

The Ontario Securities Commission

# OSC Bulletin

September 2, 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)

**The Ontario Securities Commission**

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## Chapter 1

# Notices / News Releases

1.1	Notices		<u>SCHEDULED OSC HEARINGS</u>																																				
1.1.1	<b>Current Proceedings Before The Ontario Securities Commission</b>  <p style="text-align: center;"><b>SEPTEMBER 2, 2005</b></p> <p style="text-align: center;"><b>CURRENT PROCEEDINGS</b></p> <p style="text-align: center;"><b>BEFORE</b></p> <p style="text-align: center;"><b>ONTARIO SECURITIES COMMISSION</b></p> <p style="text-align: center;">-----</p> <p>Unless otherwise indicated in the date column, all hearings will take place at the following location:</p> <p style="margin-left: 40px;">The Harry S. Bray Hearing Room Ontario Securities Commission Cadillac Fairview Tower Suite 1700, Box 55 20 Queen Street West Toronto, Ontario M5H 3S8</p> <p>Telephone: 416-597-0681 Telecopier: 416-593-8348</p> <p><b>CDS</b> <span style="float: right;"><b>TDX 76</b></span></p> <p>Late Mail depository on the 19<sup>th</sup> Floor until 6:00 p.m.</p> <p style="text-align: center;">-----</p> <p style="text-align: center;"><u>THE COMMISSIONERS</u></p> <table border="0" style="width: 100%; margin-left: 40px;"> <tr><td>Paul M. Moore, Q.C., Vice-Chair</td><td style="text-align: center;">—</td><td>PMM</td></tr> <tr><td>Susan Wolburgh Jenah, Vice-Chair</td><td style="text-align: center;">—</td><td>SWJ</td></tr> <tr><td>Paul K. Bates</td><td style="text-align: center;">—</td><td>PKB</td></tr> <tr><td>Robert W. Davis, FCA</td><td style="text-align: center;">—</td><td>RWD</td></tr> <tr><td>Harold P. Hands</td><td style="text-align: center;">—</td><td>HPH</td></tr> <tr><td>David L. Knight, FCA</td><td style="text-align: center;">—</td><td>DLK</td></tr> <tr><td>Mary Theresa McLeod</td><td style="text-align: center;">—</td><td>MTM</td></tr> <tr><td>H. Lorne Morphy, Q.C.</td><td style="text-align: center;">—</td><td>HLM</td></tr> <tr><td>Carol S. Perry</td><td style="text-align: center;">—</td><td>CSP</td></tr> <tr><td>Robert L. Shirriff, Q.C.</td><td style="text-align: center;">—</td><td>RLS</td></tr> <tr><td>Suresh Thakrar, FIBC</td><td style="text-align: center;">—</td><td>ST</td></tr> <tr><td>Wendell S. Wigle, Q.C.</td><td style="text-align: center;">—</td><td>WSW</td></tr> </table>	Paul M. Moore, Q.C., Vice-Chair	—	PMM	Susan Wolburgh Jenah, Vice-Chair	—	SWJ	Paul K. Bates	—	PKB	Robert W. Davis, FCA	—	RWD	Harold P. Hands	—	HPH	David L. Knight, FCA	—	DLK	Mary Theresa McLeod	—	MTM	H. Lorne Morphy, Q.C.	—	HLM	Carol S. Perry	—	CSP	Robert L. Shirriff, Q.C.	—	RLS	Suresh Thakrar, FIBC	—	ST	Wendell S. Wigle, Q.C.	—	WSW	TBA	<b>Yama Abdullah Yaqeen</b>  s. 8(2)  J. Superina in attendance for Staff  Panel: TBA  <b>Cornwall <i>et al</i></b>  s. 127  K. Manarin in attendance for Staff  Panel: TBA  <b>Philip Services Corp. <i>et al</i></b>  s. 127  K. Manarin in attendance for Staff  Panel: TBA  <b>Robert Patrick Zuk, Ivan Djordjevic, Matthew Noah Coleman, Dane Alan Walton, Derek Reid and Daniel David Danzig</b>  s. 127  J. Waechter in attendance for Staff  Panel: TBA  <b>Jose L. Castaneda</b>  s.127  T. Hodgson in attendance for Staff  Panel: TBA  <b>John Illidge, Patricia McLean, David Cathcart, Stafford Kelley and Devendranauth Misir</b>  S. 127 & 127.1  K. Manarin in attendance for Staff  Panel: TBA
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Suresh Thakrar, FIBC	—	ST																																					
Wendell S. Wigle, Q.C.	—	WSW																																					

Sept. 2, 2005 10:00 am-1:00 pm In the matter of Allan Eizenga\*, Richard Jules Fangeat\*, Michael Hersey\*, Luke John McGee\* and Robert Louis Rizzuto\* and **In the matter of Michael Tibollo**  
 September 7, 9, 12, 13 14 & 16, 2005  
 10:00 am-4:30 pm s.127

Sept. 15, 2005 10:00 am-2:00 pm T. Pratt in attendance for Staff  
 Panel: WSW/PKB/ST  
 \* Hersey settled May 26, 2004  
 \* Fangeat settled June 21, 2004  
 \* Rizzuto settled August 17, 2004  
 \* McGee settled November 11, 2004  
 \* Eizenga settled August 29, 2005

September 15, 2005 **James Patrick Boyle, Lawrence Melnick and John Michael Malone**  
 2:30 p.m. s. 127 and 127.1  
 Y. Chisholm in attendance for Staff  
 Panel: TBA

September 16, 2005 **Portus Alternative Asset Management Inc., and Portus Asset Management, Inc.**  
 10:00 a.m. s. 127  
 M. MacKewn in attendance for Staff  
 Panel: TBA

September 28 and 29, 2005 **Francis Jason Biller**  
 10:00 a.m. s.127  
 P. Foy in attendance for Staff  
 Panel: RLS/RWD/CSP

October 4, 2005 **Momentas Corporation, Howard Rash, Alexander Funt, Suzanne Morrison and Malcolm Rogers**  
 2:30 p.m. s. 127 and 127.1  
 P. Foy in attendance for Staff  
 Panel: PMM/WSW/CSP

October 6, 2005 **Olympus United Group Inc.**  
 10:00 a.m. s.127  
 M. MacKewn in attendance for Staff  
 Panel: TBA

October 6, 2005 **Norshield Asset Management (Canada) Ltd.**  
 10:00 a.m. s.127  
 M. MacKewn in attendance for Staff  
 Panel: TBA

October 6, 2005 **George Theodore**  
 10:00 a.m. s. 127  
 P. Foy in attendance for Staff  
 Panel: TBA

October 11, 2005 **Hollinger Inc., Conrad M. Black, F. David Radler, John A. Boulton and Peter Y. Atkinson**  
 9:00 a.m. s.127  
 J. Superina in attendance for Staff  
 Panel: TBA

October 12, 2005 **Christopher Freeman**  
 10:00 a.m. s. 127 and 127.1  
 P. Foy in attendance for Staff  
 Panel: TBA

November 2005 **Andrew Currah, Colin Halanen, Joseph Damm, Nicholas Weir, Penny Currah, Warren Hawkins**  
 s.127  
 J. Waechter in attendance for Staff  
 Panel: TBA

**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 CSA Staff Notice 62-304 - Conditions in Financing Arrangements for Take-over Bids and Issuer Bids**

**CANADIAN SECURITIES ADMINISTRATORS  
STAFF NOTICE 62-304**

**CONDITIONS IN FINANCING ARRANGEMENTS FOR  
TAKE-OVER BIDS AND ISSUER BIDS**

This notice sets out the position of the CSA staff regarding the acceptability of conditions in financing arrangements for take-over bids and issuer bids.

All of the provinces that regulate the securities law aspects of take-over and issuer bids have requirements relating to bid financing. Specifically, if an offeror makes a cash bid, it must make adequate arrangements before the bid to ensure that it has the required funds available to pay for all the securities it has offered to purchase.

It is the normal practice in Canada for bid financing arrangements to have some conditions. CSA staff have previously taken the position that some conditionality is acceptable, provided that the conditions are customary and minimal. However, earlier this year an Ontario court issued a judgment that has raised some uncertainty regarding the legal status of financing conditions.

The judgment of the Ontario Superior Court of Justice in *BNY Capital Corp. v. Katotakis*, reported at [2005] O.J. No. 813, included the following statement:

"Adequate arrangements" has been interpreted to mean that there must be accurate, clear and unequivocal assurance that the financing is in place in the sense that a public shareholder contemplating tendering his or her shares to the bid can be unequivocally assured that the funds are available to complete the purchase.

CSA staff consider that an offeror has complied with the bid financing requirement if the offeror reasonably believes the possibility is remote that it will not be able to pay for tendered securities because of a financing condition not being satisfied. In these circumstances, there is sufficient assurance that the funds are available to complete the purchase even though there is some conditionality in the financing arrangements. Staff will continue to interpret the financing requirement in this manner.

The Ontario Securities Commission proposes to introduce a rule that would confirm that financing arrangements may have a limited degree of conditionality. The proposed rule, which was published at (2005), 28 OSCB 5689, is consistent with staff's interpretation of the financing requirement as set out above.

September 2, 2005

**Questions**

Please refer your questions to any of:

**British Columbia Securities Commission:**

Rosann Youck  
Senior Legal Counsel: (604) 899- 6656  
Callers in B.C. and Alberta may also dial 1 800 373-6393

**Alberta Securities Commission:**

Marsha Manolescu  
Deputy Director, Legislation: (403) 297-2091

Chris Prokop

Legal Counsel: (403) 297-2093

**Saskatchewan Financial Services Commission:**

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Naizam Kanji

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**Autorité des marchés financiers:**

Benoit Dionne  
Manager, Corporate Finance: (514) 395-0558 ext. 4411

Kristina Beauclair

Securities Analyst: (514) 395-0558 ext. 4444

**1.1.3 Notice of Commission Approval - Technical Amendments to CDS Rules - Procedure Maintenance Clarifications, Stylistic Amendments and Error Corrections**

**THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED ("CDS")**

**TECHNICAL AMENDMENTS TO CDS RULES  
PROCEDURE MAINTENANCE CLARIFICATIONS,  
STYLISTIC AMENDMENTS AND ERROR  
CORRECTIONS**

**NOTICE OF COMMISSION APPROVAL**

Amendments filed by CDS relating to enhancements to miscellaneous procedure maintenance clarifications, stylistic amendments, and error corrections for CDS procedures are technical/housekeeping in nature. Pursuant to the Rule Protocol between the Ontario Securities Commission and CDS dated July 12, 2005, these amendments came into effect on August 8, 2005. The description of the amendments is contained in Chapter 13 of this Ontario Securities Commission Bulletin.

**1.1.4 Notice of Commission Approval - Technical Amendments to CDS Rules - CMS and IRMS Changes**

**THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED ("CDS")**

**TECHNICAL AMENDMENTS TO CDS RULES  
CMS AND IRMS CHANGES**

**NOTICE OF COMMISSION APPROVAL**

Amendments filed by CDS relating to Collateral Management System (CMS) and Internal Risk Management System (IRMS) changes are technical/housekeeping in nature. Pursuant to the Rule Protocol between the Ontario Securities Commission and CDS dated July 12, 2005, these amendments came into effect on August 8, 2005. The description of the amendments is contained in Chapter 13 of this Ontario Securities Commission Bulletin.



**1.1.5 Notice of Commission Approval - Technical Amendments to CDS Rules - CNS and ACCESS**

**THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED ("CDS")**

**TECHNICAL AMENDMENTS TO CDS RULES  
CNS AND ACCESS**

**NOTICE OF COMMISSION APPROVAL**

Amendments filed by CDS relating to the calculation of collateral for CNS and ACCESS participant funds are technical/housekeeping in nature. Pursuant to the Rule Protocol between the Ontario Securities Commission and CDS dated July 12, 2005, these amendments came into effect on August 8, 2005. The description of the amendments is contained in Chapter 13 of this Ontario Securities Commission Bulletin.

**1.1.6 Notice of Commission Approval - Technical Amendments to CDS Rules - Enhancement to B2B Compliance Reporting**

**THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED ("CDS")**

**TECHNICAL AMENDMENTS TO CDS RULES  
ENHANCEMENT TO B2B COMPLIANCE REPORTING**

**NOTICE OF COMMISSION APPROVAL**

Amendments filed by CDS relating to enhancements to B2B Compliance Reporting are technical/housekeeping in nature. Pursuant to the Rule Protocol between the Ontario Securities Commission and CDS dated July 12, 2005, these amendments came into effect on August 8, 2005. The description of the amendments is contained in Chapter 13 of this Ontario Securities Commission Bulletin.

**1.1.7 Notice of Commission Approval - Amendments to TSX Group Inc. and TSX Inc. By-laws**

**NOTICE OF COMMISSION APPROVAL**

**AMENDMENTS TO TSX GROUP INC. AND TSX INC. BY-LAWS**

On August 2, 2005, TSX Group Inc. and TSX Inc. filed with the Commission amendments to their respective By-law No. 1 (By-laws). The amendments are intended to make the By-laws consistent with amendments to the definition of an independent director in the TSX Group Inc. and TSX Inc. recognition order (published at (2005) 28 OSCB 7006). The amendments have been filed as “non-public interest” amendments pursuant to the *Protocol for Commission Oversight of Toronto Stock Exchange Rule Proposals* and are deemed to have been approved upon filing. The amendments came into effect August 2, 2005.

**1.1.8 Notice of Correction - NP 31-201 National Registration System**

**NOTICE OF CORRECTION**

**NATIONAL POLICY 31-201 NATIONAL REGISTRATION SYSTEM**

The OSC is today re-publishing in Chapter 5 National Policy 31-201 *National Registration System*, to correct several errors that appeared in the final version of the National Policy, which was published in the April 1, 2005 Bulletin at (2005) 28 OSCB 3082-3088. The errors (a zero appeared in place of the appropriate section numbers being referenced) occurred in the following sections of the Policy: 3.4, 5.1, 6.2, 6.3, and 7.1.

**1.3 News Releases**

**1.3.1 Regulators Issue Guidance on Income Trust Disclosure Relating to Distributable Cash**

**FOR IMMEDIATE RELEASE  
August 26, 2005**

**REGULATORS ISSUE GUIDANCE ON  
INCOME TRUST DISCLOSURE RELATING  
TO DISTRIBUTABLE CASH**

**Toronto** – The Canadian Securities Administrators (CSA) issued guidance today on the information that income trusts are expected to disclose to ensure transparency when they present information about estimated distributable cash in a prospectus.

The information that an income trust provides about its estimated distributable cash is likely to be central to an investor's assessment of the income trust's prospects. The disclosed amount of estimated distributable cash often incorporates significant estimates and assumptions. However, many income trusts have provided only limited information on these estimates and assumptions.

The CSA staff guidance describes what is an appropriate presentation for estimated distributable cash. This involves detailed disclosure of matters such as the information's purpose and relevance, and of the assumptions that underlie it. Depending on what adjustments are being made to an income trust's historical amounts, it may also involve providing financial statements of other entities, or other financial information. In some circumstances, CSA staff expect that appropriate disclosure of estimated distributable cash will require a forecast be included in the prospectus, in the format of historical financial statements, prepared in accordance with the CICA Handbook.

"We have heard repeated concerns about the transparency of this information," said Susan Wolburgh Jenah, acting Chair of the Ontario Securities Commission. "We expect issuers to carefully consider whether their disclosure represents a balanced and complete assessment of all factors likely to affect estimated distributable cash." Ms. Wolburgh Jenah added that the expectations in the notice will be reflected in staff's prospectus reviews.

Issuers also need to consider whether their disclosure provides adequate transparency about the sustainability of estimated distributable cash. For example, for some income trusts, capital expenditures to replace productive capacity might be relatively low in initial years but could rise significantly in later years. In these instances, information should be provided about the time period in which expenses are expected to be at the level disclosed, and about any expected long-term plans to replace productive capacity that could affect the amount of cash available to be distributed to investors.

The CSA will continue to monitor developments with respect to income trust disclosure and may provide future additional guidance.

The *CSA Staff Notice 41-304 - Income Trusts: Prospectus Disclosure of Distributable Cash* is available on several CSA members' web sites.

The CSA is the council of the securities regulators of Canada's provinces and territories whose objectives are to improve, coordinate and harmonize regulation of the Canadian capital markets.

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**1.3.2 OSC Prosecution against Emilia Von Anhalt and Jurgen Von Anhalt**

**FOR IMMEDIATE RELEASE  
August 26, 2005**

**OSC PROSECUTION AGAINST EMILIA VON ANHALT  
AND JURGEN VON ANHALT**

**TORONTO** – At an appearance yesterday in the Ontario Court of Justice at Old City Hall, the charges against Emilia von Anhalt and Jurgen von Anhalt were adjourned to October 11, 2005 in Court Room 111 at 9:00 a.m. and a judicial pre-trial hearing was set for October 7, 2005 at 9 a.m.

On May 5, 2005, the OSC charged Emilia von Anhalt and Jurgen von Anhalt with violations of the Ontario Securities Act. Information on the charges is summarized in a news release dated May 10, 2005 available on the OSC's web site ([www.osc.gov.on.ca](http://www.osc.gov.on.ca)).

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Manager, Media Relations  
416-595-8913

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

**1.3.3 Trial Date Set in Prosecution of Gouveia, Perryman and Vickery**

**FOR IMMEDIATE RELEASE  
August 26, 2005**

**TRIAL DATE SET IN PROSECUTION OF GOUVEIA,  
PERRYMAN AND VICKERY**

**TORONTO** – At an appearance at Old City Hall on August 23, 2005, a trial date in this matter was set to commence on April 10, 2006 and continue on various dates until June 27, 2006. Information on these proceedings is summarized in an OSC News Release issued on June 4, 2004 on the OSC Website ([www.osc.gov.on.ca](http://www.osc.gov.on.ca)).

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

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

**1.3.4 OSC Approves Settlement Agreement Reached with Allan Eizenga, Hearing against Michael Tibollo Adjourned to August 31**

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

**FOR IMMEDIATE RELEASE  
August 29, 2005**

**THE ONTARIO SECURITIES COMMISSION APPROVES  
SETTLEMENT AGREEMENT REACHED WITH ALLAN  
EIZENGA, HEARING AGAINST MICHAEL TIBOLLO  
ADJOURNED TO AUGUST 31**

**TORONTO** – The Ontario Securities Commission has approved a settlement agreement reached with Allan Eizenga. In the settlement agreement, Eizenga agreed that he controlled and made all key business decisions relating to The Saxton Group, a group of companies which raised approximately \$37 million dollars from Ontario investors in an illegal distribution of securities.

In the course of promoting and selling shares in The Saxton Group's various companies, Eizenga made a number of untrue statements to investors and prospective investors regarding the rate of return and risk of investing in Saxton shares. Eizenga caused the Saxton Group to issue quarterly account statements to investors that did not reflect the true value of their investment. Eizenga continued to solicit investors and distribute Saxton shares even after being advised that the distribution was likely illegal and after he was aware that the Saxton Group could not properly account for all of the investor funds raised to that point.

In approving the settlement agreement, the Commission made an order prohibiting him from acting as an officer or director of any issuer in Ontario for 25 years, and requiring him to cease trading in securities, with some limited exceptions, for a period of 22 years. Eizenga has agreed to never re-apply for registration under Ontario securities law or under any other Canadian securities legislation.

In approving the settlement agreement, Commissioner David Knight commented on the "egregious" nature of Eizenga's conduct and the losses inflicted on Saxton's investors. Kelley McKinnon, Chief Litigation Counsel for the Commission, stated that "Staff will seek severe sanctions against those who have ultimate control of illegal distributions, particularly where large numbers of investors have been harmed".

As a result of the settlement, the hearing into Staff's allegations against Michael Tibollo regarding his involvement in the Saxton Group has been adjourned to Wednesday, August 31, 2005 commencing at 10:00 am.

Copies of the settlement agreement and the Commission's order approving the agreement, as well as the statement of allegations against Michael Tibollo are available on the Commission's website ([www.osc.gov.on.ca](http://www.osc.gov.on.ca)).

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

**1.3.5 OSC Warns Investors to Beware of Phantom Regulators**

**August 30, 2005**

**OSC WARNS INVESTORS TO BEWARE OF PHANTOM REGULATORS**

**Toronto** – Before submitting any personal information to an organization claiming to be a securities regulator, investigate further, the Ontario Securities Commission warns. It doesn't take long to determine if the organization is what it claims to be – and it could save you from having your personal information and money fall into the wrong hands.

The OSC has identified a number of websites that gather personal information, under the pretense that they represent international securities regulators or government agencies. Some of these sites actively encourage investors to submit their questions and complaints, and claim to pass them on to the appropriate regulator worldwide. In fact, these sites may collect information about your investment habits in order to lure you into fraudulent investment schemes.

The North American Securities Administrators Association (NASAA) recently announced that several "phantom regulators", including U.S.-based operations that target investors worldwide, have been brought to the attention of U.S. securities regulators. In some of these cases, criminals were using the "phantom regulators" to endorse fraudulent investment opportunities.

