669,936.05 | 245,580.00 |

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|---|---|---|---|---|
| 09-Jan-2004 to 31-Dec-2004 | 34 Purchasers | Arrow WF Asia Fund - Shares | 6,273,981.00 | 428,851.00 |
| 30-Jan-2004 to 31-Dec-2004 | 7 Purchasers | Arrow Z Convertible Arbitrage Fund - Shares | 4,212,601.41 | 474,174.00 |
| 23-Mar-2005 | 3 Purchasers | Aurea Mining Inc. - Units | 39,000.00 | 150,000.00 |
| 24-Mar-2005 | 13 Purchasers | Canfirst Capital Industrial Partnership II L.P. - Limited Partnership Units | 2,587,000.00 | 2,587.00 |
| 24-Mar-2005 | CIRF Trustee Inc CanFirst Capital Industrial | CanFirst Industrial Realty Fund LP - Limited Partnership Units Partnership IILP | 28,124,572.00 | 35,000.00 |
| 22-Mar-2005 | 4 Purchasers | CareVest Blended Mortgage Investment Corporation - Preferred Shares | 132,189.00 | 132,189.00 |
| 22-Mar-2005 | 8 Purchasers | CareVest First Mortgage Investment Corporation - Preferred Shares | 786,568.00 | 786,568.00 |
| 22-Mar-2005 | Danasar Moorlee Dhar Harashmati D. Moorlee Dhar | CareVest First Mortgage Investment Corporation - Units | 20,000.00 | 2,000.00 |
| 22-Mar-2005 | 5 Purchasers | CareVest Second Mortgage Investment Corporation - Preferred Shares | 227,000.00 | 227,000.00 |
| 22-Mar-2005 | 3 Purchasers | Cellbucks Payments Networks Inc. - Units | 279,125.00 | 101,500.00 |
| 21-Mar-2005 | 8 Purchasers | CGX Energy Inc. - Common Shares | 5,052,000.00 | 6,315,000.00 |
| 15-Mar-2005 | Credit Risk Advisors LP Marret Asset Management Inc | CHC Helicopter Corporation - Subordinated Note | 8,437,992.75 | 6,750.00 |
| 18-Mar-2005 | 13 Purchasers | Cirrus Energy Corporation - Common Shares | 32,500.00 | 65,000.00 |
| 04-Mar-2005 | Maria Rossi | CI Global Opportunities III Fund - Shares | 5,375.00 | 59.00 |
| 21-Mar-2005 | 30 Purchasers | CMP 2003 Resources Limited Partnership - Shares | 16,981,106.00 | 29,877,152.00 |
| 11-Mar-2005 | 23 Purchasers | Columbia Metals Corporation Limited - Units | 822,500.00 | 2,350,000.00 |
| 23-Mar-2005 | 10 Purchasers | Cooperative Centrale Raiffeisen-Boerenleenbank B.A. - Notes | 180,000,000.00 | 180,000,000.00 |
| 24-Dec-2004 | Virginia L. Shaw | Corus Entertainment Inc. - Non-Voting Shares | 0.00 | 146,039.00 |
| 15-Mar-2005 | 5 Purchasers | Crosshair Exploration & Mining Corp. - Units | 354,000.00 | 786,666.66 |
| 17-Mar-2005 | 6 Purchasers | Dejour Enterprises Ltd. - Units | 1,126,500.05 | 1,733,077.00 |

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|---|---|---|---|---|
| 11-Mar-2005 | Burnac Corporation | DEPFA ACS Bank - Units | 1,000,000.00 | 1,000,000.00 |
| 17-Mar-2005 | Groundlayer Capital Inc. | Diana Shipping Inc. - Shares Goodman & Company Investment Counsel Ltd. | 312,018.00 | 15,000.00 |
| 16-Mar-2005 | 4 Purchasers | Diversified Racing Investments Inc. - Common Shares | 85,000.00 | 265,625.00 |
| 15-Mar-2005 | National Life | DR Residential Mortgage Trust - Notes | 15,000,000.00 | 15,000,000.00 |
| 21-Mar-2005 | 3 Purchasers | Essendon Solutions Inc. - Units | 25,000.00 | 250,000.00 |
| 23-Mar-2005 | 3 Purchasers | Executive Development Corporation - Units | 322,817.00 | 658,810.00 |
| 01-Jan-2004 to 01-Dec-2004 | Royal Bank of Canada | Forest Multi-Strategy Fund SPC - Non-Voting Shares | 31,285,928.00 | 208,627.00 |
| 13-Jan-2005 | MCE Capital Corporation | Futureway Communications Inc. - Common Shares | 100,002.00 | 25,883.00 |
| 21-Mar-2005 to 31-Mar-2005 | 4 Purchasers | F.L. Securities Inc. - Promissory note | 710,559.57 | 4.00 |
| 10-Jun-2004 | 23 Purchasers | General Strategies Ltd. - Units | 2,128,000.00 | 4,256,000.00 |
| 15-Mar-2005 | 4 Purchasers | Georgia Ventures Inc. - Units | 105,000.00 | 700,000.00 |
| 31-Mar-2005 | 22 Purchasers | Grey Island Systems International Inc. - Units | 4,515,699.90 | 15,052,333.00 |
| 23-Mar-2005 | 10 Purchasers | Hornby Bay Exploration Limited - Flow-Through Shares | 1,730,329.20 | 1,922,588.00 |
| 23-Mar-2005 | Carida Investment Inc. | HydroPoint Data Systems, Inc. - Preferred Shares | 466,410.00 | 309,722.00 |
| 16-Mar-2005 | Manulife | iShares, Inc. - Units | 9,999,016.00 | 83,800.00 |
| 24-Mar-2005 | Credit Risk Advisors LP | IAAI Finance Corp./Insurance Auto Auctions Inc - Notes | 1,820,400.00 | 1,500.00 |
| 14-Mar-2005 to 16-Mar-2005 | 3 Purchasers | IMAGIN Diagnostic Centres, Inc. - Common Share Purchase Warrant | 25,000.00 | 25,000.00 |
| 15-Mar-2005 | BCE Inc | Intellon Corporation - Convertible Preferred Stock | 6,039,000.00 | 6,102,026.00 |
| 01-Jan-2004 to 31-Dec-2004 | 132 Purchasers | Jarislowsky International Pooled Fund - Units | 137,192,607.07 | 5,513,578.00 |
| 01-Jan-2004 to 31-Dec-2004 | 87 Purchasers | Jarislowsky Special Equity Fund - Units | 42,390,344.00 | 1,830,480.00 |

| | | | | |
|---|---|---|---|---|
| 01-Jan-2004 to 31-Dec-2004 | 130 Purchasers | Jarislowsky, Fraser Balanced Fund - Units | 220,167,853.70 | 15,354,868.00 |
| 01-Jan-2004 to 31-Dec-2004 | 27 Purchasers | Jarislowsky, Fraser Bond Fund - Units | 54,469,140.81 | 4,993,173.00 |
| 01-Jan-2004 to 31-Dec-2004 | 29 Purchasers | Jarislowsky, Fraser Canadian Equity Fund - Units | 28,549,300.41 | 9,487,554.00 |
| 01-Jan-2004 to 31-Dec-2004 | 34 Purchasers | Jarislowsky, Fraser Global Balanced Fund - Units | 52,009,911.44 | 4,977,612.00 |
| 01-Jan-2004 to 31-Dec-2004 | 19 Purchasers | Jarislowsky, Fraser U.S. Equity Fund - Units | 27,906,497.38 | 3,309,276.00 |
| 22-Mar-2005 | 3996701 Canada Inc | KBSH Private - International Equity Fund - Units | 50,000.00 | 5,663.00 |
| 17-Mar-2005 | 9 Purchasers | Kommunalbanken AS - Units | 158,000,000.00 | 158,000,000.00 |
| 21-Mar-2005 to 22-Mar-2005 | 6 Purchasers | Lab9 Solutions Inc. - Common Shares | 65,000.00 | 115,000.00 |
| 09-Mar-2005 | Explorers Alliance Corporation | Lake Shore Gold Corp. - Common Shares | 60,000.00 | 75,000.00 |
| 30-Mar-2005 | 10 Purchasers | Langis Silver & Cobalt Mining Company Limited - Units | 387,000.00 | 3,225,000.00 |
| 30-Jan-2004 to 28-May-2004 | 5 Purchasers | Lazard Bond Portfolio - Shares | 2,585.28 | 263.00 |
| 30-Jun-2004 to 31-Dec-2004 | 7 Purchasers | Lazard Bond Portfolio - Shares | 3,501.85 | 360.00 |
| 11-Aug-2004 to 15-Dec-2004 | The Bay Crest Centre Foundation | Lazard International Equity Portfolio - Shares | 85,569.62 | 7,676.00 |
| 15-Dec-2004 | Kubera Holdings Inc. | Lazard International Equity Select Portfolio - Shares | 576.29 | 42.00 |
| 23-Apr-2004 | Kevin Sharfe | Live Global Bid Inc. - Units | 6,637.50 | 5,000.00 |
| 15-Mar-2005 | 43 Purchasers | Maple Minerals Corp. - Units | 7,500,000.00 | 10,000,000.00 |
| 31-Mar-2005 | BNY Trust Company of Canada | Montreal Trust Company of Canada - Notes | 300,000,000.00 | 300,000,000.00 |
| 22-Mar-2005 | 6 Purchasers | Nevada Geothermal Power Inc. - Units | 767,000.00 | 1,180,000.00 |
| 22-Mar-2005 | Ontario Teacher's Pension Plan Board | North American Oil Sands Corporation - Units | 1,000,002.00 | 333,334.00 |

| | | | | |
|---|---|---|---|---|
| 31-Mar-2005 | The Bank of Nova Scotia | O&G Trust - Trust Units | 7,125,000.00 | 750,000.00 |
| 22-Mar-2005 | 60 Purchasers | Patent Enforcement and Royalties Ltd. - Units | 7,914,419.30 | 12,993,863.00 |
| 10-Dec-2004 | Carlo Di Gioacchino | Peter Bortolussi - Common Shares | 130,050.00 | 33,660.00 |
| 14-Mar-2005 | 6 Purchasers | PGM Ventures Corporation - Units | 400,000.00 | 800,000.00 |
| 03-Dec-2004 | SC Stormaont Inc. | PharmaGap Inc. - Option | 10,000.00 | 1.00 |
| 22-Mar-2005 | 15 Purchasers | Pine Valley Mining Corporation - Units | 8,400,000.00 | 1,500,000.00 |
| 23-Mar-2005 | 111 Purchasers | Producers Oilfield Services Inc. - Subscription Receipts | 41,670,400.00 | 5,208,800.00 |
| 24-Mar-2005 | 7 Purchasers | Purepoint Uranium Corporation - Common Shares | 269,996.00 | 44,999.00 |
| 10-Mar-2005 | Michael Leahy | Rampart Ventures Ltd. - Common Shares | 30,000.00 | 100,000.00 |
| 24-Mar-2005 | 3 Purchasers | Resource Holdings & Investments Inc. - Subscription Receipts | 535,000.00 | 428,000.00 |
| 04-Mar-2005 | 22 Purchasers | RHEO Therapeutics Inc. - Common Shares | 2,344,243.50 | 520,943.00 |
| 31-Mar-2005 | 7 Purchasers | RHEO Therapeutics Inc. - Common Shares | 1,083,996.00 | 240,888.00 |
| 24-Mar-2005 | Evananchan Limited<br>JM Scott Investments | Rimon Therapeutics Ltd. - Preferred Shares | 975,000.00 | 195,000.00 |
| 23-Mar-2005 | 8 Purchasers | Sandvine Incorporated - Preferred Shares | 10,994,301.00 | 18,032,401.00 |
| 17-Mar-2005 | Front Street Capital | Saxon Energy Services Inc. - Common Shares | 824,000.00 | 200,000.00 |
| 21-Dec-2004 | Virginia L. Shaw | Shaw Communications Inc. - Non-Voting Shares | 0.00 | 1,000,000.00 |
| 23-Mar-2005 | Sea Change Corporation<br>Theresa Sorge | Simply Audiobooks Inc. - Convertible Preferred Shares | 240,000.00 | 97,824.00 |
| 24-Mar-2005 | 24 Purchasers | Skye Resources Inc. - Units | 6,547,950.00 | 7,820,000.00 |
| 18-Mar-2005 | Manulife | SPDR Trust, Series 1 - Receipts | 237,400.00 | 2,000.00 |
| 22-Mar-2005 | 115 Purchasers | Stone Castle Exploration Ltd. - Common Shares | 5,965,000.00 | 5,965,000.00 |
| 22-Mar-2005 | 28 Purchasers | Stoneham Drilling Trust - Trust Units | 15,841,620.00 | 851,700.00 |
| 01-Feb-2005 | 1346049 Ontario Limited | St. Andrew Goldfields Ltd. - Debentures | 0.00 | 1,000,000.00 |
| 18-Mar-2005 | 11 Purchasers | TAG Oil Ltd. - Units | 435,600.00 | 950,000.00 |

| | | | | |
|---|---|---|---|---|
| 22-Mar-2005 | 15 Purchasers | Tenke Mining Corp. - Common Shares | 8,050,000.00 | 1,610,000.00 |
| 22-Mar-2005 | Scott Stephen Simpson<br>David Michael Mann | Triacata Power Technologies Inc. - Common Shares | 49,999.50 | 66,666.00 |
| 04-Mar-2005 | Ed Veldjesgraff | Trident Global Opportunities Fund - Units | 150,000.00 | 1,277.00 |
| 18-Mar-2005 | 9 Purchasers | Varicent Software Incorporated - Units | 235,000.00 | 152,031.00 |
| 21-Jan-2005 | Netstar Solutions Inc. | Vector Innovations Inc. - Convertible Notes | 6,183.33 | 1.00 |
| 07-Mar-2005 | 4 Purchasers | Vector Innovations Inc. - Convertible Notes | 243,786.00 | 4.00 |
| 05-Jan-2005 | 11 Purchasers | Vector Innovations Inc. - Convertible Notes | 34,469.00 | 11.00 |
| 17-Mar-2005 | 4 Purchasers | VIQ Solutions Inc. - Units | 575,000.00 | 2,500,000.00 |
| 30-Dec-2004<br>to<br>28-Feb-2005 | 14 Purchasers | VIQ Solutions Inc. - Units | 2,454,740.00 | 13,637,444.00 |
| 24-Mar-2005 | Timothy J. Armstrong | Walsingham Fund LP No. 1 - Units | 50,000.00 | 50.00 |
| 18-Mar-2005<br>Units | Edmond Lee | West Hawk Development Corp. - | 2,500.00 | 150,000.00 |
| 18-Mar-2005 | Jeffrey A. Zeldin<br>Suzanne Zeldin | Wycliffe Resources Inc. - Common Shares | 25,000.00 | 250,000.00 |
| 22-Mar-2005 | Jaseon Brewster<br>Mike Newbury | Wycliffe Resources Inc. - Common Shares | 188,650.00 | 754,600.00 |
| 24-Mar-2005 | Joanne Edwards | ZIM Corporation - Common Shares | 180,000.00 | 1,000,000.00 |

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## Chapter 11

# IPOs, New Issues and Secondary Financings

**Issuer Name:**
Allied Properties Real Estate Investment Trust
Principal Regulator - Ontario
**Type and Date:**
Preliminary Short Form Prospectus dated April 4, 2005
Mutual Reliance Review System Receipt dated April 4, 2005
**Offering Price and Description:**
$30,100,000.00 - 2,150,000 Units Price: $14.00 per Unit
**Underwriter(s) or Distributor(s):**
Scotia Capital Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
Desjardins Securities Inc.
TD Securities Inc.
HSBC Securities (Canada) Inc.
**Promoter(s):**
-
**Project #**761560

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**Issuer Name:**
EP Advantage Trust
SP Advantage Trust
YP Advantage Trust
Principal Regulator - Ontario
**Type and Date:**
Preliminary Prospectus dated April 1, 2005
Mutual Reliance Review System Receipt dated April 1, 2005
**Offering Price and Description:**
$ * - Maximum (* Units) Price: $10.00 per Unit Minimum Purchase : 100 Units
**Underwriter(s) or Distributor(s):**
TD Securities Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Canaccord Capital Corporation
Desjardins Securities Inc.
Dundee Securities Corporation
First Associates Investments Inc.
McFarlane Gordon Inc.
Wellington West Capital Inc.
**Promoter(s):**
AGF Funds Inc.
**Project #**760736; 760759; 760790

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**Issuer Name:**
Front Street Long/Short Income Fund
Principal Regulator - Ontario
**Type and Date:**
Preliminary Prospectus dated March 30, 2005
Mutual Reliance Review System Receipt dated March 31, 2005
**Offering Price and Description:**
Minimum $ * (* Units); Maximum $ * (* Units) Minimum Purchase: 500 Units- Price: $10.00 per Unit
**Underwriter(s) or Distributor(s):**
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
Raymond James Ltd.
First Associates Investments Inc.
Haywood Securities Inc.
Tuscarora Capital Inc.
Richardson Partners Financial Limited
Wellington West Capital Inc.
**Promoter(s):**
Front Street Capital 2004
**Project** #757600

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**Issuer Name:**
George Weston Limited
Principal Regulator - Ontario
**Type and Date:**
Preliminary Short Form Shelf Prospectus dated April 1, 2005
Mutual Reliance Review System Receipt dated April 1, 2005
**Offering Price and Description:**
$1,000,000,000.00 - Debt Securities (unsecured) Preferred Shares
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #760499

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**Issuer Name:**
HSBC Bank Canada
HSBC Canada Asset Trust
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Prospectus dated March 29, 2005
Mutual Reliance Review System Receipt dated March 30, 2005
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
HSBC Securities (Canada) Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
CIBC Word Markets Inc.
National Bank Financial Inc.
Scotia Capital Inc.
**Promoter(s):**
-
**Project** #755820 & 755797

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**Issuer Name:**
HSBC Bank Canada
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Short Form Prospectus dated April 1, 2005
Mutual Reliance Review System Receipt dated April 1, 2005
**Offering Price and Description:**
$150,000,000.00 - 6,000,000 Non-Cumulative Redeemable Class 1 Preferred Shares Series C Price: $25.00 per share to yield 5.10%
**Underwriter(s) or Distributor(s):**
HSBC Securities (Canada) Inc.
TD Securities Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Desjardins Securities Inc.
National Bank Financial Inc.
Trilon Securities Corporation
**Promoter(s):**
-
**Project** #761092

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**Issuer Name:**
Ivernia Inc.
Principal Regulator - Ontario
**Type and Date:**
Preliminary Short Form Prospectus dated April 4, 2005
Mutual Reliance Review System Receipt dated April 4, 2005
**Offering Price and Description:**
$ * - * Common Shares Price: $ * per Common Share
**Underwriter(s) or Distributor(s):**
BMO Nesbitt Burns Inc.
Cannaccord Capital Corporation
Paradigm Capital Inc.
Haywood Securities Inc.
**Promoter(s):**
-
**Project** #761398

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**Issuer Name:**
Onyx Trust II
Principal Regulator - Quebec
**Type and Date:**
Amendment dated March 31, 2005 to Preliminary Prospectus dated October 29, 2004
Mutual Reliance Review System Receipt dated April 1, 2005
**Offering Price and Description:**
REDEEMABLE UNITS, SERIES A-1 - Maximum: $* (* Units); Minimum: $* (* Units)
**Underwriter(s) or Distributor(s):**
National Bank Financial Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
Desjardins Securities Inc.
Dundee Securities Corporation
Canaccord Capital Corporation
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Richardson Partners Financial Ltd.
McFarlane Gordon Inc.
Wellington West Capital Inc.
Berkshire Securities Inc.
**Promoter(s):**
OpenSky Capital
**Project** #702050

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**Issuer Name:**
PetroWorth Resources Inc.
Principal Regulator - Alberta
**Type and Date:**
Preliminary Prospectus dated March 31, 2005
Mutual Reliance Review System Receipt dated March 31, 2005
**Offering Price and Description:**
Maximum Offering: $6,000,000.00; Minimum Offering: $4,000,000.00 Up to 4,000,000 Units Price: $1.50 per Unit; and 2,581,567 Common Shares and 816,235 "B" Warrants Issuable upon the Special Warrants
**Underwriter(s) or Distributor(s):**
United Securities Inc.
**Promoter(s):**
-
**Project** #760556

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**Issuer Name:**
Rockwater Capital Corporation
Principal Regulator - Ontario
**Type and Date:**
Amended and Restated Preliminary Prospectus dated April 1, 2005
Mutual Reliance Review System Receipt dated April 4, 2005
**Offering Price and Description:**
$ * - * Common Shares Price: $ * per Common Share
**Underwriter(s) or Distributor(s):**
TD Securities Inc.
First Associates Investments Inc.
CIBC World Markets Inc.
GMP Securities Ltd.
Scotia Capital Inc.
Genuity Capital Markets
Sprott Securities Inc.
**Promoter(s):**
-
**Project** #728861

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**Issuer Name:**
Stukely Capital Inc.
Principal Regulator - Quebec
**Type and Date:**
Preliminary CPC Prospectus dated March 30, 2005
Mutual Reliance Review System Receipt dated March 31, 2005
**Offering Price and Description:**
Minimum of $1,000,000.00 - 10,000,000 common shares; Maximum of $1,800,000.00 - 18,000,000 common shares Price: $0.10 per share
**Underwriter(s) or Distributor(s):**
Desjardins Securities Inc.
**Promoter(s):**
-
**Project** #760147

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**Issuer Name:**
Uranium Participation Corporation
Principal Regulator - Ontario
**Type and Date:**
Preliminary Prospectus dated March 29, 2005
Mutual Reliance Review System Receipt dated March 31, 2005
**Offering Price and Description:**
Minimum $60,000,000.00 ( * Units); Maximum $80,000,000.00 ( * Units) Price: $ * Per Unit
**Underwriter(s) or Distributor(s):**
Sprott Securities Inc.
**Promoter(s):**
E. Peter Farmer
James R. Anderson
**Project** #756733

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**Issuer Name:**
ACE Aviation Holdings Inc.
Principal Regulator - Quebec
**Type and Date:**
Final Short Form Prospectus dated March 30, 2005
Mutual Reliance Review System Receipt dated March 30, 2005
**Offering Price and Description:**
C$300,000,000.00 4.25% Convertible Senior Notes Due 2035 Price: 100%
**Underwriter(s) or Distributor(s):**
RBC Dominion Securities Inc.
Merrill Lynch Canada Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Citigroup Global Markets Canada Inc.
Deutsche Bank Securities Limited
TD Securities Inc.
Genuity Capital Markets
**Promoter(s):**
-
**Project** #751623

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**Issuer Name:**
ACE Aviation Holdings Inc.
Principal Regulator - Quebec
**Type and Date:**
Final Short Form Prospectus dated March 30, 2005
Mutual Reliance Review System Receipt dated March 30, 2005
**Offering Price and Description:**
C$419,950,000.00 - 11,350,000 Class A Variable Voting Shares and/or Class B Voting Shares Price: C$37.00 per Offered Share
**Underwriter(s) or Distributor(s):**
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
TD Securities Inc.
Citigroup Global Markets Canada Inc.
Deutsche Bank Securities Limited
Merrill Lynch Canada Inc.
Genuity Capital Markets
Canaccord Capital Corporation
Desjardins Securities Inc.
Dloughy Merchant Group Inc.
Raymond James Ltd.
Research Capital Corporation
Westwind Partners Inc.
Orion Securities Inc.
**Promoter(s):**
-
**Project** #751622

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**Issuer Name:**
AIC Advantage II Corporate Class
AIC American Advantage Corporate Class
AIC Global Advantage Corporate Class
AIC Diversified Canada Corporate Class
AIC Value Corporate Class
AIC World Equity Corporate Class
AIC Global Diversified Corporate Class
AIC Diversified Science & Technology Corporate Class
AIC Canadian Focused Corporate Class
AIC American Focused Corporate Class
AIC Global Focused Corporate Class
AIC Canadian Balanced Corporate Class
AIC American Balanced Corporate Class
AIC Total Yield Corporate Class
AIC Money Market Corporate Class
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectuses dated March 29, 2005
Mutual Reliance Review System Receipt dated April 1, 2005
**Offering Price and Description:**
Mutual Fund Shares and Series F Shares
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
AIC Limited
**Project** #738718

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**Issuer Name:**
Alexandria Minerals Corporation
Principal Regulator - Ontario
**Type and Date:**
Final Prospectus dated March 31, 2005
Mutual Reliance Review System Receipt dated April 1, 2005
**Offering Price and Description:**
MINIMUM OF $1,400,000.00 AND MAXIMUM OF $1,500,000.00 by way of a New Issue $0.25 per Unit
**Underwriter(s) or Distributor(s):**
Bolder Investment Partners, Ltd.
**Promoter(s):**
Eric Owens
Eddy Canova
**Project** #731827

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**Issuer Name:**
Atrium Biotechnologies Inc.
Principal Regulator - Quebec
**Type and Date:**
Final Prospectus dated March 29, 2005
Mutual Reliance Review System Receipt dated March 30, 2005
**Offering Price and Description:**
$75,000,000.00 - 6,250,000 Subordinate Voting Shares
Price: $12.00 per Subordinate Voting Share
**Underwriter(s) or Distributor(s):**
RBC Dominion Securities Inc.
National Bank Financial Inc.
BMO Nesbitt Burns Inc,
CIBC World Markets Inc.
GMP Securities Ltd.
HSBC Securities (Canada) Inc.
Loewen, Ondaatje, McCutcheon Limited
**Promoter(s):**
-
**Project** #739428

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**Issuer Name:**
Axiom Balanced Income Portfolio
Axiom Diversified Monthly Income Portfolio
Axiom Balanced Growth Portfolio
Axiom Long-Term Growth Portfolio
Axiom Canadian Growth Portfolio
Axiom Global Growth Portfolio
Axiom Foreign Growth Portfolio
Axiom All Equity Portfolio
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated March 24, 2005 to Final Simplified Prospectuses and Annual Information Forms dated March 11, 2005
Mutual Reliance Review System Receipt dated March 30, 2005
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
CIBC Asset Management Inc.
**Project** #734941

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**Issuer Name:**
Battleford Capital Inc.
Principal Regulator - Alberta
**Type and Date:**
Final CPC Prospectus dated March 28, 2005
Mutual Reliance Review System Receipt dated April 4, 2005
**Offering Price and Description:**
$500,000.00 (2,000,000 COMMON SHARES) Price: $0.25 per Common Share
**Underwriter(s) or Distributor(s):**
Raymond James Ltd.
**Promoter(s):**
Mark A. Wilson
**Project** #740307

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**Issuer Name:**
Bayshore Floating Rate Senior Loan Fund
Floating Rate Senior Loan Fund Limited
Principal Regulator - Ontario
**Type and Date:**
Final Prospectus dated March 31, 2005
Mutual Reliance Review System Receipt dated March 31, 2005
**Offering Price and Description:**
Maximum: 17,500,000 Units @ $10 per Unit = $175,000,000
**Underwriter(s) or Distributor(s):**
BMO Nesbitt Burns Inc.
CIBC World Markets Inc,
RBC Dominion Securities Inc.
National Bank Financial Inc,
Scotia Capital Inc.
TD Securities Inc.
HSBC Securities (Canada) Inc,
Richardson Partners Financial Ltd.
Canaccord Capital Corporation
Dundee Securities Corporation
First Associates Investments Inc.
Raymond James Ltd.
**Promoter(s):**
Bayshore Asset Management Inc.
**Project** #742516; 743454

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**Issuer Name:**
Canada Dominion Resources 2005 Limited Partnership
Principal Regulator - Ontario
**Type and Date:**
Final Prospectus dated March 28, 2005
Mutual Reliance Review System Receipt dated March 30, 2005
**Offering Price and Description:**
Maximum: 4,000,000 Limited Partnership Units @ $25 per Unit - $100,000,000.00
**Underwriter(s) or Distributor(s):**
RBC Dominion Securities Inc.
CIBC World Markets Inc.
Dundee Securities Corporation
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
Berkshire Securities Inc.
Canaccord Capital Corporation
HSBC Securities (Canada) Inc,
Raymond James Ltd.
Desjardins Securities Inc.
First Associates Investments Inc.
Richardson Partners Financial Limited
Wellington West Capital Inc.
**Promoter(s):**
Canada Dominion Resources 2005 Corporation
**Project** #745018

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**Issuer Name:**
CIBC Canadian T-Bill Fund
CIBC International Small Companies Fund
CIBC Premium Canadian T-Bill Fund
CIBC Financial Companies Fund
CIBC Money Market Fund
CIBC Canadian Resources Fund
CIBC U.S. Dollar Money Market Fund
CIBC Energy Fund
CIBC High Yield Cash Fund
CIBC Canadian Real Estate Fund
CIBC Mortgage and Short-Term Income Fund
CIBC Precious Metals Fund
CIBC Canadian Bond Fund
CIBC North American Demographics Fund
CIBC Monthly Income Fund
CIBC Global Technology Fund
CIBC Global Bond Fund
CIBC Canadian Short-Term Bond Index Fund
CIBC Balanced Fund
CIBC Canadian Bond Index Fund
CIBC Dividend Fund
CIBC Global Bond Index Fund
CIBC Core Canadian Equity Fund
CIBC Canadian Index Fund
Canadian Imperial Equity Fund
CIBC U.S. Equity Index Fund
CIBC Capital Appreciation Fund
CIBC U.S. Index RRSP Fund
CIBC Canadian Small Companies Fund
CIBC International Index Fund
CIBC Canadian Emerging Companies Fund
CIBC International Index RRSP Fund
CIBC U.S. Small Companies Fund
CIBC European Index Fund
CIBC Global Equity Fund
CIBC European Index RRSP Fund
CIBC European Equity Fund
CIBC Japanese Index RRSP Fund
CIBC Japanese Equity Fund
CIBC Emerging Markets Index Fund
CIBC Emerging Economies Fund
CIBC Asia Pacific Index Fund
CIBC Far East Prosperity Fund
CIBC Nasdaq Index Fund
CIBC Latin American Fund
CIBC Nasdaq Index RRSP Fund
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated March 24, 2005 to Final Simplified Prospectuses and Annual Information Forms dated August 12, 2004
Mutual Reliance Review System Receipt dated March 30, 2005
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
CIBC Securities Inc.
CIBC Securities Inc.
**Promoter(s):**
Canadian Imperial Bank of Commerce
**Project** #651314

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**Issuer Name:**
Canadian Life Companies Split Corp.
Principal Regulator - Ontario
**Type and Date:**
Final Prospectus dated March 30, 2005
Mutual Reliance Review System Receipt dated March 31, 2005
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
Desjardins Securities Inc.
HSBC Securities (Canada) Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
Raymond James Ltd.
Bieber Securities Inc.
First Associates Investments Inc,
Richardson Partners Financial Limited
Wellington West Capital Inc.
**Promoter(s):**
Quadravest Capital Management Inc.
**Project** #746088

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**Issuer Name:**
CIBC Managed Income Portfolio
CIBC Managed Income Plus Portfolio
CIBC Managed Balanced Portfolio
CIBC Managed Balanced Growth Portfolio
CIBC Managed Balanced Growth RRSP Portfolio
CIBC Managed Growth Portfolio
CIBC Managed Growth RRSP Portfolio
CIBC Managed Aggressive Growth Portfolio
CIBC Managed Aggressive Growth RRSP Portfolio
CIBC U.S. Dollar Managed Income Portfolio
CIBC U.S. Dollar Managed Balanced Portfolio
CIBC U.S. Dollar Managed Growth Portfolio
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated March 24, 2005 to Final Simplified Prospectuses and Annual Information Forms dated October 7, 2004
Mutual Reliance Review System Receipt dated March 30, 2005
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
CIBC Securities Inc.
**Promoter(s):**
Canadian Imperial Bank of Commerce
**Project** #666395

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**Issuer Name:**
Cirrus Energy Corporation
Principal Regulator - Alberta
**Type and Date:**
Final Prospectus dated April 1, 2005
Mutual Reliance Review System Receipt dated April 4, 2005
**Offering Price and Description:**
26,666,666 Common Shares issuable upon the exercise of 26,666,666 Special Warrants
**Underwriter(s) or Distributor(s):**
Tristone Capital Inc.
**Promoter(s):**
-
**Project** #743488

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**Issuer Name:**
Clarington Canadian Resources Class
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectus dated March 28, 2005
Mutual Reliance Review System Receipt dated March 30, 2005
**Offering Price and Description:**
Series A Shares
**Underwriter(s) or Distributor(s):**
ClaringtonFunds Inc.
**Promoter(s):**
ClaringtonFunds Inc.
**Project** #729466

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**Issuer Name:**
European Minerals Corporation
Principal Regulator - Ontario
**Type and Date:**
Final Prospectus dated March 31, 2005
Mutual Reliance Review System Receipt dated April 1, 2005
**Offering Price and Description:**
Minimum Offering: 80,000,000 Units (C$60,000,000.00); Maximum Offering: 120,000,000 Units (C$90,000,000.00)
C$0.75 per Unit
**Underwriter(s) or Distributor(s):**
Canaccord Capital Corporation
Haywood Securities Inc.
Pacific International Securities Inc.
**Promoter(s):**
-
**Project** #743984

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**Issuer Name:**
Frontiers Canadian Short Term Income Pool
Frontiers Canadian Fixed Income Pool
Frontiers Canadian Monthly Income Pool
Frontiers Canadian Equity Pool
Frontiers U.S. Equity Pool
Frontiers U.S. Equity RSP Pool
Frontiers International Equity Pool
Frontiers International Equity RSP Pool
Frontiers Emerging Markets Equity Pool
Frontiers Global Bond Pool
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated March 24, 2005 to Final Simplified Prospectuses and Annual Information Forms dated January 12, 2005
Mutual Reliance Review System Receipt dated March 30, 2005
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
CIBC Asset Management Inc.,
**Project #**719096

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**Issuer Name:**
Imperial Money Market Pool
Imperial Short-Term Bond Pool
Imperial Canadian Bond Pool
Imperial Canadian Income Trust Pool
Imperial International Bond Pool
Imperial Canadian Dividend Income Pool
Imperial Canadian Dividend Pool
Imperial Canadian Equity Pool
Imperial Registered U.S. Equity Index Pool
Imperial U.S. Equity Pool
Imperial Registered International Equity Index Pool
Imperial International Equity Pool
Imperial Overseas Equity Pool
Imperial Emerging Economies Pool
Principal Regulator - Ontario
**Type and Date:**
Amendment No. 2 dated March 24th, 2005 to the Simplified Prospectuses dated May 10th, 2004; and for an Amendment No. 3 dated March 24th, 2005 to the Annual Information Forms dated May 10th, 2004.
Mutual Reliance Review System Receipt dated March 30, 2005
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Canadian Imperial Bank of Commerce
**Project #**618801

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**Issuer Name:**
iUnits MSCI International Equity Index RSP Fund
iUnits S&P 500 Index RSP Fund
Principal Regulator - Ontario
**Type and Date:**
Final Prospectus dated March 31, 2005
Mutual Reliance Review System Receipt dated April 1, 2005
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
Barclays Global Investors Canada Limited
**Promoter(s):**
-
**Project #**744367

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**Issuer Name:**
Lincluden Balanced Fund
**Type and Date:**
Final Simplified Prospectus dated March 31, 2005
Receipted on April 4, 2005
**Offering Price and Description:**
Mutual Fund Units @ Net Asset Value
**Underwriter(s) or Distributor(s):**
Lincluden Management Limited
Lincluden Management Limited
**Promoter(s):**
Lincluden Management Limited
**Project** #738138

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**Issuer Name:**
Multipartners Balanced Growth Portfolio
MultiPartners Balanced Growth RSP Portfolio
Multipartners Balanced RSP Portfolio
Multipartners Global Balanced Portfolio
Multipartners High Growth Portfolio
Multipartners High Growth RSP Portfolio
Principal Regulator - Quebec
**Type and Date:**
Amendment #1 dated March 24, 2005 to Final Simplified Prospectuses and Annual Information Forms dated October 14, 2004
Mutual Reliance Review System Receipt dated April 1, 2005
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
Cartier Partners Securities Inc.
Desjardins Trust Investment Services Inc.
**Promoter(s):**
Goodman & Company, Investment Counsel Ltd.
**Project** #688352

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**Issuer Name:**
Renaissance Canadian Money Market Fund
Renaissance Canadian T-Bill Fund
Renaissance U.S. Money Market Fund
Renaissance Canadian Bond Fund
Renaissance Canadian Real Return Bond Fund
Renaissance Canadian Dividend Income Fund
Renaissance Canadian High Yield Bond Fund
Renaissance Canadian Income Trust Fund
Renaissance Canadian Income Trust Fund II
Renaissance Canadian Balanced Fund
Renaissance Canadian Balanced Value Fund
Renaissance Canadian Core Value Fund
Renaissance Canadian Growth Fund
Renaissance Canadian Small Cap Fund
Renaissance U.S. Basic Value Fund
Renaissance U.S. Fundamental Growth Fund
Renaissance U.S. RSP Index Fund
Renaissance Developing Capital Markets Fund
Renaissance Euro Fund
Renaissance International Growth Fund
Renaissance International Growth RSP Fund
Renaissance International RSP Index Fund
Renaissance Tactical Allocation Fund
Renaissance Tactical Allocation RSP Fund
Renaissance Global Growth Fund
Renaissance Global Growth RSP Fund
Renaissance Global Opportunities Fund
Renaissance Global Opportunities RSP Fund
Renaissance Global Sectors Fund
Renaissance Global Sectors RSP Fund
Renaissance Global Technology Fund
Renaissance Global Technology RSP Fund
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated March 24, 2005 to Final Simplified Prospectuses and Annual Information Forms dated November 24, 2004
Mutual Reliance Review System Receipt dated March 30, 2005
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
CIBC Asset Management Inc.
**Project** #697495

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**Issuer Name:**
Rhone 2005 Flow-Through Limited Partnership
Principal Regulator - British Columbia
**Type and Date:**
Final Prospectus dated March 30, 2005
Mutual Reliance Review System Receipt dated March 30, 2005
**Offering Price and Description:**
$40,000,000.00 (Maximum Offering) (1,600,000 Units) @ $25.00 per Unit;Minimum Offering $5,000,000.00 (200,000 Units) @ $25.00 per Unit
**Underwriter(s) or Distributor(s):**
BMO Nesbitt Burns Inc.
National Bank Financial Inc,
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
Queensbury Securities Inc.
HSBC Securities (Canada) Inc,
Raymond James Ltd.
Desjardins Securities Inc,
Dundee Securities Corporation
Canaccord Capital Corporation
First Associates Investments Inc.
Richardson Partners Financial Limited
Wellington West Capital Inc,
**Promoter(s):**
Nova Bancorp Group (Canada) Ltd.
**Project** #735894

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**Issuer Name:**
Sentry Select MBS Adjustable Rate Income Fund II
Principal Regulator - Ontario
**Type and Date:**
Final Prospectus dated March 29, 2005
Mutual Reliance Review System Receipt dated March 30, 2005
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
RBC Dominion Securities Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
Scotia Capita Inc.
TD Securities Inc.
Canaccord Capital Corporation
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Berkshire Securities Inc.
Wellington West Capital Inc.
Desjardins Securities Inc.
First Associates Investments Inc.
IPC Securities Corporation
Richardson Partners Financial Limited
Rothenberg Capital Management Inc.
**Promoter(s):**
Sentry Select Capital Corp.
**Project** #740713

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**Issuer Name:**
St-Moritz Capital Inc.
Principal Regulator - Quebec
**Type and Date:**
Final Prospectus dated March 31, 2005
Mutual Reliance Review System Receipt dated April 1, 2005
**Offering Price and Description:**
$3,000,000.00 or 7,500,000 Units Price: $0.40 per Unit
**Underwriter(s) or Distributor(s):**
Canaccord Capital Corporation
**Promoter(s):**
Steve Forget
**Project** #742220

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**Issuer Name:**
Talvest Asian Fund
Talvest Bond Fund
Talvest Cdn. Asset Allocation Fund
Talvest Cdn. Equity Growth Fund
Talvest Cdn. Equity Value Fund
Talvest Cdn. Multi Management Fund
Talvest China Plus Fund
Talvest China Plus RSP Fund
Talvest Dividend Fund
Talvest European Fund
Talvest Global Asset Allocation RSP Fund
Talvest Global Bond RSP Fund
Talvest Global Equity Fund
Talvest Global Equity RSP Fund
Talvest Global Health Care Fund
Talvest Global Health Care RSP Fund
Talvest Global Multi Management Fund
Talvest Global Multi Management RSP Fund
Talvest Global Resource Fund
Talvest Global RSP Fund
Talvest Global Science & Technology Fund
Talvest Global Science & Technology RSP Fund
Talvest Global Small Cap Fund
Talvest Global Small Cap RSP Fund
Talvest High Yield Bond Fund
Talvest Income Fund
Talvest International Equity Fund
Talvest International Equity RSP Fund
Talvest Millennium High Income Fund
Talvest Millennium Next Generation Fund
Talvest Money Market Fund
Talvest Small Cap Cdn. Equity Fund
Talvest U.S. Equity Fund
Talvest U.S. Equity RSP Fund
Principal Regulator - Quebec
**Type and Date:**
Amendment #1 dated March 24, 2005 to Final Simplified Prospectuses and Annual Information Forms dated December 15, 2004
Mutual Reliance Review System Receipt dated March 30, 2005
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
CIBC Asset Management Inc.
CIBC Asset Management Inc.
**Promoter(s):**
CIBC Asset Management Inc.
**Project** #699344

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**Issuer Name:**
VECTOR Energy Fund
Principal Regulator - Ontario
**Type and Date:**
Final Prospectus dated March 30, 2005
Mutual Reliance Review System Receipt dated March 31, 2005
**Offering Price and Description:**
$125,000,000.00 - Maximum: 12,500,000 Units @ $10 per Unit
**Underwriter(s) or Distributor(s):**
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
TD Securities Inc.
National Bank Financial Inc.
HSBC Securities (Canada) Inc.
Canaccord Capital Corporation
First Associates Investments Inc.
Wellington West Capital Inc.
Desjardins Securities Corporation
Dundee Securities Corporation
Raymond James Ltd.
Acadian Securities Incorporated
Middlefield Capital Corporation
Research Capital Corporation
**Promoter(s):**
Middlefield Group Limited
Middlefield Vector Management Limited
**Project** #745619

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**Issuer Name:**
MTS Split Inc.
Principal Jurisdiction - Ontario
**Type and Date:**
Preliminary Prospectus dated February 21st, 2005
Withdrawn on April 1st, 2005
**Offering Price and Description:**
$ * - $ * - * Preferred Shares - * Capital Shares; Prices: $ * per Preferred Share and $ * per Capital Share
**Underwriter(s) or Distributor(s):**
TD Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Canaccord Capital Corporation
HSBC Securities (Canada) Inc.
Desjardins Securities Inc.
Dundee Securities Corporation
First Associates Investments Inc.
Raymond James Ltd.
Wellington West Capital Inc.
**Promoter(s):**
J. David Beattie
**Project #**740876

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# Chapter 12

# Registrations

### 12.1.1 Registrants

| Type | Company | Category of Registration | Effective Date |
|---|---|---|---|
| New Registration | Kearns Capital Corporation | Limited Market Dealer | March 31, 2005 |
| Change in Category | Stalworth Investment Management Company Inc. | From: Investment Counsel and Portfolio Manager<br><br>To: Limited Market Dealer, Investment Counsel and Portfolio Manager | April 4, 2005 |

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# Chapter 13

# SRO Notices and Disciplinary Proceedings

### 13.1.1 Notice and Request for Comment – Application to Vary the Recognition and Designation of The Canadian Depository for Securities Limited

**APPLICATION TO VARY THE RECOGNITION AND DESIGNATION OF THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED**

**NOTICE AND REQUEST FOR COMMENT**

**A. Introduction**

The Canadian Depository for Securities Limited ("CDS") has applied to the Commission for an order pursuant to subsection 21.2(1) and section 144 of the *Securities Act* (Ontario) (the "Act"), to vary the current recognition and designation order of CDS as a clearing agency.

The Commission is publishing for a 30-day comment period CDS' application (the "Application") and the following related documents (collectively, the "Related Documents"):

(a) draft varied and restated recognition and designation order ("Draft Order"),
(b) draft rule protocol governing the review and approval of CDS rules, and
(c) draft reporting obligations.

**B. Background**

The Commission issued an order, *In the matter of the Recognition of the Canadian Depository for Securities Limited,* dated February 25, 1997, which became effective on March 1, 1997, recognizing CDS as a clearing agency pursuant to subsection 21.2(1) of the Act and designating CDS as a recognized clearing agency pursuant to Part VI of the *Business Corporations Act* (Ontario) (the "1997 Order"). CDS has applied for an order pursuant to subsection 21.2(1) and section 144 of the Act to vary and restate the 1997 Order.

The 1997 Order contains only minimal terms and conditions requiring CDS to obtain Commission non-disapproval of its rules and procedures. The 1997 Order does not specifically address other key recognition criteria, including governance, fitness, access, fees and due process standards. While many of these standards are already applied by the Commission in its general oversight of CDS, staff and CDS agreed to modernize the 1997 Order. Staff have worked with CDS to develop a comprehensive oversight regime for CDS similar to the oversight regime for self-regulatory organizations and exchanges. The Draft Order will improve the transparency of the oversight regime, codify the existing regulatory practice, and incorporate other terms and conditions that reflect international standards for central securities depositories and clearing and settlement systems.

**C. Draft Recognition and Designation Order**

Staff of CDS and the Commission have engaged in extensive discussions leading to the publication of the Application and Related Documents. The Draft Order establishes terms and conditions in the following areas:

1. Governance
2. Fitness
3, Access
4. Fees and Costs
5. Due Process
6. Risk Controls
7. Financial Viability
8. Operational Reliability
9. Capacity and Integrity of Systems
10. Protection of Customers' Securities
11. Rules
12. Enforcement of Rules and Discipline
13. Information Sharing

CDS must meet each term and condition to the satisfaction of the Commission.

**D. The Comment Process**

You are asked to provide your comments in writing and to send them on or before **May 9, 2005** to:

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

We request that you submit an electronic version of your submission by email or on a diskette. As the Act requires that a summary of written comments received during the comment period be published, confidentiality of submissions cannot be maintained.

Following the comment period, staff of the Commission will consider the comments received on the Application and Related Documents. If staff are satisfied that CDS meets the criteria for recognition and designation, staff will recommend that the Commission vary and restate the 1997 Order. The varied and restated recognition order will take the form of the Draft Order with terms and conditions generally in the form of those attached to the Draft Order as Schedule "A".

Questions may be referred to:

Winfield Liu
Senior Legal Counsel, Market Regulation
Capital Markets,
Ontario Securities Commission
(416) 593-8250
wliu@osc.gov.on.ca

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

April 8, 2005

### 13.1.2 CDS Application

THE CANADIAN DEPOSITORY
FOR SECURITIES LIMITED

85 Richmond Street West
Toronto, Ontario
M5H 2C9

March 10, 2005

Ms. Cindy Petlock
Manager, Market Regulation
Ontario Securities Commission
P.O. Box 55, 19th floor
20 Queen Street West
Toronto, Ontario
M5H 3S8

Dear Ms. Petlock:

**Re: Application for Recognition and Designation of The Canadian Depository for Securities Limited ("CDS")**

This letter and attachment sets out the application of CDS to the Ontario Securities Commission ("Commission") pursuant to section 144 and subsection 21.2 (1) of the *Securities Act* (Ontario) (the" Act") to vary and restate its recognition and designation order In the Matter of the Securities Act, R.S.O. 1990, Chapter S.5, As Amended (the "Act") and In The Matter of the Recognition of The Canadian Depository for Securities Limited (1997) 20 O.S.C.B.1033.

**Facts**

CDS is Canada's national securities depository clearing and settlement agency and is currently designated by the OSC as a recognized clearing agency pursuant to section 21.2(1) of the OSA and section 53(1) of the *Business Corporations Act* (Ontario) ("OBCA"). The Commission des valeurs mobilières du Quebec (now known as the Autorité des marchés financiers ("AMF")) has recognized CDS under section 174 of the *Securities Act* (Quebec) which gives effect to the book entry transfer provisions in sections 10.2 to 10.4 of that Act. CDS has entered into a regulatory oversight agreement with the Bank of Canada and CDSX (as described below) has been designated by the Bank for particular purposes pursuant to the *Payment Clearing and Settlement Act* (Canada) ("PCSA"). Reference is made to the Rules of CDS**,** which constitute a common form agreement between CDS and its participants and between each of its participants. The OSC and AMF have given their approvals to the Rules in their current form and the Rules are available to the public on the CDS website, www.cds.ca.

In 2003 CDS completed a project to move all of CDS's domestic securities depository and settlement services to a single unified system known as CDSX. The CDSX system reflects the principles of a sophisticated risk model developed by CDS in consultation with its participants and its regulators**,** including the OSC, AMF and the Bank of Canada. The risk model was designed to meet current international standards for securities settlement systems including those set out in the Recommendations on Securities Settlement Systems Report issued in November 2001 by the Bank of International Settlements ("BIS") with the Technical Committee of the International Organization of Securities Commissions (IOSCO) (on which the OSC is a leading participant, as reflected in the fact that the Chair of the OSC was the Technical Committee Chair) . Included among the BIS recommendations was the requirement that securities settlement systems should have a "well-founded, clear and transparent legal basis" and "ensure timely settlement in the event that [a] participant with the largest payment obligation is unable to settle."

As at October 31, 2004, the value of securities on deposit at CDS exceeded $2.3 trillion, consisting of 74,100 eligible issues of equity, debt, money market and stripped securities. During the 2004 fiscal year, CDS processed 47.9 million domestic trades and 14.9 cross-border trades through its linkages to National Securities Clearing Corporation and Depository Trust Company in New York. There were 112,800 entitlement events processed, comprising dividend and interest payments, money market maturities and corporate reorganization events for a total value of $2.35 trillion. Entitlement funds payments were made by CDS to participants on the payable date in 99.96% of the events. Entitlement information was published to participants within 24 hours of receipt by CDS in 99.99% of the events.

**Supporting Documents**

In support of this application we are filing the following attachment which has been reviewed and accepted by CDS:

1. Criteria for the Recognition of Clearing Agencies under Section 21.2 of the Securities Act, OSC Criteria and CDS Responses, Submission to OSC, dated March 10, 2005.

**International Standards**

CDS is of the view that compliance with the terms of the above documents will fully satisfy relevant international standards, including:

1. The Bank for International Settlements/International Organization of Securities Commissions ("BIS/IOSCO"), Committee on Payment and Settlement Systems ("CPSS"), *Recommendations for Central Counterparties, November 2004*.

2. BIS/IOSCO, CPSS, *Recommendations for Securities Settlement Systems, November 2001*.

3. Group of 30, *Global Clearing and Settlement, A Plan of Action, January 2003*.

**Conclusion**

We look forward to receiving your comments at your earliest convenience. If you have any questions or would like to discuss any aspects of this application, please contact the undersigned at 416-365-8545.