In either case, it's a good idea to investigate further. Some signs that a regulator may be a "phantom":

1. You can't find references to the organization on any other regulatory websites and legitimate regulators have never heard of them. In Canada, check with the securities regulator in your province or territory - for contact information see the Canadian Securities Administrators website [www.csa-acvm.ca](http://www.csa-acvm.ca). For North American jurisdictions including state regulators see the North American Securities Administrators contact information section at [www.nasaa.org](http://www.nasaa.org) and worldwide check the members list on the International Organization of Securities Commission's website, [www.iosco.org](http://www.iosco.org).
2. They endorse, or promote any particular investment opportunity – a legitimate regulator would not do this.
3. They claim that paying a fee to "release restricted shares" is not an attempt to steal your savings. This is a common ploy, and a recent twist on age-old advance fee schemes.

For more information or to report a suspected 'phantom' regulator, please contact the Ontario Securities Commission at (416) 593-8314 or toll free at 1 (877) 785-1555 or e-mail [inquiries@osc.gov.on.ca](mailto:inquiries@osc.gov.on.ca). For free educational resources on how to protect yourself from frauds and scams, visit the [www.investorED.ca](http://www.investorED.ca) website. View the NASAA news release.

If you'd like to automatically receive future OSC investor alerts, please contact Vicky Beach at [vbeach@osc.gov.on.ca](mailto:vbeach@osc.gov.on.ca) and (416) 204-8995.

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

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

**1.4 Notices from the Office of the Secretary**

**1.4.1 Allan Eizenga and Michael Tibollo**

**FOR IMMEDIATE RELEASE  
August 29, 2005**

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

**AND**

**IN THE MATTER OF  
ALLAN EIZENGA AND MICHAEL TIBOLLO**

**TORONTO** – The Commission issued an Order approving the settlement agreement between Staff of the Commission and Allan Eizenga today.

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

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

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

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## Chapter 2

# Decisions, Orders and Rulings

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## 2.1 Decisions

### 2.1.1 Rock Creek Resources 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.

**August 25, 2005**

#### Carscallen Lockwood LLP

1500, 407 - 2 Street SW  
Calgary, AB T2P 2Y3

Attention: George, C. Tai

Dear Sir:

**Re: Rock Creek Resources Ltd. (the “Applicant”) -  
Application to Cease to be a Reporting Issuer  
under the securities legislation of Alberta,  
Saskatchewan, Manitoba and Ontario (the  
“Jurisdictions”)**

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

As the Applicant has represented to the Decision Makers that:

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 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 in the Jurisdictions.

Relief requested granted on the 25<sup>th</sup> day of August, 2005.

“Marsha M. Manolescu”  
Deputy Director, Legislation  
Alberta Securities Commission

2.1.2 Scotia Capital Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Exemptions from the mutual fund self-dealing prohibitions of clauses 111(2)(a) and 111(3) of the Securities Act (Ontario). Mutual funds allowed to make purchases and sales of common shares of the Bank of Nova Scotia, a related company to the manager of the mutual funds, and to retain those securities provided that a fund governance mechanism is used to oversee the holdings, purchases or sales of these securities for the mutual funds and to ensure that such holdings, purchases or sales have been made free of any influence by the Bank of Nova Scotia and without taking into account any consideration relevant to the Bank of Nova Scotia.

Mutual funds also exempt from the provision, where applicable, prohibiting a mutual fund or responsible person from causing a mutual fund to invest in an issuer in which a responsible person is a director, partner or officer unless that fact is disclosed to the mutual fund securityholders before the purchase.

Statutes Cited

Securities Act (Ontario), R.S.O. 1990,c. 5, as am., 111(2)(a) and 111(3).

August 26, 2005

IN THE MATTER OF  
THE SECURITIES LEGISLATION  
OF ONTARIO, BRITISH COLUMBIA, ALBERTA,  
SASKATCHEWAN, QUÉBEC, NOVA SCOTIA, New  
BRUNSWICK  
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  
SCOTIA CAPITAL INC.

AND

IN THE MATTER OF  
PINNACLE CANADIAN GROWTH EQUITY FUND  
PINNACLE CANADIAN MID CAP VALUE EQUITY FUND  
PINNACLE CANADIAN VALUE EQUITY FUND  
PINNACLE STRATEGIC BALANCED FUND  
(THE "PINNACLE FUNDS")

MRRS DECISION DOCUMENT

Background

The securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions has received an application from Scotia Capital Inc. (the "Filer") in respect of the Pinnacle Funds together with such other mutual funds for which the Filer is, or may become, the manager (individually a "Fund" and collectively with the Pinnacle Funds, the "Funds") for a decision (the "Decision") under the securities legislation of the Jurisdictions (the "Legislation") that:

- (a) the provision prohibiting a mutual fund from knowingly making or holding an investment in any person or company which is a substantial security holder of the mutual fund, its management company or distribution company; and
- (b) the provision, in British Columbia, prohibiting a mutual fund or a responsible person from causing a mutual fund to invest in an issuer in which a responsible person is a director, partner or officer unless that fact is disclosed to the mutual fund securityholders before the purchase;

(The "Investment Restrictions") shall not apply to investments made by the Funds in common shares (the "Common Shares") of The Bank of Nova Scotia ("Scotiabank");

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 otherwise defined in this Decision.

Representations

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

1. The Filer is a corporation established under the laws of the Province of Ontario, is registered as a dealer in Ontario in the category of investment dealer and is registered under the equivalent category in the other Jurisdictions. The Filer is a member of the Investment Dealers Association of Canada. The Filer is or will be the principal distributor, trustee and manager of each of the Funds. Accordingly, the Filer is or will be the distribution company of each of the Funds.
2. Each of the Funds is or will be a mutual fund within the meaning of the Legislation and is or will

- be a reporting issuer subject to National Instrument 81-102.
3. Each of the Pinnacle Funds is not in default under the Legislation.
  4. Securities of the Funds are or will be offered to the public in all provinces and territories of Canada.
  5. Each of the Funds receives portfolio advisory services from third party portfolio managers who are not affiliates of the Filer.
  6. The Filer is a subsidiary of Scotiabank. Accordingly, Scotiabank is a substantial security holder of the Filer.
  7. The Filer is prohibited by the Investment Restrictions from causing the investment portfolios of certain of the Funds to invest in Common Shares of Scotiabank because Scotiabank is a substantial security holder of the manager and distribution company of the Funds.
  8. For purposes of the requirement of section 11.3(b) of Part B of Form 81-101F1 – Contents of Simplified Prospectus – under National Instrument 81-101, the broad based securities market index that is relevant for the purposes of comparing the performance of many of the Funds is the S&P/TSX Composite Total Return Index (the “Composite Index”). In addition, investors and/or their advisors may compare the performance of a Fund to one or more of the S&P/TSX 60 Index (the “60 Index”), and the S&P/TSX Financial Services Index (the “Financial Services Index”).
  9. As at December 31, 2004, the Common Shares of Scotiabank are represented in each of the indices referred to in paragraph 8 above in approximately the following percentages:

Composite Index 4.44%

60 Index 5.93%

Financial Services Index 13.51%

10. The Financial Services Index is the largest industry sector sub-index of the Composite Index, representing approximately 32.84% of the Composite Index in 2004. In 2004, bank securities represented approximately 59.23% of the Financial Services Index and approximately 19.45% of the Composite Index.
11. As demonstrated by the information set out in paragraphs 8, 9 and 10 above, in the context of the Canadian capital markets, the ability to invest in Common Shares of Scotiabank is important to the Funds. Scotiabank is the second largest bank issuer by market capitalization and index weighting in each of the indices referred to above

and it has a significant impact on the returns of each of such indices. The Filer is of the view that it is not prudent for a portfolio manager to arbitrarily exclude securities of such an issuer from the universe of securities available for investment.

12. The Filer considers that it would be in the best interests of investors in the Funds if the portfolios of the Funds were permitted to invest in Common Shares of Scotiabank where such investment is consistent with the investment objectives of the Funds.
13. The Filer has appointed an independent Board of Advisors (the “Board of Advisors”), which will review each Fund’s purchases, sales and continued holdings of Common Shares of Scotiabank to ensure that these investment decisions have been made free from any influence by Scotiabank, have not taken into account any consideration relevant to Scotiabank or any associate or affiliate of Scotiabank, and do not cause the portfolio of the Fund to exceed the investment concentration limits for the Fund in any one issuer.
14. In reviewing the Funds’ purchases, sales and continued holdings of Common Shares of Scotiabank, the Board of Advisors will take into account the best interests of the unitholders of the Funds and no other factors.
15. In addition to an annual fee, compensation to be paid to members of the Board of Advisors will be paid on a per meeting plus expenses basis and will be allocated among the Funds in a manner that is considered by the Board of Advisors to be fair and reasonable to the Funds.

#### 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 this Decision has been met.

The decision of the Decision Makers under the Legislation is that the Filer and the Funds are exempt from the Investment Restrictions so as to enable the Funds to invest, or continue to hold an investment, in Common Shares of Scotiabank provided that:

1. The Filer has appointed a Board of Advisors to review the Funds’ purchases, sales and continued holdings of Common Shares of Scotiabank;
2. the Board of Advisors has at least three members, each of whom is independent of
  - (a) Scotiabank,
  - (b) the Filer or any portfolio advisor of the Funds, or

- (c) any associate or affiliate of Scotiabank, the Filer or any portfolio advisor of the Funds.
- A member of the Board of Advisors is not independent if the member has a direct or indirect material relationship with the Filer, the Funds, or an entity related to the Filer. A material relationship is any relationship that a reasonable person would consider might interfere with the exercise of the member's independent judgement regarding conflicts of interest facing the Filer;
3. the Board of Advisors has a written mandate describing its duties and standard of care which, at a minimum, sets out the conditions of this Decision;
4. the members of the Board of Advisors exercise their powers and discharge their duties honestly, in good faith and in the best interests of investors in the Funds and, in doing so, exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;
5. none of the Funds relieves the members of the Board of Advisors from liability for loss that arises out of a failure to satisfy the standard of care set out in paragraph 4;
6. none of the Funds indemnifies the members of the Board of Advisors against legal fees, judgements and amounts paid in settlement as a result of a breach of the standard of care set out in paragraph 4;
7. none of the Funds incurs the cost of any portion of liability insurance that insures a member of the Board of Advisors for a liability for loss that arises out of a failure to satisfy the standard of care set out in paragraph 4;
8. the cost of any indemnification or insurance coverage paid for by the Filer, any portfolio advisor of the Funds, or any associate or affiliate of the Filer or any portfolio advisor of the Funds to indemnify or insure the members of the Board of Advisors in respect of a loss that arises out of a failure to satisfy the standard of care set out in paragraph 4 is not paid either directly or indirectly by the Funds;
9. prior to effecting a purchase pursuant to this Decision, the Filer has in place written policies and procedures to ensure that there is compliance with the conditions of this Decision;
10. the Board of Advisors reviews the Funds' purchases, sales and continued holdings of Common Shares of Scotiabank on a regular basis, but not less frequently than once every calendar quarter;
11. the Board of Advisors forms the opinion after reasonable inquiry that the decisions made on behalf of each Fund by the Fund's portfolio advisor to purchase, sell or continue to hold Common Shares of Scotiabank were, and continue to be, in the best interests of the Fund and:
- (a) represent the business judgement of the Fund's portfolio advisor, uninfluenced by considerations other than the best interests of the Fund,
- (b) have been made free from any influence by Scotiabank and without taking into account any consideration relevant to Scotiabank or any associate or affiliate of Scotiabank, and
- (c) do not exceed the limitations of the applicable legislation;
12. the determination made by the Board of Advisors pursuant to paragraph 11 above is included in detailed written minutes provided to the Filer, not less frequently than quarterly;
13. in respect of the relevant Fund, within 30 days after the end of each month in which the Fund's portfolio advisor purchases or sells Common Shares of Scotiabank on behalf of one or more Funds, the Filer will file on SEDAR:
- (a) reports disclosing:
- (i) the name of each Fund that purchased or sold during the month,
- (ii) the date of each purchase and sale,
- (iii) the volume weighted average price paid or received for the Common Shares of Scotiabank by each Fund on a given date, and
- (iv) whether a purchase, sale or equity position was determined by the Board of Advisors to not comply with paragraph 11 above and, if so, why the purchase, sale or equity position was either completed, continued or not liquidated notwithstanding the Board of Advisors' determination;
- (b) a certificate of the Fund's portfolio advisor certifying that:

- (i) at the time of each trade the trade represented the business judgement of the portfolio advisor of the Fund uninfluenced by considerations other than the best interest of the Fund and was, in fact, in the best interests of the Fund,
  - (ii) the trades were made free from any influence by Scotiabank or any affiliate or associate thereof and without taking any consideration relevant to Scotiabank or any associate or affiliate thereof, and
  - (iii) the trades were not part of a series of transactions aiming to support or otherwise influence the price of the Common Shares of Scotiabank; and
- (c) a certificate by each member of the Board of Advisors certifying that after reasonable inquiry the member formed the opinion that the policies and procedures referred to in paragraph 9 above are adequate and effective to ensure compliance with this Decision and that the decision made on behalf of each Fund by the Fund's portfolio advisor to purchase Common Shares of Scotiabank for the Fund and the purchase by the Fund:
- (i) was made in compliance with the conditions of this Decision;
  - (ii) represented the business judgment of the Fund's portfolio advisor uninfluenced by considerations other than the best interests of the Fund; and
  - (iii) was, in fact, in the best interests of the Fund;
14. the Board of Advisors advises the Decision Makers in writing of:
- (a) any determination by it that paragraph 11 has not been satisfied with respect to any purchase, sale or holding of Common Shares of Scotiabank,
  - (b) any determination by it that any other condition of this Decision has not been satisfied,
  - (c) any action it has taken or proposes to take following the determinations referred to above, and
- (d) any action taken, or proposed to be taken, by Scotiabank, the Filer or the portfolio advisor of the Funds in response to the determinations referred to above;
15. the existence, purpose, duties and obligations of the Board of Advisors, the names of its members, whether and how they are compensated by the Funds, and the fact that they meet the requirements of paragraph 2 are disclosed:
- (a) in a press release issued, and a material change report filed, prior to reliance on the Decision,
  - (b) in item 12 of Part A of the simplified prospectus of the Funds, and
  - (c) on the Filer's Internet website; and
16. the Decision, as it relates to the Jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation or rule of that Decision Maker dealing with mutual fund governance in a manner that conflicts with or makes inapplicable any provision of this Decision.

"Theresa McLeod"  
Commissioner  
Ontario Securities Commission

"Harold P. Hands"  
Commissioner  
Ontario Securities Commission

**2.1.3 Aurora Platinum Corp. - MRRS Decision**

"Iva Vranic"  
Manager, Corporate Finance

**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.

**August 26, 2005**

**MRRS Decision Document – Letter Granting the Relief**

**Goodman and Carr LLP**

200 King Street West, Suite 2300  
Toronto, Ontario  
M5H 3W5

Attention: Amy Harvey

Dear Ms. Harvey:

**Re: Aurora Platinum Corp. (the Applicant) -  
Application to Cease to be a Reporting Issuer  
under the securities legislations of Alberta,  
Quebec and Ontario (the "Jurisdictions")**

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

As the Applicant has represented to the Decision Makers that,

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

## 2.1.4 ING Investment Management Inc. - MRRS Decision

### Headnote

Approval to change the fund manager, change the custodian and conduct fund mergers as part of the transfer of one family of mutual funds into another family of mutual funds

### Rules Cited

National Instrument 81-102 - Mutual Funds, ss. 5.5(1)(a), (b) and (c)

August 2, 2005

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

**AND**

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

**AND**

**IN THE MATTER OF  
ING INVESTMENT MANAGEMENT, INC.**

**MRRS DECISION DOCUMENT**

### Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application dated May 27, 2005 (the Application) from ING Investment Management, Inc. (the Manager), for itself and on behalf of certain mutual funds managed by the Manager as listed in Schedule A attached hereto (collectively, the Terminating Funds), ING Canadian Money Market Fund and ING Canadian Dividend Income Fund (the Terminating Funds, ING Canadian Money Market Fund and ING Canadian Dividend Income Fund, collectively, the Funds) for a decision under from the securities legislation of the Jurisdictions (the Legislation) for the following approvals (the Requested Approvals):

1. the change in the manager of the ING Canadian Dividend Income Fund from the Manager to AGF Funds Inc. (AGF) pursuant to clause 5.5(1)(a) of NI 81-102;
2. the transfer of assets of the Terminating Funds to certain mutual funds managed by AGF as listed in Schedule A for securities of those funds (Fund Mergers) pursuant to clause 5.5(1)(b) of NI 81-102;
3. the transfer of net assets of the ING Canadian Money Market Fund to AGF Canadian Money Market Fund for units of AGF Canadian Money Market Fund (Fund Asset Merger) pursuant to clause 5.5(1)(b) of NI 81-102; and
4. the change in the custodian of the ING Canadian Dividend Income Fund from The Royal Trust Company to CIBC Mellon Global Securities Services Company pursuant to clause 5.5(1)(c) of NI 81-102.

The change in the manager and custodian of the ING Canadian Dividend Income Fund would be made in conjunction with other proposed changes in respect of the ING Canadian Dividend Income Fund (collectively, the Fund Amendments ) as more particularly described in the Management Information Circular dated May 6, 2005 (the Circular). The Fund Mergers, the Fund Asset Merger and the Fund Amendments are collectively defined as the Transactions.

Under the Mutual Reliance Review System for Exemptive Relief Applications

## Decisions, Orders and Rulings

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- (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, as applicable.

### Interpretation

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

### Representations

This decision is based on the following facts represented by the Manager, for itself and on behalf of the Funds:

1. The Funds are open-ended mutual funds which have been established by way of a Master Declaration of Trust by General Trust of Canada (now National Bank Trust Inc.) dated December 12, 2000, as amended and restated on November 1, 2001 and as amended on November 1, 2002 and April 14, 2003 under the laws of the Province of Ontario, and in respect of which Natcan Trust Company was appointed trustee under a Trustee Replacement Agreement dated May 17, 2004.
2. Each Fund is a reporting issuer or the equivalent thereof in each Jurisdiction and not in default of any requirements of the securities legislation of the Jurisdictions.
3. Units of the Terminating Funds and ING Canadian Money Market Fund are offered for sale on a continuous basis in each Jurisdiction pursuant to a simplified prospectus and annual information form dated November 18, 2004 (collectively, the November Prospectus). Units of ING Canadian Dividend Income Fund are for sale on a continuous basis in each Jurisdiction pursuant to a simplified prospectus and annual information form dated April 22, 2004 (collectively, the April Prospectus). The Decision Makers issued a decision on April 22, 2005 granting an extension of the lapse date for the April Prospectus to July 31, 2005.

### Fund Mergers

4. The proposed Fund Mergers will be structured as follows:
  - (a) All assets of the Terminating Funds will be liquidated on the open market and all derivatives contracts in respect of the ING US Equity RSP Fund and ING Global Equity RSP Fund will be settled;
  - (b) net cash proceeds of the liquidated assets of each Terminating Fund, after setting aside funds required to discharge estimated liabilities of such Terminating Fund as of the date of the Fund Mergers, payment of brokerage commissions on the liquidation of the assets of each Terminating Fund and the payment of sufficient distributions to Unitholders to ensure the Terminating Fund is not subject to Canadian federal income tax in its final taxation year, will be transferred to the applicable Corresponding AGF Fund (as listed in Schedule A attached hereto) on the Effective Date (as defined below) in exchange for MF Series units or shares of the applicable Corresponding AGF Fund. The Corresponding AGF Funds will not assume the liabilities of the Terminating Funds;
  - (c) the MF Series units or shares of each Corresponding AGF Fund received by the applicable Terminating Fund in payment for the transferred assets (being cash) will have an aggregate net asset value equal to the value of the assets transferred by that Terminating Fund. The units or shares of the Corresponding AGF Funds will be issued at the applicable net asset value per unit or share of the Corresponding AGF Fund determined in accordance with its constating documents as of the close of business on the Effective Date;
  - (d) the units or shares of the applicable Corresponding AGF Fund received by each Terminating Fund will be transferred to Unitholders of such Terminating Fund in exchange for the issued and outstanding Investor Class and Exclusive Class units of the Terminating Fund held by investors. No unit or share certificates will be issued; and
  - (e) the affairs of the Terminating Funds will be wound up and such funds shall be terminated.