Yours truly,

"Toomas Marley"
Vice-President, Legal, and Corporate Secretary
The Canadian Depository for Securities Limited

**THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED ("CDS")**

**Criteria for the Recognition of Clearing Agencies under Section 21.2 of the Securities Act**

***OSC Criteria and CDS Responses***

***Governance***

1. *A clearing agency's corporate governance arrangements shall be designed to fulfill public interest requirements and to promote the objectives of its shareholders and the users ("participants") of its depository, clearing and settlement services (collectively, "settlement services").*

2. *Without limiting the generality of the foregoing, a clearing agency's governance structure should provide for:*

   *(a) fair and meaningful representation on its board of directors and any committee of the board of directors;*

   *(b) appropriate representation of persons independent of the shareholders and participants on the board of directors and any committees of the board of directors;*

   *(c) appropriate qualifications, remuneration, conflict of interest provisions and limitation of liability and indemnification protections for directors, officers and employees of the clearing agency..*

**CDS Response:**

CDS is owned by the six major Canadian chartered banks, the members of the IDA and TSX Inc. CDS has guidelines with respect to the appointment of directors. The guidelines are outlined in detail in a Pooling Agreement, the net effect of which allows the Bank shareholders to appoint six directors, the TSX Inc. to appoint two directors, the TSX Venture Exchange Inc. to appoint one director, the Investment Dealers Association of Canada to appoint one director and the CDS Board of Directors to nominate four non-industry directors. The non-industry directors are directors who are not employees, officers or directors of a company in the securities industry. The President and CEO of CDS is also a member of the Board.

The CDS Board of Directors recognizes that it is the prerogative of the shareholder groups, pursuant to the Pooling Agreement, to appoint Directors to the Board. The Executive Committee annually reviews the general and specific criteria to consider when directors are being appointed to the Board. The objective of this review is to recommend to the shareholder groups that appointments be made to provide the best mix of skills and experience to guide the long-term strategy and ongoing business operations of CDS. The Board Chair has the responsibility to ensure the criteria developed by the Executive Committee are communicated to the shareholder groups before they are required to propose their candidate(s). The communication explains the reason(s) the criteria were developed and encourages the shareholder groups to consider the needs of CDS.

CDS also has Section 3.01 of Bylaw 11 which constitutes three quorum groups (trust company, bank, and dealer) of the directors and provides that at least one member from each Quorum Group must be present as part of quorum for transaction of business at Board and Committee meetings. The quorum for the transaction of business at any meeting of the Board consists of six directors. Directors are designated into a quorum group by resolution of the Board. The Board regularly considers its size relative to its mandate and is satisfied that a Board size of fourteen is appropriate, effective and meets the needs of CDS at this time.

The CDS Board of Directors in April 18, 2002 approved the Board Corporate Governance Manual ("Board Manual") which outlines the policies and procedures by which the Board will operate and the terms of reference for the Board, the Board Chair, the President/Chief Executive Officer, a director and Committees.

A review of CDS' overall governance structure is currently underway and will be completed by six months from the date of the Recognition and Designation Order.

CDS will take reasonable steps to ensure that each officer or director of CDS is a fit and proper person and the past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity. Each director in exercising his/her powers and discharging his/her duties shall act honestly and in good faith with a view to the best interests of the Corporation and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. In determining the best interests of the Corporation, each director shall consider, in addition to any other matters which each director considers relevant, the need for a fair and efficient central securities depository, clearance and settlement system in Canada, expressly recognizing the Corporation's broader public interest role in the Canadian capital markets securities industry. Code of Conduct and Conflict of Interest Guidelines for directors have been

developed outlining the general standards of behaviour expected to support these activities. Each director must adhere to the standards set out in applicable policies, guidelines or legislation. Any director who knows or suspects a breach of this Code of Conduct and Conflict of Interest Guidelines has a responsibility to report it to the Board Chair or the Corporate Secretary. To demonstrate determination and commitment, CDS requires each director to review and sign the Code annually. The willingness and ability to sign the Code is a requirement of all directors.

Individual directors have membership on the Board committees (Audit, Executive and Finance). Each committee operates according to a Board approved terms of reference outlining its duties and responsibilities. This structure is subject to change from time to time as the Board considers which of its responsibilities will best be fulfilled through more detailed review by a committee. Four members of a committee constitute a quorum including one member from each quorum group. No business may be transacted by the committees except at a meeting of its members at which a quorum of the committee is present at which a majority of the members present are resident Canadian.. The Board Chair is responsible for annually proposing the leadership and membership of each committee consistent with the Corporation's Bylaw to the Board for appointment.

Compensation is paid to non-industry directors only. The Executive Committee has the responsibility to review and approve non-industry director compensation.

CDS By-laws provide for the indemnification of its directors and officers against loss (including defence costs), to the extent permitted by the law, where they are acting in good faith and in the best interests of CDS. CDS finances any risk associated with this indemnification through the acquisition of Directors' and Officers' insurance. This insurance (subject to various terms, conditions and exclusions) provides coverage for all losses for which CDS indemnifies its Directors and Officers (the insured) and for which they become legally obligated to pay on account of any claims made against them for any "wrongful act" committed, or allegedly committed or attempted before or during the policy period. Such policy also provides the insured coverage in their roles as directors and officers of CDS for all losses for which the insured is not indemnified by CDS (subject to various terms, conditions and exclusions), and which the insured becomes legally obligated to pay on account of any claims made against them, for any "wrongful act" committed, or allegedly committed or attempted by the insured before or during the policy period.

***Access***

3. *A clearing agency shall provide any person or company reasonable access to its settlement services where that person or company satisfies the eligibility requirements established by the clearing agency to access the settlement services.*

4. *Without limiting the generality of the foregoing, a clearing agency must:*

   *(a) establish written standards for granting access to the settlement services;*

   *(b) keep records of*

      *(i) each grant of access including, for each participant, the reasons for granting such access, and*

      *(ii) each denial or limitation of access, including the reasons for denying or limiting access to any applicant.*

**CDS Response:**

CDS complies with the Recognition Criteria for Access. In particular:

3. Rule 2.2.4 describes the persons or companies that are eligible for participation in CDS Services. The categories are "Regulated Financial Institution", "Foreign Institution", "Government Body" and "Bank of Canada", which are defined as follows:

   Regulated Financial Institution
   a Person
   (i) who is incorporated, established or formed pursuant to the laws of Canada or of any province or territory of Canada;

   (ii) who is primarily regulated for prudential and liquidity purposes under the laws of Canada or of any province or territory of Canada; and

   (iii) who is a Financial Institution, a broker or dealer trading in Securities, an insurance company or corporation, or a securities clearing corporation or depository;

Foreign Institution
a Person other than an individual

(i) who is incorporated, established or formed under the laws of a jurisdiction situated outside Canada or who is primarily regulated for prudential and liquidity purposes under the laws of a jurisdiction situate outside Canada; and

(ii) who is a broker or dealer trading in Securities, a bank or savings bank, a trust company or corporation, a loan company or corporation, an insurance company or corporation, a securities clearing corporation or depository, a central bank or any other Person trading in Securities;

Government Body
the Government of Canada or the government of any province or territory of Canada or any municipality in Canada, or any of their agencies;

Bank of Canada
the central bank of Canada formed under the Bank of Canada Act (Canada).

4. (a) The qualifications for each category of Participant are set out in Rule 2.2.5, ie. duly incorporated, in compliance with its regulations, meeting minimum capital requirements, minimum portfolio of eligible securities, legal opinion regarding security interests (from foreign participants), etc. The standards which each Participant must satisfy are in Rule 2.2.7, ie. financial ability, sufficient resources, qualified personnel, secure network access facilities, data processing and security capabilities in compliance with CDS specifications, insurance coverage, etc.

(b) Rule 2.2.1 requires the full Board to approve or reject every application for participation. In practice, the Legal and Risk Management Departments review each application for completeness and acceptability. Their recommendation is vetted by the Executive Committee of the Board before presentation for final approval of the Board. The recommendation is made in writing and pre-mailed to the Board; the decision of the Board is recorded in the minutes of the Board meeting. The applicant is kept apprised throughout the process and is advised of its acceptance or rejection and any related conditions, together with reasons, immediately following the Board meeting at which the decision was taken.

***Fees***

5. *Fees and costs for settlement services shall be equitably allocated by a clearing agency. The fees shall not have the effect of unreasonably creating barriers to access to such settlement services and shall be balanced with the criterion that the clearing agency has sufficient revenues to satisfy its responsibilities.*

*6. The clearing agency's process for setting fees and costs for a settlement services shall be fair, appropriate and transparent. The fees, costs or expenses bourne by participants in the settlement services shall not reflect any costs or expense incurred by CDS in connection with an activity carried on by CDS that is not related to the settlement services.*

**CDS Response:**

1. CDS prices for its core services (e.g., clearing, settlement and depository) and the principles according to which these prices are derived are available to all participants to ensure transparency. The prices are circulated via CDS bulletin and are on the CDS Web site.

2. With the exceptions noted below, prices for CDS services are based on full cost recovery to recoup CDS' annual budgeted costs for delivering CDS services. These projections are based on volume estimates and an agreed-upon service standard level. It is recognized that there are economies of scale when using certain of CDS' services and, consequently, that there are occasions when marginal rather than average pricing is appropriate.

3. Exceptions to cost recovery pricing may include:

- Premiums for potential transaction volatility (i.e., volumes lower than planned) to provide a buffer in case expected revenues do not materialize (Note*:* Premiums collected but not required are rebated to participants at the end of the fiscal year or as directed by the Board of Directors)
- Incentive pricing to encourage participants to adopt best practices, for example, supporting BIS/IOSCO or other recommendations
- Risk adjustment factors to account for the risk brought to CDS by a particular service or participant

- Other circumstances as may arise, for example:
  - * when there is a major change in services and/or service delivery, where there may be multiple stages and/or a need to phase in price changes to minimize material non-volume-related variations in participants' expenses
  - * amortization of capital costs depending on the funding method for the capital outlay
  - * during the start-up of new services.

4. Pricing is discussed with industry representatives. Consultation is undertaken to ensure a fair and efficient distribution of costs, be responsive to market needs and avoid unreasonable barriers to access.

5. Any updates to the existing price list are presented to the Finance Committee and Board of Directors for approval before implementation. Prices are set or reconfirmed on an annual basis for effect at the start of CDS' fiscal year (November 1). In rare cases, changes during the year may occur when a new service is introduced or changed or additional information is available that would enable agreement on a more exact or equitable price.

6. Fee increases require at least 60 days' notice before implementation, subject to Board of Directors' approval to abridge the notice period as required.

7. Fee-setting principles, guidelines and processes are reviewed periodically to ensure that they remain relevant and equitable.

8. CDS invoices detail the prices, volumes and extensions at the transaction level to enable participants to understand the charges for the services that they use.

9. In view of the major changes in service usage, cost factors and billable service items, resulting from the implementation of CDSX and the termination of SSS/BBS in 2004, no material changes were made to CDS pricing model for the purposes of the 2005 Business Plan. In preparation for the 2006 Business Plan, CDS undertakes to review its fee-setting principles, guidelines and processes with a view to making fee pricing changes where relevant and equitable.

***Due Process***

7. *A clearing agency shall ensure that:*
   *(a) participants affected by its decisions are given an opportunity to be heard or make representations; and*

   *(b) it keeps a record, gives reasons and provides for appeals of its decisions to regulatory authorities.*

**CDS Response:**

(a) Rule 3.2.3 provides that:

A Participant who disagrees with any action taken by CDS pursuant to the Rules, other than an action taken by the Board of Directors, may appeal to the appropriate committee of the Board of Directors by delivering to CDS within 10 days of the action a notice in writing specifying the action under appeal and the reason for the appeal. The committee shall consider the appeal within 30 days of receipt of the notice of appeal, and shall provide the Participant with an opportunity to make submissions in writing or in person. The committee shall give notice to the Participant of its decision within a reasonable time after hearing the appeal, and shall at the request of the Participant provide its decision in writing. The Participant may appeal the decision of the committee to the Board of Directors by delivering to CDS, within 10 days of notice of the decision, a further notice specifying the reason for the appeal. The Board of Directors (but not the executive committee) shall consider the appeal within 30 days of receipt of the notice of appeal, and shall provide the Participant with an opportunity to make submissions in writing or in person. The Board of Directors shall give notice to the Participant of its decision within a reasonable time after hearing the appeal, and shall at the request of the Participant provide its decision in writing. The decision of the Board of Directors with respect to an appeal shall be final, subject to any further right of appeal pursuant to Rule 3.2.4.(b). Rule 3.2.4 sets out the Participant's right to appeal decisions to the regulatory authorities.

The Autorité des marchés financiers has recognized CDS as a self-regulatory organization pursuant to the *Securities Act* of Quebec. The Ontario Securities Commission has designated CDS as a recognized clearing agency pursuant to the *Securities Act* of Ontario. Participants and applicants for participation have the rights set out in such Acts, and in any other Acts that may apply to CDS from time to time, to request a review of actions taken by CDS and of decisions of the Board of Directors.

***Risk Controls***

*8. A clearing and settlement system should be designed to achieve the following:*

*(a) Where a central counterparty is employed, the central counterparty should rigorously control the risks it assumes.*

*(b) A clearing agency should reduce principal risk to the greatest extent possible by linking securities transfers to funds transfers in a way that achieves delivery versus payment.*

*(c) Final settlement should occur no later than the end of the settlement day. Intraday or real-time finality should be provided where necessary to reduce risks.*

*(d) A clearing agency that extends intraday credit to participants, including a clearing agency that operates net settlement systems, should institute risk controls that, at a minimum, ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle.*

*(e) Assets used to settle the ultimate payment obligations arising from securities transactions should carry little or no credit or liquidity risk. If same-day irrevocable final funds are not used, the clearing agency shall take steps to protect participants in settlement services from potential losses and liquidity pressures arising from the failure of the payor or its paying agent.*

*(f) A clearing agency that establishes links to settle cross-border trades should design and operate such links to reduce effectively the risks associated with cross-border settlements.*

*(g) A clearing agency engaging in activities not related to the settlement services should carry on such activities in a manner that prevents the spillover of risk to the clearing agency that might negatively affect the clearing agency's financial viability.*

*(h) Where a clearing agency materially outsources any of its settlement services and related systems to a third party service provider, which shall include affiliates and associates of the clearing agency, the clearing agency shall ensure the outsourcing arrangement is carried out in accordance with best practices and that the outsourcing arrangement provides regulatory authorities with access to all data, information and systems maintained by the third party service provider necessary for the purposes of regulatory oversight of the clearing agency.*

**CDS Response:**

(a) Through the process of novation, the settlement obligations and rights between the participants arising from the trades processed in the central counterparty (CCP) services (CNS, ACCESS and DetNet) are extinguished and replaced by corresponding settlement obligations and rights between each participant and CDS (the CCP for these services). For these novated trades, all obligations of each participant are owed to CDS and all rights of each participant are against CDS. The novated obligations and rights between CDS and each participant are due as of the value date of the trades. If a participant cannot complete settlement of its side of the trade, then CDS remains obliged to settle the other side with the counterparty. Following novation on value date, settlement of each side of the trade is attempted on subsequent days.

Risk mitigation in the settlement system is based on a combination of "defaulter pay" and "survivor pay". Each participant is responsible for covering the risk that it brings to the system to a tested confidence level. In the event that this coverage is insufficient, the other surviving participants are required by CDS' Rules to cover any shortfall.

To address principal or payment risk, system operating caps and lines of credit combine to limit the maximum amount that each participant can owe at payment exchange. Participants are required to pledge sufficient collateral relative to the level of risk of their transactions in order to provide CDS with sufficient realizable value in the event that they are unable to meet their payment obligations.

CDS is subject to replacement cost risk in its role as CCP in the three services. All trades and outstanding positions in the services are marked-to-market daily. This covers the potential loss between the original trade price and the current price that could result if there was a default by a participant and CDS was required as the central counterparty to settle the trades and outstanding positions.

Participants must also contribute to participant funds for each of the three CCP services to cover the mark-to-market payment owed by a participant in the event that it defaults and any loss that CDS might incur when it closes out a defaulter's outstanding positions.

CDS uses a Value-at-Risk (VaR) based margining methodology to measure the maximum loss that a given position could sustain with a given confidence level over a set period of time. This methodology takes into account the "riskiness" of the security as well as the impact of market liquidity over the potential liquidation period.

Caps also will be applied to limit the amount of outstanding positions that any participant can create in each CCP service.

Default procedures, backed by CDS' Rules, are in place to deal with one or more participant defaults.

(b) Principal risk exists during the period of time when a seller has delivered securities for which they have not yet received payment or when a buyer makes payment and has not yet received the purchased securities. Principal risk is eliminated through the use of a delivery versus payment (DVP) mechanism. CDS achieves DVP by linking real-time transaction-by-transaction transfers of securities in participants' ledgers with book-entry transfers of funds positions in participants' CDS funds accounts upon settlement of each transaction. These securities and funds transfers are final and irrevocable and represent settlement when these transfers are entered into participants' accounts in CDSX. The net final funds positions resulting from these transfers are settled between CDS and its participants at the end of the day. The legal framework supporting enforceability of DVP are provided by CDS' Rules and provisions in the federal *Payment Clearing and Settlement Act*.

(c) As described in 8(b), settlement of trades occurs intraday when securities and funds are transferred onto the CDSX ledgers of the two participants. The transactions must pass the system's risk edits in order to be settled. Once settled, the transactions cannot be reversed. Final settlement of participants' net fund positions arising from the intraday transfers of securities and funds occurs no later than the end of the settlement day during payment exchange. At payment exchange, the net final funds positions are settled between CDS and its participants on the books of the Bank of Canada. All payments by participants owing funds to CDS must be completed before any payments owed to participants by CDS can be completed. The payments must be made in funds that are final and irrevocable: in Large Value Transfer System (LVTS) funds for Canadian dollar obligations and in FedWire funds for the separate payment exchange for U.S. dollar obligations. Even though this final settlement of net funds positions does not occur until the end of the day, participants can use and trade the securities and funds that have been transferred to them by book entry during the day.

(d) CDS allows participants to have intraday negative funds balances in their ledgers. The risk associated with this is controlled with system operating caps and lines of credit (granted by extenders of credit, comprised of major financial institutions, to receivers of credit) to limit the maximum amount that each participant can owe at payment exchange. The risk is also covered by using the securities in the participants' general and collateral accounts as collateral (aggregate collateral value (or ACV)). These securities are valued by applying haircuts to determine their current value. The haircut represents the amount that the securities could decline in value, based on historical statistics from the time of default to the time that the collateral securities are liquidated.

Intraday credit is also covered by a pool that is shared with other members of their participant class (extender of credit, settlement agent, federated participant, and receiver of credit are the four classes). Collateralization of the pool is through pledges of eligible (highly liquid) debt securities. Haircuts are applied to the value of these securities, based on debt rating (nothing lower than BBB) and years to maturity. If a participant defaults, 99% of the time the liquidation value of the pledged securities is sufficient to cover the defaulter's negative funds value.

CDS (as authorized in its Rules) seizes these pledged securities in the event that a participant defaults. The survivors of the credit ring in which the member defaults are required (also by the Rules) to cover the defaulter's obligation that arose from its use of the pool.

There are five CDSX collateral pools, which are designed to cover the default of the largest net debtor. There is one for each of the extender of credit, settlement agent and federated participant credit rings. There are two pools for the receiver of credit ring--one for Canadian dollar and one for US dollar settlement transactions in CDSX.

Caps are placed on the participants' maximum exposures they can incur in the system for trade for trade transactions. The caps are based on participants' capital. (For receivers of credit, the cap is based on their collateral contributions and a leverage factor.) Participants also face a cap on the amount of exposure they can impose in the CCP services.

(e) At the end-of-day payment exchange for Canadian dollar obligations, individual participants' payment obligations are netted and aggregated with the obligations of the banker they have designated to make or receive payment on their behalf. Designated bankers must have LVTS accounts at the Bank of Canada in order to complete the exchange of LVTS funds to or from CDS' account at the central bank. Only when all payments are received will CDS release payments from its LVTS account to participants who are owed funds by CDS. These payments are made in funds that are final and irrevocable, eliminating the risk of returned payments. LVTS is a risk-proofed system that complies with international standards for systemically important payment systems.

(f) CDS offers participants three links to effect Canada-U.S. cross-border transactions. These are ACCESS®, New York Link and DTC (Depository Trust Company) Direct Link.

In ACCESS® ("American and Canadian Connection for Efficient Securities Settlement"), participants can manage all domestic and Canada-U.S. cross-border activity using their own CDS account for settlement and custody. CDS manages the cross-border settlement through an omnibus account and handles the relationship with NSCC (National Securities Clearing Corporation) and DTC on behalf of ACCESS participants. In New York Link, CDS sponsors participants for direct membership in NSCC. Custodial, institutional clearing and settlement services are offered. Participants can settle transactions on a continuous net settlement and trade-for-trade basis. In DTC Direct Link, CDS sponsors participants for direct membership in DTC. Participants have complete control over U.S. settlement activities and can settle transactions on a trade-for-trade basis.

Both CDS and NSCC provide CNS systems that process trading activity. Trades conducted by ACCESS® participants are entered into CDS' CNS system while trades entered into by New York Link customers are processed within NSCC's CNS system. Following novation, the clearing organizations assume the contra sides of each CNS transaction and become responsible for their settlement.

Payment exchange for the three links to the U.S. marketplace is centralized through CDS. Participants who owe funds pay CDS and those who are in a credit position receive funds from CDS, through designated payment agencies. As with designated bankers for CDSX payment exchange, designated payment agencies are large financial institutions who settle on behalf of a number of New York Link participants. For ACCESS® participants, payment exchange and settlement is centralized (in US dollars) through CDSX. Payments to and receipt of funds from NSCC and DTC are made using FedWire. Since cross-border payment exchange is conducted with a private U.S. settlement bank, CDS has arranged a back-up arrangement with a second U.S. bank to mitigate the risk that the U.S. settlement bank could fail.

When the cross-border services were first established)in the early 1980's, CDS evaluated the financial integrity and operational reliability of DTC/NSCC and concluded they met CDS' linkage standards. Annual reviews of the linkage determine that these standards are maintained.

Securities traded through the cross-border services are held by DTC in New York, which are subject to U.S. law on securities and transfer pledges (Uniform Commercial Code Articles 8 and 9). This law determines with certainty the laws of the jurisdiction which will apply to transactions in a multi-tiered indirect holding system. As New York law applies to cross-border transactions settled in DTC, CDS would look to courts in New York to uphold the validity of CDS' claims as a participant in DTC.

ACCESS® operates in the same way as CDS' domestic CNS service (in CDSX). As a result, the service exposes CDS to the same risks and participants are required to contribute to a participant fund and to collateralize all of its settlement transactions. Since the risk mitigation techniques are the same for both ACCESS® and CNS domestic services, and risk controls in CNS are efficient and effective, the risks arising from ACCESS® are sufficiently controlled. In the New York Link function, since most trades go through the CNS functionality, CDS faces counterparty risk. As a result, CDS requires a participant fund contribution from all participants and full collateralization of negative funds balances. For the DTC Direct Link, trade-for-trade transactions are relevant. CDS requires full collateralization of negative funds balances but does not require a participant fund contribution.

(g) CDS INC. was incorporated by CDS in 1995 to house CDS' complementary services in a subsidiary to prevent risk spillover to the core services, and to separate the respective companies' different approaches to pricing and risk coverage. CDS INC. can provide services to both participants and non-participants and relies on contracts, rather than Rules and procedures to protect its interests. Pricing is structured to produce profits, which flow to the consolidated operation to reduce the costs of providing the core services to participants.

The payment obligations of CDS INC. to IBM for the development of the National Registration Database system were guaranteed by CDS. CDS is currently examining a process which would remove the guarantee by the end of the calendar year 2004. Henceforth, CDS undertakes not to provide any guarantees, or assume any liabilities, in favour of any third parties or any of CDS' subsidiaries. It is recognized that where services offered by CDS result in the novation

of participants' obligations to CDS or require the sponsorship of participants by CDS into other clearing and settlement systems, these legal arrangements do not constitute guarantees.

(h) (i) CDS has implemented a policy to ensure the management of risks associated with the use of vendors and outsourcing. The policy and any updates to it are approved by management and by the board of directors. The policy outlines requirements for effective risk identification and management, business casing, vendor engagement, relationship management and service monitoring.

(ii) CDS policy for outsourcing requires the creation of a business case for approval by senior management and, where applicable, the board of directors. The business case documents the objectives and scope of the arrangement, an assessment of expected costs and benefits, the degree of direct control over business functions , and an assessment of the risks and impacts.

CDS policy for outsourcing requires the execution of a contract for services which documents all aspects of the outsourcing relationship, including the scope and nature of the service being provided, key deliverables, performance measures and commitments, and penalties/remedies in the event that service levels are not achieved.

(iii) CDS policy for outsourcing arrangements requires the inclusion in the service contract of a right to audit by CDS. This policy will be amended to include that any contract implementing an outsourcing arrangement that is likely to impact the settlement services, will permit the regulators of CDS to have access to and inspect all data, information and systems maintained by the third party service provider on behalf of CDS for the purposes of determining CDS' compliance with the terms and conditions of any regulatory order or securities legislation.

(iv) CDS policy for outsourcing requires performance to be tracked and measured through the course of the arrangement. Significant engagements include regular review meetings with representatives from the outsource provider and CDS management, ensuring the prompt identification and resolution of service issues.