### Fund Asset Merger

5. The proposed Fund Asset Merger will be structured as follows:



- (a) All portfolio assets of ING Canadian Money Market Fund, except for assets which will be liquidated in order to (a) discharge estimated liabilities of the fund as of the date of the Fund Asset Merger or, (b) pay sufficient distributions to Unitholders to ensure the ING Canadian Money Market Fund is not subject to Canadian federal income tax in its final taxation year, will be transferred to AGF Canadian Money Market Fund on the Effective Date of the Fund Asset Merger. The value of the portfolio assets of ING Canadian Money Market Fund which are to be transferred to AGF Canadian Money Market Fund will be determined as of the close of business on the business day before the effective date of the merger in accordance with the declaration of trust of the ING Canadian Money Market Fund;
- (b) the MF Series units of AGF Canadian Money Market Fund received by ING Canadian Money Market Fund in payment for the transferred portfolio assets will have an aggregate net asset value equal to the value of the transferred portfolio assets. The units of AGF Canadian Money Market Fund will be issued at the applicable net asset value per unit of the AGF Canadian Money Market Fund determined in accordance with its constating documents as of the close of business on the Effective Date;
- (c) the ING Canadian Money Market Fund will distribute any undistributed net income of the fund to Unitholders to ensure that the fund is not subject to Canadian federal income tax in its taxation year ending on the effective date of the Fund Asset Merger, and within 60 days of the Fund Asset Merger, the units of AGF Canadian Money Market Fund received by ING Canadian Money Market Fund will be transferred to Unitholders of ING Canadian Money Market Fund as consideration for all of the issued and outstanding units of ING Canadian Money Market Fund (being Investor Class and Exclusive Class units) surrendered by investors on the redemption of such units. No unit certificates will be issued.
- (d) the manager or trustee of the ING Canadian Money Market Fund will, on behalf of the Fund, jointly elect with the AGF Canadian Money Market Fund under section 132.2 of the *Income Tax Act* (Canada) (the "Tax Act") (a) to defer the recognition of gains of Unitholders of the ING Canadian Money Market Fund on the exchange of their units of such Fund for units of the AGF Canadian Money Market Fund, and (b) such that the ING Canadian Money Market Fund will not realize any capital gains on the transfer of its portfolio assets to the AGF Canadian Money Market Fund, except to the extent that the Manager has confirmed that the ING Canadian Money Market Fund will not be subject to tax under the Tax Act on any such capital gains.
- (e) the affairs of the ING Canadian Money Market Fund will be wound up and the ING Canadian Money Market Fund shall be terminated.

ING Canadian Dividend Income Fund Amendments

- 6. The principal changes in connection with the ING Canadian Dividend Income Fund (the Dividend Fund) Amendments are: (a) a change in the manager of the Dividend Fund, from the Manager to AGF; (b) a change in the auditors of the Dividend Fund, from Ernst & Young LLP to PricewaterhouseCoopers LLP; (c) a change in the trustee of the Dividend Fund, from Natcan Trust Company to AGF; (d) a change in other service providers, including a change in the custodian of the Dividend Fund from The Royal Trust Company to CIBC Mellon Global Securities Service Company; (e) a change in the name of the Dividend Fund, from ING Canadian Dividend Income Fund to AGF Dividend Income Fund; (f) the entering into by the trustee of a new management agreement; (g) the amendment of the Current Declaration of Trust (as defined below) to conform with the master declaration of trust used by AGF; and (h) a change in the terms under which deferred sales charges are payable (in respect of the annual free redemption right and ordering rules) to be more consistent with the terms under which AGF currently charges deferred sales charges in connection with redemptions from other AGF Funds. Unitholder approval has been obtained in respect of the changes described above other than in (d) and (e).
- 7. A press release has been issued and a material change report has been filed by the Funds announcing the proposed Transactions.
- 8. On April 8, 2005, amendments to each of the November Prospectus and the April Prospectus were filed with the Decision Makers to reflect the proposed Transactions.
- 9. Extracts from Part B of the simplified prospectus of the AGF Group of Funds dated April 15, 2005 relevant to the AGF funds listed in Schedule A and the AGF Canadian Money Market Fund and the preliminary simplified prospectus of the AGF U.S. Risk Managed Class dated April 26, 2005 were mailed to unitholders of each of the Funds (the Unitholders ) together with the Circular. The Circular indicated that copies of the AGF Funds annual information form and annual and interim financial statements including a statement of portfolio transactions could be obtained from Unitholders registered representatives or by contacting AGF and were available on SEDAR.

## Decisions, Orders and Rulings

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10. At special meetings (the Meetings) held on June 8, 2005, Unitholders approved the Transactions. It is proposed that the Transactions will be implemented after the close of business on or about August 5, 2005 (the Effective Date). The cost of effecting the Transactions (consisting primarily of proxy solicitation, printing, mailing, legal and regulatory fees) will be borne by the Manager. The Manager and AGF may postpone implementing any of the Transactions until a later date (which shall be not later than August 30, 2005, unless otherwise agreed between the parties) and may elect to not proceed with any of the Transactions.

### 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 Approvals are granted provided that the Transactions are completed no later than September 30, 2005.

“Susan Silma”  
Director, Investment Funds Branch

**Schedule A**

**Terminating Funds**

ING Canadian Bond Fund  
ING Canadian Balanced Fund  
ING Canadian Equity Fund  
ING Canadian Small Cap Equity Fund  
ING US Equity Fund  
ING US Equity RSP Fund  
ING Global Equity Fund  
ING Global Equity RSP Fund  
ING Europe Equity Fund  
ING Canadian Financial Services Fund  
ING Canadian Resources Fund  
ING Global Brand Names Fund

**Corresponding AGF Funds**

AGF Canadian Bond Fund  
AGF Canadian Balanced Fund  
AGF Canadian Stock Fund  
AGF Canadian Small Cap Fund  
AGF U.S. Risk Managed Class  
AGF RSP American Growth Fund  
AGF World Companies Fund  
AGF RSP World Companies Fund  
AGF European Equity Class  
AGF Global Financial Services Class  
AGF Canadian Resources Fund Limited  
AGF World Companies Fund

## 2.1.5 Fairborne Energy Ltd. - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from certain filing requirements under NI 51-101, NI 51-102 and MI 52-109 – subject to conditions.

### Applicable Ontario or National 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:** Fairborne Energy Ltd., 2005 ABASC 678

August 15, 2005

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, ALBERTA, ONTARIO,  
QUEBÉC, NEW BRUNSWICK, NEWFOUNDLAND AND LABRADOR,  
YUKON, NORTHWEST TERRITORIES AND NUNAVUT (THE JURISDICTIONS)**

**AND**

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

**AND**

**IN THE MATTER OF  
FAIRBORNE ENERGY LTD. (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), as applicable, 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 any comparable continuous disclosure requirements under the securities legislation of such Jurisdictions that have not yet been repealed or otherwise rendered ineffective as a consequence of the adoption of NI 51-102, including continuous disclosure requirements under the securities legislation of those Jurisdictions which have not adopted or implemented NI 51-102 (collectively, the Continuous Disclosure Requirements) (collectively, the Continuous Disclosure Relief); and
  - 1.3 except in British Columbia, the Filer be exempted from the requirements contained in Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings (MI 52-109) (the MI 52-109 Relief).
2. Under the Mutual Reliance Review System for Exemptive Relief Applications (the MRRS):
  - 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 defined in this decision.

### Representations

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

#### Fairborne Energy Ltd.

- 4.1 The Filer was amalgamated under the Business Corporations Act (Alberta) (the ABCA) on June 1, 2005.
- 4.2 Prior to the amalgamation, the Filer had been a reporting issuer in British Columbia, Alberta, Ontario, Québec and New Brunswick and the common shares of the Filer (Fairborne Shares) had been listed and posted for trading on the Toronto Stock Exchange (the TSX).
- 4.3 The Fairborne Shares were delisted from the TSX on June 6, 2005.
- 4.4 The head office and registered office of the Filer is located in Calgary, Alberta.
- 4.5 The authorized share capital of the Filer includes common shares and exchangeable shares (Exchangeable Shares). As at June 15, 2005, 100 common shares of the Filer were issued and outstanding, all of which were owned by the Trust, and approximately 7,000,000 Exchangeable Shares were issued and outstanding.
- 4.6 The common shares of the Filer are not listed or quoted on any marketplace. The Exchangeable Shares are listed and posted for trading on the TSX.
- 4.7 The Filer is currently a reporting issuer in British Columbia, Alberta, Ontario, Québec and New Brunswick. The Filer is not in default of the securities legislation of such jurisdictions.

#### Fairborne Energy Trust

- 4.8 Fairborne Energy Trust (the Trust) was established pursuant to a trust indenture dated April 20, 2005, as amended, under the laws of Alberta.
- 4.9 The head office of the Trust is located in Calgary, Alberta.
- 4.10 The Trust owns all of the issued and outstanding securities of the Filer, other than the Exchangeable Shares.
- 4.11 The holders (Unitholders) of units of the Trust (Trust Units) are the sole beneficiaries of the Trust. Computershare Trust Company of Canada (the Trustee) is the trustee of the Trust. The Filer is the administrator of the Trust.
- 4.12 The Trust Units were listed and posted for trading on the TSX on June 6, 2005.
- 4.13 The Trust became a reporting issuer in each of British Columbia, Alberta, Ontario, Québec and New Brunswick on June 1, 2005 concurrent with the completion of the amalgamation.

#### The Arrangement

- 4.14 Pursuant to an arrangement (Arrangement) involving Fairborne Energy Ltd. (Fairborne), the Trust, Fairquest Energy Limited (Fairquest), Fairborne ExchangeCo Ltd. (ExchangeCo), Fairborne Acquisition Corp. (AcquisitionCo) and the securityholders of the Filer, among other things:
- 4.14.1 certain oil and gas assets of the Filer were conveyed to Fairquest;
- 4.14.2 shareholders (Shareholders) of the Filer, other than non-resident and tax-exempt Shareholders, received in exchange for each common share of the Filer, either:
- 4.14.2.1 0.333 common share of Fairquest (Fairquest Common Share) and one (1) Trust Unit; or
- 4.14.2.2 0.333 Fairquest Common Share and one (1) Exchangeable Share.

- 4.14.3 non-resident and tax-exempt Shareholders received, in exchange for each Share, one (1) Trust Unit and 0.333 Fairquest Common Share; and
- 4.14.4 Fairborne and AcquisitionCo were amalgamated and continued as one corporation, the Filer.
- 4.15 Upon completion of the Arrangement:
  - 4.15.1 Shareholders and placees under a private placement completed by Fairquest prior to the completion of the Arrangement owned all of the issued and outstanding securities of Fairquest;
  - 4.15.2 certain Shareholders owned all of the Exchangeable Shares;
- 4.15.3 the Trust owned all of the issued and outstanding common shares of the Filer; and
- 4.15.4 the Trust owned all of the issued and outstanding notes of the Filer.

**The Exchangeable Shares**

- 4.16 The Exchangeable Shares are, to the extent possible, the economic equivalent of the Trust Units.
- 4.17 The Exchangeable Shares have voting attributes equivalent to those of the Trust Units.
- 4.18 Holders of Exchangeable Shares will receive all disclosure materials that the Trust is required to send to Unitholders under the Legislation.
- 4.19 The exchange rights attaching to the Exchangeable Shares are governed by a voting and exchange trust agreement among the Trust, the Filer, ExchangeCo and the Trustee.
- 4.20 The Exchangeable Shares are also subject to a support agreement among the Trust, the Filer and ExchangeCo, pursuant to which the Trust and ExchangeCo will take certain actions and make certain payments and will deliver or cause to be delivered Trust Units in satisfaction of the obligations of the Filer.
- 4.21 The provisions of the Exchangeable Shares, together with the Support Agreement and the Voting and Exchange Trust Agreement, result in the Exchangeable Shares providing the holders thereof with a security having economic, ownership and voting rights which are, as nearly as practicable, equivalent to those of the Trust Units.

**British Columbia and Québec**

- 4.22 The NI 51-101 Relief is not required in Québec as Québec has not adopted NI 51-101.
- 4.23 The MI 52-109 Relief is not required in British Columbia as British Columbia has not adopted MI 52-109.

**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 the Legislation is that:
  - 6.1 the NI 51-101 Relief is granted for so long as:
    - 6.1.1 the Trust files with each Decision Maker copies of all documents required to be filed by it pursuant to NI 51-101 (the NI 51-101 Documents) and concurrently with the filing of the NI 51-101 Documents, the Trust files in electronic form and under the System for Electronic Documents Analysis and Retrieval (SEDAR) profile of the Filer either:
      - 6.1.1.1 the NI 51-101 Documents, or
      - 6.1.1.2 a notice that indicates:

- 6.1.2.1.1 that the Filer has been granted an exemption from the requirements of Part 2 (Annual Filing Requirements) and Part 3 (Responsibilities of Reporting Issuers and the Directors) of NI 51-101,
    - 6.1.1.2.2 that the Trust has filed the NI 51-101 Documents, and
    - 6.1.1.2.3 where a copy of the NI 51-101 Documents can be found for viewing on SEDAR by electronic means.
  - 6.1.2 the Filer disseminates, or causes the Trust to disseminate on the Filer's behalf, a news release announcing the filing by the Trust of the information set out in Section 6.1.1 above and indicating where a copy of the filed information can be found for viewing on SEDAR by electronic means;
  - 6.1.3 the Filer is exempt from or otherwise not subject to the Continuous Disclosure Requirements;
  - 6.1.4 if disclosure to which NI 51-101 applies is made by the Filer separately from the Trust, the disclosure includes a statement to the effect that the Filer is relying on an exemption from requirements to file information annually under NI 51-101 separately from the Trust, and indicates where disclosure under NI 51-101 filed by the Trust (or by the Filer, if applicable) can be found for viewing on SEDAR by electronic means; and
  - 6.1.5 if the Trust files a material change report to which section 6.1 of NI 51-101 applies, the Filer files the same material change report.
- 6.2 the Continuous Disclosure Relief is granted for so long as:
  - 6.2.1 the Trust is a reporting issuer in at least one of the jurisdictions listed in Appendix "B" of Multilateral Instrument 45-102 Resale of Securities and is an electronic filer under SEDAR;
  - 6.2.2 the Trust sends concurrently to all holders of Exchangeable Shares resident in the Jurisdictions all disclosure material furnished to holders of Trust Units under the Continuous Disclosure Requirements;
  - 6.2.3 the Trust files with each Decision Maker copies of all documents required to be filed by it pursuant to NI 51-102;
  - 6.2.4 concurrently with the filing of the documents required to be filed by it pursuant to the Continuous Disclosure Requirements and the MI 52-109 Relief (the Trust Documents), the Trust files in electronic format under the SEDAR profile of the Filer either,
    - 6.2.4.1 the Trust Documents, or
    - 6.2.4.2 a notice that indicates
      - 6.2.4.2.1 that the Filer has been granted an exemption from the Continuous Disclosure Requirements and the requirements of MI 52-109,
      - 6.2.4.2.2 that the Trust has filed the Trust Documents, and
      - 6.2.4.2.3 where a copy of the Trust Documents can be found for viewing on SEDAR by electronic means;
  - 6.2.5 the Trust is in compliance with the requirements in the securities legislation of the Jurisdictions and of any marketplace on which the securities of the Trust are listed or quoted in respect of making public disclosure of material information on a timely basis;
  - 6.2.6 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 the Trust;
  - 6.2.7 the Trust 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 the Trust, indicates that Exchangeable Shares are the economic equivalent to the Trust Units and describes any rights associated with the Exchangeable Shares;
- 6.2.8 the Trust remains a direct or indirect beneficial owner of all of the issued and outstanding voting securities of the Filer; and
- 6.2.9 the Filer does not issue any securities other than Exchangeable Shares, securities issued to the Trust or its affiliates or debt securities issued to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions.
- 6.3 the MI 52-109 Relief is granted for so long as:
- 6.3.1 the Filer is not required to, and does not, file its own interim filings and annual filings (as those terms are defined under MI 52-109);
- 6.3.2 the Trust files in electronic format under the SEDAR profile of the Filer the:
- 6.3.2.1 interim financial statements of the Trust required under section 4.3 of NI 51-102;
- 6.3.2.2 annual financial statements of the Trust required under section 4.2 of NI 51-102;
- 6.3.2.3 certification of interim filings of the Trust required under Part 3 of MI 52-109; and
- 6.3.2.4 certification of annual filings of the Trust required under Part 2 of MI 52-109
- at the same time as such documents are required to be filed on its own behalf under the Legislation; and
- 6.3.3 the Filer is exempt from or otherwise not subject to the Continuous Disclosure Requirements.

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

“Stephen R. Murison”  
Vice-Chair  
Alberta Securities Commission



**2.1.6 BNS Split Corp. II and Scotia Capital Inc. - MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - subdivided offering - the prohibitions contained in the Legislation prohibiting trading in portfolio shares by persons or companies having information concerning the trading programs of mutual funds shall not apply to the promoter/agent with respect to certain principal trades with the issuer in securities comprising the issuer's portfolio - issuer's portfolio consisting of common shares of the Bank of Nova Scotia.

Issuer, a mutual fund, exempted from restriction against making an investment in any person or company who is a substantial security holder of the Issuer's distribution company.

**Applicable Ontario Statutes**

Securities Act, R.S.O. 1990, c. S.5, as amended, ss. 111(2)(a), 113, 119, 121(2)(a)(ii).

**August 30, 2005**

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
ONTARIO, BRITISH COLUMBIA, ALBERTA,  
SASKATCHEWAN,  
NEWFOUNDLAND AND LABRADOR, 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  
BNS SPLIT CORP. II**

**AND**

**IN THE MATTER OF  
SCOTIA CAPITAL INC. (collectively, the Filers)**

**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 Filers for decisions under the securities legislation (the Legislation) of the Jurisdictions that the following requirements contained in the applicable Legislation shall not apply to BNS Split Corp. II (the Issuer) and/or Scotia Capital Inc. (Scotia Capital), as applicable, in connection with the initial public offering (the Offering) of

class A capital shares (the Capital Shares) and class A preferred shares (the Preferred Shares) of the Issuer:

- (a) The prohibitions contained in the Legislation prohibiting trading in portfolio shares by persons or companies having information concerning the trading programs of mutual funds (the Principal Trading Prohibitions) shall not apply to Scotia Capital in connection with the Principal Sales and Principal Purchases (both as hereinafter defined); and
- (b) The restrictions contained in the Legislation prohibiting the Issuer from making investments in the common shares (the BNS Shares) of The Bank of Nova Scotia (BNS), which bank is a substantial security holder of Scotia Capital, a distribution company of the Issuer, (the Investment Restrictions) shall not apply to the Issuer in connection with the Offering.

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 Filer:

**The Issuer**

1. The Issuer was incorporated on February 28, 2005 under the *Business Corporations Act* (Ontario).
2. The Issuer has filed the Preliminary Prospectus with each of the Decision Makers in respect of the Offering of Capital Shares and Preferred Shares to the public.
3. The Issuer is a passive investment company whose principal undertaking will be to invest the net proceeds of the Offering in a portfolio (the Portfolio) of BNS Shares in order to generate fixed cumulative preferential distributions for the holders of the Preferred Shares and to enable the holders of Capital Shares to participate in any capital appreciation in the BNS Shares after payment of administrative and operating expenses of the Issuer. It will be the policy of the Board of Directors of the Issuer to pay dividends on the

Capital Shares in an amount equal to the dividends received by the Issuer on the BNS Shares minus the distributions payable on the Preferred Shares and all administrative and operating expenses of the Issuer.

4. The Issuer is considered to be a mutual fund, as defined in the Legislation, except in Québec. Since the Issuer does not operate as a conventional mutual fund, it has made application for a waiver from certain requirements of National Instrument 81-102 Mutual Funds.
5. The Capital Shares and Preferred Shares may be surrendered for retraction at any time in the manner described in the Preliminary Prospectus.
6. It will be the policy of the Issuer to hold the BNS Shares and to not engage in any trading of the BNS Shares, except:
  - (i) to fund retractions or redemptions of Capital Shares and Preferred Shares;
  - (ii) following receipt of stock dividends on the BNS Shares;
  - (iii) in the event of a take-over bid for any of the BNS Shares;
  - (iv) if necessary, to fund any shortfall in distributions on the Preferred Shares;
  - (v) to meet obligations of the Issuer in respect of liabilities including extraordinary liabilities; or
  - (vi) certain other limited circumstances as described in the Preliminary Prospectus.
7. The Issuer intends to become a reporting issuer under the Legislation by filing a final prospectus (the Final Prospectus) relating to the Offering. Prior to the filing of the Final Prospectus, the Articles of Incorporation of the Issuer will be amended so that the authorized capital of the Issuer will consist of an unlimited number of Capital Shares, an unlimited number of Preferred Shares, an unlimited number of Class B, Class C, Class D and Class E capital shares, issuable in series, an unlimited number of Class B, Class C, Class D and Class E preferred shares, issuable in series, an unlimited number of Class J Shares and an unlimited number of Class S Shares, each having the attributes set forth under the headings "Description of Share Capital" and "Details of the Offerings" commencing on page 13 of the Preliminary Prospectus.
8. The Class J Shares are currently the only voting shares in the capital of the Issuer. At the time of filing the Final Prospectus, there will be 150 Class J Shares and 100 Class S non-voting shares

issued and outstanding. Scotia Capital will not own any Class J Shares and will own all of the Class S shares. BNS Split II Holdings Corp. will own all of the Class J Shares of the Company.

9. The Issuer has a Board of Directors which currently consists of three directors. All of the directors are employees of Scotia Capital. Also, the offices of President/Chief Executive Officer and Chief Financial Officer/Secretary of the Issuer are held by employees of Scotia Capital. At least three additional, independent directors will be appointed to the Board of Directors of the Issuer prior to the filing of the Final Prospectus.
10. The BNS Shares are listed and traded on The Toronto Stock Exchange (the TSX).
11. The Issuer is not, and will not upon the completion of the Offering be, an insider of BNS within the meaning of the Legislation.