***Financial Viability***

9. *A clearing agency shall maintain sufficient financial and staffing resources to ensure the proper performance of the settlement services.*

10. *A clearing agency shall establish financial tests for the purpose of monitoring its financial viability.*

11. *The financial statements of a clearing agency shall be presented in a manner that allows for effective monitoring of the financial position and the performance of the settlement system, including providing audited annual financial statements.*

12. *So long as a clearing agency carries on a business other than the provision of the settlement services, it will allocate sufficient financial and staff resources to carry out its functions as a clearing agency in a manner that is consistent with any regulatory requirements.*

**CDS Response:**

1. CDS shall maintain sufficient financial and staffing resources to ensure the proper performance of the settlement services. The settlement services performed by CDS are highly automated. Consequently, the performance of the settlement services is largely dependent on the effective functioning of the settlement processes embedded in CDSX. CDSX was exhaustively tested by CDS and its various customer groups (participants and service bureaus) prior to its implementation in 2003. All major new releases of CDSX are also fully tested by CDS and its customer groups prior to implementation. Further, CDSX has been designated by the Bank of Canada as meeting international standards for a fully functioning clearing and settlement service.

   In terms of ensuring that CDS is properly staffed to perform the settlement services, CDS has Service Level Agreements (SLAs) that have been negotiated with its participants and approved by its Board of Directors. CDS routinely reports its performance against these SLAs. A portion of these SLAs deals with settlement services. If CDS did not have adequate staffing to deal with settlement services the SLA requirements would not be consistently met and CDS management would take the appropriate action to remedy this situation. To date, CDS has delivered the settlement services in accordance with the SLAs.

In terms of sufficient financial resources, CDS is committed to meeting the Lamfalussy standard for settlement services and, as such, is committed to having the financial resources available through lines of credit to meet the financial requirements imposed by the default of the largest single debtor on any given day.

2. CDS shall establish financial tests for the purpose of monitoring its financial viability. Specifically CDS shall maintain:

   (a) a debt to cash flow ratio less than or equal to 4.0/1, and

   (b) a financial leverage ratio less than or equal to 4.0/1.

   For the purpose above:

   (i) debt to cash flow ratio is the ratio of total debt to EBITDA (earnings before interest, taxes, depreciation and amortization) for the most recent 12 months, and

   (ii) financial leverage ratio is the ratio of total assets to shareholder's equity.

3. CDS shall report to the Commission any decision made to retain all or part of its transaction volatility premiums collected or to be collected.

4. If CDS fails to maintain, or anticipates it will fail to maintain the debt to cash flow ratio or financial leverage ratio it shall immediately report to the Commission. If CDS fails to maintain either of the debt to cash flow ratio or the financial leverage ratio for a period of more than three months, its Chief Executive Officer will deliver a letter advising the Commission of the continued ratio deficiencies and the steps being taken to address the situation.

5. On a quarterly basis (together with the financial statements required to be filed), CDS shall report to the Commission the monthly calculation of the debt to cash flow ratio and financial leverage ratio.

6. CDS shall file unaudited quarterly financial statements within 60 days of each quarter end and audited annual financial statements, prepared in accordance with generally accepted accounting principles, together with any annual report to the shareholders, within 90 days of each year end. The quarterly and annual financial statements of CDS shall be provided on an unconsolidated and consolidated basis.

***Operational Reliability***

13. *A clearing agency should adopt procedures and processes that, on an ongoing basis, ensure the provision of accurate and reliable settlement services to participants.*

**CDS Response:**

Based on input from its customers, CDS has developed service level standards (SLS) focusing on three key areas: reliability, customer service and entitlements. The standards, covering the critical CDS depository, clearing, settlement and ancillary services, are amended, as required from time to time, based on input from a participant review group, comprised of senior operational representatives in the financial community and CDS management, and approved by CDS' Board of Directors. Since the SLS is an evolving document, it will change as participants needs change, as products and services evolve, as CDS' network and system environments are upgraded and as CDS develops ways to cost efficiently capture relevant information. Currently, CDS has set and meets or exceeds standards of over 99.4 per cent or more for: network availability, pledging availability, operational reliability, payment exchange, claims processing time, entitlement information processing, entitlements payment and accuracy.

The standard for network availability is 99.8% and CDS' network availability through April 30, 2004 is 99.9. As well, CDS is measured on its disaster recovery plan (DRP) as demonstrated by an industry test and on avoidance of disruptions to CDS participants. CDS reports its compliance with these standards in its quarterly newsletter. Internal and external audit reviews are conducted by CDS to assess operational reliability.

**Capacity and Integrity of Systems**

For all of its core systems supporting clearing and settlement business operations, CDS:

- makes reasonable current and future capacity estimates
- conducts capacity stress tests of critical systems to determine the ability of those systems to process transactions in an

- accurate, timely and efficient manner
- implements reasonable procedures to review and keep current the development and testing methodology of those systems
- reviews the vulnerability of those systems and data centre computer operations to internal and external threats including physical hazards and natural disasters
- maintains adequate contingency and business continuity plans

The above are included in the Risk Assessed Audit Universe and are subjected to periodic audits by the Internal Audit department.

Current Capacity
The CDSX system is built to meet current and medium term requirements. CDS architecture is designed to accommodate rapid upgrades in processor and data storage capacities to meet volatile business requirements. The system meets high standards for availability, security and efficiency, with sufficient redundancy in hardware, software and network elements to withstand component failure.

Changes in CDS systems, in capacity requirements, and in infrastructure supporting CDS systems are reported to the OSC in the *Production Plan Summary Report*, submitted every three months as detailed in the ARP Implementation documentation.

Future Capacity
On a regular basis system capacity is assessed against current and expected levels of market activity to ensure maintenance of availability and efficiency. The four key performance indicators assessed are volume of transactions being processed, average online response time, average online CPU utilization percentage, and reporting on missed batch deliverables. CDS technology is easily expandable without interruption to service. Data protection is accomplished through disk mirroring between the production and back-up sites as a vital part of the overall disaster recovery plan.

Because trade volumes are unpredictable, CDS bases its capacity projections on demonstration that our systems can handle two to three times current volume. This is accomplished by running a production simulation and increasing the simulated data input. Test results are reported in the *Production Plan Summary Report* submitted every three months as detailed in the ARP Implementation document.

Contingency
CDS production systems run at a standalone data centre, with contracted back-up to a vendor facility. By use of the disk mirroring technology noted above, committed recovery times are 2 hours for mainframe systems and 2 to 4 hours for client-server applications, with near zero data loss. Actual recovery times accomplished in semi-annual, audited tests have consistently proven to be closer to 1 hour. Sufficient back-up workstations at the CDS Data Centre are available on standby at all times for the use of business operations staff in the event of a disruption affecting the primary corporate office.

DRP/BCP testing is reported to the OSC in the *Production Plan Summary Report* submitted every three months as detailed in the ARP Implementation document.

***Protection Of Customers' Securities***

14. *A clearing agency providing depository services shall employ securities depository, account maintenance and accounting practices and safekeeping procedures that protect participants' securities.*

**CDS Response:**

1. CDS is committed to protecting participants' securities on deposit against loss and inappropriate disposition. For certificated securities, certificates are held in secured vaults at CDS or at approved custodians who meet CDS standards. There are additional controls on CDS book-entry-only strips and packages to ensure that they are appropriately accounted for.

2. Physical access to the securities held under CDS custody is restricted to authorized employees only. CDS employs an automated inventory system to track securities movements and their locations, facilitated by daily automated reconciliation of certificates to participants' holdings. Participants are provided with reports to verify the completeness and accuracy of the executed depository transactions.

3. Securities held externally by authorized custodians that meet CDS standards, including federal government issues and other debt securities, are reconciled by CDS daily and discrepancies are resolved on a timely basis.

4. Majority of securities are registered under CDS' names and held in non-negotiable form, in addition to other bearer instruments. Adequate segregation of duties among the different departments of CDS is in place to ensure the proper safeguarding of the securities. Movements of physical strip coupons are monitored and handled under dual/triple custody. Withdrawal requests of securities were validated prior to release to authorized personnel by the CDSX system, which has an online security feature that authorizes entry to the system.
5. Transferable securities inventory is counted bi-monthly, and non-transferable issue inventory is counted three times per annum. Participants are requested to provide positive confirmation of their ledger balance annually. In addition, an annual count of the physical securities under CDS custody is also conducted under the supervision of Internal or External auditors. Effective controls are in place to ensure any discrepancies are identified, investigated and resolved.
6. CDS employs armored courier to deliver securities between regional offices, which provide insurance coverage to cover potential losses during the shipment.
7. Risk Management ensures that appropriate control architectures are maintained and that key controls are documented and are consistent with CDS' policies and procedures. Periodic reviews are undertaken to ensure the controls remain relevant and effective. Line management monitors the controls to ensure compliance with procedures and constantly reinforces staff observance of security and control standards.
8. Management at CDS is committed to providing its services in a secure and controlled environment, with appropriate and effective internal controls and safeguards in place for the protection of participants' assets. The Report on Internal Controls and Safeguards (RICS) describes the safeguards, security and controls that management has instituted. CDS' external auditors' opinion on the design and effectiveness of these control systems is included in the RICS.

***Rules***

15. *A clearing agency shall establish rules that are necessary or appropriate to govern and regulate all aspects of the settlement services offered by the clearing agency.*

16. *The rules shall be consistent with the general goals of:*

    *(a) ensuring compliance with securities legislation;*

    *(b) fostering co-operation and co-ordination with self-regulatory organizations and persons or companies operating marketplaces, clearing and settlement systems and other systems that facilitate the processing of securities transactions and safeguarding of securities; and*

    *(c) controlling systemic risk.*

17. *The rules will not:*

    *(a) permit unreasonable discrimination among participants; or*

    *(b) impose any burden on competition that is not necessary or appropriate in furtherance of securities legislation or the objects and mandate of the clearing agency.*

18. *A clearing agency's rules and the process for adopting new rules or amending existing rules, should be transparent to participants and the general public.*

**CDS Response:**

15. CDS has established Rules, supported by Procedures that are necessary or appropriate to govern and regulate all aspects of the settlement services offered by the clearing agency. The Rules are 286 pages in length and are publicly available at CDS website, www.cds.ca. For ease of reference, the Rules are divided into ten sections:

    1. Documentation
    2. Participation
    3. Operations
    4. Liability and Indemnity
    5. Risk Management
    6. Depository Service
    7. Settlement Service
    8. Payment Exchange for CDSX

9. Default
10. Cross-Border Services

The Procedures are also publicly available at CDS website, approximately 1300 pages in length and covering all aspects of participating in CDS services.

16. The Rules are consistent with the general goals set out in the acceptance criteria through the following means:

(a) Compliance with securities legislation is ensured through the preparation and review of the Rules by legal counsel for CDS and participants prior to submission to the Board of Directors for approval, to all Participants for comment and to the regulatory authorities for non-disapproval.

(b) Co-operation and co-ordination with like organizations is fostered through the authority granted by Participants to CDS under Rule 3.6.2 to disclose Participant information to such organizations where the Participant is also a member or to any Regulatory Body having jurisdiction over CDS.

(c) All of the Rules focus on controlling systemic risk, in particular, Rule 5, Risk Management comprising 50 pages.

17. CDS accepts the criterion, and is of the view, that its current Rules do not and future amendments will not permit unreasonable discrimination among participants or impose any burden on competition that is not necessary or appropriate in furtherance of securities legislation or the objects and mandate of the clearing agency.

18. The process for amending Rules and Procedures is set out in Rules 1.5 and 1.4, respectively. The process involves reviews by participants, the Board and the regulators of CDS.

The need for Rules or Procedures amendments is identified by CDS legal counsel in consultation with project development staff and participants during the design phase of a new service or enhancement of an existing service. The initial drafts of Rules amendments are prepared by CDS legal counsel and circulated for review and discussion to a group of participants' legal and business representatives (known as the "Legal Drafting Group"). When the LDG is satisfied with the draft Rule amendment, it is tabled together with an explanatory memorandum with the Board (or its Executive Committee) for approval for circulation for comment to all participants for 30 days (or such shorter period as the Board determines). The draft Rule amendment and explanatory memorandum are circulated to the regulatory authorities of CDS no later than the time that they are circulated to participants and are also posted upon CDS website.

Following receipt of comments from participants and regulators of CDS, further variations are drafted, if required, prior to submission to the Board for final approval for implementation. The regulators are requested to provide final non-disapproval within the time frames which they have established, following which the Rules are made effective upon ten days notice to all participants (or such shorter period specified by the Board).

The Procedures follow a similar process with the following exceptions: The final draft of the amendments to the Procedures are circulated to the "procedures committee" of participants when CDS project staff determine that the amendments are complete and ready; no Board approval is required. The Procedures amendments are then posted on the CDS website and circulated to the regulators. Following the making of any changes required by the procedures committee or the regulators, the Procedures become effective upon 10 days notice to participants, subject to regulatory non-disapproval.

Any participant who disagrees with any action taken by CDS pursuant to its Rules and Procedures, including the substantive provisions of the Rules and Procedures, has the right of appeal to the Board (Rule 3.2.3) and to the Securities Commissions (Rule 3.2.4). Section 21.7 of the Ontario Securities Act gives the Executive Director of the OSC or any person or company directly affected by decisions or rules of a recognized clearing agency the right to a hearing before the OSC.

***Enforcement Of Rules And Discipline***

19. *The rules of a clearing agency shall set out appropriate sanctions in the event of non-compliance by participants.*

20. *A clearing agency shall reasonably monitor participant activities and impose sanctions to ensure compliance by participants of its rules.*

**CDS Response:**

19. Rule 2.7.5 lists adequate causes for the suspension or termination of a Participant. Adequate cause includes failure to make settlement payments, fees payments, participant fund or collateral pool contributions, credit ring payments; failure to comply with participation qualifications or standards: or material breach of the Rules or Procedures.

Rule 3.5.2 provides that CDS' fee schedule may include fees for the failure to comply with CDS' Rules and Procedures. The following fines/penalty fees are set out in CDS 2004 fee schedule:

| | | |
|---|---|---|
| Undelivered certified cheque | Charge per incident for failure to deliver certified cheque within required timeframes | 1,000.00 |
| Proper valuation not provided | Charge per unvalued security for failure to provide valuation of all transfers, deposits and withdrawals | 10.00 |
| Bank declaration not submitted | Charge per day per share per ISIN (daily maximum of $1,000) for non-compliance with Depository Rules re failure to submit bank declarations | 0.001 |
| Envelope not picked up by COB | Charge per envelope per day for failure to pick up envelope before close of business | 25.00 |
| Position not reconstituted | Charge per million par value (or thereof) per business day reserved for failure to reconstitute a position reserved for reconstitution | 1,000.00 |
| Delay of CDSX Payment Exchange | | |
| Delay CDSX Pmt Exch -Init 15 Min | Charge for the first 15 minute extension for each participant requesting a delay | 2,500.00 |
| Delay CDSX Pmt Exch -Addl 15 Min | Charge for a further 15 minute extension for each participant requesting a delay | 5,000.00 |

These fines/penalty fees are assessed on a per incident/occurrence basis. The size of the fine/penalty fee has been determined by CDS, following consultation with participants to be sufficiently large so as to act as a sufficient deterrent in the occurrence of the incidents listed.

20. Upon application for participation in one of CDS' services, firms are required to provide the necessary information to demonstrate that they meet the eligibility and qualification criteria for a particular type of participant. On a regular basis, CDS reviews the financial data and other information regarding participants to ensure that they continue to meet CDS' standards. Participants' daily activities are also monitored to determine that they are complying with the risk controls associated with the securities settlement system, such as the contribution of collateral to participant funds. Annually, CDS prepares a report to the Audit Committee on participants' compliance with the standards set out in its service Rules, custodial contracts and related procedures, using the participants' published information and other source material.

***Information Sharing***

21. *A clearing agency shall cooperate by the sharing of information and otherwise, with the Commission and its staff, other recognised clearing agencies, recognised exchanges and recognized quotation and trade reporting systems, alternative trading systems, recognised self-regulatory organisations, the Canadian Investor Protection Fund and other regulatory authorities responsible for the supervision or regulation of securities firms or financial institutions.*

**CDS Response:**

Rule 3.6.2 under Criteria 16(b) sets out our authority to disclose information to other SROs, clearinghouses, etc.

CDS has an MOU in place with the IDA and Bourse de Montréal Inc. to exchange information about participants that are members of both CDS and one of these self-regulatory organizations (SROs). The MOU enables CDS and the respective SRO to alert each other if there are any concerns about the financial health or capabilities of a common participant, so that appropriate action can be taken.

An information-sharing arrangement is in place between the New York Stock Exchange and a foreign participant of CDS, to advise CDS in the event that the foreign participant is placed on early warning.

### 13.1.3 CDS Recognition and Designation Order - ss. 21.2(1) and s. 144 of the Act and Part VI of the OBCA

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

**AND**

**IN THE MATTER OF**
**THE *BUSINESS CORPORATIONS ACT***
**R.S.O. 1990, CHAPTER B.16, AS AMENDED (the "OBCA")**

**AND**

**IN THE MATTER OF**
**THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED**

**RECOGNITION AND DESIGNATION ORDER**
**(Subsection 21.2(1) and Section 144 of the Act and Part VI of the OBCA)**

**WHEREAS** the Ontario Securities Commission (the "Commission") issued an order dated February 25, 1997, which became effective on March 1, 1997, recognizing The Canadian Depository for Securities Limited ("CDS") as a clearing agency pursuant to subsection 21.2(1) of the Act and designating CDS as a recognized clearing agency pursuant to Part VI of the OBCA (the "1997 Recognition and Designation Order");

**AND WHEREAS** CDS has applied for an order pursuant to section 144 of the Act to vary the 1997 Recognition and Designation Order;

**AND WHEREAS** the Commission has received certain representations and undertakings from CDS in connection with its application to vary the 1997 Recognition and Designation Order;

**AND WHEREAS** the Commission considers it appropriate to set out in the order terms and conditions of CDS' recognition as a clearing agency under the Act which terms and conditions are set out in Schedule "A" attached;

**AND WHEREAS** CDS has agreed to the terms and conditions as set out in Schedule "A";

**AND WHEREAS** the terms and conditions set out in Schedule "A" may be varied or waived by the Commission;

**AND UPON** the Commission being of the opinion that it is not prejudicial to the public interest to vary the 1997 Recognition and Designation Order;

**AND UPON** the Commission being satisfied that it is in the public interest to continue to recognize CDS as a clearing agency pursuant to subsection 21.2(1) of the Act;

**AND UPON** the Commission wishing to continue to designate CDS as a recognized clearing agency for the purposes of Part VI of the OBCA;

**IT IS ORDERED** pursuant to section 144 of the Act that the 1997 Recognition and Designation Order be varied and restated in the form of this order;

**THE COMMISSION HEREBY RECOGNIZES** CDS as a clearing agency pursuant to subsection 21.2(1) of the Act, subject to the terms and conditions set out in Schedule "A";

**AND THE COMMISSION HEREBY DESIGNATES** CDS as a recognized clearing agency for the purposes of Part VI of the OBCA.

DATED February 25, 1997, as varied and restated on _____.

_____ _____

**SCHEDULE "A"**

**TERMS AND CONDITIONS**

**GOVERNANCE**

1. CDS' governance arrangements shall be designed to fulfill public interest requirements and to promote the objectives of its shareholders and the users ("participants") of its depository, clearing and settlement services (collectively, "settlement services").

2. Without limiting the generality of the foregoing, CDS' governance structure shall provide for:

   (a) fair and meaningful representation on its board of directors and any committee of the board of directors;

   (b) appropriate representation of persons independent of the shareholders and participants on the board of directors and any committees of the board of directors, and, for such purpose, a person is "independent" if the person is not:

      (i) an associate, partner, director, officer or employee of a shareholder of CDS,

      (ii) an associate, director, officer or employee of a participant of CDS or its affiliates or an associate of such director, officer or employee, or

      (iii) an officer or employee of CDS or its affiliates or an associate of such officer or employee; and

   (c) appropriate qualifications, remuneration, conflict of interest guidelines and limitation of liability and indemnification protections for directors, officers and employees of CDS.

3. CDS shall complete the current review of its governance structure by six months from the date of this order and shall submit for the Commission's consideration a report containing recommendations to amend the governance structure. Specifically the report shall:

   (a) provide recommendations on alternative voting structures to ensure that the board is, in all cases, able to discharge its responsibilities;

   (b) provide recommendations on how to achieve fair and effective representation of all stakeholders on the board of directors, board committees or other committees of CDS; and

   (c) review the nomination process for directors and independent directors to include an assessment of the needs of the board and board committees.

4. CDS shall not, without the Commission's prior written approval, make significant changes to its governance structure or constating documents.

5. CDS shall not, without the Commission's prior written approval, enter into any contract, agreement or arrangement that may limit its ability to comply with the terms and conditions contained in this Schedule "A".

**FITNESS**

6. CDS shall take reasonable steps to ensure that each officer or director of CDS is a fit and proper person and the past conduct of each officer or director affords reasonable grounds for belief that such person will perform his or her duties with integrity.

**ACCESS**

7. CDS shall provide any person or company reasonable access to its settlement services where that person or company satisfies the eligibility requirements established by CDS to access the settlement services.

8. Without limiting the generality of the foregoing, CDS shall:

   (a) establish written standards for granting access to the settlement services;

   (b) keep records of:

(i) each grant of access including, for each participant, the reasons for granting such access, and

(ii) each denial or limitation of access, including the reasons for denying or limiting access to any applicant.

**FEES AND COSTS**

9. CDS shall equitably allocate its fees and costs for settlement services. The fees shall not have the effect of unreasonably creating barriers to access such settlement services and shall be balanced with the criterion that CDS has sufficient revenues to satisfy its responsibilities.

10. CDS' process for setting fees and costs for settlement services shall be fair, appropriate and transparent. The fees, costs or expenses borne by participants in the settlement services shall not reflect any costs or expense incurred by CDS in connection with an activity carried on by CDS that is not related to the settlement services.

**DUE PROCESS**

11. CDS shall ensure that:

(a) participants affected by its decisions are given an opportunity to be heard or make representations; and

(b) it keeps a record, gives reasons and provides for appeals of its decisions to regulatory authorities.

**RISK CONTROLS**

12. CDS shall have clearly defined procedures for the management of risk which specify the respective responsibilities of CDS and its participants.

13. Without limiting the generality of the foregoing:

(a) Where a central counterparty service is offered by CDS, CDS shall rigorously control the risks it assumes.

(b) CDS shall reduce principal risk to the greatest extent possible by linking securities transfers to funds transfers in a way that achieves delivery-versus-payment.

(c) Final settlement shall occur no later than the end of the settlement day and intraday or real-time finality should be provided where necessary to reduce risks.

(d) Where CDS extends intraday credit to participants, including where it operates a net settlement system, it shall institute risk controls that, at a minimum, ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle.

(e) Assets accepted by CDS used to settle the ultimate payment obligations arising from securities transactions shall carry little or no credit or liquidity risk. If same-day, irrevocable final funds are not used, CDS shall take steps to protect participants in settlement services from potential losses and liquidity pressures arising from the failure of the payor or its paying agent.

(f) Where CDS establishes links to settle cross-border trades, it shall design and operate such links to reduce effectively the risks associated with cross-border settlements.

(g) Where CDS engages in activities not related to the settlement services, it shall carry on such activities in a manner that prevents the spillover of risk arising from such activities where such risks might negatively impact CDS' financial viability.

(h) Where CDS materially outsources any of its settlement services or systems to a third party service provider, which shall include affiliates or associates of CDS, CDS shall proceed in accordance with best practices. Without limiting the generality of the foregoing, CDS shall:

(i) establish and maintain policies and procedures that are approved by its board of directors for the evaluation and approval of such outsourcing arrangements;

(ii) in entering any such outsourcing arrangement,

(A) assess the risk of such arrangement, the quality of the service to be provided and the degree of control to be maintained by CDS, and

(B) execute a contract with the third party service provider addressing all significant elements of such arrangement, including service levels and performance standards;

(iii) ensure that any contract implementing such outsourcing arrangement, that is likely to impact the settlement services, permits the Commission to have access to and inspect all data, information and systems maintained by the third party service provider on behalf of CDS for the purposes of determining CDS' compliance with the terms and conditions of this Schedule "A" or securities legislation; and

(iv) monitor the performance of the third party service provider under any such outsourcing arrangement.

**FINANCIAL VIABILITY**

14. CDS shall maintain sufficient financial and staffing resources to ensure the proper performance of the settlement services.

15. CDS shall establish financial tests for the purpose of monitoring its financial viability. Specifically CDS shall maintain:

(a) a debt to cash flow ratio less than or equal to 4/1; and

(b) a financial leverage ratio less than or equal to 4/1.

For the purpose above:

(i) debt to cash flow ratio is the ratio of total debt to EBITDA (earnings before interest, taxes, depreciation and amortization) for the most recent 12 months, and

(ii) financial leverage ratio is the ratio of total assets to shareholder's equity.

16. CDS shall notify Commission staff as soon as practicable of any decision made to retain all or part of its transaction volatility premiums collected or to be collected.

17. If CDS fails to maintain, or anticipates it will fail to maintain, the debt to cash flow ratio or financial leverage ratio, it shall immediately notify the Commission staff. If CDS fails to maintain either of the debt to cash flow ratio or the financial leverage ratio for a period of more than three months, its Chief Executive Officer will deliver a letter advising the Commission staff of the continued ratio deficiencies and the steps being taken to address the situation.

18. On a quarterly basis (together with the financial statements required to be filed pursuant to item 19), CDS shall report to Commission staff that quarter's monthly calculation of the debt to cash flow ratio and financial leverage ratio.