#### The Offering

12. The net proceeds from the sale of the Capital Shares and Preferred Shares under the Final Prospectus, after payment of commissions to the Agents (as defined in Section 20), expenses of issue and carrying costs relating to the acquisition of the BNS Shares, will be used by the Issuer to: (i) pay the acquisition cost (including any related costs or expenses) of the BNS Shares; and (ii) pay the initial fee payable to Scotia Capital for its services under the Administration Agreement (as defined in Section 21).
13. The Final Prospectus will disclose the acquisition cost to the Issuer of the BNS Shares and selected financial information and dividend and trading history of the BNS Shares.
14. Application will be made to list the Capital Shares and Preferred Shares on the TSX.
15. All Capital Shares and Preferred Shares outstanding on a date approximately five years from the closing of the Offering will be redeemed by the Issuer on such date.

#### Scotia Capital

16. Scotia Capital was incorporated under the laws of the Province of Ontario and is a direct, wholly-owned subsidiary of BNS.
17. BNS is a substantial security holder of Scotia Capital, which is a distribution company of the Issuer.
18. Scotia Capital is registered under the Legislation as a dealer in the categories of "broker" and "investment dealer" and is a member of the

Investment Dealers Association of Canada and a participant in the TSX.

19. Scotia Capital is the promoter of the Issuer and will be establishing a credit facility in favour of the Issuer in order to facilitate the acquisition of the BNS Shares (defined below) by the Issuer.
20. Pursuant to an agreement (the Agency Agreement) to be made between the Issuer and Scotia Capital, BMO Nesbitt Burns Inc., CIBC World Markets Inc., RBC Dominion Securities Inc., TD Securities Inc., National Bank Financial Inc., HSBC Securities (Canada) Inc., Canaccord Capital Corporation, Desjardins Securities Inc., Raymond James Ltd. and Wellington West Capital Inc. (collectively, the Agents and individually, an Agent), the Issuer will appoint the Agents, as its agents, to offer the Capital Shares and Preferred Shares of the Issuer on a best efforts basis and the Final Prospectus qualifying the Offering will contain a certificate signed by each of the Agents in accordance with the Legislation.
21. Pursuant to an administration agreement (the Administration Agreement) to be entered into between Scotia Capital and the Issuer, the Issuer will retain Scotia Capital to administer the ongoing operations of the Issuer and will pay Scotia Capital a quarterly fee of 1/4 of 0.20 % of the market value of the BNS Shares held by the Issuer.
22. Scotia Capital's economic interest in the Issuer and in the material transactions involving the Issuer are disclosed in the Preliminary Prospectus and will be disclosed in the Final Prospectus under the heading "Interest of Management and Others in Material Transactions" and include the following:
  - (a) agency fees with respect to the Offering;
  - (b) an administration fee under the Administration Agreement;
  - (c) commissions in respect of the acquisition of BNS Shares, the disposition of BNS Shares to fund a redemption, retraction or purchase for cancellation of the Capital Shares and Preferred Shares;
  - (d) interest and reimbursement of expenses, in connection with the acquisition of BNS Shares; and
  - (e) amounts in connection with Principal Sales and Principal Purchases (as described in paragraphs 23 and 28 below).

### The Principal Trades

23. Pursuant to a securities purchase agreement (the Securities Purchase Agreement) to be entered into between the Issuer and Scotia Capital, Scotia Capital will purchase, as agent for the benefit of the Issuer, BNS Shares in the market on commercial terms or from non-related parties with whom Scotia Capital and the Issuer deal at arm's length. Subject to receipt of all necessary regulatory approvals, Scotia Capital may, as principal, sell BNS Shares to the Issuer (the Principal Sales). The aggregate purchase price to be paid by the Issuer for the BNS Shares (together with carrying costs and other expenses incurred in connection with the purchase of BNS Shares) will not exceed the net proceeds from the Offering.
24. Under the Securities Purchase Agreement, Scotia Capital may receive commissions at normal market rates in respect of its purchase of BNS Shares, as agent on behalf of the Issuer, and the Issuer will pay any carrying costs or other expenses incurred by Scotia Capital, on behalf of the Issuer, in connection with its purchase of BNS Shares as agent on behalf of the Issuer. In respect of any Principal Sales made to the Issuer by Scotia Capital as principal, Scotia Capital may realize a financial benefit to the extent that the proceeds received from the Issuer exceed the aggregate cost to Scotia Capital of such BNS Shares. Similarly, the proceeds received from the Issuer may be less than the aggregate cost to Scotia Capital of the BNS Shares and Scotia Capital may realize a financial loss, all of which is disclosed in the Preliminary Prospectus and will be disclosed in the Final Prospectus.
25. The Preliminary Prospectus discloses and the Final Prospectus will disclose that any Principal Sales will be made in accordance with the rules of the applicable stock exchange and the price paid by Scotia Capital (inclusive of all transaction costs, if any) will not be greater than the price which would have been paid (inclusive of all transaction costs, if any) if the acquisition had been made through the facilities of the principal stock exchange on which the BNS Shares are listed and posted for trading at the time of the purchase from Scotia Capital.
26. Scotia Capital will not receive any commissions from the Issuer in connection with the Principal Sales and all Principal Sales will be approved by a majority of the independent directors of the Issuer. In carrying out the Principal Sales, Scotia Capital will deal fairly, honestly and in good faith with the Issuer.
27. For the reasons set forth in Section 23 and 24 above, and the fact that no commissions are payable to Scotia Capital in connection with the

Principal Sales, in the case of the Principal Sales, the interests of the Issuer and the shareholders of the Issuer may be enhanced by insulating the Issuer from price increases in respect of the BNS Shares.

28. In connection with the services to be provided by Scotia Capital to the Issuer pursuant to the Administration Agreement, Scotia Capital may sell BNS Shares to fund retractions of Capital Shares and Preferred Shares prior to the Redemption Date and upon liquidation of the BNS Shares in connection with the final redemption of Capital Shares and Preferred Shares on the Redemption Date. These sales will be made by Scotia Capital as agent on behalf of the Issuer, but in certain circumstances, such as where a small number of Capital Shares and Preferred Shares have been surrendered for retraction, Scotia Capital may purchase BNS Shares as principal (the Principal Purchases) subject to receipt of all regulatory approvals.
29. In connection with any Principal Purchases, Scotia Capital will comply with the rules, procedures and policies of the applicable stock exchange of which it is a member and in accordance with orders obtained from all applicable securities regulatory authorities. The Preliminary Prospectus discloses and the Final Prospectus will disclose that Scotia Capital may realize a gain or loss on the resale of such securities.
30. The Administration Agreement will provide that Scotia Capital must take reasonable steps, such as soliciting bids from other market participants or such other steps as Scotia Capital, in its discretion, considers appropriate after taking into account prevailing market conditions and other relevant factors, to enable the Issuer to obtain the best price reasonably available for the BNS Shares so long as the price obtained (net of all transaction costs, if any) by the Issuer from Scotia Capital is at least as advantageous to the Issuer as the price which is available (net of all transaction costs, if any) through the facilities of the applicable stock exchange at the time of the trade.
31. All Principal Purchases will be approved by a majority of the independent directors of the Company. Scotia Capital will not receive any commissions from the Issuer in connection with Principal Purchases and, in carrying out the Principal Purchases, Scotia Capital shall deal fairly, honestly and in good faith with the Issuer.
32. At the time of making Principal Sales and/or Principal Purchases, Scotia Capital will not have any knowledge of a material fact or material change with respect to BNS that has not been generally disclosed.

### Decision

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

The decision of the Decision Makers is that:

- A. The Principal Trading Prohibitions shall not apply to Scotia Capital in connection with the Principal Sales and Principal Purchases; and
- B. The Investment Restrictions shall not apply to the Issuer in connection with the Investments in BNS Shares for the purposes of the Offering.

“Robert L. Shirriff”

“Wendell S. Wigle”

2.1.7 ClaringtonFunds Inc. et al. - MRRS Decision

Headnote

Approval granted for merger of mutual funds. Relief granted in respect of current mergers and future mergers to send tailored simplified prospectus and not to send financial statements, unless requested.

Rules Cited

National Instrument 81-102 - Mutual Funds, subsection 5.5(1)(b) and section 5.6.

August 10, 2005

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

AND

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

AND

IN THE MATTER OF  
CLARINGTONFUNDS INC. ("CLARINGTON")

AND

CLARINGTON GLOBAL CORE PORTFOLIO,  
CLARINGTON U.S. CORE PORTFOLIO,  
CLARINGTON CANADIAN GROWTH FUND,  
CLARINGTON NAVELLIER U.S. ALL CAP CLASS OF  
CLARINGTON SECTOR FUND INC.,  
CLARINGTON U.S. GROWTH FUND,  
CLARINGTON U.S. SMALLER COMPANY GROWTH  
FUND,  
CLARINGTON U.S. VALUE CLASS OF CLARINGTON  
SECTOR FUND INC.,  
CLARINGTON GLOBAL VALUE CLASS OF  
CLARINGTON SECTOR FUND INC.,  
CLARINGTON GLOBAL HEALTH SCIENCES CLASS OF  
CLARINGTON SECTOR FUND INC.,  
CLARINGTON ASIA PACIFIC FUND,  
CLARINGTON INTERNATIONAL EQUITY FUND AND  
CLARINGTON GLOBAL COMMUNICATIONS FUND  
(COLLECTIVELY, THE "TERMINATING FUNDS")

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions has received an application from Clarington and the Terminating Funds (the "Filers") for a decision under the securities legislation of the Jurisdictions (the "Legislation") for:

- approval of the mergers (the "Current Mergers") of the Terminating Funds into the applicable Continuing Funds (as defined below) as set out in paragraph 4 below;
- an exemption from the requirement (the "Prospectus Delivery Requirement") to deliver the Clarington Funds simplified prospectus to securityholders of the Terminating Funds in connection with the Current Mergers and all future mergers of mutual funds managed by Clarington (the "Future Mergers"); and
- an exemption from the requirement (the "Financial Statement Delivery Requirement") to deliver the financial statements of the Continuing Funds to securityholders of the Terminating Funds in connection with the Current Mergers and all Future Mergers

(collectively, the Prospectus Delivery Requirement and the Financial Statement Delivery Requirement are 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. The following additional terms shall have the following meanings:

"Class" or "Classes" means, individually or collectively, Clarington Navellier U.S. All Cap Class, Clarington U.S. Value Class, Clarington Global Value Class, Clarington Global Health Sciences Class and Clarington Global Equity Class;

"Continuing Funds" means Clarington Canadian Core Portfolio, Clarington Canadian Equity Fund, Clarington Navellier U.S. All Cap Fund, Clarington Global Small Cap Fund, Clarington Global Equity Class and Clarington Global Equity Fund;

“Fund” or “Funds” means, individually or collectively, the Terminating Funds and the Continuing Funds;

“Sector Fund” means Clarington Sector Fund Inc.;

“Tax Act” means the *Income Tax Act* (Canada).

**Representations**

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

- (i) Clarington is a corporation incorporated under the laws of Ontario. Clarington is the manager of each of the Funds and the trustee of each of the Funds other than the Classes. The head office of Clarington is located in Ontario.
- (ii) Sector Fund is a mutual fund corporation incorporated by articles of incorporation under the laws of Ontario on July 17, 2000. Each of the Classes is a separate class of shares of Sector Fund.
- (iii) Each of the Funds, other than the Classes, is an open-end mutual fund trust established under the laws of Ontario by a master declaration of trust.
- (iv) Clarington intends to merge the Terminating Funds into the Continuing Funds as follows:
  - (1) Clarington Global Core Portfolio and Clarington U.S. Core Portfolio into Clarington Canadian Core Portfolio (the “Core Portfolio Merger”);
  - (2) Clarington Canadian Growth Fund into Clarington Canadian Equity Fund (the “Canadian Merger”);
  - (3) Clarington Navellier U.S. All Cap Class into Clarington Navellier U.S. All Cap Fund (the “Navellier Merger”);
  - (4) Clarington U.S. Growth Fund into Clarington Navellier U.S. All Cap Fund (the “U.S. Growth Merger”);
  - (5) Clarington U.S. Smaller Company Growth Fund into Clarington Global Small Cap Fund;
  - (6) Clarington U.S. Value Class, Clarington Global Value Class and Clarington Global Health Sciences Class into Clarington Global Equity Class (the “Global Equity Class Merger”); and
  - (7) Clarington Asia Pacific Fund, Clarington International Equity Fund and Clarington

Global Communications Fund into Clarington Global Equity Fund.

- (v) Pursuant to the Current Mergers, securityholders will receive securities in the same series of the applicable Continuing Fund as they currently own in the Terminating Fund.
- (vi) Securities of the Funds are currently qualified for sale by a simplified prospectus and annual information form dated June 28, 2005, which have been filed and accepted in all of the Jurisdictions.
- (vii) Each of the Funds is a reporting issuer under applicable securities legislation of each Jurisdiction and is not on the list of defaulting reporting issuers maintained under the applicable securities legislation of the Jurisdictions.
- (viii) Other than circumstances in which the securities regulatory authority of a Jurisdiction (the “Authorities”) has expressly exempted a Fund therefrom, each of the Funds follows the standard investment restrictions and practices established by the Authorities.
- (ix) The net asset value for each series of the Funds is calculated on a daily basis on each day that the Toronto Stock Exchange is open for trading.
- (x) No sales charges will be payable in connection with the acquisition by a Continuing Fund of the investment portfolio of an applicable Terminating Fund.
- (xi) The portfolios and other assets of each Terminating Fund to be acquired by the applicable Continuing Fund arising from the Current Mergers may be acquired by the applicable Continuing Fund in compliance with National Instrument 81-102 – *Mutual Funds* (“NI 81-102”) and are currently, or will be, acceptable, on or prior to the effective date of the Current Mergers, to the portfolio advisers of the applicable Continuing Fund and are or will be consistent with the investment objectives of the applicable Continuing Fund.
- (xii) Securityholders of a Terminating Fund will continue to have the right to redeem securities of the Terminating Fund for cash at any time up to the close of business on the business day immediately prior to the effective date of the Current Mergers.
- (xiii) A material change report and amendments to the then current simplified prospectus and annual information form of the Funds were filed via SEDAR on June 10, 2005 with respect to the proposed Current Mergers.
- (xiv) A notice of meeting, a management information circular and a proxy in connection with meetings

of securityholders have been mailed to securityholders of the Terminating Funds, Clarington Global Equity Class and Clarington Canadian Core Portfolio and have been filed via SEDAR on July 29, 2005. The management information circular contains disclosure of the management fees of the Continuing Funds.

(xv) Securityholders of the Terminating Funds and of Clarington Global Equity Class will be asked to approve the Current Mergers at meetings to be held on August 17, 2005. Clarington, as the sole common shareholder of Sector Fund, will also approve the Global Equity Class Merger, as required under corporate law.

(xvi) Each Terminating Fund will merge into the applicable Continuing Fund on or about the close of business on August 26, 2005 and the Continuing Funds will continue as publicly offered open-end mutual funds governed by the laws of Ontario.

(xvii) Each Terminating Fund will be wound up as soon as reasonably possible following the relevant Current Merger.

(xviii) Clarington will pay for the costs of the Current Mergers. These costs consist mainly of brokerage charges associated with the merger-related trades that occur both before and after the date of the Current Mergers and legal, proxy solicitation, printing, mailing and regulatory fees.

(xix) Approval of the Current Mergers is required because each Current Merger does not satisfy all of the criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102 in the following ways:

(1) Other than the Navellier Merger, each of the Continuing Funds does not have substantially similar investment objectives as the Terminating Fund;

(2) The U.S. Growth Merger and the Global Equity Class Merger will result in an increase in the management fees for securityholders of Clarington U.S. Growth Fund and Clarington Global Value Class;

(3) Except for the Core Portfolio Merger, the Canadian Merger and the Global Equity Class Merger, each of the Current Mergers will not be a "qualifying exchange" within the meaning of section 132.2 of the Tax Act or a tax-deferred transaction under subsection 85(1), 85.1(1), 86(1) or 87(1) of the Tax Act;

(4) The current simplified prospectus of the Clarington Funds will not be sent to securityholders of the Terminating Funds

but, instead, a tailored document consisting of the Part A and the Part B of the simplified prospectus for the Continuing Funds will be sent to securityholders of the Terminating Funds;

(5) The most recent annual and interim financial statements for the Continuing Funds will not be sent to the securityholders of the Terminating Funds but, instead, Clarington will prominently disclose in the information circular sent to securityholders of the Terminating Funds that they can obtain the most recent interim and annual financial statements of the Continuing Funds by accessing the SEDAR website at [www.sedar.com](http://www.sedar.com), by accessing the Clarington website at [www.claringtonfunds.com](http://www.claringtonfunds.com), by calling a toll-free number or by faxing a request to Clarington.

### 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:

- (I) the Current Mergers are approved; and
- (II) the Requested Relief is granted in respect of the Current Mergers and all Future Mergers (collectively, the "Mergers"), provided that:
  - (a) the material sent to securityholders in respect of a Merger includes a tailored simplified prospectus consisting of:
    - (i) the current Part A of the simplified prospectus of the applicable continuing fund, and
    - (ii) the current Part B of the simplified prospectus of the applicable continuing fund;
  - (b) the information circular sent to securityholders in connection with a Merger provides sufficient information about the Merger to permit securityholders to make

- an informed decision about the Merger;
- (c) the information circular sent to securityholders in connection with a Merger prominently discloses that securityholders can obtain the most recent interim and annual financial statements of the applicable continuing fund by accessing the SEDAR website at [www.sedar.com](http://www.sedar.com), by accessing the Clarington website at [www.claringtonfunds.com](http://www.claringtonfunds.com), by calling Clarington's toll-free telephone number or by faxing a request to Clarington;
- (d) upon request by a securityholder for financial statements, Clarington will make best efforts to provide the securityholder with financial statements of the applicable continuing fund in a timely manner so that the securityholder can make an informed decision regarding a Merger; and
- (e) each applicable terminating fund and the applicable continuing fund with respect to a Merger have an unqualified audit report in respect of their last completed financial period.

This Decision, as it relates to the jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation or rule of that Decision Maker dealing with matters in paragraph 5.5(1)(b) of NI 81-102.

“Susan Silma”  
Director, Investment Funds Branch  
Ontario Securities Commission

## 2.1.8 Royster-Clark Ltd. and Royster-Clark LLC - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Issuer of subordinated notes exempt, subject to certain conditions, from continuous disclosure requirements of National Instrument 51-102 Continuous Disclosure Obligations and certification requirements of Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings – Subordinated notes issued as part of offering of income deposit securities consisting of subordinated notes of issuer and common shares of issuer's indirect parent – Conditions to relief intended to ensure that continuous disclosure of issuer's indirect parent will contain the information relevant to holders of subordinated notes and will be accessible to such holders.

### Rules Cited

National Instrument 51-102 Continuous Disclosure Obligations  
Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings

August 29, 2005

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

AND

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

AND

IN THE MATTER OF  
ROYSTER-CLARK LTD. AND ROYSTER-CLARK ULC

### MRRS DECISION DOCUMENT

### Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from Royster-Clark Ltd. (RC Ltd.) and Royster-Clark ULC (RC ULC and, together with RC Ltd., the Filers) for a decision under the securities legislation of the Jurisdictions (the Legislation) that RC ULC be exempt from



1. except in the Northwest Territories, the requirements under the Legislation to:

- (a) issue press releases and file reports regarding material changes (the Material Change Reporting Requirement);
- (b) file annual financial statements together with an auditor's report and annual MD&A, as well as interim financial statements together with a notice regarding auditor review of a written review report, if required, and interim MD&A;
- (c) send annually a request form to the registered holders and beneficial owners of RC ULC's securities, other than debt instruments, that the registered holders and beneficial owners may use to request a copy of RC ULC's annual financial statements and annual MD&A, interim financial statements and interim MD&A, or both, and to send a copy of financial statements and MD&A to registered holders and beneficial owners;
- (d) send a form of proxy and information circular with a notice of meeting to registered holders of voting securities and to file the information circular, form of proxy and all other material required to be sent in connection with the meeting to which the information circular or form of proxy relates;
- (e) where applicable, file a business acquisition report including any required financial statement disclosure, if RC ULC completes a significant acquisition (the BAR Requirement);
- (f) file a copy of any disclosure material that it sends to its security holders;
- (g) file an annual information form; and
- (h) where applicable, file a copy of any contract that it or any of its subsidiaries is a party to, other than a contract entered into in the ordinary course of business, that is material to RC ULC and was entered into in the last year, or before the last financial year but is still in effect (the Material Contracts Requirement),

(collectively, the Continuous Disclosure Requirements); and

2. except in British Columbia, the requirements under the Legislation to:

- (a) file annual certificates (Annual Certificates) in accordance with section 2.1 of Multilateral Instrument 52-109 *Certification of Disclosure in Issuer's Annual and Interim Filings* (MI 52-109); and
- (b) file interim certificates (Interim Certificates) in accordance with section 3.1 of MI 52-109,

(collectively, the Certification Requirements)

Under the Mutual Reliance Review System for Exemptive Relief Applications (the System):

- (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 in 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 Filers:

- 3. RC Ltd. is a corporation formed under the laws of Ontario, with its head office located at Suite 3000, 79 Wellington Street West, TD Centre, Toronto, Ontario, M5K 1N2.
- 4. RC Ltd. owns all of the Class A common shares of Royster-Clark Holdings, Inc. (RC Holdco), representing an approximately 91.1% economic interest.
- 5. RC ULC is an unlimited liability company organized under the laws of Nova Scotia, with its head office at Suite 3000, 79 Wellington Street West, TD Centre, Toronto, Ontario, M5K 1N2.
- 6. RC ULC is a wholly-owned subsidiary of RC Holdco and owns all of the issued and outstanding preferred shares of RC Holdco (the Preferred Shares).
- 7. RC Holdco is a Delaware corporation, with its head offices located at 6 Executive Drive, Collinsville, Illinois; 1251 Avenue of the Americans, Suite 900, New York, NY; and 999 Waterside Drive, 8th Floor, Norfolk, Virginia. RC Holdco, through its subsidiaries, is one of the largest retail distributors of each of agricultural fertilizer, seed and crop protection products, and providers of agronomic services, such as product

application and technical consulting services, to farmers in the United States. RC Holdco, through its subsidiaries, also distributes crop production inputs, principally fertilizer, on a wholesale level.