19. CDS shall file with Commission staff unaudited quarterly financial statements within 60 days of each quarter end and audited annual financial statements, prepared in accordance with generally accepted accounting principles, together with any annual report to the shareholders, within 90 days of each year end. The quarterly and annual financial statements of CDS shall be provided on an unconsolidated and consolidated basis.

**OPERATIONAL RELIABILITY**

20. CDS shall adopt procedures and processes that, on an ongoing basis, ensure the provision of accurate and reliable settlement services to participants.

21. CDS shall annually file with Commission staff the Report on Internal Controls and Safeguards including CDS' external auditor's opinion on the design and effectiveness of these control systems.

**CAPACITY AND INTEGRITY OF SYSTEMS**

22. For all of its core systems supporting the settlement services and related business operations (the "systems"), CDS will:

(a) on a reasonably frequent basis, and in any event, at least annually;

(i) make reasonable current and future capacity estimates,

(ii) conduct capacity stress tests of the systems to determine the ability of those systems to process transactions in an accurate, timely and efficient manner,

(iii) develop and implement reasonable procedures to review and keep current the development and testing methodology of the systems,

(iv) review the vulnerability of the systems and data centre computer operations to internal and external threats including breaches of security, physical hazards and natural disasters, and

(v) maintain adequate contingency and business continuity plans;

(b) annually, cause to be performed an independent review and written report, in accordance with generally accepted auditing standards, of the stated internal control objectives of the systems, whether as part of the report described in item 21 or as a separate review; and

(c) promptly notify Commission staff of material systems failures and changes.

**PROTECTION OF CUSTOMERS' SECURITIES**

23. CDS shall employ securities depository, account maintenance and accounting practices and safekeeping procedures that protect participants' securities.

**RULES**

24. CDS shall establish rules, operating procedures, user guides, manuals or similar instruments or documents (collectively, "rules") that are necessary or appropriate to govern, regulate, and set out all aspects of the settlement services offered by CDS.

25. The rules shall be consistent with the general goals of:

(a) ensuring compliance with securities legislation;

(b) fostering co-operation and co-ordination with self-regulatory organizations and persons or companies operating marketplaces, clearing and settlement systems and other systems that facilitate the processing of securities transactions and safeguarding of securities; and

(c) controlling systemic risk.

26. The rules will not:

(a) permit unreasonable discrimination among participants; or

(b) impose any burden on competition that is not necessary or appropriate in furtherance of compliance with securities legislation or the objects and mandate of the clearing agency.

27. CDS' rules and the process for adopting new rules or amending existing rules shall be transparent to participants and the general public.

28. CDS shall file with the Commission all rules and amendments to the rules and comply with the rule protocol attached as Appendix "A", as amended from time to time.

**ENFORCEMENT OF RULES AND DISCIPLINE**

29. The rules of CDS shall set out appropriate sanctions in the event of non-compliance by participants.

30. CDS shall reasonably monitor participant activities and impose sanctions to ensure compliance by participants with its rules.

**INFORMATION SHARING**

31. CDS shall share information and otherwise cooperate with the Commission and its staff, other recognized clearing agencies, recognized exchanges, recognized quotation and trade reporting systems, registered alternative trading systems, recognized self-regulatory organizations, the Canadian Investor Protection Fund and any regulatory authority

having jurisdiction over CDS, subject to any applicable privacy or other laws governing the sharing of information and the protection of personal information, and subject to any confidentiality provisions contained in agreements entered into with the Bank of Canada pertaining to information received from the Bank of Canada in its roles as registrar, issuing agent, transfer agent or paying agent for the Government of Canada.

32 CDS shall permit the Commission to have access to and inspect all data and information in its possession that is required to assess compliance with the terms and conditions of this Schedule "A" or securities legislation, subject to applicable privacy or other laws governing the sharing of information and the protection of personal information, and subject to any confidentiality provisions contained in agreements entered into with the Bank of Canada pertaining to information received from the Bank of Canada in its roles as registrar, issuing agent, transfer agent or paying agent for the Government of Canada.

33. CDS shall comply with Appendix "B" setting out the reporting obligations, as amended from time to time, regarding the reporting of information to the Commission.

### 13.1.4 Rule Protocol Regarding the Review and Approval of CDS Rules by the OSC

**APPENDIX "A"**

**RULE PROTOCOL REGARDING THE REVIEW AND APPROVAL OF CDS RULES BY THE OSC**

**1. Purpose of the Protocol**

On [**** 2005], the Commission issued a varied and restated recognition and designation order ("Recognition Order") with terms and conditions governing CDS' recognition as a clearing agency pursuant to subsection 21.2(1) of the *Securities Act* (Ontario). To comply with the Recognition Order, CDS must file, among other things, its rules with the Commission for approval. This protocol sets out the procedures for the submission of a rule by CDS and the review and approval of the rule by the Commission.

**2. Definitions**

In this protocol:

"rule" means a proposed new or amendment to or deletion of a participant rule, operating procedure, user guide, manual or similar instrument or document of CDS which contains any contractual term setting out the respective rights and obligations between CDS and participants or among participants.

All other terms have the respective meanings ascribed to them in the Recognition Order and in securities legislation as that term is defined in NI 14-101.

**3. Classification of Rules**

CDS will classify a rule as either "material" or "technical/housekeeping" for the purposes of the approval process set out in this protocol.

***(a) Technical/Housekeeping Rules***

For the purpose of this protocol, a rule will be classified as "technical/housekeeping" if the rule involves only:

(i) matters of a technical nature in routine operating procedures and administrative practices relating to the settlement services;

(ii) amendments required to ensure consistency or compliance with an existing rule, securities legislation or other regulatory requirement;

(iii) the correction of spelling, punctuation, typographical or grammatical mistakes or inaccurate cross-referencing; or

(iv) stylistic formatting, including changes to headings or paragraph numbers.

***(b) Material Rules***

A rule that is not a technical/housekeeping rule, as defined above, would be classified as a "material" rule.

**4. Procedures for Review and Approval of Material Rules**

***(a) Prior Notice of a Significant Material Rule***

If CDS is developing a material rule that it anticipates will result in a significant change in its policy, will require amendments to a significant number of rules or may be the subject of significant public comment as a result of publication, then CDS will notify Commission staff in writing at least 30 calendar days prior to submitting such a significant material rule. The purpose of such prior notification is to enable the Commission to react in a timely manner to the material rule upon filing. Prior notification shall not be interpreted as an opportunity for Commission staff to participate in CDS policy development. Commission staff will not begin a formal review of the material rule until all relevant documents have been filed.

***(b) Documents to be Filed***

For a material rule, CDS will file with the Commission the following documents electronically, or by other means as agreed to by Commission staff and CDS from time to time:

(i) a cover letter that indicates the classification of the rule and the rationale for that classification and includes a statement that the rule is not contrary to the public interest;

(ii) the rule and, where applicable, a blacklined version of the rule indicating the proposed changes to an existing rule;

(iii) a notice of publication to be published by the Commission in the OSC Bulletin that contains the following information:

A. a description of the rule,

B. a concise statement, together with supporting analysis, of the nature and purpose of the rule,

C. a description and analysis of the possible effects of such rule on CDS, participants and other market participants and the securities and financial markets in general, including but not limited to any impact on competition, risks and the costs of compliance borne by any of the foregoing parties or within any market, and where applicable, a comparison of the rule to international standards promulgated by Committee on Payment and Settlement Systems of the Bank for International Settlements, the Technical Committee of the International Organization of Securities Commissions and the Group of Thirty,

D. a description of the rule drafting process, including a description of the context in which the rule was developed, the process followed, the issues considered, consultation done, the alternative approaches considered, the reasons for rejecting the alternatives and a review of the implementation plan,

E. where the rule requires technological systems changes to be made by participants, other market participants or CDS, CDS shall provide a description of the implications of the rule on such systems and, where possible, an implementation plan, including a description of how the rule will be implemented and the timing of the implementation,

F. where CDS is aware that another clearing agency has a counterpart to the rule, CDS shall include a reference to the rules of the other clearing agency, including an indication as to whether that clearing agency has a comparable rule or has made or is contemplating making a comparable rule, and a comparison of the rule to same,

G. a statement that CDS has determined that the rule is not contrary to the public interest, and

H. an explanation that all comments should be sent to CDS with a copy to the Commission, and that CDS will make available to the public on request all comments received during the comment period.

***(c) Confirmation of Receipt***

Commission staff will within 5 business days send to CDS confirmation of receipt of documents filed by CDS under subsection (b).

***(d) Publication of a Material Rule by the Commission***

As soon as practicable, Commission staff will publish in the OSC Bulletin the notice and rule filed by CDS under subsection (b) for a comment period of 30 calendar days (the "comment period"), commencing on the date on which the notice first appears in the OSC Bulletin or website.

***(e) Review by Commission Staff***

Commission staff will use their best efforts to conduct their initial review of the material rule and provide comments to CDS during the comment period. However, there will be no restriction on the amount of time necessary to complete the review of the material rule.

***(f) CDS Responses to Commission Staff's Comments***

(i) CDS will respond to any comments received to Commission staff in writing.

(ii) CDS will provide to Commission staff a summary of all public comments received and CDS' responses to the public comments, or confirmation of having received no public comments.

(iii) If CDS fails to respond to comments from Commission staff within 120 calendar days after receipt of their comment letter, CDS will be deemed to have withdrawn the material rule unless Commission staff otherwise agree.

***(g) Approval by the Commission***

Commission staff will use their best efforts to prepare the material rule for approval within 30 calendar days of the later of (a) receipt of written responses from CDS to staff's comments or requests for additional information, and (b) receipt of the summary of public comments and CDS' response to the public comments, or confirmation from CDS that there were no comments received. If at any time during the review period, Commission staff determine that they have further comments or require further information from CDS in order to prepare the materials for Commission approval, the review period will be extended by an additional period of 30 calendar days commencing on the day that Commission staff receive responses to the comments or the information requested. Commission staff will notify CDS of the Commission's approval of the material rule within 5 business days.

***(h) Publication of Notice of Approval***

Commission staff will prepare and publish in the OSC Bulletin and on its website a short notice of approval of the material rule within 15 business days of delivery of the notification to CDS of the decision. CDS will provide the following information to accompany the publication of the notice of approval:

(i) a short summary of the material rule;

(ii) CDS' summary of public comments and responses received, if applicable; and

(iii) if changes were made to the version published for public comment, a blacklined copy of the revised material rule.

***(i) Effective Date of a Material Rule***

A material rule will be effective as of the date of the notification of approval by Commission staff in accordance with subsection (g) or on a date determined by CDS, if such date is later.

***(j) Significant Revisions to a Material Rule***

When a material rule is revised subsequent to its publication for comment in a way that Commission and CDS staff determine has a material effect on the substance of the rule or its effect, the revision will be published in the OSC Bulletin with a notice for a second 30 calendar day comment period. The request for comment shall include CDS' summary of comments and responses submitted in response to the previous request for comments, together with an explanation of the revision to the material rule and the supporting rationale for the amendment.

***(k) Withdrawal of a Material Rule***

If CDS withdraws or is deemed to have withdrawn a rule that was previously submitted, then it will provide a notice of withdrawal to be published by the Commission in the OSC Bulletin as soon as practicable.

**5. Procedures for Review and Approval of a Technical/Housekeeping Rule**

***(a) Documents to be Filed***

For a technical/housekeeping rule, CDS will file with the Commission the following documents electronically, or by other means as agreed to by the Commission staff and CDS from time to time:

(i) a cover letter that indicates the classification of the rule and the rationale for that classification;

(ii) the rule and, where applicable, a blacklined version of the rule indicating the proposed changes to an existing rule; and

(iii) a short notice of publication to be published by the Commission in the OSC Bulletin that contains the following information:

A. a brief description of the technical/housekeeping rule;

B. the reasons for the technical/housekeeping classification; and

C. the effective date of the technical/housekeeping rule, or a statement that the technical/housekeeping rule will be effective on a date subsequently determined by CDS.

***(b) Effective Date of Technical/Housekeeping Rules***

The technical/housekeeping rule will be effective upon CDS filing the documents in accordance with subsection (a) or on a date determined by CDS. Where CDS does not receive any communication of disagreement with the classification from Commission staff in accordance with subsection (d) within 15 business days after filing the rule, CDS may assume that the Commission staff agree with the classification.

***(c) Confirmation of Receipt***

Commission staff will within in 5 business days send to CDS confirmation of receipt of documents filed by CDS under subsection (a).

***(d) Disagreement with Classification***

Where CDS has classified a rule as "technical/housekeeping" and Commission staff disagree with the classification:

(i) Commission staff will communicate to CDS, in writing, the reasons for disagreeing with the classification of the rule within 15 business days after receipt of CDS' filing.

(ii) After receipt of Commission staff's written communication, CDS will re-classify the rule as material and the Commission will review and approve the rule under the procedures set out in section 4.

(iii) Commission staff may require that CDS immediately repeal the technical/housekeeping rule and inform its participants of the reason for the repeal of the rule.

***(e) Publication of Technical/Housekeeping Rules***

Commission staff will publish the notice filed by CDS under clause (a)(iii) as soon as practicable.

***(f) Comments received on Technical/Housekeeping Rules***

If comments are raised in response to the publication of the notice or the implementation of the technical/housekeeping rule, Commission staff may review the rule in light of the comments received. Commission staff may determine that the rule was incorrectly classified and require that the rule be classified as a material rule and reviewed and approved by the Commission in accordance with the procedures set out in section 4 with necessary modifications. If the Commission subsequently disapproves the material rule, CDS will immediately repeal the material rule and inform its participants of the disapproval.

**6. Immediate Implementation of a Material Rule**

***(a) Criteria for Immediate Implementation***

CDS may make a material rule effective immediately where CDS determines that there is an urgent need to implement the material rule because of a substantial and imminent risk of material harm to CDS, participants, other market participants, or the Canadian capital markets or due to a change in operation imposed by a third party supplying services to CDS and to its participants.

***(b) Prior Notification***

Where CDS determines that immediate implementation is necessary, CDS will advise Commission staff in writing as soon as possible but in any event at least 7 business days prior to the implementation of the rule. Such written notice will include an analysis to support the need for immediate implementation.

***(c) Disagreement on Need for Immediate Implementation***

If Commission staff do not agree that immediate implementation is necessary, the process for resolving the disagreement will be as follows:

(i) Commission staff will notify CDS, in writing, of the disagreement, or request more time to consider the immediate implementation, within 5 business days of being advised by CDS under subsection (b).

(ii) Commission staff and CDS will discuss and resolve any concerns raised by Commission staff.

(iii) If no notice is received by CDS by the 5th business day after Commission staff received CDS' notification, CDS may assume that Commission staff does not disagree with their assessment.

***(d) Review of Material Rules Implemented Immediately***

A material rule that has been implemented immediately will be published, reviewed and approved by the Commission in accordance with the procedures set out in section 4 with necessary modifications. If the

Commission subsequently disapproves the material rule, CDS will immediately repeal the material rule and inform its participants of the disapproval.

**7. Miscellaneous Provisions**

***(a) Waiving Provisions of the protocol***

Commission staff may waive any part of this protocol upon request from CDS. Such a waiver must be granted in writing by Commission staff.

***(b) Amendments***

This protocol and any provision hereof may be amended at any time or times with the agreement of the Commission and CDS.

**8. Effective Date**

This protocol comes into effect on *.

### 13.1.5 CDS Reporting Obligations

**APPENDIX "B"**

**REPORTING OBLIGATIONS**

In addition to the notification, reporting and filing obligations set out in Schedule "A" to the Recognition and Designation Order, CDS shall also comply with the reporting obligations set out below.

**1. Prior Notification**

1.1 CDS shall provide to Commission staff prior notification of:

(a) any proposed change to CDS' corporate governance structure other than significant changes to the governance structure or constating documents for which prior approval is required under item 4 of Schedule "A" to the Recognition and Designation Order;

(b) a decision to enter into an agreement, memorandum of understanding or other similar arrangement with any governmental or regulatory body, self-regulatory organisation, clearing agency, stock exchange, other marketplace or market; or

(c) a decision to, either directly or through an affiliate, engage in a new type of business activity or cease to engage in a business activity in which CDS is then engaged.

**2. Immediate Notification**

2.1 CDS shall provide to Commission staff immediate notice of:

(a) the appointment of any new director or officer, including a description of the individual's employment history; and

(b) the resignation or intended resignation of a director or officer or the auditors of CDS, including a statement of the reasons for the resignation or intended resignation.

2.2 CDS shall immediately notify Commission staff if it:

(a) becomes the subject of any order, directive or other similar action of a governmental or regulatory authority;

(b) becomes aware that it is the subject of a criminal or regulatory investigation; or

(c) becomes, or is aware that it will become, the subject of a material lawsuit.

2.3 CDS shall immediately file with Commission staff copies of all notices, bulletins and similar forms of communication that CDS sends its participants.

2.4 CDS shall immediately file with the Commission any unanimous shareholder agreements to which it is a party.

**3. Quarterly Reporting**

3.1 CDS shall file quarterly with Commission staff a list of the internal audit reports and risk management reports issued in the previous quarter.

**4. Annual Reporting**

4.1 CDS shall provide to Commission staff annually:

(a) a list of the directors and officers of CDS;

(b) a list of the committees of the CDS board of directors, setting out the members, mandate and responsibilities of each of the committees; and

(c) a list of all participants in each settlement service operated by CDS.

**5. General**

5.1 CDS shall continue to comply with the reporting obligations set out in its tailored Automation Review Program document.

### 13.1.6 MFDA News Release - MFDA Pacific Regional Council Hearing Panel Adjourns Raymond Brown-John Hearing to April 25, 2005

*For immediate release*

**MFDA PACIFIC REGIONAL COUNCIL HEARING PANEL ADJOURNS RAYMOND BROWN-JOHN HEARING TO APRIL 25, 2005**

**April 1, 2005** (Toronto, Ontario) - The Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding in respect of Raymond Brown-John by Notice of Hearing dated January 21, 2005.

On Thursday, March 31, 2005 at 10:00 a.m. (PST) at the Morris J. Wosk Centre for Dialogue, Simon Fraser University at Harbour Centre, 580 West Hastings Street, Vancouver, B.C., the Hearing Panel made an Order adjourning the hearing to April 25, 2005 at 9:30 a.m. (PST), or as soon thereafter as can be held. The hearing on that date will be conducted by teleconference. Members of the public may attend the proceedings on that date by attending at the MFDA office, 650 West Georgia Street, Suite 1220, Vancouver, British Columbia at the designated time.

A copy of the Notice of Hearing and related News Releases is available on the MFDA web site at www.mfda.ca.

The Mutual Fund Dealers Association of Canada is the self-regulatory organization for Canadian mutual fund dealers. The MFDA regulates the operations, standards of practice and business conduct of its 181 members and their approximately 70,000 representatives with a mandate to protect investors and the public interest.

*For further information, please contact:*
Gregory J. Ljubic
Corporate Secretary and Director of Regional Councils
(416) 943-5836 or gljubic@mfda.ca

### 13.1.7 RS Market Integrity Notice – Notice of Amendment Approval – Provisions Respecting a "Basis Order"

**April 8, 2005**

**NOTICE OF AMENDMENT APPROVAL**

**PROVISIONS RESPECTING A "BASIS ORDER"**

**Summary**

Effective April 8, 2005, the Alberta Securities Commission, British Columbia Securities Commission, Manitoba Securities Commission, Ontario Securities Commission and, in Quebec, the Autorité des marchés financiers (the "Recognizing Regulators") approved amendments to the Universal Market Integrity Rules ("UMIR") to incorporate a definition of a "Basis Order" and to provide that the execution of a Basis Order should not establish the "last sale price" and that the execution would be exempt from the requirements of:

- Rule 3.1 – Restrictions on Short Selling;
- Rule 5.2 – Best Price Obligation;
- Rule 6.3 – Exposure of Client Orders; and
- Rule 8.1 – Client Principal Trading.

**Summary of the Amendments as Approved**

***Definition of a "Basis Order"***

The definition of "Basis Order" has the following four components:

- the order involves the purchase or sale of listed securities or quoted securities;
- notice is provided to a Market Regulator prior to the entry of the order on a marketplace;
- the price of the resulting trade is determined in a manner acceptable to a Market Regulator based on the price achieved through the execution on that trading day of one or more transactions in a derivative instrument that is listed on an Exchange or quoted on a QTRS; and
- the securities included in the order comprise at least 80% of the component security weighting of the underlying interest of the derivative instruments used in the determination of the price.

In order to preclude abuse of a Basis Order merely to bypass better-priced orders for a particular security on a marketplace, notice of the order must be given to a Market Regulator prior to entry on a marketplace and the Market Regulator must be satisfied as to the calculation of the price for the trade. In assessing whether the difference between the price at which the derivative transactions were executed and the price at which trades in the listed security or quoted security will be reported as a Basis Order is "acceptable", the Market Regulator will consider principally the historical "price spreads" for transactions of a similar size and number of securities.

Effective January 31, 2005, the rules of the Bourse de Montréal Inc. ("Bourse") were amended to permit approved participants of the Bourse to arrange block trades of derivative contracts at price that is different from prevailing market prices provided that trade is at a price which the Bourse would consider "fair and reasonable" in light of a number of factors including:

- the size of the block trade;
- current prices in the same derivative contract or other contract months or option series;
- current prices in "other relevant markets, including without limitation the underlying markets";
- the volatility and liquidity of the market; and
- general market conditions.

Presently, the ability to execute on the Bourse a block trade at a price that is different from the prevailing market will be limited to interest rate futures contacts and options on interest rate future contracts. If the ambit of the rule of the Bourse is expanded to include other types of derivatives for which the underlying interest is a listed security or a quoted security, the Market Regulator will have to be satisfied that the price of any derivative trade on the Bourse has not been made outside of the prevailing market for that derivative merely to permit the Basis Order for the underlying listed security or quoted security to bypass better-priced orders for the underlying security on a marketplace.

***Definition of "Last Sale Price"***

A Basis Order will be executed at the average price of the accumulation or distribution of the underlying derivative position. As such, the price of the trade of a Basis Order may be above the best ask price or below the best bid price of a particular component security that is part of the Basis Order. It is therefore appropriate that the execution of a Basis Order not establish the "last sale price" of a security. Similarly, to the extent that a trade of Volume-Weighted Average Price Order is reported to a consolidated market display during regular trading hours (since the order will use only part of the trading day to establish the price) such an order should not establish the "last sale price". The amendments therefore exclude trades resulting from a Basis Order and a Volume-Weighted Average Price Order from the definition of the last sale price.

***Provision for Exemptions from UMIR Provisions***

Given that the price at which a Basis Order is executed is dependent on the average price of accumulation or distribution of the underlying derivative position, the execution of a Basis Order is exempt from certain requirements under UMIR including:

| Rule | Description | Justification for Exemption from Requirement |
|---|---|---|
| 3.1 | Restrictions on Short Selling | The exemption from the requirement that the price not be less than the last sale price is supported by the fact that the Market Regulator must be satisfied that the price reflects trades in the derivative markets. |
| 5.2 | Best Price Obligation | The exemption from the requirement that a Participant take reasonable efforts to ensure that a sale is at the best bid price and a purchase is at the best ask price is justified since the Market Regulator must be satisfied as to the manner of the determination of the price and the client has consented to their order being executed at a price determined by transactions in the derivatives market. |
| 6.3 | Exposure of Client Orders | The requirement that client orders for 50 standard trading units or less be exposed on a marketplace ensures that the client receives timely execution at the best available price. The execution of a Basis Order has been agreed to based on transactions in the derivatives markets. As the client must consent to or direct that their order be treated as a Basis Order, it is not appropriate that their orders for the listed or quoted securities be exposed on a marketplace. |
| 8.1 | Client Principal Trading | If a principal or non-client account is trading the Basis Order with a client, the price will be determined in a manner satisfactory to a Market Regulator based on transactions in the derivative markets. It is therefore not possible to determine in advance if the execution price will in fact be a "better" price. |

**Procedures for Providing Notice of a Basis Order**

One of the requirements of the definition of a "Basis Order" is that notice must be provided to a Market Regulator prior to the entry of the order on a marketplace. A sample of the notice form is set out as Appendix "C" to this Market Integrity Notice. The notice may be completed and submitted on-line by accessing the "Notice of a Basis Order" form available on the Market Regulation Services Inc. ("RS") website at www.rs.ca. Upon receipt of the notice by RS, an e-mail response will be automatically generated to acknowledge receipt of the notice.

If an electronic submission can not be provided, the completed notice may be faxed to RS: Market Regulation Eastern Region – 416.646.7261; or Market Regulation Western Region – 604.602.6986.

**Appendices**

The amendments to the Rules respecting a "Basis Order" are effective as of April 8, 2005. The text of the amendments is set out in Appendix "A".

Appendix "B" contains the text of the relevant provisions of the Rules as they read following the adoption of the amendments. Appendix "B" also contains a marked version of the current provisions highlighting the changes introduced by the amendments.

Appendix “C” is the form of notice to be provided to RS prior to the entry of a Basis Order.

**Questions**

Questions concerning this notice may be directed to:

James E. Twiss,
Chief Policy Counsel,
Market Policy and General Counsel’s Office,
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***

**Amendments Respecting Basis Orders**

The Universal Market Integrity Rules are amended by:

1. Amending Rule 1.1 to:

   (a) Add the following definition of "Basis Order":

   **"Basis Order"** means an order for the purchase or sale of listed securities or quoted securities:

   (a) where the intention to enter the order has been reported by the Participant or Access Person to a Market Regulator prior to the entry of the order;

   (b) that will be executed at a price which is determined in a manner acceptable to a Market Regulator based on the price achieved through the execution on that trading day of one or more transactions in a derivative instrument that is listed on an Exchange or quoted on a QTRS; and

   (c) that comprise at least 80% of the component security weighting of the underlying interest of the derivative instruments subject to the transaction or transactions described in clause (b).

   (b) Amend the definition of "last sale price" by deleting the phrase "Call Market Order" and substituting "Basis Order, Call Market Order or Volume-Weighted Average Price Order".

2. Amending clause (f) of subsection (2) of Rule 3.1 by:

   (a) deleting the word "or" at the end of subclause (ii);

   (b) inserting the phrase ", or" after the word "Order" in subclause (iii); and

   (c) adding the following as subclause (iv):

   (iv) a Basis Order.

3. Amending clause (c) of subsection (2) of Rule 5.2 by:

   (a) deleting the word "or" at the end of subclause (iii);

   (b) inserting the phrase ", or" after the word "Order" in subclause (iv); and

   (c) adding the following as subclause (v):

   (v) a Basis Order.

4. Amending clause (b) of subsection (1) of Rule 6.2 by adding the following as subclause (v.1):

   (v.1) a Basis Order.

5. Amending clause (h) of subsection (1) of Rule 6.3 by:

   (a) deleting the word "or" at the end of subclause (iv);

   (b) inserting the phrase ", or" after the word "Order" in subclause (v); and

   (c) adding the following as subclause (vi):

   (vi) a Basis Order.

6. Amending subsection (2) of Rule 8.1 by:

(a) deleting the word “or” at the end of clause (c);

(b) inserting the phrase “; or” after the word “Order” in clause (d); and

(c) adding the following as clause (e):

(e) a Basis Order.

**Appendix "B"**

***Universal Market Integrity Rules***

**Text of Rule to Reflect Amendments**
**Respecting Basis Orders**

| Text of Provisions Following Adoption of Amendments Effective April 8, 2005 | Text of Current Provisions Marked to Reflect Adoption of Amendments Effective April 8, 2005 |
|---|---|
| **1.1 Definitions**<br><br>**"Basis Order"** means an order for the purchase or sale of listed securities or quoted securities:<br><br>(a) where the intention to enter the order has been reported by the Participant or Access Person to a Market Regulator prior to the entry of the order;<br><br>(b) that will be executed at a price which is determined in a manner acceptable to a Market Regulator based on the price achieved through the execution on that trading day of one or more transactions in a derivative instrument that is listed on an Exchange or quoted on a QTRS; and<br><br>(c) that comprise at least 80% of the component security weighting of the underlying interest of the derivative instruments subject to the transaction or transactions described in clause (b). | **1.1 Definitions**<br><br>**"Basis Order"** means an order for the purchase or sale of listed securities or quoted securities:<br><br>(a) where the intention to enter the order has been reported by the Participant or Access Person to a Market Regulator prior to the entry of the order;<br><br>(b) that will be executed at a price which is determined in a manner acceptable to a Market Regulator based on the price achieved through the execution on that trading day of one or more transactions in a derivative instrument that is listed on an Exchange or quoted on a QTRS; and<br><br>(c) that comprise at least 80% of the component security weighting of the underlying interest of the derivative instruments subject to the transaction or transactions described in clause (b). |
| **"last sale price"** means the price of the last sale of at least one standard trading unit of a particular security displayed in a consolidated market display but does not include the price of a sale resulting from an order that is a Basis Order, Call Market Order or Volume-Weighted Average Price Order. | **"last sale price"** means the price of the last sale of at least one standard trading unit of a particular security displayed in a consolidated market display but does not include the price of a sale resulting from an order that is a Basis Order, Call Market Order or Volume-Weighted Average Price Order. |
| **3.1 Restriction on Short Selling**<br><br>(2) A short sale of a security may be made on a marketplace at a price below the last sale price if the sale is:<br><br>…<br><br>(f) the result of:<br><br>(i) a Call Market Order,<br><br>(ii) a Market-on-Close Order,<br><br>(iii) a Volume-Weighted Average Price Order, or<br><br>(iv) a Basis Order. | **3.1 Restriction on Short Selling**<br><br>(2) A short sale of a security may be made on a marketplace at a price below the last sale price if the sale is:<br><br>…<br><br>(f) the result of:<br><br>(i) a Call Market Order,<br><br>(ii) a Market-on-Close Order, ~~or~~<br><br>(iii) a Volume-Weighted Average Price Order, or<br><br>(iv) a Basis Order. |

| Text of Provisions Following Adoption of Amendments Effective April 8, 2005 | Text of Current Provisions Marked to Reflect Adoption of Amendments Effective April 8, 2005 |
|---|---|
| **5.2 Best Price Obligation**<br><br>(2) Subsection (1) does not apply to the execution of an order which is:<br><br>…<br><br>(c) directed or consented to by the client to be entered on a marketplace as:<br><br>(i) a Call Market Order,<br><br>(ii) a Volume-Weighted Average Price Order,<br><br>(iii) a Market-on-Close Order,<br><br>(iv) an Opening Order, or<br><br>(v) a Basis Order. | **5.2 Best Price Obligation**<br><br>(2) Subsection (1) does not apply to the execution of an order which is:<br><br>…<br><br>(c) directed or consented to by the client to be entered on a marketplace as:<br><br>(i) a Call Market Order,<br><br>(ii) a Volume-Weighted Average Price Order,<br><br>(iii) a Market-on-Close Order, ~~or~~<br><br>(iv) an Opening Order, or<br><br>(v) a Basis Order. |
| **6.2 Designations and Identifiers**<br><br>(1) Each order entered on a marketplace shall contain:<br>…<br><br>(b) a designation acceptable to the Market Regulator for the marketplace on which the order is entered, if the order is:<br><br>(i) a Call Market Order,<br><br>(ii) an Opening Order,<br><br>(iii) a Market-on-Close Order,<br><br>(iv) a Special Terms Order,<br><br>(v) a Volume-Weighted Average Price Order,<br><br>(v.1) a Basis Order,<br><br>(vi) part of a Program Trade,<br><br>(vii) part of an intentional cross or internal cross,<br><br>(viii) a short sale which is subject to the price restriction under subsection (1) of Rule 3.1,<br><br>(ix) a short sale which is exempt from the price restriction on a short sale in accordance with subsection (2) of Rule 3.1,<br><br>(x) a non-client order, | **6.2 Designations and Identifiers**<br><br>(1) Each order entered on a marketplace shall contain:<br>…<br><br>(b) a designation acceptable to the Market Regulator for the marketplace on which the order is entered, if the order is:<br><br>(i) a Call Market Order,<br><br>(ii) an Opening Order,<br><br>(iii) a Market-on-Close Order,<br><br>(iv) a Special Terms Order,<br><br>(v) a Volume-Weighted Average Price Order,<br><br>(v.1) a Basis Order,<br><br>(vi) part of a Program Trade,<br><br>(vii) part of an intentional cross or internal cross,<br><br>(viii) a short sale which is subject to the price restriction under subsection (1) of Rule 3.1,<br><br>(ix) a short sale which is exempt from the price restriction on a short sale in accordance with subsection (2) of Rule 3.1,<br><br>(x) a non-client order, |

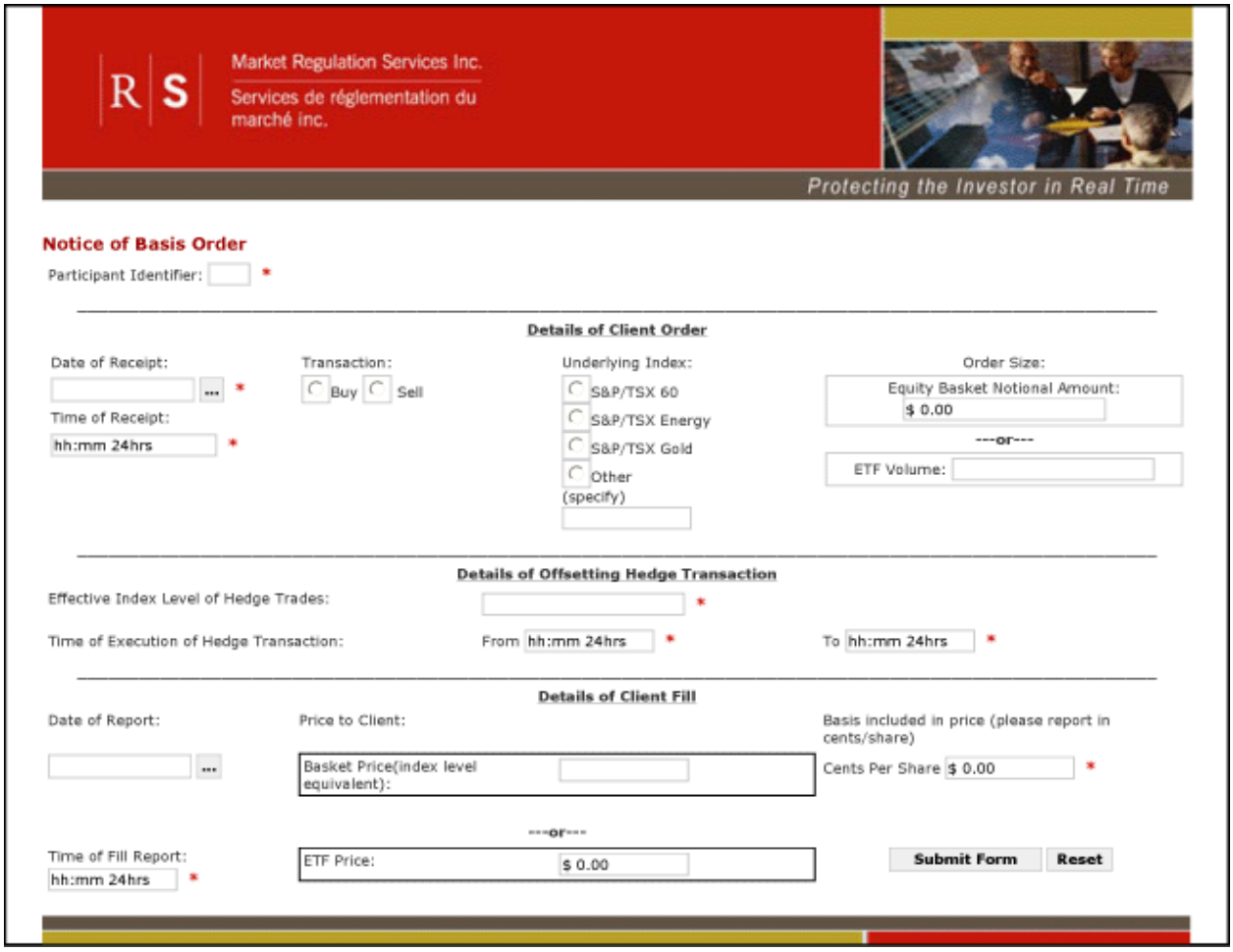
| Text of Provisions Following Adoption of Amendments Effective April 8, 2005 | Text of Current Provisions Marked to Reflect Adoption of Amendments Effective April 8, 2005 |
|---|---|
| (xi) a principal order,<br><br>(xii) a jitney order,<br><br>(xiii) for the account of a derivatives market maker,<br><br>(xiv) for the account of a person who is an insider of the issuer of the security which is the subject of the order,<br><br>(xv) for the account of a person who is a significant shareholder of the issuer of the security which is the subject of the order, or<br><br>(xvi) of a type for which the Market Regulator may from time to time require a specific or particular designation. | (xi) a principal order,<br><br>(xii) a jitney order,<br><br>(xiii) for the account of a derivatives market maker,<br><br>(xiv) for the account of a person who is an insider of the issuer of the security which is the subject of the order,<br><br>(xv) for the account of a person who is a significant shareholder of the issuer of the security which is the subject of the order, or<br><br>(xvi) of a type for which the Market Regulator may from time to time require a specific or particular designation. |
| **6.3 Exposure of Client Orders**<br><br>(1) A Participant shall immediately enter on a marketplace a client order to purchase or sell 50 standard trading units or less of a security unless:<br>…<br><br>(h) the client has directed or consented to the order being entered on a marketplace as:<br><br>(i) a Call Market Order,<br><br>(ii) an Opening Order,<br><br>(iii) a Special Terms Order,<br><br>(iv) a Volume-Weighted Average Price Order,<br><br>(v) a Market-on-Close Order, or<br><br>(vi) a Basis Order. | **6.3 Exposure of Client Orders**<br><br>(1) A Participant shall immediately enter on a marketplace a client order to purchase or sell 50 standard trading units or less of a security unless:<br>…<br><br>(h) the client has directed or consented to the order being entered on a marketplace as:<br><br>(i) a Call Market Order,<br><br>(ii) an Opening Order,<br><br>(iii) a Special Terms Order,<br><br>(iv) a Volume-Weighted Average Price Order, ~~or~~<br><br>(v) a Market-on-Close Order, or<br><br>(vi) a Basis Order. |
| **8.1 Client-Principal Trading**<br><br>(2) Subsection (1) does not apply if the client has directed or consented that the client order be:<br><br>(a) a Call Market Order;<br><br>(b) an Opening Order;<br><br>(c) a Market-on-Close Order;<br><br>(d) a Volume-Weighted Average Price Order; or<br><br>(e) a Basis Order. | **8.1 Client-Principal Trading**<br><br>(2) Subsection (1) does not apply if the client has directed or consented that the client order be:<br><br>(a) a Call Market Order;<br><br>(b) an Opening Order;<br><br>(c) a Market-on-Close Order; ~~or~~<br><br>(d) a Volume-Weighted Average Price Order; or |

| Text of Provisions Following Adoption of Amendments Effective April 8, 2005 | Text of Current Provisions Marked to Reflect Adoption of Amendments Effective April 8, 2005 |
|---|---|
| | (e) a Basis Order. |

**Appendix "C"**

***Universal Market Integrity Rules***

**Sample "Notice of Basis Order" Form**



### 13.1.8 MFDA News Release - MFDA Regional Council Hearing Panel Issues Written Order in Raymond Brown-John Proceeding

*For immediate release*

**MFDA REGIONAL COUNCIL HEARING PANEL ISSUES WRITTEN ORDER IN RAYMOND BROWN-JOHN PROCEEDING**

**April 5, 2005** (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") today announced that the Hearing Panel of the MFDA Pacific Regional Council in the Raymond Brown-John proceeding has issued its written Order adjourning the hearing, as previously announced on April 1, 2005.

A copy of the written Order is available on the MFDA web site at www.mfda.ca.

The hearing in this matter will resume by teleconference at the MFDA Office, 650 West Georgia Street, Suite 1220, Vancouver, British Columbia on Monday, April 25, 2005 at 9:30 a.m. (PST) or as soon thereafter as can be held.

The hearing will be open to the public, except as may be required for the protection of confidential matters.

The Mutual Fund Dealers Association of Canada is the self-regulatory organization for Canadian mutual fund dealers. The MFDA regulates the operations, standards of practice and business conduct of its 181 members and their approximately 70,000 representatives with a mandate to protect investors and the public interest.

*For further information, please contact:*
Gregory J. Ljubic
Corporate Secretary
(416) 943-5836 or gljubic@mfda.ca

### 13.1.9 MFDA Order in Respect of Raymond Brown-Jones

**IN THE MATTER OF A DISCIPLINARY HEARING**
**PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1**
**OF THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: RAYMOND BROWN-JOHN**

**ORDER**

**WHEREAS** on January 21, 2005, the Mutual Fund Dealers Association of Canada (the MFDA) issued a Notice of Hearing pursuant to section 24.4 of By-law No. 1 in respect of **RAYMOND BROWN-JOHN, (**the Respondent);

**AND WHEREAS** on March 2, 2005 this matter was set down to proceed to a hearing on March 31, 2005;

**AND WHEREAS** the Respondent was not in attendance at the scheduled hearing;

**AND WHEREAS** the Hearing Panel decided on March 31 that the MFDA had technically complied with the Rules of Procedure respecting Notice, and therefore the Hearing Panel had jurisdiction to hear this matter;

**AND WHEREAS** the Hearing Panel directed that further and additional efforts be made by MFDA to ensure that the Respondent has adequate notice of these proceedings;

**AND WHEREAS** the Hearing Panel is prepared to hear evidence in support of a suggestion that the Respondent seeks to avoid service,

**IT IS HEREBY ORDERED THAT** this matter is adjourned to give the MFDA an opportunity to enquire as to the best means to serve adequate Notice upon the Respondent.

**AND IT IS FURTHER ORDER THAT** the Hearing Panel will convene by means of Electronic Hearing at MFDA Office, 650 West Georgia Street, Suite 1220, Vancouver, B.C. on Monday April 25, 2005 at 9:30 a.m. (Pacific) or as soon thereafter as the hearing can be held, to hear submissions and give directions as to further efforts at service and to set a new date for the adjourned Hearing.

March 31, 2005.

“The Hon. Roger Kerans Q.C.”

“Dawn Daughton”

“Larry Neilsen”

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# Chapter 25

# Other Information

## 25.1 Memorandums of Understanding

### 25.1.1 TSX Venture Exchange Inc. - Amended and Restated CPC Operating Agreement

**AMENDED AND RESTATED**
**CPC OPERATING AGREEMENT**

Among:

**TSX VENTURE EXCHANGE INC. (TSX VENTURE)**

**AND**

**BRITISH COLUMBIA SECURITIES COMMISSION (BCSC),**

**ALBERTA SECURITIES COMMISSION (ASC),**

**SASKATCHEWAN FINANCIAL SERVICES COMMISSION (SSC),**

**MANITOBA SECURITIES COMMISSION (MSC),**

**ONTARIO SECURITIES COMMISSION (OSC),**

**AND**

**NOVA SCOTIA SECURITIES COMMISSION (NSSC)**

**TABLE OF CONTENTS**

## I. Definitions and Interpretations

### A. Definitions

The following terms used in this Agreement have the meanings set out below.

**Applicable Commission** means each Commission with which a CPC has filed a preliminary CPC Prospectus.

**Commission** means any of the BCSC, ASC, SSC, MSC, OSC and NSSC and includes either or both of the securities regulatory authority and regulator, as applicable, as securities legislation or securities directions, may require.

**Control Person** means a control person as defined in TSX Venture *Policy 1.1 - Interpretation*.

**CPC** means a capital pool company, as defined in the CPC Policy.

**CPC Jurisdictions** means the jurisdictions in which (subject to securities legislation) a CPC prospectus may be filed and receipted and, as at the date of this agreement, include British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Nova Scotia.

**CPC Policy** means TSX Venture *Policy 2.4 - Capital Pool Companies* as published April, 2002 and effective on or before June 15, 2002, as amended from time to time. Reference in this agreement to the application of, or compliance with, the CPC Policy includes reference to the application of, or compliance with, any other TSX Venture policy or form that is referred to in the CPC Policy.

**CPC Prospectus** means a prospectus prepared in accordance with the CPC Policy, the CPC Prospectus Form, OSC Rule 41-501 *General Prospectus Requirements* and other applicable securities legislation.

**CPC Prospectus Form** means TSX Venture *Form 3A - Capital Pool Company Prospectus* as published April, 2002 and effective on or before June 15, 2002, as amended from time to time.

**CPC Review Staff** means the corporate analysts employed on a full-time, part-time or secondment basis by TSX Venture to review, among other things, CPC Prospectuses.

**Excluded Persons** means those persons in respect of whom TSX Venture may choose not to carry out a background check and:

(a) in the context of the review of a CPC Prospectus, refers to persons referred to in section I. B. 1(c) of Appendix A; or

(b) in the context of a review of the QT Circular, refers to persons referred to in section II. A. 4 of Appendix A.

**Final Exchange Bulletin** has the meaning in the CPC Policy.

**Insider** means an insider as defined in TSX Venture *Policy 1.1 – Interpretation.*

**IPO Jurisdiction(s)** means the one or more CPC Jurisdictions in which the CPC's initial public offering is made under the CPC Prospectus.

**IPO Regulator** means, in connection with a CPC's initial public offering, the principal regulator under the MRRS Policy. Until the BCSC obtains a CPIC terminal, when the BCSC is the IPO Regulator, for the purpose of completing background checks, the IPO Regulator will mean the ASC**.**

**Lead Regulator** means the ASC.

**MRRS Policy** means National Policy 43-201 *Mutual Reliance Review System for Prospectuses and AIFs* or any successor instrument.

**MRRS ERA Policy** means National Policy 12-201 *Mutual Reliance Review System for Exemptive Relief Applications* or any successor instrument.

**PIF** means TSX Venture's Form 2A - *Personal Information Form* or any successor form required by TSX Venture to conduct background checks.

**Qualified Accountant** means an individual employed by TSX Venture on a full-time or part-time basis, who has a Canadian professional accounting designation (CA, CMA, CGA) and a minimum of 30 months accounting or auditing experience in a public accounting firm or any other individual that the Lead Regulator accepts in writing**.**

**Qualified Lawyer** means an individual employed by TSX Venture on a full-time or part-time basis, who is a member of a law society in Canada and has a minimum of three years experience primarily in the area of securities law or any other individual that the Lead Regulator accepts in writing.

**Qualified Resource Professional** means an individual employed or retained by TSX Venture, who:

(a) if the Resulting Issuer will be a mining issuer is:

  (i) a "qualified person" under National Instrument 43-101 *Standards of Disclosure for Mineral Projects;* or

  (ii) an engineer or geologist with at least three years experience in mineral exploration, mine development or operation or mineral project assessment, or any combination of these and a member in good standing of a provincial professional association of engineers or geologists where that individual is located; or

(b) if the Resulting Issuer will be an oil and gas issuer,

  (i) a "qualified reserves evaluator or auditor" as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* or any successor instrument, or

  (ii) is a member of a Canadian professional engineering or geoscience association or an equivalent foreign professional association with at least three years of relevant professional experience in the oil and gas industry; or

(c) the Lead Regulator agrees in writing to accept as a qualified resource professional.

**Qualifying Transaction** has the meaning in the CPC Policy.

**QT Circular** means the information circular or filing statement, as applicable, required to be prepared in connection with a Qualifying Transaction by a CPC in accordance with the CPC Policy.

**QT Circular Form** means TSX Venture *Form 3B1 – Information Required in an Information Circular for a Qualifying Transaction* / *Form 3B2 – Information Required in a Filing Statement for a Qualifying Transaction* effective on January 15, 2003, as amended from time to time.

**QT Regulator** means, for a CPC that has issued a news release announcing a proposed Qualifying Transaction:

(a) the securities regulatory authority in the jurisdiction in which the head office of the Resulting Issuer will be located, provided that it is one of the Commissions; or

(b) if the head office of the Resulting Issuer will not be located in one of the CPC Jurisdictions, the IPO Regulator.

However, if a CPC issues a news release announcing that it will not be proceeding with a proposed Qualifying Transaction, the IPO Regulator will be the QT Regulator.

**QT Review Staff** means the corporate analysts employed on a full-time, part-time or secondment basis by TSX Venture to review, among other things, QT Circulars.

**Receipt** means a receipt issued for a prospectus (including a preliminary prospectus or amendment) and, if applicable, includes reference to the term, decision document, as used in the MRRS Policy.

**Receipt Refusal Concerns** mean the concerns of the IPO Regulator as set out in section 120 of the *British Columbia Securities Commission Rules*; section 120 of the *Securities Act* (Alberta); section 70 of the *Securities Act* (Saskatchewan); section 61 of the *Securities Act* (Manitoba); section 61 of the *Securities Act* (Ontario); and section 66 of the *Securities Act* (Nova Scotia) as may be amended from time to time, as applicable.

**Resulting Issuer** has the meaning in the CPC Policy.

**RSP** means Market Regulation Services Inc. or any regulation services provider as defined in National Instrument 21-101 – *Marketplace Operation* and referred to in National Instrument 23-101 - *Trading Rules*, that may be retained by TSX Venture.

**SEDAR** has the meaning in National Instrument 13-101 *System for Electronic Document Analysis and Retrieval.*

**Significant Waiver** means a waiver of the CPC Policy identified in Appendix B to this Agreement.

**Sponsor** has the meaning in the CPC Policy.

**Target Company** has the meaning in the CPC Policy.

**B. Interpretation**

The following terms have the meanings provided in National Instrument 14-101 *Definitions*: jurisdiction; securities directions; securities legislation; securities regulatory authority; and regulator (other than when used in the term IPO Regulator, Lead Regulator or QT Regulator).

**II. Background and Purpose**

1. The CPC Policy establishes a program under which a CPC may conduct an initial public offering by prospectus and obtain a listing on TSX Venture's Tier 2. The program requires the CPC to identify and complete a Qualifying Transaction within a specified period of time after listing. After the CPC obtains the necessary shareholder approval or files the QT Circular on SEDAR, as applicable, it closes the Qualifying Transaction and submits to TSX Venture all required post-meeting and post-closing documents. Provided that the Resulting Issuer meets applicable TSX Venture minimum listing requirements, TSX Venture issues a Final Exchange Bulletin and the Resulting Issuer is no longer considered to be a CPC.

2. TSX Venture administers the CPC program and wishes to review CPC Prospectuses and QT Circulars in order to more effectively administer the CPC program, reduce duplication of review, improve market efficiencies and provide consistent treatment to CPCs among CPC Jurisdictions.

3. In agreeing to accept the CPC program and in determining that the operation of the CPC program is not contrary to the public interest, the Commissions considered that it was appropriate to enter into this Agreement to set out the standards TSX Venture will apply in review of CPC Prospectuses and QT Circulars.

4. The Commissions, in exercising their discretion under securities legislation, intend to rely primarily on the analysis and review carried out by TSX Venture. However, nothing in this Agreement involves a surrender of jurisdiction by any Commission. Each Commission may conduct a detailed review of a CPC Prospectus and retains its discretion to refuse to issue a Receipt for a CPC Prospectus, whether a preliminary or final or an amendment of either. Nothing in this Agreement is intended to create an obligation on any Commission to review a preliminary CPC Prospectus or draft QT Circular.