8. The Filers filed a preliminary prospectus dated June 14, 2005, an amended and restated preliminary prospectus dated June 21, 2005 and a (final) prospectus dated July 13, 2005 in connection with an initial public offering (the Offering) of income deposit securities (IDSs).
9. RC Ltd. issued the common shares that form part of the IDSs and will satisfy dividends declared on these common shares with the dividends it receives on the Class A common shares that it owns in RC Holdco.
10. RC ULC issued the subordinated notes (the Subordinated Notes) that form part of the IDSs and will satisfy its obligations under the Subordinated Notes with the dividends it receives on the Preferred Shares that it owns in RC Holdco.
11. Mutual Reliance Review System decision documents were issued for the Filers' (a) preliminary prospectus and the amended and restated preliminary prospectus on June 15, 2005 and June 22, 2005, respectively; and (b) (final) prospectus on July 14, 2005.
12. RC Ltd. and RC ULC became reporting issuers or the equivalent in each of the Jurisdictions where such status exists on July 14, 2005, and the Offering closed on July 22, 2005.
13. In connection with the Offering, the Filers filed an undertaking with the Ontario Securities Commission to provide investors with separate financial statements for any guarantor subsidiaries and any significant business interests where GAAP prohibits the consolidation of financial information of such entities and the Filers.
14. RC ULC's obligations under the Subordinated Notes represent its primary liability.
15. RC ULC will satisfy its obligations under the Subordinated Notes through the dividends that it will receive on the Preferred Shares and it is not currently anticipated that RC ULC will have any other meaningful assets or sources of income.
16. RC ULC's obligations under the Subordinated Notes are fully and unconditionally guaranteed by RC Holdco and each of its subsidiaries other than RC ULC (the Guarantors).
17. In order to understand and assess the ability of RC ULC (and the Guarantors) to satisfy the obligations under the Subordinated Notes, a holder of the Subordinated Notes will need to

determine (a) the ability of RC Holdco to satisfy its dividend requirements under the Preferred Shares held by RC ULC and (b) the ability of the Guarantors to satisfy the guarantee obligations of the Subordinated Notes.

18. Because RC Ltd. is the ultimate parent of the Guarantors and RC ULC and is required to:
  - (a) include in its public disclosure (e.g., annual information form and material change reports) information concerning all of its material subsidiaries (including RC Holdco), and
  - (b) consolidate the financial position and results of operations of all of the other members of the RC entities,it is the public disclosure, including the consolidated financial statements, relating to RC Ltd. that is relevant from the perspective of a potential investor. Specifically, it is that information (not information relating solely to RC ULC) that permits an investor to determine (a) the ability of RC Holdco to satisfy its dividend requirements under the Preferred Shares and (b) the ability of the Guarantors to satisfy the guarantee obligations of the Subordinated Notes.
19. RC Ltd. has no operations other than minimal operations that are independent of RC Holdco, no material assets other than its holdings of the Class A shares of RC Holdco and no material liabilities.
20. RC Ltd. controls all of its subsidiaries, including RC Holdco and RC ULC (the Subsidiaries).
21. RC ULC will send a form of proxy and information circular to holders of the Subordinated Notes resident in Canada in connection with any meeting of holders of Subordinated Notes, in the manner and at the time that such materials are required by the Legislation to be sent to the holders of the Subordinated Notes.

#### 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 (except for the Decision Makers in the Northwest Territories, with respect to the Continuous Disclosure Requirements, and in British Columbia, with respect to the Certification Requirements) pursuant to the Legislation is that the Continuous Disclosure Requirements and the Certification Requirements shall not apply to RC ULC, provided that:

1. RC Holdco continues to own all of the issued and outstanding voting securities of RC ULC;

## Decisions, Orders and Rulings

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2. RC Ltd. continues to control the Subsidiaries and continues to consolidate the financial information of the Subsidiaries in its financial information;
3. RC ULC continues to have no operations other than minimal operations that are independent of RC Holdco, no material assets other than its holding of Preferred Shares and no material liabilities other than the Subordinated Notes;
4. RC Ltd. has and will continue to have no operations other than minimal operations that are independent of RC Holdco, no material assets other than its holding of the Class A common shares of RC Holdco and no material liabilities;
5. RC Ltd. remains a reporting issuer in each of the Jurisdictions that provides for such a regime and complies with all of its reporting issuer obligations under such regime;
6. each of the Guarantors continues to provide a full and unconditional guarantee of RC ULC's obligations under the Subordinated Notes ;
7. the Filers file, in electronic format under RC ULC's SEDAR profile, copies of any and all documents that RC Ltd. is required to file pursuant to the Continuous Disclosure Requirements at the same time that such documents are required under the Legislation to be filed by RC Ltd. under its own SEDAR profile;
8. RC ULC complies with the Material Change Reporting Requirement in respect of material changes in the affairs of RC ULC that are not also material changes in the affairs of RC Ltd.;
9. RC ULC complies with the Material Contracts Requirement in respect of contracts of RC ULC that would be material to RC ULC but would not be material to RC Ltd.;
10. RC ULC complies with the BAR Requirement in respect of business acquisitions that would be significant acquisitions to RC ULC but not to RC Ltd.;
11. RC ULC has not issued any securities to the public other than the Subordinated Notes;
12. RC Ltd. files copies of its own Annual Certificates and Interim Certificates on RC ULC's SEDAR profile at the same time that such documents are required to be filed by RC Ltd. on its own SEDAR profile;
13. the interim and annual financial statements filed by the Filers under RC ULC's SEDAR profile are accompanied by a notice indicating that all of the consolidated assets of the Guarantors, before any minority interest, are available to support the guarantee of RC ULC's obligations under the Subordinated Notes;
14. RC Ltd. remains an electronic filer under National Instrument 13-101 *System for Electronic Data Analysis and Retrieval (SEDAR)*;
15. RC Ltd. shall not have any Subsidiaries that are not Guarantors; and
16. RC ULC concurrently sends to all holders of Subordinated Notes all disclosure materials that RC Ltd. is required to send to holders of its securities, in the manner and at the time that such materials are required by the Legislation to be sent to the securityholders of RC Ltd.

"John Hughes"  
Manager, Corporate Finance  
Ontario Securities Commission

**2.1.9 BNS Split Corp. II - MRRS Decision**

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications –subdivided offering exempted from certain requirements of National Instrument 81-102 Mutual Funds since issuer is fundamentally different from a conventional mutual fund.

**Rules Cited**

National Instrument 81-102 Mutual Funds, section 19.1, subsection 2.1(1), clause 2.6(a), section 3.3, sections 10.3 & 10.4(1), subsection 12.1(1), section 14.

**August 31, 2005**

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
ONTARIO, BRITISH COLUMBIA, ALBERTA,  
SASKATCHEWAN, MANITOBA,  
NEWFOUNDLAND AND LABRADOR, NOVA SCOTIA  
NEW BRUNSWICK, PRINCE EDWARD ISLAND and  
NORTHWEST TERRITORIES (The Jurisdictions)**

**AND**

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

**AND**

**IN THE MATTER OF  
BNS SPLIT CORP. II (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 (the Application) from the Filer dated August 2, 2005 for exemptive relief pursuant to section 19.1 of National Instrument 81-102 – Mutual Funds (NI 81-102) from certain provisions of NI 81-102.

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 Filer:

1. The Filer was incorporated under the *Business Corporations Act* (Ontario) on February 28, 2005.
2. The Filer will make offerings to the public (the Offerings) on a best efforts basis, of class A capital shares (the Capital Shares) and class A preferred shares (the Preferred Shares) pursuant to a final prospectus (the Final Prospectus) in respect of which the Preliminary Prospectus has already been filed.
3. The Capital Shares and the Preferred Shares will be listed for trading on the Toronto Stock Exchange (the TSX). An application requesting conditional listing approval has been made by the Filer to the TSX.
4. The Filer is a passive investment company whose principal investment objective is to invest in a portfolio of common shares (the BNS Shares) of The Bank of Nova Scotia (BNS) in order to generate fixed cumulative preferential distributions for holders of the Filer's Preferred Shares, and to allow the holders of the Filer's Capital Shares to participate in capital appreciation of the BNS Shares after payment of administrative and operating expenses of the Filer. It will be the policy of the Board of Directors of the Filer to pay dividends on the Capital Shares in an amount equal to the dividends received by the Filer on the BNS Shares minus the distributions payable on the Preferred Shares and all administrative and operating expenses of the Filer.
5. The expenses incurred in connection with the Offerings (the Expenses of the Offerings), being the costs of incorporation, formation and initial organization of the Filer, including the preparation and filing of the Preliminary Prospectus and the Final Prospectus, will be borne by the Filer.
6. The net proceeds of the Offerings (after deducting the agents' fees, Expenses of the Offerings and the Filer's interest and other expenses relating to the acquisition of the BNS Shares) will be used by the Filer to fund the purchase of BNS Shares.
7. The Filer has established a credit facility with Scotia Capital Inc. (Scotia Capital) which may be used by the Filer to purchase the BNS Shares and which will be repaid in full on the closing of the Offerings. The maximum rate of interest payable on such credit facility will be set out in the Final Prospectus. The Filer also intends to establish a revolving credit facility after the closing of the Offerings, which may be used to fund the payment of a portion of the fixed distributions on the Preferred Shares on a temporary basis if

- necessary. To the extent that either credit facility is used, the Filer will pledge BNS Shares as collateral for amounts borrowed thereunder.
8. It will be the policy of the Filer to hold the BNS Shares and to not engage in any trading of the BNS Shares, except:
- (i) to fund retractions or redemptions of Capital Shares and Preferred Shares;
  - (ii) following receipt of stock dividends on the BNS Shares;
  - (iii) in the event of a take-over bid for any of the BNS Shares;
  - (iv) if necessary, to fund any shortfall in the distribution on Preferred Shares;
  - (v) to meet obligations of the Filer in respect of liabilities including extraordinary liabilities; or
  - (vi) certain other limited circumstances as described in the Preliminary Prospectus.
9. Preferred Share distributions will be funded primarily from the dividends received on the BNS Shares and, if necessary, any shortfall will be funded with proceeds from the sale of BNS Shares or, if determined appropriate by the Board of Directors, premiums earned from writing covered call options on the BNS Shares.
10. The record date for the payment of Preferred Share distributions, Capital Share dividends or other distributions of the Filer will be set in accordance with the applicable requirements of the TSX.
11. The Capital Shares and Preferred Shares may be surrendered for retraction at any time. Retraction payments for Capital Shares and Preferred Shares will be made on the Retraction Payment Date (as defined in the Preliminary Prospectus) provided the Capital Shares and the Preferred Shares have been surrendered for retraction by the Valuation Date (as defined in the Preliminary Prospectus). While the Filer's Unit Value (as defined in the Preliminary Prospectus) is calculated weekly, the retraction price for the Capital Shares and the Preferred Shares will be determined based on the Unit Value in effect as at the Valuation Date.
12. The retraction payments for the Capital Shares and Preferred Shares surrendered under the Regular Retraction or Concurrent Retraction (both as defined in the Preliminary Prospectus) will be calculated at a discount to the Unit Value of the Filer on the applicable Valuation Date, in the manner described in the Preliminary Prospectus.

13. Any Capital Shares and Preferred Shares outstanding on a date approximately five years from the closing of the Offerings, which date will be specified in the Final Prospectus, will be redeemed by the Filer on such date.

**Decision**

Each of the Decision Makers is satisfied that based on the information and representations provided in the Application and this decision, and for the purposes described in the Application, the Decision Makers, as applicable, hereby grant exemptions from the following requirements of NI 81-102:

- (a) subsection 2.1(1) – to enable the Filer to invest all of its net assets in the BNS Shares, provided that the Filer does not become an insider of BNS as a result of such investment;
- (b) clause 2.6(a) –
  - (i) to enable the Filer to obtain a short-term loan from Scotia Capital to finance the initial acquisition of the BNS Shares and provide a security interest over its assets as stated in paragraph 7 above, provided that the loan is paid in full on the closing of the Offerings;
  - (ii) to enable the Filer to provide a security interest over its assets in connection with the revolving credit facility after the closing of the Offerings to permit the Filer to fund the payment of a portion of the fixed distribution of the Preferred Shares on a temporary basis if necessary, so long as the outstanding amount of any such borrowings of the Filer does not exceed 5% of the net assets of the Filer taken at market value at the time of the borrowing;
- (c) section 3.3 – to permit the Filer to bear the Expenses of the Offerings;
- (d) section 10.3 – to permit the Filer to calculate the retraction price for the Capital Shares and Preferred Shares in the manner described in the Preliminary Prospectus and on the applicable Valuation Date as defined in the Preliminary Prospectus;
- (e) subsection 10.4(1) – to permit the Filer to pay the retraction price for the Capital Shares and the Preferred Shares on the

Retraction Payment Date, as defined in the Preliminary Prospectus;

- (f) subsection 12.1(1) – to relieve the Filer from the requirement to file the prescribed compliance reports; and
- (g) section 14.1 – to relieve the Filer from the requirement relating to the record date for the payment of dividends or other distributions, provided that it complies with the applicable requirements of the TSX.

"Leslie Byberg"

## 2.2 Orders

### 2.2.1 CI Investments Inc. - cl. 121(2)(a)(ii)

#### Headnote

One time trade of securities between mutual funds in the same family of funds that are not reporting issuers to implement two fund mergers is exempted from the conflict of interest restrictions in section 118(2)(b).

#### Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 118(2)(b) and 121(2).

July 22, 2005

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

**AND**

**IN THE MATTER OF  
CI INVESTMENTS INC.**

**ORDER  
(clause 121(2)(a)(ii))**

**WHEREAS** the Ontario Securities Commission has received an application (the "Application") from CI Investments Inc. ("CI") for an order pursuant to clause 121(2)(a)(ii) of the *Securities Act* (Ontario) (the "Securities Act") for relief from the prohibition in paragraph 118(2)(b) of the Securities Act in connection with the merger (the "Mergers") of Landmark Global Opportunities Fund into Altrinsic Opportunities Fund and BPI Global Opportunities III Fund into Trident Opportunities Fund (each, a "Fund" and collectively, the "Funds");

**AND WHEREAS** it has been represented by CI that:

1. Each Fund is a "mutual fund in Ontario" as defined in the OSA.
2. Each Fund was established as a trust and CI is the trustee and manager of each Fund.
3. Each Fund offers its units in all of the Provinces and Territories of Canada pursuant to applicable prospectus exemptions.
4. The Funds are not offered by way of prospectus and are neither "reporting issuers" nor subject to National Instrument 81-102.
5. The approval of the unitholders of Landmark Global Opportunities Fund and BPI Global Opportunities III Fund (the "Terminating Funds") and Altrinsic Opportunities Fund and Trident Opportunities Fund (the "Continuing Funds") is not

- required by the Funds' constating documents or offering documents or under applicable securities laws in order to effect the Mergers.
6. The Mergers will be advantageous for investors because, among other reasons:
- (a) investors in each Continuing Fund will enjoy increased economies of scale and potentially lower management expenses borne indirectly by investors as part of a larger Fund; and
  - (b) investors will benefit from becoming investors in a larger Fund which will be better able to maintain a diversified, well-managed portfolio with a smaller proportion of assets set aside to fund redemptions.
7. Each Terminating Fund and its Continuing Fund have the same fee structures and valuation procedures.
8. The assets of each Terminating Fund will be transferred to its Continuing Fund at a value determined in accordance with the valuation procedures set out constating documents of the Terminating Fund and the Continuing Fund. The Continuing Fund will then issue units of the Continuing Fund to the Terminating Fund having an aggregate net asset value equal to the value of the assets transferred. Because the transfer of assets will take place at a value determined by common valuation procedures and the issue of units will be based upon the net asset value of the assets received by the Continuing Fund, CI submits that there will be no conflict of interest for CI to effect the Mergers.
9. Units of the Funds are redeemable weekly at their respective net asset values. Unitholders of each Terminating Fund will be given sufficient notice of their Merger to allow them to redeem their units prior to the Merger, should they wish to do so. A letter dated June 30, 2005 was sent to all unitholders of the Landmark Global Opportunities Fund notifying the unitholders of the Merger with Altrinsic Opportunities Fund. A similar letter will be sent to the unitholders of BPI Global Opportunities III Fund at least 30 days prior to that Merger once a date is fixed for the Merger.
10. It is expected that the Merger involving Landmark Global Opportunities Fund and Altrinsic Global Opportunities Fund will take place on or about July 26, 2005 and the Merger involving BPI Global Opportunities III Fund and Trident Global Opportunities Fund will take place on a date to be determined by CI, which date shall not be later than November 30, 2005.

11. In the opinion of CI, the Mergers will not adversely effect unitholders of the Terminating Funds or the Continuing Funds.

12. In the absence of this order, CI would be prohibited from purchasing and selling the securities of the Terminating Funds in connection with the Mergers.

**AND WHEREAS** the Commission is satisfied that the test contained in the legislation that provides the Commission with the jurisdiction to make the Order has been met;

**IT IS ORDERED** pursuant to clause 121(2)(a)(ii) that paragraph 118(2)(b) of the Securities Act shall not apply so as to prevent the sale of the assets of one Fund to the other Fund in connection with the Mergers provided that the Mergers are completed no later than November 30, 2005.

"Paul M. Moore"

"Harold P. Hands"

**2.2.2 Bluefield Financial Limited Partnership - Rule 31-506**

**Headnote**

Section 5.1 of Rule 31-506 - SRO Membership - Mutual Fund Dealers - mutual fund dealer exempted, subject to conditions, from the requirements of the Rule that it file an application and prescribed fees with the Mutual Fund Dealers Association of Canada - mutual fund dealer will conduct limited mutual fund dealer activities only - mutual fund dealer subject to terms and conditions of registration.

**Statute Cited**

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

**Rule Cited**

Rule 31-506 SRO Membership - Mutual Fund Dealers, ss. 2.1, 3.1, 5.1

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

**AND**

**IN THE MATTER OF  
BLUEFIELD FINANCIAL LIMITED PARTNERSHIP**

**ORDER**

**UPON** the Director having received an application (the **Application**) from Bluefield Financial Limited Partnership (**Bluefield**) for an order pursuant to section 5.1 of Ontario Securities Commission Rule 31-506 – *SRO Membership – Mutual Fund Dealers* (the **Rule**), exempting Bluefield from the requirements of Sections 2.1 and 3.1 of the Rule, which would otherwise require that Bluefield be a member of the Mutual Fund Dealers Association of Canada (the **MFDA**);

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

**AND UPON** the Registrant having represented to the Director that:

1. Bluefield is a limited partnership formed under the laws of Ontario. Bluefield has applied for registration in Ontario as an adviser in the category of investment counsel and portfolio manager, and as a dealer in the category of limited market dealer and mutual fund dealer.
2. Bluefield's principal business activity will be managing mutual funds (the **Funds**) the securities of which will be generally be qualified for sale to the public in some, or all, of the provinces and territories of Canada pursuant to a prospectus for

which a receipt has been, or will be, issued by the relevant Canadian securities administrators.

3. Bluefield's activities as a mutual fund dealer will represent activities that are incidental to its principal business activity of managing mutual funds.
4. Bluefield has agreed to the imposition of the terms and conditions on its registration as a mutual fund dealer set out in the attached Schedule "A", which outlines the activities Bluefield has agreed to adhere to in connection with its application for this order.
5. The requested relief is currently required in Ontario only and no similar application has been filed in any other jurisdiction.
6. Existing clients, or any new person or company, before they are accepted as a mutual fund client of Bluefield, will receive prominent written notice from Bluefield that:

*Bluefield Financial Limited Partnership is not currently a member, and does not intend to become a member of the Mutual Fund Dealers Association; consequently, clients of Bluefield Financial Limited Partnership will not have available to them investor protection benefits that would otherwise derive from membership of Bluefield Financial Limited Partnership in the MFDA, including coverage under any investor protection plan for clients of members of the MFDA.*

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

**IT IS THE DECISION** of the Director, pursuant to section 5.1 of the Rule, that, Bluefield is exempt from the requirements in section 2.1 and 3.1 of the Rule;

**PROVIDED THAT** Bluefield complies with the terms and conditions on its registration as a mutual fund dealer, as set out in the attached Schedule "A".  
August 11, 2005.