**III. Responsibilities of IPO Regulator**

**A. Issuing Receipts**

1. The IPO Regulator will be responsible for issuing the Receipt for the preliminary CPC Prospectus, the final CPC Prospectus and any amendment to a preliminary or final CPC Prospectus.

**B. Commission Review of CPC Prospectus**

1. An Applicable Commission may elect to conduct a detailed review of a CPC Prospectus. An Applicable Commission will use its reasonable best efforts to advise TSX Venture of this in writing, within five business days following the filing of the CPC Prospectus.

2. An Applicable Commission will immediately notify the CPC in writing of this election and will advise the CPC to deal directly with that Applicable Commission.

3. The terms of this Agreement shall continue to apply to the parties except to the extent they relate to the review of that CPC Prospectus and the issuance of Receipts for it.

**IV. CPC Prospectus: Responsibilities of TSX Venture**

1. When reviewing a CPC Prospectus, TSX Venture will exercise its reasonable professional judgment.

2. TSX Venture, on a timely basis, having regard to the procedures set out in Part I of Appendix A, will use its reasonable

best efforts to:

(a) apply and enforce the CPC Policy;

(b) assess the quality of the disclosure contained in the CPC Prospectus to determine whether it appears to:

(i) comply in all material respects with the CPC Prospectus Form; and

(ii) contain full, true and plain disclosure of all material facts relating to the securities offered by the CPC Prospectus, and

(c) identify material issues and consider whether there appear to be any Receipt Refusal Concerns.

3. TSX Venture will not recommend issuance of a final Receipt for a CPC Prospectus where it appears to TSX Venture that:

(a) there are unresolved Receipt Refusal Concerns;

(b) the CPC Prospectus does not comply with the tests set out in sub-paragraph 2(b)(i) and (ii), above;

(c) there is material non-compliance with the CPC Policy and such non-compliance, if allowed, would constitute a Significant Waiver unless the necessary exemption or waiver has been granted in accordance with Part VI of the Agreement; or

(d) any necessary exemption or waiver from securities legislation or securities direction has not been granted by the relevant securities regulatory authority(ies) or regulator(s).

4. This Agreement does not impose on TSX Venture a standard higher than that which would be achieved by the exercise of reasonable professional judgment. This Agreement does not impose a responsibility on TSX Venture to:

(a) be a substitute for the due diligence investigations of the CPC, its directors, officers, and promoters or the agent;

(b) ensure the viability of the CPC;

(c) guarantee the adequacy of the disclosure in the CPC Prospectus;

(d) guarantee that there are no Receipt Refusal Concerns;

(e) guarantee compliance with the CPC Policy; or

(f) guarantee compliance by the CPC with applicable securities legislation or securities directions.

**V. Qualifying Transaction: Responsibilities of TSX Venture**

1. When reviewing a QT Circular filing, TSX Venture will exercise its reasonable professional judgment.

2. When reviewing a QT Circular, TSX Venture, on a timely basis, having regard to the procedures set out in Part II of Appendix A will use its reasonable best efforts to:

(a) apply and enforce the CPC Policy; and

(b) assess the quality of the disclosure in the QT Circular to determine whether it appears to comply in all material respects with the QT Circular Form.

3. TSX Venture will not accept a QT Circular where it appears to TSX Venture that:

(a) the QT Circular does not comply in all material respects with the QT Circular Form;

(b) there is material non-compliance with the CPC Policy and such non-compliance, if allowed, would constitute a Significant Waiver, unless a Significant Waiver has been granted in accordance with Part VI of this Agreement; or

(c) any necessary exemption or waiver from securities legislation has not been granted by the relevant securities regulatory authority(ies) or regulator(s).

4. This Agreement does not impose on TSX Venture a standard higher than that which would be achieved by the exercise of reasonable professional judgment. This Agreement does not impose a responsibility on TSX Venture to:

(a) be a substitute for the due diligence investigations of the CPC, its directors, officers, promoters or the Sponsor;

(b) ensure the viability of the Resulting Issuer;

(c) guarantee the adequacy of the disclosure in the QT Circular;

(d) guarantee there are no public interest concerns;

(e) guarantee compliance with the CPC Policy; or

(f) guarantee compliance by the CPC, Target Company or the Resulting Issuer with applicable securities legislation or securities directions.

## VI. Waivers and Amendments

### *A. Waivers of Securities Legislation and Securities Directions*

1. **General -** In regard to pre-filings and waivers of securities legislation in connection with a CPC Prospectus filing, the principles of mutual reliance, as amended from time to time will apply. The mutual reliance procedures are described in the MRRS Policy and the MRRS ERA Policy.

(a) **CPC Prospectus** - Subject to amendment of those policies, where a waiver or exemption is required in connection with a CPC Prospectus, generally, this will mean that:

(i) The IPO Regulator will act as principal regulator under the MRRS Policy or MRRS ERA Policy, as applicable, unless relief is not required from the IPO Regulator, in which case the Commission with which the CPC has the next most significant connection will act as principal regulator.

(ii) If referred to in Appendix B to the MRRS Policy, (e.g. relief from requirements relating to financial statements, escrow or listing representations) the application will be dealt with under the MRRS Policy and the relief will be evidenced by the issuance of a Receipt.

(iii) Where a waiver or exemption cannot be evidenced by the issuance of a Receipt for a CPC Prospectus, the matter will generally be dealt with under the MRRS ERA Policy.

(b) **QT Circular** - Notwithstanding the MRRS ERA Policy, when an exemption from securities legislation, if applicable, is required in regard to the disclosure that must be provided in a QT Circular, generally, the QT Regulator will act as the principal regulator unless relief is not required from the QT Regulator, in which case the CPC will select as principal regulator the Commission with which the Resulting Issuer will have the next most significant connection.

2. **TSX Venture Advice** - TSX Venture will require a CPC to identify at the time of filing the preliminary CPC Prospectus and the draft QT Circular whether any waiver or exemption from securities legislation or securities directions is required. If a waiver or exemption is required in connection with a CPC Prospectus, TSX Venture will advise the IPO Regulator whether it has any objection to the requested waiver or exemption.

### *B. Significant Waivers of CPC Policy and Forms*

1. TSX Venture agrees not to allow any Significant Waiver of the CPC Policy, the CPC Prospectus Form or its QT Circular Form unless TSX Venture has considered the proposed waiver and determined that granting the waiver:

(a) is a reasonable exercise of discretion; and

(b) does not to the best of its knowledge, authorize an action which is contrary to applicable securities legislation except where a waiver or exemption has also been obtained from the applicable securities regulatory authority(ies) or regulator(s).

**C. Amendments to the CPC Policy, CPC Prospectus Form or QT Circular Form**

Any proposed amendment to any provision of the CPC Policy, the CPC Prospectus Form or the QT Circular Form (a "Policy Amendment"), will be reviewed and approved by the Lead Regulator and the BCSC (the "Primary Regulators") in accordance with the oversight program established for TSX Venture by the Primary Regulators from time to time and in accordance with the procedures set out in Part VI of Appendix A.

**VII. Violation of Securities Legislation**

1. In the event that in the context of a review of a CPC Prospectus, or a QT Circular, TSX Venture becomes aware of a circumstance that appears to be a violation of applicable securities legislation:

   (a) TSX Venture will conduct a reasonable inquiry into the matter;

   (b) if the results of the inquiry reveal a circumstance that TSX Venture perceives to be a contravention of securities legislation, TSX Venture will immediately provide written notification to the Applicable Commissions to the persons identified in Appendix E; and

   (c) TSX Venture will not take any further action with regard to acceptance of the CPC Prospectus or the QT Circular until the Applicable Commission has confirmed it has no objection to TSX Venture proceeding.

**VIII. Reporting**

1. Unless otherwise agreed to by the Lead Regulator, TSX Venture will submit to each of the Commissions the information referred to in:

   (a) Part V A 3 (a) and (c) of Appendix A, except for a Significant Waiver contemplated by section 2 of Appendix B, in which case, TSX Venture will provide the name of the CPC and the financial statement requirement that was waived; and

   (b) Part V B of Appendix A

   within 30 days after the end of a reporting period. Reporting periods are for six month periods ending on June 30 and December 31 of each year.

**IX. Miscellaneous**

**A. Application of this Agreement**

1. This Agreement will apply only to a CPC that files a preliminary CPC Prospectus with an Applicable Commission on or after the effective date of this Agreement.

2. In the review of a CPC Prospectus or a Qualifying Transaction with regard to a CPC, JCP, VCP or keystone company that has filed a preliminary prospectus , prior to the effective date of this Agreement, TSX Venture will continue to be subject only to the applicable prior operating agreement.

**B. Effective Date**

This Agreement will come into effect on March 23, 2005 and amends and restates an earlier agreement of June 15, 2002.

**C. Cancellation of this Agreement**

1. A Commission may terminate its participation in this Agreement by giving six months prior written notice to the other parties. If any Commission cancels its participation in this Agreement, TSX Venture will cease to have authority to review CPC Prospectuses in that jurisdiction from the effective date of cancellation. Notwithstanding such cancellation, the Agreement will continue to bind the other parties.

2. TSX Venture may terminate this Agreement with any one or more Commissions on six months notice. However, the Agreement will continue to apply with regard to any CPC that has filed a preliminary CPC Prospectus before the effective date of TSX Venture's termination.

3. Notice of termination will be given to the persons referred to in Appendix C, and to the President of TSX Venture.

4. If TSX Venture materially breaches this Agreement, a Commission may terminate this Agreement immediately.

**D. Appendices**

Appendix A to this Agreement provides the relevant policies and procedures for review of a CPC Prospectus and a QT Circular, qualifications of CPC Review Staff and QT Review Staff, SEDAR filings, file maintenance and Policy Amendments. Appendix B identifies waivers from the CPC Policy that are considered Significant Waivers. Appendix C identifies the persons to whom proposed CPC Policy, CPC Prospectus Form, and QT Circular Form amendments and amendments to this Agreement are to be addressed. Appendix D identifies the parties required to approve amendments to this Agreement. Appendix E identifies the persons to be notified if TSX Venture perceives that securities legislation has been contravened. The Appendices form part of this Agreement.

**E. Consultation**

Unless otherwise agreed to between TSX Venture and the Lead Regulator, TSX Venture will meet at least semi-annually with the Lead Regulator, within 30 days of the end of each reporting period referred to in section VIII of this Agreement, in order to review and enhance the operation of this Agreement and to identify and discuss issues that have arisen during that period.

**F. Amendments to Operating Agreement**

1. Subject to paragraphs 4 and 5, amendments may be made to this Agreement upon the written consent of TSX Venture and the parties referred to in Appendix D.

2. If a Commission requests an amendment, the request will be made in writing and sent by that Commission to the Lead Regulator to be coordinated by the Lead Regulator among the Commissions prior to it being sent to TSX Venture. TSX Venture will endeavor to provide a response or consent to the Lead Regulator within 30 days of receipt of any written request from the Lead Regulator.

3. If TSX Venture requests an amendment, TSX Venture, in a covering letter sent to the Commissions, will provide a narrative summary and reasons for the proposed amendment together with a copy of the proposed amendment. The Commissions will follow principles of mutual reliance in considering the amendment. The Lead Regulator will consolidate written responses and/or coordinate consents from the other Commissions and will endeavor to provide such responses and/or consents to TSX Venture within 30 days of receipt of any written request from TSX Venture.

4. An amendment to the information respecting a Commission contained in Appendix C, D or E may be made by that Commission without the consent of any other party to this Agreement, provided that any such Commission sends written notice of such amendment to the other parties in the form of a revised Appendix C, D or E, as the case may be.

5. (a) No amendment to this Agreement shall affect the OSC until the procedures set out in section 143.10 of the *Securities Act* (Ontario) (the "Ontario Act") have been complied with, unless:

   (i) the amendment is an amendment to an Appendix;

   (ii) the amendment adds an additional securities regulatory authority as a party to the Agreement; or

   (iii) on the date upon which the proposed amendment is to become effective, section 143.10 of the Ontario Act no longer applies to this Agreement.

   (b) Where section 143.10 of the Ontario Act applies to this Agreement, the amendment shall come into effect with respect to the OSC on the date determined in accordance with section 143.10 of the Ontario Act.

   (c) Where section 143.10 of the Ontario Act does not apply to this Agreement, the amendment shall come into effect with respect to the OSC upon the written consent of TSX Venture and the parties referred to in Appendix D.

**G. Counterparts**

This Agreement may be executed in several counterparts, including by facsimile. Upon execution, each counterpart will be considered an original. The counterparts together shall constitute one agreement.

**Acknowledgments**

By placing their signatures below, each of the parties to this Agreement acknowledges and agrees to the terms of this Agreement.

**TSX Venture Exchange Inc.**

"Linda Hohol"
President

**British Columbia Securities Commission**

"Brenda Leong"
Executive Director

**Alberta Securities Commission**

"David C. Linder"
Executive Director

**Saskatchewan Financial Services Commission**

"Barbara Shourounis"
Director, Securities Division

**Manitoba Securities Commission**

"Donald G. Murray"
Chair

**Ontario Securities Commission**

"David A. Brown, Q.C."
Chair

**Nova Scotia Securities Commission**

"H. Leslie O'Brien, Q.C."
Chair

**APPENDIX A**

**CPC Prospectus and QT Circular Procedures,
Review Staff, SEDAR, File Maintenance and Policy Amendments**

## I. CPC Prospectus

### A. Filing of CPC Prospectus

1. **CPC Policy Requirements** - TSX Venture will require each CPC, subject to the grant by TSX Venture of a Significant Waiver:

   (a) to comply in all material respects with the CPC Policy;

   (b) to prepare the CPC Prospectus in accordance with the CPC Prospectus Form or any successor form;

   (c) to identify in the cover letter accompanying the filing of the preliminary CPC Prospectus, in addition to any requirement of Part 9 of the MRRS Policy, any required waivers or exemptive relief applications from applicable securities legislation, securities directions or TSX Venture requirements;

   (d) to file the CPC Prospectus together with supporting materials in accordance with the MRRS Policy; and

   (e) to confirm to the IPO Regulator in a letter accompanying the preliminary filing materials that it has made application, or is concurrently making an application, to TSX Venture to list its securities on TSX Venture.

### B. Review of Preliminary CPC Prospectus

1. **Review Procedures** - The following review procedures will apply in respect of the filing of a CPC Prospectus:

   (a) **General Review** – After the preliminary Receipt is issued by the IPO Regulator, TSX Venture will promptly review the CPC Prospectus and supporting materials in accordance with its review procedures.

   (b) **TSX Venture Background Checks** – Subject to subsection (c), as soon as possible after receiving the PIF for any director, officer, Insider, promoter or Control Person of the CPC, TSX Venture will, or will cause its RSP to, conduct background checks on each such person or company to determine whether there is relevant material information of detriment with respect to a director, officer, Insider, promoter or Control Person of the CPC that would give TSX Venture reason to believe that there is a Receipt Refusal Concern.

   (c) **TSX Venture Discretion on Background Checks -** TSX Venture may choose not to carry out a background check for any person referred to in subsection (b) if:

      (i) the person is currently on the board of directors or a member of senior management of an issuer that is listed on TSX Venture or the Toronto Stock Exchange (TSX), and

      (ii) either:

         (A) TSX Venture or its RSP has:

            (I) required a PIF and conducted background checks on that person in the prior 18 month period, and those prior background checks did not disclose material issues of detriment, and

            (II) received a statutory declaration from that person confirming that there has been no change in the information disclosed in the most recent PIF filed by that person; or

         (B) a Vice-President Corporate Finance of TSX Venture has concluded that it is not necessary to conduct background checks because the person has exhibited:

            (I) a satisfactory track record with public companies in Canada or the United States, and

            (II) a positive corporate governance and regulatory history.

(d) **IPO Regulator Background Checks –** The IPO Regulator will initiate its own background checks. In the event the IPO Regulator identifies any questions or concerns as a result of those background checks, the IPO Regulator will deal directly with the CPC or the applicable person or company and, if the questions or concerns are satisfactorily resolved, the IPO Regulator will advise TSX Venture accordingly by fax or e-mail.

(e) **Communication with CPC Relating to Background Checks** – TSX Venture will address details of any issues or concerns arising from background checks conducted on any director, officer, Insider, promoter or Control Person of the CPC as soon as possible after receipt of any such background checks. If confidential inquiries regarding potential information of detriment are necessary, the communication may be made in writing directly with the applicable individual and need not be sent via SEDAR. However, TSX Venture must maintain a record of that communication.

(f) **General TSX Venture Responsibility -** Subject to subsection (d), TSX Venture will be responsible for issuing and resolving comments on the CPC Prospectus and related materials and the CPC will generally deal solely with TSX Venture.

(g) **TSX Venture Financial Statement Review** – TSX Venture will provide the CPC Prospectus (including the financial statements) to a Qualified Accountant for review and comment if:

(i) the financial statements consist of anything other than an audit report, opening balance sheet, an income statement and notes;

(ii) there are any items in the balance sheet, income statement, if applicable, or notes that deviate from those customarily contained in the financial statements accompanying a CPC Prospectus; or

(iii) there is any reservation in the auditor's report.

(h) **TSX Venture Initial Comment Letter** – TSX Venture will use its reasonable best efforts to send an initial comment letter to the CPC within 10 business days of the date of the Receipt for the preliminary prospectus. The initial comment letter will provide a clear and full explanation of TSX Venture's material concerns and the issues to be resolved, including:

(i) any Receipt Refusal Concerns;

(ii) any material disclosure deficiencies;

(iii) any non-compliance with the CPC Policy that if permitted would constitute a Significant Waiver and, unless an application has already been filed, a direction to the CPC to comply with the CPC Policy or make application to TSX Venture for a Significant Waiver;

(iv) requests for any additional information reasonably required to assess the filing; and

(v) a request that the CPC confirm that all necessary applications for exemptive relief or waivers have been made to the Applicable Commissions.

(i) **Comments of Applicable Commissions** – Within five business days after TSX Venture issues its initial comment letter, each Applicable Commission (other than the IPO Regulator) will use its reasonable best efforts:

(i) to advise TSX Venture and the IPO Regulator by fax or e-mail if it has any material concerns with the materials that, if left unresolved, would cause it to opt out of the MRRS Policy, or

(ii) if there are no outstanding applications for exemption orders or waivers filed with it, to indicate in the SEDAR "Filing Status" screen that it is clear to receive final materials.

(j) **Comments of IPO Regulator** - Within five business days after TSX Venture issues its initial comment letter, the IPO Regulator will use its reasonable best efforts to advise TSX Venture by fax or e-mail if it has any material concerns with the materials (other than as a result of background checks), that if left unresolved, would cause it to refuse to issue a Receipt. TSX Venture will incorporate into a subsequent comment letter or send as an attachment to the CPC any material concerns raised by the IPO Regulator.

(k) **Treatment of Concerns** - As soon as possible after receipt of a notice, under section 1 (i) above, the IPO Regulator will advise TSX Venture whether it considers the concern to be a Receipt Refusal Concern or other

concern required to be raised, and if it does, TSX Venture will incorporate the concern into a subsequent comment letter or send it as an attachment to the CPC. Where the IPO Regulator does not consider the concern to be a Receipt Refusal Concern or another concern required to be raised, TSX Venture may nonetheless include the concern in a subsequent comment letter or send it as an attachment to the CPC. If an Applicable Commission opts out of the MRRS Policy, this Agreement will remain in effect and the Applicable Commission will deal with the CPC separately to resolve the concern.

(l) **Notices Under MRRS Policy –** Any notice from an Applicable Commission that is required to be provided under the MRRS Policy to the principal regulator will be provided at the same time to both TSX Venture and the IPO Regulator.

2. **Written Record of Material Communication -** Material communication including comment letters and responses to comment letters, between TSX Venture and the CPC will generally be in writing and delivered via SEDAR. Any material verbal communication must be documented in writing, including the nature and outcome of the discussion.

3. **CPC's Response** - Where issues or deficiency comments were initially raised by a Qualified Lawyer or Qualified Accountant, that individual (or a similarly qualified individual) will consider the acceptability of the CPC's responses.

4. **Invitation to File Final Material** - TSX Venture will only invite the CPC to file final material when the IPO Regulator has indicated via SEDAR, in the SEDAR "Filing Status" screen that it is "Clear for Final". Before the IPO Regulator will indicate that it is "Clear for Final", it will generally require that TSX Venture provide written confirmation that:

(a) all of TSX Venture's comments on the preliminary CPC Prospectus filing (including those raised by an Applicable Commission) have been satisfactorily resolved;

(b) TSX Venture has received either:

(i) the results of all TSX Venture background checks as carried out in accordance with section B 1(b) and any relevant information of detriment revealed by those background checks has been appropriately resolved and, if necessary, disclosed in the CPC Prospectus, or

(ii) the results of the TSX Venture background checks as carried out in accordance with section B 1(b), in relation to at least a majority of all directors, officers, other Insiders, promoters, inclusive of Excluded Persons, and any Control Person of the CPC and any relevant information of detriment revealed by those background checks, has been appropriately resolved and, if necessary, disclosed in the CPC Prospectus and in regard to each director, officer, Insider or promoter who is not an Excluded Person in regard to whom background checks have not been received, from such person or company:

(A) an undertaking to resign,

(B) in the case of an Insider, an undertaking to divest shares, or

(C) in the case of a promoter, an undertaking to cease to be involved with the CPC,

at the request of TSX Venture, if TSX Venture in its sole discretion, considers the resignation, divestiture or cessation of involvement appropriate;

(c) to the best of its knowledge, TSX Venture is not aware of any other circumstances that would cause it to conclude that there are Receipt Refusal Concerns or a failure to materially comply with the CPC Policy, except where a Significant Waiver waiving such non-compliance has been granted;

(d) TSX Venture has granted listing approval to the CPC, conditional only on satisfaction of distribution and other standard conditions of TSX Venture or, if there are any non-standard conditions, those conditions and the concerns underlying those conditions are fully described in the written confirmation;

(e) either TSX Venture has

(i) not granted any Significant Waiver, or

(ii) only granted a Significant Waiver in accordance with Part VI. B. of the Agreement; and

(f) if the CPC Prospectus has been filed in multiple CPC Jurisdictions, each of the Applicable Commissions,

other than the IPO Regulator, has indicated in the SEDAR "Filing Status" screen,

(i) that it is "Clear for Final", or

(ii) has opted out of the MRRS Policy by indicating "MRRS - Opt Out".

5. **Review of Final Material** - When the final CPC Prospectus and supporting material is filed, a member of the CPC Review Staff will promptly review it to determine that acceptable materials have been filed. TSX Venture will use its reasonable best efforts to promptly review the final materials such that a final Receipt for the CPC Prospectus may be issued not later than the next business day following receipt of acceptable final materials.

6. **TSX Venture's Recommendation to Issue Final Receipt** - If the final materials are acceptable, TSX Venture will promptly send to the IPO Regulator a written notice recommending that a Receipt be issued for the final prospectus and stating that:

(a) acceptable materials have been filed;

(b) TSX Venture has complied with this Agreement;

(c) if the CPC Prospectus has been filed in multiple CPC Jurisdictions, the CPC has filed the letter required under section 7.4(4) of the MRRS Policy; and

(d) if applicable, the statutory waiting period (10 days) between the issuance of an MRRS decision document for the preliminary CPC Prospectus and the final CPC Prospectus has expired.

7. **Final Receipt -** The IPO Regulator will generally require receipt of the confirmation from TSX Venture referred to in section B.6. prior to issuing a Receipt for the final CPC Prospectus.

**C. Prospectus Amendments**

1. **Preliminary Prospectus Amendments** - In the case of a preliminary prospectus amendment, TSX Venture will use its reasonable best efforts to follow the MRRS Policy as if it were the principal regulator and if any Applicable Commission sends comments in respect of the preliminary prospectus amendment, that Applicable Commission will provide those comments both to TSX Venture and the IPO Regulator.

2. **Final Prospectus Amendments** - If a prospectus amendment is filed, the following procedures will apply.

(a) Except as varied by this section C. 2., Part I of Appendix A, as modified by the time period requirements of section 10.5 of the MRRS Policy, will apply to the review by TSX Venture of any prospectus amendment.

(b) TSX Venture, the IPO Regulator and each Applicable Commission (other than the IPO Regulator) will review the prospectus amendment and accompanying documents following the procedure set out at sections B.1.(h) to (k) to the extent applicable to the amendment filed.

(c) Prior to issuing a Receipt for the prospectus amendment, the IPO Regulator will generally require receipt from TSX Venture of the confirmation:

(i) referred to in sections B.4, as may be applicable, and B.6(a) and (b); and

(ii) if the prospectus amendment has been filed in multiple CPC Jurisdictions, that the CPC has filed the letter required under section 10.6(4) of the MRRS Policy.

**II. Qualifying Transaction Review**

**A. Review of QT Circular**

1. **Initial QT Circular Filing** - TSX Venture will require each CPC, subject to the grant by TSX Venture of a Significant Waiver to:

(a) comply in all material respects with the CPC Policy;

(b) prepare the draft QT Circular in accordance with the QT Circular Form or any successor form;

(c) make a complete filing with TSX Venture; and

(d) identify in the cover letter accompanying the filing of the draft QT Circular, any required waivers or exemptive relief orders required under applicable securities legislation or TSX Venture requirements.

2. **General Review** – Following receipt of a draft QT Circular, TSX Venture will promptly review the QT Circular and supporting materials in accordance with its review procedures.

3. **TSX Venture Background Checks** – Subject to section 4, TSX Venture will conduct or will cause its RSP to conduct as soon as possible after receiving the PIF for any proposed director, officer, Insider, promoter or Control Person of the Resulting Issuer, background checks on each such person or company. TSX Venture will conduct or will cause its RSP to conduct a reasonable review to determine whether there is relevant material information of detriment with respect to a director, officer, Insider, promoter or Control Person of the Resulting Issuer that would give TSX Venture reason not to accept the Qualifying Transaction.

4. **TSX Venture Discretion on Background Checks -** TSX Venture may choose not to carry out a background check for any person referred to in section 3 if:

(a) the person is currently on the board of directors or a member of senior management of an issuer that is listed on TSX Venture or the TSX, and

(b) either:

(i) TSX Venture or its RSP has:

(A) required a PIF and conducted background checks on that person in the prior 18 month period, and those prior background checks did not disclose material issues of detriment, and

(B) received a statutory declaration from that person confirming that there has been no change in the information disclosed in the most recent PIF filed by that person; or

(ii) a Vice-President, Corporate Finance of TSX Venture has concluded that it is not necessary to conduct background checks because the person has exhibited:

(A) a satisfactory track record with public companies in Canada or the United States, and

(B) a positive corporate governance and regulatory history.

5. **Trading Surveillance** – TSX Venture will cause its RSP to advise it if the RSP becomes aware of any materially unusual trading patterns in the shares of a CPC. TSX Venture or its RSP will conduct such inquiry or investigation as TSX Venture or its RSP, as the case may be, determines to be reasonably necessary or advisable in the circumstances.

6. **Financial Statements** - TSX Venture will provide the financial statements included in the draft QT Circular to a Qualified Accountant for review and comment. The Qualified Accountant will assess whether it appears that:

(a) the financial statements (including any pro forma financial statements) comply with Canadian generally accepted accounting principles;

(b) the QT Circular contains all of the financial statements required under the CPC Policy and TSX Venture's QT Circular Form; and

(c) any future oriented financial information has been prepared in accordance with the Canadian Institute of Chartered Accountants Handbook and National Policy Statement No. 48 or any successor instrument.

7. **Financial Statement Disclosure** - A Qualified Accountant or a member of the QT Review Staff will review the QT Circular and the financial statements included in the draft QT Circular to assess whether it appears that the disclosure derived from the financial statements (e.g. management's discussion and analysis and share capitalization) fairly corresponds to the financial statements. If the review is not conducted by a Qualified Accountant, a Qualified Accountant will be consulted, as necessary.

8. **Geological or Engineering Reports** - If the Resulting Issuer will be an oil and gas or mining issuer, TSX Venture will provide any geological or engineering report to a Qualified Resource Professional for review and comment. The Qualified Resource Professional will assess whether it appears that:

   (a) there are one or more resource properties which have sufficient merit to meet TSX Venture's minimum listing requirements;

   (b) the property reports materially comply with National Instrument 43-101, *Standards of Disclosure for Mineral Projects* and Form 43-101F1 *Technical Report* or National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* or any successor instrument, as applicable; and

   (c) resource and reserve definitions are substantially in accordance with National Instrument 43-101 or National Instrument 51-101 or any successor instrument, as applicable.

9. **Geological or Engineering Disclosure** - TSX Venture will ensure that a reasonable review of the QT Circular and the geological or engineering reports filed with the QT Circular is conducted to assess whether it appears that:

   (a) the QT Circular substantially complies with the CPC Policy (including as specified in the QT Circular Form);

   (b) the funds available to the Resulting Issuer are sufficient to complete any recommended program and the geologist's or engineer's recommendations, conclusions and cost estimates for any recommended program correspond with the details in the "Available Funds" section of the QT Circular; and

   (c) all material facts contained in the reports are fairly disclosed or summarized in the QT Circular and in this regard, quantities, values and disclosure in the reports are consistent with the disclosure in the QT Circular.

   If the Resulting Issuer will be a mining issuer, the review may be conducted by either a Qualified Resource Professional or a member of QT Review Staff, but if the property contains reserves and resources or an economic valuation, such as scoping, pre-feasibility or feasibility studies, the review must be conducted by a Qualified Resource Professional. If the Resulting Issuer will be an oil and gas issuer, the review may be conducted either by a Qualified Resource Professional or a member of the QT Review Staff. In assessing the materiality of information in the reports, the corporate analyst will consider any comments received from the Qualified Resource Professional and, if necessary, will consult with the Qualified Resource Professional.

10. **TSX Venture Comment Letters** - TSX Venture will send a comment letter to the CPC which will provide a clear and full explanation of TSX Venture's material concerns and issues to be resolved, including:

   (a) any matters arising out of the review conducted in accordance with section 2 of Part V of the Agreement;

   (b) any material disclosure deficiencies;

   (c) any material non-compliance with the CPC Policy that if permitted would constitute a Significant Waiver and, unless an application has already been filed, a direction to the CPC to comply with the CPC Policy or make application to TSX Venture for a Significant Waiver;

   (d) requests for any additional information reasonably required to assess the filing; and

   (e) a request that the CPC identify any exemptive relief or waivers required from a securities regulatory authority or regulator in connection with a Qualifying Transaction and confirm that all necessary applications for exemptive relief or waivers have been made.

11. **Geologist/Engineer Comments** - If the Resulting Issuer will be a mining or oil and gas issuer, the CPC will be provided with a comment letter that identifies any material issues or deficiencies identified by a Qualified Resource Professional arising from the review contemplated by section 8, above. The Qualified Resource Professional's comments will be provided to the CPC as soon as reasonably possible. They may be provided with the initial comment letter or as a separate letter.

12. **Written Record of Material Communication** - Material communication between TSX Venture and the CPC will generally be in writing. Any material verbal communication must be documented in writing, including the nature and outcome of the discussion.

13. **Background Check Comment Letters** - Details of any issues or concerns arising from background checks conducted on any director, officer, Insider, promoter or Control Person of the Resulting Issuer will be addressed as soon as

possible after receipt of the information. If confidential inquiries regarding potential information of detriment are necessary, the communication may be made in writing directly with the applicable individual. However, TSX Venture will maintain a record of that communication.

14. **CPC's Response** - If issues or deficiency comments were initially raised by a Qualified Lawyer, Qualified Accountant or Qualified Resource Professional, that individual (or another similarly qualified individual) will consider the acceptability of the responses.

15. **Conditions to Giving Clearance to File and Sending QT Circular** - TSX Venture will not advise the CPC that it is clear to file and send the QT Circular unless:

    (a) all of TSX Venture's comments on the draft QT Circular have been satisfactorily resolved;

    (b) TSX Venture has received either

        (i) the results of all background checks as carried out in accordance with section A 3 above and any relevant information of detriment revealed by those background checks has been appropriately resolved and, if necessary, disclosed in the QT Circular, or

        (ii) the results of TSX Venture background checks, as carried out in accordance with section A 3 above, in relation to at least a majority of all the proposed directors, officers, Insiders, promoters, inclusive of Excluded Persons, and any Control Person of the Resulting Issuer, and any relevant information of detriment revealed by those background checks has been appropriately resolved and, if necessary, disclosed in the QT Circular and in regard to each director, officer, Insider or promoter who is not an Excluded Person in regard to whom background checks have not been received, from such person or company:

            (A) an undertaking to resign,

            (B) in the case of an Insider, an undertaking to divest shares, or

            (C) in the case of a promoter, an undertaking to cease to be involved with the Resulting Issuer,

            at the request of TSX Venture, if TSX Venture in its sole discretion, considers the resignation, divestiture or cessation of involvement appropriate;

    (c) TSX Venture is not aware of any other circumstances that would cause it, having regard to section V. 2. of the Agreement, to conclude that there has been a failure to materially comply with the CPC Policy, except where a Significant Waiver waiving such non-compliance has been granted;

    (d) TSX Venture has granted conditional acceptance of the Qualifying Transaction;

    (e) any Significant Waivers required to be granted by TSX Venture have been granted; and

    (f) to the best of its knowledge, any exemptive relief or waiver required from any securities regulatory authority(ies) or regulator(s) in connection with the Qualifying Transaction has been granted or the relevant securities regulatory authority(ies) or regulator(s) has confirmed that the QT Circular can be sent to shareholders or filed on SEDAR, as applicable, prior to the granting of such relief or waiver.

16. **TSX Venture Acceptance Bulletin** - As soon as possible after advising the CPC that it is cleared to file and where applicable, send the QT Circular to shareholders, TSX Venture will issue an Exchange Bulletin (as defined in TSX Venture policies) confirming that TSX Venture has accepted the QT Circular for filing.

17. **Post Meeting and Closing Material** - A member of the QT Review Staff will promptly review the post-meeting and closing materials to determine whether the materials comply with the CPC Policy. In the event that the materials are acceptable and all conditions to TSX Venture's acceptance of the Qualifying Transaction have been satisfied (or, subject to the terms of this Agreement, waived), the QT Review Staff member will promptly issue a Final Exchange Bulletin (as defined in the CPC Policy) confirming that the Qualifying Transaction has been completed and that the Resulting Issuer is not a CPC.

## III. CPC Review Staff and QT Review Staff: Qualifications and Training

### A. General

1. CPC Review Staff and QT Review Staff must:

   (a) be employed by TSX Venture on a full-time, part-time or a secondment basis as a corporate analyst or corporate finance manager;

   (b) have adequate access to and be trained in use of SEDAR so that they are capable of receiving all filings and issuing all comment letters through SEDAR on a timely basis;

   (c) have adequate access to a Qualified Accountant;

   (d) have adequate access to a Qualified Lawyer who can provide legal advice relating to securities legislation and securities directions of a CPC Jurisdiction; and

   (e) report to and be appropriately supervised by an individual who is employed by TSX Venture on a full-time or part-time basis and who is a lawyer, public accountant (CA, CMA or CGA) or holds an MBA or CFA or is an individual who is otherwise accepted in writing by the Lead Regulator. A manager of the CPC Review Staff or QT Review Staff, as the case may be, must also qualify as a member of the review staff that he or she oversees.

2. TSX Venture will consider the complexity and significance of each CPC Prospectus filing and each QT Circular filing to ensure that it is assigned to one or more suitably qualified and experienced members of its CPC Review Staff or QT Review Staff, as applicable.

### B. CPC Review Staff

A member of the CPC Review Staff that does not meet the qualifications of QT Review Staff must hold a Bachelors of Commerce degree (or have substantially equivalent education and experience) and have at least one year's experience as an Analyst or Corporate Analyst with TSX Venture or a predecessor of TSX Venture or have other qualifications accepted by the Lead Regulator.

### C. QT Review Staff

1. Each member of the QT Review Staff must:

   (a) have appropriate professional qualifications as a public accountant in Canada (CA, CMA, CGA) lawyer, MBA, CFA;

   (b) have other comparable business and financial education or experience and a minimum of three years' full-time supervised experience reviewing prospectuses, QT Circulars (or their predecessors) or information circulars in connection with reverse takeovers and changes of business;

   (c) be a Qualified Resource Professional; or

   (d) have such other qualifications as may be accepted in writing by the Lead Regulator.

## IV. Use of SEDAR

1. Except as permitted by National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* or as otherwise agreed to in writing by the Lead Regulator, TSX Venture will not, other than through SEDAR:

   (a) accept the filing of any CPC Prospectus (preliminary, blacklined, final or amendment) or any supporting document required to be filed by the CPC with an Applicable Commission;

   (b) provide any written correspondence to a CPC (including any correspondence which includes comments of an Applicable Commission); or

   (c) accept the filing of any response to comments made (including responses to comments of an Applicable Commission) or the filing of any supplementary documents.

2. TSX Venture will not consider a CPC Prospectus or any supporting document required to be filed with an Applicable Commission, to be "filed" unless it has been properly filed in accordance with National Instrument 13-101.

3. Notwithstanding subsection IV. 1, PIFs, and documents required to be submitted by a Sponsor are not required to be filed via SEDAR.

4. Notwithstanding anything in this Agreement relating to filing or communication to be made or delivered via SEDAR, such filing or communication shall be subject to any exemption permitted by National Instrument 13-101 *System for Electronic Document Analysis and Retrieval*.

**V. File Maintenance**

**A. File Maintenance**

1. TSX Venture will maintain for a period of eight years, the files or reports referred to in this Part V.A and the following Part V.B.

2. TSX Venture will maintain a file in paper or electronic format of all material documents filed in connection with a CPC Prospectus filing or QT Circular filing, including:

   (a) in relation to a CPC Prospectus filing, all versions of the CPC Prospectus filed with TSX Venture, all supporting documents and correspondence, including correspondence with any Applicable Commission;

   (b) in relation to a Qualifying Transaction filing, all versions of the QT Circular filed with TSX Venture, including all supporting documents and correspondence;

   (c) all internal notes and comments on a CPC Prospectus (preliminary, final or amendment), a QT Circular or the Qualifying Transaction, including comments by the Qualified Accountant, Qualified Resource Professional or any other expert retained by TSX Venture;

   (d) each letter recommending to the IPO Regulator to issue a receipt for a CPC Prospectus (or amendment);

   (e) each letter confirming that TSX Venture is in a position to accept final materials;

   (f) a record evidencing that all comments made by TSX Venture, including those raised by an Applicable Commission have been satisfactorily addressed;

   (g) the Sponsor report, if applicable;

   (h) the minutes of the Executive Listing Committee in relation to each conditional approval for listing of a CPC and each conditional acceptance of a Qualifying Transaction; and

   (i) identification of whether any Significant Waiver was requested or granted in regard to the file.

3. TSX Venture will maintain a file of all Significant Waivers of the CPC Policy requested and all Significant Waivers granted. The file will:

   (a) identify the name of the CPC;

   (b) include the submissions made in support of the Significant Waiver; and

   (c) include TSX Venture's reasons for accepting or refusing the Significant Waiver.

4. TSX Venture is not required to maintain its own file of documents that have been filed via SEDAR.

**B. Maintaining a Database**

1. In regard to CPC Prospectus filings, TSX Venture will create and maintain an Excel spreadsheet or other database which contains the following information:

   (a) the name of each CPC and its trading symbol;

   (b) the date of filing of the preliminary prospectus;

(c) the date the preliminary Receipt was issued;

(d) the date the final Receipt was issued;

(e) the date of listing;

(f) whether a possible Qualifying Transaction was identified in the prospectus;

(g) the dollar amount of seed capital;

(h) the number of shares being offered under the IPO;

(i) the price per IPO share;

(j) the IPO Regulator;

(k) the TSX Venture office that reviewed the prospectus;

(l) the jurisdictions in which the initial public offering was made; and

(m) the date of announcement by the CPC of each proposed Qualifying Transaction.

2. TSX Venture will also maintain a record of the number of CPC Prospectuses filed, the number that were rejected by the Executive Listing Committee and the number that were withdrawn or abandoned. In regard to any that were rejected by the Executive Listing Committee, the reasons for that rejection will be recorded. If known, the reasons for withdrawal or abandonment will also be recorded.

3. In regard to Qualifying Transaction filings, TSX Venture will maintain an Excel spreadsheet or other database which contains the following information:

(a) the name of each CPC, each Resulting Issuer and each of their respective trading symbols;

(b) the date of announcement of the proposed Qualifying Transaction;

(c) the date of initial filing of the QT Circular;

(d) the dollar amount of any concurrent financing and whether it was conducted by the CPC or a Target Company;

(e) the proposed industry sector of the Resulting Issuer;

(f) the location of the Resulting Issuer's head office and, if different, the location of its principal business operations;

(g) the TSX Venture office that reviewed the QT Circular;

(h) whether the Qualifying Transaction is a Related Party Transaction as defined in TSX Venture Policy 5.9;

(i) escrow requirements or other resale restrictions imposed by TSX Venture on any person, other than as contemplated by TSX Venture's *Policy 5.4 – Escrow, Vendor Consideration and Resale Restrictions;*

(j) whether TSX Venture concluded that any person or company was an Excluded Person under sections I B 1 (c) (ii) (B) or II A 4 (b) (ii) of Appendix A and, if so, the name of the person or company, and the reasons for the decision;

(k) the date of TSX Venture's Bulletin confirming acceptance for filing of the QT Circular;

(l) if applicable, the name of the Sponsor;

(m) whether the Resulting Issuer is a Tier 1 or Tier 2 issuer; and

(n) the date of TSX Venture's Final Exchange Bulletin.

4. TSX Venture will maintain a record of the number of QT Circulars filed, the number that were rejected by the Executive Listing Committee and the number that were withdrawn or abandoned. In regard to any that were rejected by the Executive Listing Committee, the reasons for that rejection will be maintained. If known, the reasons for the withdrawal or abandonment of any Qualifying Transaction will also be recorded.

5. TSX Venture will maintain a record of all complaints received in relation to a CPC, a non-arm's length party to a CPC, the Sponsor or other person or company relating to the CPC or a Qualifying Transaction. TSX Venture will maintain and provide, or may cause any RSP retained by TSX Venture to maintain and provide, to an Applicable Commission, a report reflecting the following information:

   (a) the name of the parties against whom the complaint was made or the investigation was started;

   (b) the date the complaint was received or investigation started;

   (c) a brief summary of the complaint or the allegations under investigation; and

   (d) in regard to any complaint or investigation that has been resolved or concluded, the date of resolution or conclusion and a brief summary of the resolution or conclusion.

**VI Policy Amendments**

1. Subject to section 4, TSX Venture will file any Policy Amendment for review and approval with the Primary Regulators, and TSX Venture will concurrently provide copies of the Policy Amendment to the other Commissions addressed to the persons identified in Appendix C.

2. Within 10 business days of receipt of the Policy Amendment, the other Commissions will endeavour to provide written notice to the Lead Regulator as to:

   (a) any comments on the Policy Amendments; or

   (b) advice that they have no comments on the Policy Amendments.

3. In the event that the Lead Regulator advises TSX Venture that a Commission objects to a Policy Amendment that would otherwise be approved by the Primary Regulators in accordance with the oversight program, such Policy Amendment will not take effect in the objecting Commission's jurisdiction until such time as the Lead Regulator advises that the objection has been withdrawn.

4. Notwithstanding section 1, TSX Venture may make a Policy Amendment:

   (a) if that Policy Amendment involves only

      (i) the correction of mistakes with regard to spelling, punctuation, grammar, inaccurate cross-references or other similar merely typographical errors;

      (ii) stylistic reformatting, including in regard to headings and paragraph numbering;

      (iii) non-material amendments required to ensure consistency between TSX Venture policies and rules and applicable securities legislation or securities directions; or

      (iv) other non-material amendments agreed to by the Lead Regulator; or

   (b) if TSX Venture determines that the Policy Amendment is of an urgent nature, in which case:

      (i) prior to publishing the Policy Amendment, TSX Venture will notify the Lead Regulator,

      (ii) TSX Venture may immediately proceed to institute and publish the Policy Amendment, and

      (iii) TSX Venture will concurrently send the Policy Amendment to the Primary Regulators advising that the Policy Amendment has been published and requesting the Primary Regulators to review and approve the Policy Amendment. TSX Venture will also send a copy of the Policy Amendment concurrently to every other Commission addressed to the persons identified in Appendix C.

5. A Policy Amendment that is published in accordance with paragraph 4 (b) will cease to have any force and effect:

(a) in all CPC Jurisdictions on the earlier of:

(i) the date of receipt by TSX Venture of a notice of objection from the Lead Regulator on behalf of the Primary Regulators, or

(ii) the 60th day following publication, if the Primary Regulators have failed to approve the Policy Amendment.

(b) in a CPC Jurisdiction on the date of receipt by TSX Venture of notice from the Lead Regulator that a Commission objects to the implementation of the Policy Amendment in that Commission's jurisdiction.

In the event the Primary Regulators object or the Lead Regulator fails to provide notice of approval in accordance with section 5 (a) or notifies TSX Venture of an objection pursuant to section 5 (b), TSX Venture will promptly publish an Exchange Bulletin (as defined in TSX Venture Policies) advising that the Policy Amendment has no further force and effect in all or any particular CPC Jurisdiction.

## APPENDIX B

### Significant Waivers of CPC Policy

The parties agree that waivers of the following provisions of the CPC Policy will constitute Significant Waivers:

1. distribution requirements (at either the IPO or Qualifying Transaction stage) where the issuer's distribution is, or in the case of a Resulting Issuer, will be less than 80% of any one or more of the applicable distribution requirements;

2. any financial statement requirement in connection with a Qualifying Transaction;

3. financial requirements specified in TSX Venture's minimum listing requirements, such as net tangible assets, earnings, revenues, expenditures, reserves or working capital if the actual financial circumstances of the Resulting Issuer, will represent, less than 80% of any one or more of the stated financial requirements;

4. the minimum listing requirements applicable to a Resulting Issuer, upon completion of the Qualifying Transaction relating to a holding of at least a 51% interest in the asset, business or property which is the subject of the application, unless this is otherwise permitted by *Policy 2.1 – Minimum Listing Requirements*;

5. the requirement to escrow securities, including any material variation or waiver of the securities to be escrowed, the persons to be escrowed or the terms of release of escrowed securities, provided that any variation resulting in less stringent requirements from that which would be obtained if the guidelines in National Policy 46-201 *Escrow For Initial Public Offerings* were applied, will be considered to be a material variation or waiver unless otherwise permitted by the CPC Policy;

6. other than in the case of a QT Circular that is a filing statement, the requirement for shareholder approval including the acceptance of consents in lieu of a formal shareholder meeting;

7. minimum listing requirements as to residency requirements for either individual directors, or senior officers of the CPC or the Resulting Issuer;

8. material seed capital or initial public offering financing requirements for CPCs including minimum and maximum price per share and minimum and maximum proceeds;

9. restrictions on private placements or other financings if it allows the CPC to raise, in aggregate in excess of $2,000,000 (after including proceeds from the seed capital and IPO);

10. sponsorship requirements, including

    (a) waiver of sponsorship, other than as may be permitted under TSX Venture Policy 2.2 – Sponsorship and Sponsorship Requirements, or

    (b) acceptance of a Sponsor report from a person not qualified to act as Sponsor;

11. limits on agent's compensation or options;

12. restrictions on material payments prohibited under the CPC Policy;

13. material requirements of National Instrument 51-101 or any other successor instrument;

14. restrictions on pro group involvement;

15. the time period within which the initial submission of the draft QT Circular and other related documents must be made or trading in shares of the CPC will be halted, unless the waiver is for no more than two weeks;

16. prohibitions on the issuance of securities;

17. the prohibition on the exercise of incentive stock options prior to issuance of the Final Exchange Bulletin, unless the shares issued on the exercise of such options are escrowed until issuance of the Final Exchange Bulletin;

18. the prohibition against the Resulting Issuer being a finance company, financial institution, finance issuer or mutual fund as defined under applicable securities legislation; or

19. the prohibition on the acquisition pursuant to a Qualifying Transaction, of Significant Assets, as defined in the CPC Policy, which are located other than in Canada or the United States, unless the Resulting Issuer will be either an oil and gas issuer or a mining issuer.

The parties agree that the failure of TSX Venture to:

(a) suspend a CPC for failure to complete a Qualifying Transaction within 24 months from the date of listing;

(b) delist, a CPC that has been suspended for a period of more than 18 months; or

(c) follow the procedures in the CPC Policy for lifting a halt on announcement of an Agreement in Principle

will constitute a Significant Waiver.

## APPENDIX C

### Addressees for CPC Policy and Form Amendments and Amendments to the Agreement

Director, Corporate Finance
British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, B.C. V7Y 1L2

Director, Legal Services & Policy Development
Alberta Securities Commission
400, 300 - 5th Avenue S.W.
Calgary, Alberta T2P 3C4

Deputy Director, Corporate Finance
Saskatchewan Financial Services Commission
800, 1920 Broad Street
Regina, Saskatchewan S4P 3V7

Director, Corporate Finance
Manitoba Securities Commission
1130 - 405 Broadway
Winnipeg MB R3C 3L6

Manager, Market Regulation
Capital Markets Branch
copy to: Director, Corporate Finance
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario M5H 3S8

Deputy Director, Corporate Finance and Administration
Nova Scotia Securities Commission
P.O. Box 458
Halifax, Nova Scotia B3J 2P8

## APPENDIX D

### Parties Required to Approve Amendments to the Agreement

Executive Director,
British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, B.C. V7Y 1L2

Executive Director,
Alberta Securities Commission
400, 300 - 5th Avenue S.W.
Calgary, Alberta T2P 3C4

Director
Saskatchewan Financial Services Commission
800, 1920 Broad Street
Regina, Saskatchewan S4P 3V7

Chair
Manitoba Securities Commission
1130 - 405 Broadway
Winnipeg MB R3C 3L6

Chair and a Vice-Chair
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario M5H 3S8

Chair
Nova Scotia Securities Commission
P.O. Box 458
Halifax, Nova Scotia B3J 2P8

## APPENDIX E

### Addressees for Notification of Securities Legislation Contraventions

Manager Case Assessment Team
copy to: Director, Corporate Finance
British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, B.C. V7Y 1L2

Director, Enforcement
Alberta Securities Commission
400, 300 - 5th Avenue S.W.
Calgary, Alberta T2P 3C4

Deputy Director, Corporate Finance
Saskatchewan Financial Services Commission
800, 1920 Broad Street
Regina, Saskatchewan S4P 3V7

Director, Legal and Enforcement
Manitoba Securities Commission
1130 - 405 Broadway
Winnipeg MB R3C 3L6

Manager, Market Regulation
Capital Markets Branch
copy to: Director of Enforcement
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario M5H 3S8

Deputy Director, Compliance and Enforcement
Nova Scotia Securities Commission
P.O. Box 458
Halifax, Nova Scotia B3J 2P8

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