"David M. Gilkes



**SCHEDULE "A"**

**TERMS AND CONDITIONS OF REGISTRATION  
OF BLUEFIELD FINANCIAL LIMITED PARTNERSHIP  
(the Registrant)  
AS A MUTUAL FUND DEALER**

Definitions

1. For the purposes hereof, unless the context otherwise requires:

(a) "Act" means the *Securities Act*, R.S.O. 1990, c. S.5, as amended;

(b) "Adviser" means an adviser as defined in subsection 1(1) of the Act;

(c) "Client Name Trade" means, for the Registrant, a trade to, or on behalf of, a person or company, in securities of a mutual fund, that is managed by the Registrant or an affiliate of the Registrant, where, immediately before the trade, the person or company is shown on the records of the mutual fund or of an other mutual fund managed by the Registrant or an affiliate of the Registrant as the holder of securities of such mutual fund, and the trade consists of:

(i) a purchase, by the person or company, through the Registrant, of securities of the mutual fund; or

(ii) a redemption, by the person or company, through the Registrant, of securities of the mutual fund;

and where, the person or company:

(iii) is a client of the Registrant that was not solicited by the Registrant; or

(iv) was an existing client of the Registrant on the Effective Date;

(d) "Commission" means the Ontario Securities Commission;

(e) "Effective Date" means August \_\_\_\_, 2005;

(f) "Employee", for the Registrant, means:

(i) an employee of the Registrant;

(ii) an employee of an affiliated entity of the Registrant; or

(iii) an individual that is engaged to provide, on a *bona fide* basis, consulting, technical, management or other services to the Registrant or to an affiliated entity of the Registrant, under a written contract between the Registrant or the affiliated entity and the individual or a consultant company or consultant partnership of the individual, and, in the reasonable opinion of the Registrant, the individual spends or will spend a significant amount of time and attention on the affairs and business of the Registrant or an affiliated entity of the Registrant;

(g) "Employee", for a Service Provider, means an employee of the Service Provider or an affiliated entity of the Service Provider, provided that, at the relevant time, in the reasonable opinion of the Registrant, the employee spends or will spend, a significant amount of time and attention on the affairs and business of:

(i) the Registrant or an affiliated entity of the Registrant; or

(ii) a mutual fund managed by the Registrant or an affiliated entity of the Registrant;

(h) "Employee Rule" means Commission Rule 45-503 Trades To Employees, Executives and Consultants;

(i) "Executive", for the Registrant, means a director, officer or partner of the Registrant or of an affiliated entity of the Registrant;

(j) "Executive", for a Service Provider, means a director, officer or partner of the Service Provider or of an affiliated entity of the Service Provider;

(k) "Exempt Trade", for the Registrant, means:

(i) a trade in securities of a mutual fund that is made between a person or company and an underwriter acting as purchaser or between or among underwriters; or

(ii) a trade in securities of a mutual fund for which the Registrant

- would have available to it an exemption from the registration requirements of clause 25(1)(a) of the Act if the Registrant were not a “market intermediary” as such term is defined in section 204 of the Regulation;
- (iii) in each Jurisdiction other than Ontario, a trade in securities of a mutual fund for which the Registrant would have available to it an exemption from the registration requirements of the Act; or
- (iv) a trade in securities of a mutual fund for which the Registrant has received a discretionary exemption from the registration requirements of the Act;
- (l) “Fund-on-Fund Trade”, for the Registrant, means a trade that consists of:
- (i) a purchase, through the Registrant, of securities of a mutual fund that is made by another mutual fund;
- (ii) a purchase, through the Registrant, of securities of a mutual fund that is made by a counterparty, an affiliated entity of the counterparty or an other person or company, pursuant to an agreement to purchase the securities to effect a hedge of a liability relating to a contract for a specified derivative or swap made between the counterparty and another mutual fund; or
- (iii) a sale, through the Registrant, of securities of a mutual fund that is made by another mutual fund where the party purchasing the securities is:
- (A) a mutual fund managed by the Registrant or an affiliated entity of the Registrant; or
- (B) a counterparty, affiliated entity or other person or company that acquired the securities pursuant to an agreement to purchase the securities to effect a hedge of a
- liability relating to a contract for a specified derivative or swap made between the counterparty and another mutual fund; and
- where, in each case, at least one of the referenced mutual funds is a mutual fund that is managed by either the Registrant or an affiliated entity of the Registrant;
- (m) “In Furtherance Trade” means, for the Registrant, a trade by the Registrant that consists of any act, advertisement, or solicitation, directly or indirectly in furtherance of any other trade in securities of a mutual fund, where the other trade consists of:
- (i) a purchase or sale of securities of a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant; or
- (ii) a purchase or sale of securities of a mutual fund where the Registrant acts as the principal distributor of the mutual fund;
- and where, in each case, the purchase or sale is made by or through another registered dealer if the Registrant is not otherwise permitted to make the purchase or sale pursuant to these terms and conditions;
- (n) “Managed Account” means for the Registrant, an investment portfolio account of a client under which the Registrant, pursuant to a written agreement made between the Registrant and the client, makes investment decisions for the account and has full discretionary authority to trade in securities for the account without obtaining the client’s specific consent to the trade;
- (o) “Managed Account Trade” means for the Registrant, a trade to, or on behalf of a Managed Account of the Registrant, where the trade consists of a purchase or redemption, through the Registrant of securities of a mutual fund, that is made on behalf of the Managed Account;
- where in each case,

- i) the Registrant, or an affiliate of the Registrant, is the portfolio adviser to the mutual fund;
- ii) the mutual funds is managed by the Registrant or an affiliate of the Registrant; and
- iii) either of:
  - a) the mutual fund is prospectus qualified in the Jurisdiction; or
  - b) the trade is not subject to the prospectus and registration requirements of the Act;
- (p) "Mutual Fund Instrument" means National Instrument 81-102 Mutual Funds, as amended;
- (q) "Permitted Client", for the Registrant, means a person or company that is a client of the Registrant, and that is, or was at the time the person or company became a client of the Registrant:
  - (i) an Executive or Employee of the Registrant;
  - (ii) a Related Party of an Executive or Employee of the Registrant;
  - (iii) a Service Provider of the Registrant or an affiliated entity of a Service Provider of the Registrant;
  - (iv) an Executive or Employee of a Service Provider of the Registrant; or
  - (v) a Related Party of an Executive or Employee of a Service Provider of the Registrant;
- (r) "Permitted Client Trade" means, for the Registrant, a trade to a person who is a Permitted Client or who represents to the Registrant that he, she or it is a person included in the definition of Permitted Client, in securities of a mutual fund that is managed by the Registrant or an affiliate of the Registrant, and the trade consists of a purchase or redemption, by the person, through the Registrant, of securities of the mutual fund;
- (s) "Registered Plan" means a registered pension plan, deferred profit sharing plan, registered retirement savings plan, registered retirement income fund, registered education savings plan or other deferred income plan registered under the *Income Tax Act* (Canada);
- (t) "Registrant" means Bluefield Financial Limited Partnership;
- (u) "Regulation" means R.R.O. 1990, Reg. 1015, as amended, made under the Act;
- (v) "Related Party", for a person, means any other person who is:
  - (i) the spouse of the person;
  - (ii) the issue of:
    - (A) the person,
    - (B) the spouse of the person, or
    - (C) the spouse of any person that is the issue of a person referred to in subparagraphs (A) or (B) above;
  - (iii) the parent, grandparent or sibling of the person, or the spouse of any of them;
  - (iv) the issue of any person referred to in paragraph (iii) above; or
  - (v) a Registered Plan established by, or for the exclusive benefit of, one, some or all of the foregoing;
  - (vi) a trust where one or more of the trustees is a person referred to above and the beneficiaries of the trust are restricted to one, some, or all of the foregoing;
  - (vii) a corporation where all the issued and outstanding shares of the corporation are owned by one, some, or all of the foregoing;
- (w) "securities", for a mutual fund, means shares or units of the mutual fund;
- (x) "Seed Capital Trade" means a trade in securities of a mutual fund made to a person or company referred to in any of subparagraphs 3.1(1)(a)(i) to 3.1(1)(a)(iii) of the Mutual Fund Instrument;

(y) "Service Provider", for the Registrant, means:

- (i) a person or company that provides or has provided professional, consulting, technical, management or other services to the Registrant or an affiliated entity of the Registrant;
- (ii) an Adviser to a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant; or
- (iii) a person or company that provides or has provided professional, consulting, technical, management or other services to a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant.

2. For the purposes hereof, a person or company is considered to be an "affiliated entity" of another person or company if the person or company would be an affiliated entity of that other person or company for the purposes of the Employee Rule.

3. For the purposes hereof:

- (a) "issue", "niece", "nephew" and "sibling" includes any person having such relationship through adoption, whether legally or in fact;
- (b) "parent" and "grandparent" includes a parent or grandparent through adoption, whether legally or in fact;
- (c) "registered dealer" means a person or company that is registered under the Act as a dealer in a category that permits the person or company to act as dealer for the subject trade; and
- (d) "spouse", for an Employee or Executive, means a person who, at the relevant time, is the spouse of the Employee or Executive.

4. Any terms that are not specifically defined above shall, unless the context otherwise requires, have the meaning:

- (a) specifically ascribed to such term in the Mutual Fund Instrument; or
- (b) if no meaning is specifically ascribed to such term in the Mutual Fund Instrument, the same meaning the term would have for the purposes of the Act.

## Restricted Registration

### Permitted Activities

5. The registration of the Registrant as a mutual fund dealer under the Act shall be for the purposes only of trading by the Registrant in securities of a mutual fund where the trade consists of:

- (a) a Client Name Trade;
- (b) an Exempt Trade;
- (c) a Fund-on-Fund Trade;
- (d) an In Furtherance Trade;
- (e) a Managed Account Trade, provided that at the time of the trade, the Registrant is registered under the Act as an adviser in the categories of investment counsel and portfolio manager;
- (f) a Permitted Client Trade; or
- (g) a Seed Capital Trade;

provided that, in the case of all trades that are only referred to in clauses (a) or (f), the trades are limited and incidental to the principal business of the Registrant.

2.2.3 Hyperion Capital Management, Inc. - s. 80

Headnote

Section 80 of the Commodity Futures Act (Ontario) – relief from the adviser registration requirements of subsection 22(1)(b) of the CFA granted to a non-resident sub-adviser seeking registration, in respect of advising certain funds, established outside of Canada in respect of trades in commodity futures contracts and commodity futures options principally traded on commodity futures exchanges outside Canada and cleared through clearing corporations outside Canada, subject to certain terms and conditions.

Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., s. 22(1)(b) and s. 80.  
Securities Act, R.S.O. 1990, c. S.5, as am. – Rule 35-502 – Non Resident Advisers, s. 7.10

August 12, 2005.

IN THE MATTER OF  
THE COMMODITY FUTURES ACT,  
R.S.O. 1990, CHAPTER C.20, AS AMENDED

AND

IN THE MATTER OF  
HYPERION CAPITAL MANAGEMENT, INC.

ORDER  
(Section 80)

UPON the application of Hyperion Capital Management, Inc. (**Hyperion**) to the Ontario Securities Commission (the **Commission**) for an order, pursuant to section 80 of the *Commodity Futures Act* (the **CFA**), that neither Hyperion, nor any of its directors, officers or employees acting on its behalf as an adviser (collectively, **Representatives**), shall be subject to paragraph 22(1)(b) of the CFA in respect of advice provided for the benefit of a Partnership (as defined below), the principal investment adviser of which is an Ontario registrant, in respect of trades in commodity futures contracts and commodity futures options traded on commodity futures exchanges outside Canada and cleared through clearing houses outside Canada (the **Commodity Futures**);

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

AND UPON Hyperion having represented to the Commission that:

1. Hyperion is an investment manager headquartered in New York, New York. Hyperion is registered as an investment adviser under the U.S. *Investment Advisers Act of 1940*, as a commodity trading adviser with the U.S. Commodities Futures Trading Commission and is

a member of the U.S. National Futures Association.

2. Hyperion has applied for registration as an investment counsel and portfolio manager under *Securities Act* (Ontario) (the **OSA**) and as a commodity trading manager under the CFA.
3. Cassels Investment Management Inc. (**Cassels**) is registered as an adviser under the OSA in the categories of investment counsel and portfolio manager. In respect of advice related to Commodity Futures, Cassels and its directors, officers and employees will rely on section 31(d) of the CFA, which provides registration relief for OSA registrants whose services as advisers for purposes of the CFA are solely incidental to their principal business.
4. Brascan Adjustable Rate Trust I (the **Fund**) is a newly created investment trust established under the laws of Ontario pursuant to a declaration of trust. In order to meet its investment objectives, the Fund intends to obtain exposure to the performance of an actively managed portfolio (the **Portfolio**) held by Brascan Adjustable Rate Limited Partnership (the **Partnership**) by entering into one or more forward purchase and sale agreements with a Canadian chartered bank or its affiliate. The Partnership was established under the laws of the State of Delaware. The Fund will not invest in the Partnership.
5. The Portfolio will consist primarily of adjustable rate and hybrid mortgage-backed securities. The Partnership will not purchase or sell Commodity Futures, except as part of its hedging strategy.
6. Cassels will provide investment management services to the Fund and the Partnership.
7. Hyperion will provide investment advisory and portfolio management services to Cassels with respect to the Partnership pursuant to the terms of a sub-advisory agreement (the **Sub-Advisory Agreement**).
8. Under the terms of the Sub-Advisory Agreement, Hyperion will agree:
  - (a) to discharge its duties in a manner that is fair and reasonable to the Partnership, to act honestly and in good faith and in the best interests of Cassels, the Partnership, the general partner of the Partnership and the limited partners of the Partnership; and
  - (b) to exercise the degree of care, diligence and skill that a reasonably prudent portfolio manager would exercise in comparable circumstances.

- (collectively the **Standard of Care**)
9. Cassels has contractually agreed to be responsible for the investment advice given or the portfolio management services provided by Hyperion and will be responsible to the Partnership and the Fund for any loss that arises out of the failure of Hyperion to discharge its obligations under the Sub-Advisory Agreement in accordance with the Standard of Care.
10. The offering document of the Fund will disclose that:
- (a) Cassels has responsibility for the investment advice or portfolio management services provided by Hyperion; and
- (b) to the extent applicable, there may be difficulty in enforcing any legal rights against Hyperion because it is resident outside of Canada and all or a substantial portion of its assets are situated outside of Canada.
11. In respect of its securities related investment advisory and portfolio management services for the benefit of the Partnership, Hyperion and its Representatives will rely on the exemption from registration under the OSA set out under section 7.3 of Ontario Securities Commission Rule 35-502 -- *Non-Resident Advisers*, which provides that a non-resident adviser is exempt from the OSA registration requirement where the principal adviser is a registrant, that pursuant to a written agreement, irrevocably accepts responsibility for the services provided by the exempted non-resident.
12. At the time Hyperion becomes registered as an investment counsel and portfolio manager under the OSA and a commodity trading manager under the CFA, Cassels' appointment as investment manager of the Fund and of the Partnership and Hyperion's appointment as sub-advisor will be terminated. Upon such termination, Hyperion will assume the obligations of Cassels as investment manager of the Fund and of the Partnership on substantially the same terms as Cassels.
- (a) the obligation and duties of Hyperion as an adviser are set out in a written agreement with Cassels;
- (b) Cassels contractually agrees with the Partnership on whose behalf investment advice and portfolio management services are to be provided by Hyperion and its Representatives to be responsible for any loss that arises out of the failure of Hyperion and its Representatives to meet the Standard of Care;
- (c) Cassels cannot be relieved by the Partnership from its responsibility for loss under paragraph (b);
- (d) Hyperion is registered as an investment adviser under the U.S. *Investment Advisers Act of 1940*, as amended, with the U.S. Commodities Futures Trading Commission as a commodity trading adviser and is a member of the U.S. National Futures Association;
- (e) Cassels is registered as an investment counsel and portfolio manager under the OSA; and
- (f) this Order shall terminate on the day that Hyperion obtains registration as a commodity trading manager under the CFA, or three years from the date of this Order, whichever occurs first.

"Paul M. Moore"  
Commissioner

"Robert W. Davis"  
Commissioner

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

**IT IS ORDERED** pursuant to section 80 of the CFA that Hyperion and its Representatives are not subject to the requirements of paragraph 22(l)(b) in respect of their investment advice and portfolio management services for the benefit of the Partnership, provided that:

**2.2.4 Providence Investment Management LLC - s. 80 of the CFA**

**Headnote**

Section 80 of the Commodity Futures Act (Ontario) – relief from the adviser registration requirements of subsection 22(1)(b) of the CFA granted to a non-resident sub-adviser in respect of advising certain mutual funds, non-redeemable investment funds and similar investment vehicles established outside of Canada in respect of trades in commodity futures contracts and commodity futures options principally traded on commodity futures exchanges outside Canada and cleared through clearing corporations outside Canada, subject to certain terms and conditions.

**Statutes Cited**

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., s. 22(1)(b) and s. 80.  
Securities Act, R.S.O. 1990, c. S.5, as am. – Rule 35-502 – Non Resident Advisers, s. 7.10

**August 19, 2005**

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

**AND**

**IN THE MATTER OF  
PROVIDENCE INVESTMENT MANAGEMENT LLC**

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

**UPON** the application (the **Application**) of Providence Investment Management LLC (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for an order pursuant to section 80 of the CFA that the Applicant and each of its directors, officers, partners, members and employees (the **Representatives**), be exempt, for a period of three years, from the requirements of paragraph 22(1)(b) of the CFA in respect of advising certain mutual funds, non-redeemable investment funds and similar investment vehicles established outside of Canada in respect of trades in commodity futures contracts and commodity futures options principally traded on commodity futures exchanges outside Canada and cleared through clearing corporations outside Canada;

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

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

1. The Applicant is a limited liability company organized under the laws of the State of Delaware. The Applicant may also include affiliates of, or entities organized by, the Applicant, which may subsequently execute and submit to

the Commission a verification statement confirming the truth and accuracy of the information set out in this Order with respect to that particular Applicant.

2. The Applicant is not registered in any capacity under the CFA or the *Securities Act*, Ontario (the **OSA**).
3. The Applicant is registered with the U.S. Securities and Exchange Commission as an investment adviser under the U.S. Investment Advisers Act of 1940 and with the U.S. Commodity Futures Trading Commission as a commodities pool operator. The Applicant is exempt from registration with the National Futures Association.
4. Providence MBS Offshore Fund, Ltd (the **Offshore Fund**), an exempted company formed under the laws of the Cayman Islands, invests in a "master" fund, Providence MBS Master Fund, Ltd. (the **Master Fund**), an exempted company formed under the laws of the Cayman Islands. The Master Fund serves as the master fund in which substantially all of the assets of the Offshore Fund and one more other feeder funds (each, a **Feeder Fund**) will be invested in a "master-feeder" structure. The Applicant may in future establish or advise certain other mutual funds, non-redeemable investment funds or similar investment vehicles (collectively, together with the Offshore Fund, the other Feeder Funds and the Master Fund, the **Funds**).
5. The Applicant will be the investment manager of the Funds and may provide advice to the Funds with respect to trading in commodity futures contracts and commodities futures options principally traded on commodity futures exchanges outside Canada and cleared through clearing corporations outside Canada.
6. None of the Funds is or has any current intention of becoming a reporting issuer in Ontario or in any other Canadian jurisdiction.
7. There is presently no rule under the CFA that provides an exemption from the adviser registration requirement in paragraph 22(1)(b) of the CFA for a person or company acting as an adviser in respect of commodity futures options and commodity futures contracts that is similar to the exemption from the adviser registration requirement in clause 25(1)(b) of the OSA for acting as an adviser (as defined in the OSA) in respect of securities that is provided under section 7.10 (Privately Placed Funds Offered Primarily Abroad) of Rule 35-502 – *Privately Placed Funds Offered Primarily Abroad (Rule 35-502)*.
8. As would be required under section 7.10 of Rule 35-502, the securities of the Funds are, or will be:

- (i) primarily offered outside of Canada;
- (ii) only distributed in Ontario through one or more registrants under the OSA; and
- (iii) distributed in Ontario in reliance upon an exemption from the prospectus requirements of the OSA.

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

**IT IS ORDERED** pursuant to section 80 of the CFA that the Applicant and its Representatives are, for a period of three years, not subject to the requirements of paragraph 22(1)(b) of the CFA in respect of their advisory activities in connection with the Funds, provided that:

- (a) the Applicant, where required, is or will be registered or licensed, or is or will be entitled to rely on appropriate exemptions from such registrations or licences, to provide advice to the Funds pursuant to the applicable legislation of its principal jurisdiction;
- (b) the Funds invest, or in the future may invest, in commodity futures contracts and commodity futures options principally traded on commodity futures exchanges outside Canada and cleared through clearing corporations outside of Canada;
- (c) securities of the Funds are offered primarily outside of Canada and are only distributed in Ontario through Ontario-registered dealers, in reliance on an exemption from the prospectus requirements of the OSA and upon an exemption from the adviser registration requirement of the OSA under Section 7.10 of Rule 35-502;
- (d) prospective investors who are Ontario residents will receive disclosure that includes:
  - (i) a statement that there may be difficulty in enforcing legal rights against the Funds and or the Applicant which advises the relevant Funds because such entities are resident outside of Canada and all or substantially all of their assets are situated outside of Canada; and

- (ii) a statement that the Applicant advising the applicable Funds is not registered with or licensed by any securities regulatory authority in Canada and, accordingly, the protections available to clients of a registered adviser will not be available to purchasers of securities of the Funds.

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

M. Theresa McLeod  
Commissioner

Harold P. Hands  
Commissioner



2.2.5 Allan Eizenga - s. 127

August 29, 2005

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

**AND**

**IN THE MATTER OF  
ALLAN EIZENGA**

**ORDER (Section 127)**

**WHEREAS** by temporary order dated September 24, 1998, the Ontario Securities Commission (the "Commission") ordered that the exemptions contained in ss. 35(1)21 and 35(2)10 of the the *Securities Act* R.S.O. 1990 c. S.5 (the "Act") do not apply to Allan Eizenga (the "Temporary Order"). The Temporary Order was extended by Commission Orders dated October 9, 1998 and February 4, 1999.

**AND WHEREAS** on May 21, 2004, the Commission issued an Amended Notice of Hearing and Statement of Allegations pursuant to sections 127 and 127.1 in respect of Allan Eizenga ("Eizenga") and others;

**AND WHEREAS** Eizenga entered into a settlement agreement with Staff of the Commission dated August 29, 2005 (the "Settlement Agreement") in which he agreed to a proposed settlement of the proceeding, subject to the approval of the Commission;

**AND WHEREAS** in addition to the terms of the order below, Eizenga has undertaken as follows:

- (a) Any existing accounts not in Eizenga's name but in which he has a beneficial ownership or interest will be closed within 10 days of the approval of this settlement agreement;
- (b) Eizenga undertakes to never apply for registration or recognition of any kind under Ontario securities law or any other Canadian securities legislation; and
- (c) Eizenga undertakes to cooperate fully with Staff in connection with the outstanding Saxton-related proceeding.

**AND UPON** reviewing the Settlement Agreement and the Amended Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for Eizenga and from counsel for Staff of the Commission;

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

**IT IS THEREFORE ORDERED THAT:**

1. the Settlement Agreement is approved;
2. the exemptions contained in Ontario securities law do not apply to Eizenga and Eizenga must cease trading in securities for twenty two years with the exception that, after ten years from the date of the approval of this settlement, Eizenga is permitted to trade securities for the account of his registered retirement savings plan (as defined in the *Income Tax Act (Canada)*) if the securities are:
  - (a) referred to in clause 1 of subsection 35(2) of the Act; or
  - (b) listed and posted for trading on the TSX or NYSE (or their successor exchanges); or
  - (c) issued by mutual funds that are reporting issuers in Ontario;
3. Eizenga must resign any position that he holds as director or officer of any issuer;
4. Eizenga is prohibited from becoming or acting as a director or officer of any issuer for twenty five years;
5. Eizenga is reprimanded; and
6. the Temporary Order is rescinded.

"Robert W. Davis"

"David L. Knight"

**2.2.6 Napier Environmental Technologies Inc. -  
s. 144**

**Headnote**

Cease trade order revoked where the issuer has remedied its default in respect of disclosure requirements under the Act.

**Statutes Cited**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127(1)2, 127(5), 127(8), 144.

**August 29, 2005**

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

**AND**

**IN THE MATTER OF  
NAPIER ENVIRONMENTAL TECHNOLOGIES INC.**

**ORDER  
(Section 144)**

**WHEREAS** the securities of Napier Environmental Technologies Inc. ("**Napier**") have been subject to a cease trade order (the "**Ontario CTO**") of the Ontario Securities Commission (the "**Commission**") pursuant to paragraph 2 of subsection 127(1) of the Act, issued on August 8, 2005 and extended August 15, 2005, directing that trading in securities of Napier cease until the Ontario CTO is revoked by the Director;

**AND WHEREAS** Napier has applied to the Commission pursuant to section 144 of the Act (the "**Application**") for a revocation of the Ontario CTO;

**AND WHEREAS** Napier has represented to the Commission that:

1. Napier was incorporated under the laws of the Province of British Columbia on February 14, 1984.
2. Napier is a reporting issuer under the securities legislation of the provinces of British Columbia and Ontario.
3. The authorized share capital of Napier consists of 145,635,962 common shares (the "**Common Shares**"). As at August 26, 2005, 47,768,042 Common Shares are issued and outstanding. In addition, there are currently outstanding options to

purchase up to 1,184,000 Common Shares and warrants to purchase up to 2,917,120 Common Shares.

4. The Common Shares are listed and posted for trading on the Toronto Stock Exchange (the "**TSX**").
5. The Ontario CTO was issued as a result of Napier's failure to file its audited annual financial statements and management's discussion and analysis for the year ended December 31, 2004 (the "**2004 Financial Documents**") and its unaudited interim financial statements and management's discussion and analysis for the three months ended March 31, 2005 (the "**Q1 2005 Financial Documents**"). Subsequently, Napier failed to file its interim financial statements and management's discussion and analysis for the six months ended June 30, 2005 (the "**Q2 2005 Financial Documents**") which were due to be filed on August 15, 2005.
6. The British Columbia Securities Commission (the "**BCSC**") also issued a cease trade order (the "**BC CTO**") dated July 29, 2005 relating to Napier's failure to file the 2004 Financial Documents and the Q1 2005 Financial Documents.
7. To bring its continuous disclosure records up to date, on August 17, 2005, Napier filed the 2004 Financial Documents and the Q1 2005 Financial Documents on SEDAR. Subsequently, on August 26, 2005, Napier filed the Q2 2005 Financial Documents as well as its annual information form for the year ended December 31, 2004 on SEDAR.
8. Napier has been advised by the BCSC that they intend to revoke the BC CTO on August 26, 2005.
9. Except for the Ontario CTO and the BC CTO, Napier is not in default of any requirement of the Act or the rules or regulations made thereunder.

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

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

**IT IS ORDERED**, pursuant to section 144 of the Act, that the Ontario CTO be revoked.

Ontario Securities Commission

"John Hughes"

## Chapter 3

# Reasons: Decisions, Orders and Rulings

### 3.1 OSC Decisions, Orders and Rulings

#### 3.1.1 Allan Eizenga - Settlement Agreement

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

**AND**

**IN THE MATTER OF  
ALLAN EIZENGA AND  
MICHAEL ANTHONY TIBOLLO**

**SETTLEMENT AGREEMENT  
OF ALLAN EIZENGA**

#### I. INTRODUCTION

1. By Notice of Hearing dated May 21, 2004 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider whether, pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act"), it is in the public interest for the Commission to make an order that:

- (a) trading in any securities by Allan Eizenga ("Eizenga") cease permanently or for such period as the Commission may order;
- (b) the exemptions contained in Ontario securities law do not apply to Eizenga permanently or for such period as the Commission may order;
- (c) Eizenga resign any position that he may hold as director or officer of any issuer;
- (d) Eizenga is prohibited from becoming or acting as a director or officer of any issuer permanently or for such period as the Commission may order;
- (e) Eizenga be reprimanded; and/or
- (f) such other order as the Commission may deem appropriate.

2. By temporary order dated September 24, 1998, the Commission ordered that the exemptions contained in ss. 35(1)21 and 35(2)10 of the Act do not apply to Eizenga (the "Temporary Order"). The Temporary Order was extended by Commission Orders dated October 9, 1998 and February 4, 1999.

#### II. JOINT SETTLEMENT RECOMMENDATION

3. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding initiated in respect of Eizenga by the Notice of Hearing in accordance with the terms and conditions set out below. Eizenga consents to the making of an order against him in the form attached as Schedule "A" based on the facts set out in Part III of this settlement agreement.

#### Acknowledgment

4. For the purposes of this proceeding, and of any other proceeding commenced by a securities regulatory agency, Eizenga agrees with the facts set out in Part III of this settlement agreement.

#### III. STATEMENT OF FACTS

##### Factual Background

##### The Respondent

5. Eizenga is an individual who resides in St. Catharines, Ontario. Eizenga has never been registered with the Commission to trade in securities.

##### The Distribution of the Saxton Securities

6. Saxton Investments Ltd. ("Saxton") was incorporated on January 13, 1995. Eizenga was an officer and a director of Saxton. Saxton and Eizenga established numerous other corporations. Eizenga was the president and a director of each of these companies (the "Offering Corporations").

7. Between January 1995 and September 1998, Eizenga participated in the distribution of, and sold to Ontario investors, securities of one or more of the following Offering Corporations:

Saxton Investments Ltd.  
The Saxton Trading Corp.  
The Saxton Export Corp.  
The Saxton Export (II) Corp.  
The Saxton Export (III) Corp.

- The Saxton Export (IV) Corp.  
 The Saxton Export (V) Corp.  
 The Saxton Export (VI) Corp.  
 The Saxton Export (VII) Corp.  
 The Saxton Export (VIII) Corp.  
 The Saxton Export (IX) Corp.  
 The Saxton Export (X) Corp.  
 The Saxton Export (XI) Corp.  
 The Saxton Export (XII) Corp.  
 The Saxton Export (XIII) Corp.  
 The Saxton Export (XIV) Corp.  
 The Saxton Export (XV) Corp.  
 The Saxton Export (XVI) Corp.  
 The Saxton Export (XVII) Corp.  
 The Saxton Export (XVIII) Corp.  
 The Saxton Export (XIX) Corp.  
 The Saxton Export (XX) Corp.  
 The Saxton Export (XXI) Corp.  
 The Saxton Export (XXII) Corp.  
 The Saxton Export (XXIII) Corp.  
 The Saxton Export (XXIV) Corp.  
 The Saxton Export (XXV) Corp.  
 The Saxton Export (XXVI) Corp.  
 The Saxton Export (XXVII) Corp.  
 The Saxton Export (XXVIII) Corp.  
 The Saxton Export (XXIX) Corp.  
 The Saxton Export (XXX) Corp.  
 The Saxton Export (XXXI) Corp.  
 The Saxton Export (XXXII) Corp.  
 The Saxton Export (XXXIII) Corp.  
 The Saxton Export (XXXIV) Corp.  
 The Saxton Export (XXXV) Corp.  
 The Saxton Export (XXXVI) Corp.  
 The Saxton Export (XXXVII) Corp.  
 The Saxton Export (XXXVIII) Corp.
8. The Offering Corporations were incorporated pursuant to the laws of Ontario. Eizenga's sales of shares of the Offering Corporations (the "Saxton Securities") constituted trades in securities of an issuer that had not been previously issued.
9. The distribution of the Saxton Securities contravened Ontario securities law. None of the Offering Corporations filed a preliminary prospectus or a prospectus with the Commission. No Offering Corporation was issued a receipt for a prospectus by the Commission. None of the Offering Corporations filed an Offering Memorandum or a Form 20 with the Commission.
10. The Offering Corporations purported to rely on the "seed capital" prospectus exemption contained in subparagraph 72(1)(p) of the Act. Neither this exemption, nor any other prospectus exemption, was available to them.
11. None of the exemptions from the registration requirements in Ontario securities law was available for the sale of the Saxton Securities.
12. On or about October 7, 1998, the Court appointed KPMG Inc. ("KPMG") as the custodian of Saxton's assets. In early 1999, KPMG reported that the Offering Corporations had raised approximately \$37 million from investors. All funds invested in the Offering Corporations had been transferred to Saxton. At that time, KPMG held the view that the value of the Saxton assets, at its highest (as reported by a related company, Sussex Group Ltd. (Barbados)), was approximately \$5.5 million. Sussex Group Ltd. (Barbados) is currently being wound down by a court-appointed manager.
- The Saxton Products and Business**
13. The Saxton Group was a trade name that encompassed a complex network of related companies including Saxton, the Offering Corporations and Sussex Admiral Group Limited (Barbados), later renamed Sussex Group Ltd. (Barbados) ("Sussex").
14. The Saxton Group's core business was the development and manufacture of beverage and food products for the hospitality and tourist industries in Cuba (and elsewhere in the Caribbean). Sussex was the operating company. Among other things, Sussex held the Saxton Group's economic associations, operating contracts and supply agreements.
15. The primary function of every Offering Corporation was to raise investment capital for the operations in Cuba and elsewhere. The Offering Corporations financed Sussex's activities. Funds raised through the Offering Corporations were pooled and transferred to Saxton. Saxton, in turn, transferred the money directly, and indirectly (through 1125956 Ontario Inc.), to the Cuban and other operations. Investors associated their investment with "Saxton" and the Cuban operations, not the Offering Corporations.
16. Even though, in fact, investors purchased shares in the Offering Corporations (the Saxton Securities), Saxton marketed the Securities as a "GIC", a "Fixed Dividend Account" product and an "Equity Dividend Account" product.
17. The "GIC" promised investors an annual return of 10.25%. The Fixed Dividend Account offered investors either a 10.25% annual return for a three year term compounded or a 12% annual return for a five year term compounded. Investors in the Equity Dividend Account product were told to

expect 25% to 30% annual growth. Investors were told that their money funded the Saxton Group's operations and that the rate of return on, or the growth of, their investment resulted from the profitability and success of the Group's businesses, principally the Cuban operations.

18. The Saxton products were marketed and sold as a no, or low, risk investment notwithstanding that the Saxton Securities were described in the Offering Memoranda as "speculative".

#### Eizenga's Conduct

##### (a) Management of Saxton and the Raising of Funds

19. Eizenga controlled the Saxton Group and the raising of funds from Ontario investors through the sale of the Saxton Securities. He made all key business and management decisions relating to, among other things, the means by, and structure through, which the Saxton Securities were distributed and the use of investor funds. All Saxton officers, and the Sussex president, reported to him. Eizenga approved all promotional and investor relations material distributed by Saxton.
20. The concept and plan for, and the resulting distribution of, the Saxton Securities were designed by Eizenga and implemented at his direction. The incorporation, and use, of many Offering Corporations was designed or implemented by Eizenga to avoid the "seed capital" prospectus exemption requirement in subparagraph 72(1)(p) of the Act that sales be made to no more than 25 purchasers. Once one Offering Corporation received funds from the maximum allowed 25 investors, Eizenga allocated investors to a new Offering Corporation.
21. Eizenga directed the preparation, and approved the publication and distribution, of an Offering Memorandum for each of the Offering Corporations. These Memoranda were virtually identical and provided little information about the Saxton Group's operations (into which funds invested in the Offering Corporations would flow) other than their geographic location.
22. Further, Eizenga failed to ensure that salespeople provided an Offering Memorandum to investors prior to their purchase of the Saxton Securities.
23. Eizenga controlled the monies raised through the distributions of the Saxton Securities. He possessed the authority to independently sign cheques and effect transfers on Saxton's and the Offering Corporations' bank accounts. He controlled the flow of funds from the Offering Corporations to Saxton and from Saxton to Sussex, 1125956 Ontario Inc. and elsewhere.

24. Between 1995 and 1998, Eizenga traded the Saxton Securities by executing as each Offering Corporation's authorized signing officer the investor subscription agreements and share certificates.

25. He also acted as a financial advisor to clients who purchased approximately \$1.1 million worth of the Saxton Securities. In this regard, he made representations to certain of his clients as described in subparagraphs 29(d) through (g) below and failed to provide all of them with access to substantially the same information concerning the Saxton Securities that a prospectus filed under the Act would provide. Eizenga was not registered with the Commission and no registration exemption was available to him. He received commissions for sales in which he was directly involved.

##### (b) Information Disseminated to Saxton Salespeople and Investors

26. Saxton's head office was located initially in London and then moved to Burlington, Ontario. The sales force consisted of independent salespeople who earned commissions and trailer fees on their sales of the Saxton Securities. The majority of the Saxton salespeople also purchased the Saxton Securities for themselves and/or their families.
27. Rick Fangeat was a Saxton salesperson who acted as an intermediary between Saxton head office and several other Saxton salespeople. Luke McGee also had some direct dealings with salespeople. Rick Fangeat and Luke McGee reported to, and took direction from, Eizenga.
28. Eizenga made various oral and written representations respecting the nature and quality of the Saxton Securities and the mechanics and legality of their distributions to Saxton management and salespeople. Among other things, Eizenga approved promotional and investor relations material, facilitated, organized or approved group meetings with sales staff and presentations respecting the Saxton Securities and the Sussex operations and participated in promotional/investor relations trips to Cuba.
29. Between January 1995 and the summer of 1998, Eizenga made various representations to salespeople, investors and/or prospective investors including the following:
- (a) He had obtained a legal opinion that the structure for the Saxton Securities' distributions complied with Ontario securities laws, which was not true;

- (b) Salespeople did not need to be registered with the Commission to sell the Saxton Securities, which was not true;
- (c) For salespeople who were registered with the Commission, sales of the Saxton Securities did not need to be approved of, or processed through, their mutual fund dealers, which was not true;
- (d) The capital invested in, and the rate of return earned on shares in the "GIC" or "Fixed Dividend Account" product was guaranteed, which was not true;
- (e) Based on the historical profits of the operations, the "Equity Dividend Account" would provide a 30% rate of return for investors, which was not true;
- (f) In anticipation of becoming a public company, Saxton had purchased surety bonds from Liberty Insurance that guaranteed fully the company's capital base and provided an additional level of security to investors, which was not true; and
- (g) Saxton had secured a Certificate of Deposit for \$40 million backed by gold that fully collateralized shareholders' investments, which was not true.
- (c) Investor Quarterly Account Statements**
30. Eizenga failed to ensure that Saxton and/or its controller established proper internal controls and kept proper books of account. Among other things, Saxton's general ledger was never "closed off" and audited financial statements were never prepared.
31. Saxton distributed quarterly account statements to all investors who purchased the Saxton Securities. These account statements were created and disseminated on the instructions of Eizenga.
32. Shareholders who invested in the "GIC/Fixed Dividend Account" product received quarterly account statements that reflected a "market value" increase of between 10.25% or 12% and, thus, showed the rate of return promised to investors. The quarterly account statements provided to shareholders who invested in the "Equity Dividend Account" product reflected a "market value" increase of between 25% and 30%, thus showing the rate of return which investors had been told to expect.
33. Along with the historical cost of the Saxton Securities held by the investor, the quarterly account statements purported to disclose an increase in the "market value" for the quarter and the end of the quarter for such Securities. There were no financial statements or record of any revenue generation by the Saxton operations. There were thus no means by which Saxton or Eizenga could establish the net results of the Saxton Cuban or other operations. In fact, an independent audit established that they were operating at a loss.
34. Thus the quarterly account statements distributed to, and relied upon by, investors did not reflect the true "value" of the Saxton Securities. They also provided to investors and salespeople misplaced comfort and confidence in the legitimacy of the Saxton Group business and the return on, and the stability, quality, and risk level of, their investment.
- (d) Eizenga's Continued Distribution of the Saxton Securities**
35. In or about 1997, Eizenga embarked on a plan to take Saxton public and listed on a recognized stock exchange by way of a reverse takeover. It was contemplated that Sussex's assets would be vended in to F.S.P.I. Technologies Corp., a company listed on the Alberta Stock Exchange.
36. In the course of the going public process, Eizenga and the Saxton Group received legal advice that the distributions of the Saxton Securities likely did not comply with Ontario securities law and that no further funds should be raised. Further, it became apparent that the existing Saxton books and

records did not account for all of the investor funds.

37. Notwithstanding the circumstances described in the previous paragraph, and in the face of Commission inquiries in April of 1998, Eizenga continued to solicit investors and distribute the Saxton Securities. He did not contact the Commission.

**(e) Eizenga's Failure to Inform the Commission**

38. In October 1997, the Commission wrote to Eizenga and asked him to provide certain information respecting the Saxton Group. In his January 1998 response, Eizenga did not provide the Commission with all of the requested information of which he was aware.

**(f) Eizenga's Remuneration**

39. Eizenga received a generous remuneration package as the president of Saxton.

40. Eizenga's conduct as described in Part III of this Settlement Agreement was contrary to Ontario securities law and the public interest.

**IV. POSITION OF THE RESPONDENT**

41. Eizenga takes the position and represents to Staff that:

(a) In relation to subparagraph 29(f) above, surety bonds were issued to Saxton by Liberty Insurance but were never paid for because Eizenga discovered that the value of the bonds were questionable; and

(b) In Eizenga's view, the beverage business in Cuba had great potential and its sales were growing. He calculated the "market value" of the Saxton Securities on the basis of the Cuban business' potential. Investors were not told that this is how the "market value" of their investment was being calculated.

**V. TERMS OF SETTLEMENT**

42. Eizenga agrees to the following terms of

settlement:

(a) The Commission will make an order:

(i) approving this settlement agreement;

(ii) removing all exemptions and requiring that trading in any securities by Eizenga cease for twenty two years with the exception that, after ten years from the date of the approval of this settlement, Eizenga is permitted to trade securities for the account of his registered retirement savings plan (as defined in the *Income Tax Act (Canada)*) if the securities are:

(a) referred to in clause 1 of subsection 35(2) of the Act; or

(b) listed and posted for trading on the TSX or NYSE (or their successor exchanges); or

(c) issued by mutual funds that are reporting issuers in Ontario;

(iii) requiring that Eizenga resign any position that he holds as director or officer of any issuer;

(iv) prohibiting Eizenga from becoming or acting as a director or officer of any issuer for twenty five years;

(v) reprimanding Eizenga; and

(vi) rescinding the Temporary Order.

(b) Eizenga will carry out the permitted trading described in paragraph 42(a)(ii) through accounts opened in his name only. Any existing accounts not in Eizenga's name but in which he has a beneficial ownership or interest will be closed within 10 days of the approval of this settlement agreement;

(c) Eizenga undertakes to never apply for registration or recognition of any kind under Ontario securities law or any other Canadian securities legislation; and

- (d) Eizenga undertakes to cooperate fully with Staff in connection with the outstanding Saxton-related proceeding, including providing complete and truthful answers to any Staff inquiries and testifying as a witness for Staff.

**VI. STAFF COMMITMENT**

43. If this settlement agreement is approved by the Commission, Staff will not initiate any proceeding under Ontario securities law in respect of any conduct or alleged conduct of Eizenga in relation to the facts set out in Part III of this settlement agreement, subject to the provisions of paragraph 44 below.

**VII. FAILURE TO HONOUR UNDERTAKINGS**

44. If this settlement agreement is approved by the Commission, and at any subsequent time Eizenga fails to honour the undertakings contained in subparagraphs 42(b), (c) and (d) and paragraph 47 of this settlement agreement, Staff reserve the right to bring proceedings under Ontario securities law against Eizenga based on the facts set out in Part III of this settlement agreement, as well as the breach of the undertakings.

**VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT**

45. Approval of this settlement agreement shall be sought at a hearing of the Commission scheduled for August 29, 2005, or such other date as may be agreed to by Staff and Eizenga, in accordance with the procedures described in this settlement agreement.
46. Staff and Eizenga agree that if this settlement agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted respecting Eizenga in this matter, and Eizenga agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.
47. Staff and Eizenga agree that if this settlement agreement is approved by the Commission, neither Staff nor Eizenga will make any public statement inconsistent with this settlement agreement.
48. If, for any reason whatsoever, this settlement agreement is not approved by the Commission or an order in the form attached as Schedule "A" is

not made by the Commission, each of Staff and Eizenga will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations against Eizenga set out in the Notice of Hearing and Amended Statement of Allegations against Eizenga dated May 21, 2004, unaffected by this agreement or the settlement negotiations.

49. Whether or not this settlement agreement is approved by the Commission, Eizenga agrees that he will not, in any proceeding, refer to or rely upon this agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

**X. DISCLOSURE OF AGREEMENT**

50. The terms of this settlement agreement will be treated as confidential by all parties hereto until approved by the Commission, and forever if, for any reason whatsoever, this settlement agreement is not approved by the Commission, except with the written consent of both Eizenga and Staff or as may be required by law.

51. Any obligations of confidentiality shall terminate upon approval of this settlement agreement by the Commission except in accordance with any order made by the Commission.

**IX. EXECUTION OF AGREEMENT**

52. This settlement agreement may be signed in one or more counterparts which together shall constitute a binding agreement.
53. A facsimile copy of any signature shall be effective as an original signature.

August 29, 2005.

"Jennifer Cooper"  
Witness

"Allan Eizenga"

August 29, 2005.

"Kelley McKinnon"

Michael Watson  
Director, Enforcement Branch



## Chapter 4

# Cease Trading Orders

### 4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
Concert Industries	16 Aug 05	26 Aug 05	26 Aug 05	

### 4.2.1 Temporary, Permanent & Rescinding Management 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

There are no updates for the week August 24 to August 31, 2005.

### 4.2.2 Outstanding 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		
Brainhunter Inc.	18 May 05	31 May 05	31 May 05		
Hip Interactive Corp.	04 Jul 05	15 Jul 05	15 Jul 05		
HMZ Metals Inc.	24 Aug 05	06 Sept 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	18 May 04	01 Jun 04	01 Jun 04		
Kinross Gold Corporation	01 Apr 05	14 Apr 05	14 Apr 05		
Rex Diamond Mining Corporation	04 Jul 05	15 Jul 05	15 Jul 05		
Thistle Mining Inc.	05 Apr 05	18 Apr 05	18 Apr 05		
TS Telecom Ltd	08 Aug 05	19 Aug 05	19 Aug 05		
Xplore Technologies Corp.	04 Jul 05	15 Jul 05	15 Jul 05		

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# Chapter 5

## Rules and Policies

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### 5.1.1 NP 31-201 - National Registration System

#### NATIONAL POLICY 31-201 — NATIONAL REGISTRATION SYSTEM

##### PART 1 DEFINITIONS AND INTERPRETATION

### 1.1 DEFINITIONS

(1) In this Policy,

“application form” means, for a filer, the form required under applicable securities legislation to submit an application for registration or approval;

“conduct rules” means the rules, as they apply to registered filers or non-registered individuals, contained in securities legislation of the jurisdictions in which a registered filer is registered or in which a non-registered individual is approved or reviewed, to ensure the proper conduct, namely as regards skill, care and diligence, of registered filers and non-registered individuals towards clients, other registrants and regulators and, without limiting the generality of the foregoing, may include rules relating to

- (a) the types of securities that may be traded or on which advice may be given,
- (b) knowledge of clients, including identity, creditworthiness, reputation, investment needs and objectives and suitability of securities transactions,
- (c) membership with self-regulatory organizations,
- (d) necessary human resources,
- (e) supervision,
- (f) compliance officers or branch managers,
- (g) fair and honest treatment of clients,
- (h) fair allocation of investment opportunities,
- (i) prudent business practices,
- (j) record-keeping,
- (k) communications with clients,
- (l) safe-keeping of assets,
- (m) conflicts of interest,
- (n) use of advertising,
- (o) segregated and trust accounts, and
- (p) general conduct of business activities so as to promote the best interests of clients and the integrity of the market;

“materials” means the materials identified in accordance with section 4.2;

“MI 31-102” means Multilateral Instrument 31-102 National Registration Database;

“MI 33-109” means Multilateral Instrument 33-109 Registration Information;

“NI 31-101” means National Instrument 31-101 National Registration System; and

“Québec NRD Rules” means Regulation 31-102Q Respecting the National Registration Database and Regulation 33-109Q Respecting Registration Information.

- (2) In this Policy, “conduct rules” also means the rules, as they apply to mutual fund dealers and their sponsored individuals who are registered in Québec, contained in the securities legislation of Québec, with respect to liability insurance.

## **1.2 INTERPRETATION**

- (1) Unless otherwise defined or interpreted herein or unless the context otherwise requires, terms used in this Policy that are defined or interpreted in NI 31-101 or National Instrument 14-101 Definitions have the meanings given in those national instruments.
- (2) “Fit and proper requirements”, as defined in NI 31-101, include requirements relating to
- (a) employment conflicts and multiple-category registration,
  - (b) experience and completion of recognized industry course,
  - (c) minimum capital,
  - (d) bonding or insurance, except as contemplated in subsection 1.1(2),
  - (e) participation in compensation or contingency funds,
  - (f) record-keeping systems,
  - (g) preparation of audited and unaudited financial statements, and
  - (h) jurisdiction of incorporation.
- (3) In this Policy, the terms “NRD”, “NRD format” and “NRD website” have the meanings defined in MI 31-102.
- (4) Terms and conditions attaching to a filer’s registration does not affect the filer’s eligibility to use NRS.
- (5) This Policy should be read in conjunction with NI 31-101, which sets out specific requirements and exemptions in relation to the use of NRS.

## **PART 2 OVERVIEW AND APPLICATION**

### **2.1 OVERVIEW**

- (1) This Policy describes the practical application of mutual reliance concepts set out in the MRRS MOU relating to the filing and review of registration applications and applications for approval or review of non-registered individuals.
- (2) Under NRS, a designated securities regulatory authority or regulator, as applicable, acts as the principal regulator for all applications relating to a filer. This will enable securities regulatory authorities and regulators to develop greater familiarity with their respective filers, which will enhance the efficiency and quality of their review of applications filed under NRS.
- (3) A person or company submitting an application to become a registered firm should determine pursuant to NI 31-101 if it is eligible to use NRS. Eligible registered firms may elect to use NRS at any time. Any election by a firm filer to use NRS is binding on all eligible sponsored individuals of the firm filer submitting, or whose firm filer is submitting on their behalf, an application to a non-principal regulator.

## **2.2. APPLICABLE REQUIREMENTS**

- (1) NI 31-101 provides exemptive relief so that firm filers who have elected to use NRS and their sponsored individuals will only have to satisfy or comply with, as the case may be, the fit and proper requirements, notice requirements and filing requirements applicable in the jurisdiction of the filer's principal regulator. A requirement is not considered applicable if the filer's principal regulator has issued a blanket ruling or order providing for general relief from this requirement.
- (2) Filers will continue to be subject to the conduct rules applicable in each jurisdiction where they are registered.

## **2.3 APPLICATIONS FOR EXEMPTIVE RELIEF**

- (1) If a filer requires exemptive relief from the fit and proper requirements, the notice requirements or the filing requirements in connection with its application, it only needs to obtain the exemption from its principal regulator.
- (2) If a filer requires exemptive relief from the conduct rules in connection with its application, the exemption can only be obtained from the securities regulatory authority or regulator of the jurisdiction in which the exemption is required. If an exemption is required in more than one jurisdiction, filers are encouraged to use the procedures under National Policy 12-201 Mutual Reliance Review System for Exemptive Relief Applications.

## **PART 3 PRINCIPAL REGULATOR**

### **3.1 PARTICIPATING PRINCIPAL REGULATORS**

As of the effective date of this Policy, the securities regulatory authorities and regulators of all jurisdictions have agreed to act as principal regulator for applications submitted under NRS.

### **3.2 DETERMINATION OF PRINCIPAL REGULATOR**

- (1) It is the responsibility of the filer to determine its principal regulator.
- (2) A filer submitting an application under NRS or, in the case of a firm filer, electing to use NRS should determine its principal regulator in accordance with this section.
- (3) The principal regulator for a firm filer is the securities regulatory authority or regulator of the jurisdiction with which the firm filer has the most significant connection.
- (4) The following are factors that should be considered by a firm filer when determining the jurisdiction with which it has the most significant connection:
  - (a) head office,
  - (b) directing mind and management,
  - (c) operational headquarters,
  - (d) business offices,
  - (e) workforce, and
  - (f) clientele.
- (5) A firm filer's jurisdiction of incorporation or its registered office, if it is not also a significant business office, are not in themselves factors that should be considered by a firm filer when determining the jurisdiction with which it has the most significant connection.
- (6) The principal regulator for an individual filer is the securities regulatory authority or regulator of the jurisdiction in which the individual filer's working office is located.
- (7) If a filer wishes to obtain confirmation of its determination of principal regulator, it may notify that regulator of its determination before submitting an application under NRS. The notice should include detailed information regarding the relevant factors considered by the filer in making the determination. The principal regulator, after considering the

determination, which may include discussing the determination with other securities regulatory authorities or regulators, will respond to the filer's notice within ten business days.

### **3.3 CHANGE OF PRINCIPAL REGULATOR**

- (1) Securities regulatory authorities and regulators may change the principal regulator determined by the filer in the following circumstances:
  - (a) the securities regulatory authorities and regulators believe that the determination of the principal regulator by the filer was not or is no longer appropriate in view of the particular relevant factors applicable to the filer, or
  - (b) the securities regulatory authorities and regulators determine that changing the principal regulator of a filer would result in greater administrative and regulatory efficiencies in connection with the filer's registration or approval.
- (2) If the securities regulatory authorities and regulators propose to change a filer's principal regulator, the principal regulator will notify the filer in writing of the proposed change and will identify the reasons for the proposed change.

### **3.4 EFFECT OF CHANGE OF PRINCIPAL REGULATOR**

Unless otherwise consented to by the principal regulator and the redesignated principal regulator, a change of principal regulator pursuant to section 3.3 will take effect immediately. Requirements applicable to the filer will change accordingly, subject to the temporary exemption contained in section 3.2 of NI 31-101 for the benefit of registered filers.

## **PART 4 FILING MATERIALS UNDER NRS**

### **4.1 USE OF NRS**

A firm filer uses NRS or enables its individual filers to use NRS by filing a completed Form 31-101F1 with its principal regulator and non-principal regulators.

### **4.2 MATERIALS TO BE FILED**

- (1) If a firm filer or an individual filer's sponsoring firm has elected to use NRS, the filer or the non-registered individual's sponsoring firm should file all required materials in connection with the application under the securities legislation applicable in the jurisdiction of the filer's principal regulator. Materials that would have normally been required in connection with the application under the securities legislation applicable in the jurisdictions of the non-principal regulators do not need to be filed.
- (2) Materials that must be filed in NRD format through the NRD website in accordance with MI 31-102 and MI 33-109 should be filed concurrently with each of the principal regulator and the non-principal regulators with the applicable fees.
- (3) Materials that cannot be filed in NRD format through the NRD website should be filed in paper format with the principal regulator only. Firm filers should also concurrently send in paper format to each non-principal regulator a signed copy of Form 31-101F1 and a copy of the application form, as well as the applicable fees. Supporting materials for an application are not required to be sent to the firm filer's non-principal regulators.

### **4.3 SEQUENTIAL APPLICATIONS**

- (1) A registered firm seeking further registration in one or more jurisdictions of non-principal regulators should submit its application with its principal regulator and the non-principal regulators in whose jurisdiction the registered firm is seeking further registration.
- (2) The registered firm should submit a letter to its principal regulator, with a copy to the non-principal regulators in whose jurisdictions it is seeking further registration, describing the nature of the application and confirming that the information that it has submitted to its principal regulator in connection with its existing registration is accurate as at the date of the sequential application. The registered firm is not required to submit a new application form or any other document which has been previously filed with the principal regulator and which would remain unchanged. In accordance with section 2.3 of NI 31-101, the registered firm must submit a new completed Form 31-101F1 which includes the further jurisdictions in which it is seeking registration.

**PART 5  
REVIEW OF MATERIALS**

**5.1 Review by Principal Regulator**

- (1) The principal regulator is responsible for reviewing all the materials filed pursuant to sections 4.2 and 4.3 in accordance with the securities legislation and securities directions applicable in its jurisdiction and with its review procedures and those set forth under this Policy and the MRRS MOU, together with the benefit of comments, if any, from the non-principal regulators.
- (2) The principal regulator will be responsible for identifying and addressing all deficiencies relating to the filer's application and the submitted materials.

**5.2 COORDINATION**

The principal regulator for an application made by a firm filer will coordinate the review of the application with the principal regulators of the firm filer's sponsored individuals that have submitted concurrent applications to ensure that issues are resolved so that NRS documents are issued concurrently.

**PART 6  
REGISTRATION**

**6.1 DETERMINATION BY PRINCIPAL REGULATOR**

After completing its review of the filer's application, the principal regulator will determine whether it will grant, refuse to grant or impose terms and conditions on the registration or approval sought.

**6.2 SUBMISSION OF PROPOSED NRS DOCUMENT TO NON-PRINCIPAL REGULATORS**

After making the determination referred to in section 6.1, the principal regulator will submit to all non-principal regulators the NRS document that it proposes to issue, addressing

- (a) the completion of its review of the filer's application,
- (b) whether the filer complies with all fit and proper requirements of the securities legislation applicable in the jurisdiction of the principal regulator,
- (c) whether, in the opinion of the principal regulator, the filer is suitable for registration,
- (d) the terms and conditions, if any, that the principal regulator proposes to impose, and
- (e) the exemptive relief, if any, that the principal regulator is prepared to grant to the filer in connection with the fit and proper requirements, the filing requirements or the notice requirements.

**6.3 DETERMINATION BY NON-PRINCIPAL REGULATORS**

- (1) Each non-principal regulator will have five business days from the receipt of the proposed NRS document referred to in section 6.2 or subsection 6.5(4), as the case may be, to confirm to the principal regulator whether it has made the same determination as the principal regulator and therefore opts into NRS for that application or whether it is opting out. A confirmation from the regulators in the Northwest Territories, Nunavut and the Yukon Territory is not required if they are opting in.
- (2) Non-principal regulators may, without opting out of NRS, impose local terms and conditions to the registration or approval relating to conduct rules applicable in their jurisdiction.
- (3) If a non-principal regulator intends to impose local terms and conditions on the filer's registration or approval, it will notify the filer of such terms and conditions and, if and as provided under the securities legislation applicable in the jurisdiction of the non-principal regulator, it will provide the filer with an opportunity to be heard with respect to the proposed terms and conditions.

#### **6.4 POTENTIAL REFUSAL OF REGISTRATION OR IMPOSITION OF TERMS AND CONDITIONS**

If, based on the information before it, the principal regulator is not prepared to grant the registration or approval sought, or if it is prepared to grant the registration or approval sought with certain terms and conditions, the principal regulator will, after the period referred to in subsection 6.3(1) has elapsed, notify the filer.

#### **6.5 OPPORTUNITY TO BE HEARD**

- (1) If a filer has, under the securities legislation applicable in the jurisdiction of its principal regulator, the right to request the opportunity to appear before or otherwise make submissions to the principal regulator as a result of a potential refusal of the registration or approval sought or as a result of the proposed terms and conditions to the registration or approval sought and if the filer exercises such right, the principal regulator will notify the non-principal regulators with whom the application was filed that the filer has made the request.
- (2) The principal regulator may provide an opportunity to be heard, either solely, jointly or concurrently with other interested non-principal regulators in accordance with applicable securities legislation.
- (3) The non-principal regulators with whom the filer's application was filed may make whatever arrangements they consider appropriate, including providing an opportunity to be heard contemporaneously with an opportunity provided by the principal regulator, in accordance with applicable securities legislation.
- (4) After a decision has been rendered following the hearing, the principal regulator will submit to all non-principal regulators a newly proposed NRS document, if required.

#### **6.6 RENEWALS**

- (1) In certain jurisdictions, securities legislation provides that registration will expire after a certain period of time, while in other jurisdictions, securities legislation provides that registration is permanent unless revoked by the local securities regulatory authority or regulator. Renewal requirements apply to registered filers using NRS, however the exemption from the fit and proper requirements of the local jurisdiction of non-principal regulators continues in effect.
- (2) Due to the different requirements among the jurisdictions in respect of renewal filings and fees, it is not possible to process renewals through the single channel of the principal regulator in the same manner as with other NRS applications. Applicable filings must be submitted directly to a securities regulatory authority or regulator whose securities legislation imposes a renewal requirement on a registered filer and applicable renewal payments must be made through NRD.

### **PART 7 OPT OUT**

#### **7.1 OPT OUT**

- (1) A non-principal regulator electing to opt out of NRS on any particular application will notify the filer, the principal regulator and other non-principal regulators within the time period prescribed by subsection 6.3(1) and will briefly indicate the reasons for opting out.
- (2) A decision by a non-principal regulator to opt out of NRS is not a decision on the merits of the application.
- (3) A filer will deal directly with any non-principal regulator that has opted out of NRS to resolve outstanding issues.

#### **7.2 OPT BACK IN**

If the filer and the non-principal regulator are able to resolve their outstanding issues before the principal regulator issues the final NRS document, the non-principal regulator may opt back into NRS by notifying the principal regulator, all other non-principal regulators and the filer.

### **PART 8 NRS DOCUMENT**

#### **8.1 CONDITIONS FOR ISSUANCE OF NRS DOCUMENT**

The principal regulator will issue an NRS document for an application submitted under NRS if



- (a) all non-principal regulators, other than the regulators in the Northwest Territories, Nunavut and the Yukon Territory, have indicated whether they are opting in or out of NRS with respect to the application,
- (b) the principal regulator has determined that acceptable materials have been filed,
- (c) the principal regulator has reviewed the materials submitted,
- (d) where the registration or approval sought by the filer is to be granted, the principal regulator has determined that the requirements contained in the securities legislation applicable in the jurisdiction of the principal regulator to grant the registration or approval, with or without terms and conditions, are satisfied, or where the registration or approval sought by the filer is to be refused, the principal regulator has determined that the requirements contained in the securities legislation applicable in the jurisdiction of the principal regulator to grant the registration or approval are not satisfied, and
- (e) where the registration or approval sought by an individual filer is to be granted, the individual filer's sponsoring firm is registered in all jurisdictions in which the individual filer is to be registered or approved.

## **8.2 EFFECT AND SUBSTANCE OF NRS DOCUMENT**

- (1) The NRS document evidences that a decision on the filer's application has been made by the principal regulator and the non-principal regulators that have not opted out of NRS for the application.
- (2) The NRS document will evidence any terms and conditions imposed by a principal regulator or a non-principal regulator, as well as any exemption from the fit and proper requirements, the notice requirements and the filing requirements granted by the principal regulator.

## **8.3 EFFECTIVE DATE OF NRS DOCUMENT**

The decisions made by the principal regulator and the non-principal regulators with respect to a filer's application will have the same effective date as the NRS document.

## **8.4 LOCAL DECISION**

Despite the issuance of the NRS document, certain non-principal regulators may concurrently issue their own decision documents in connection with a filer's application. It is not necessary for a filer to obtain a copy of any local decision document before commencing registrable activities.

## **PART 9 TRANSITION**

### **9.1 REGISTRATIONS OR APPROVALS OF INDIVIDUAL FILERS IN QUÉBEC**

Québec has adopted the Québec NRD Rules, which correspond to MI 31-102 and MI 33-109, and has made NRD available for registrations or approvals of individual filers in Québec. However, because of transitional measures provided in the Québec NRD Rules, individual filers whose principal regulator is a securities regulatory authority in Québec and who are not yet required pursuant to the Québec NRD Rules to file materials in NRD format through the NRD website, in addition to complying with the requirements of securities legislation in Québec, must comply with the requirements of MI 31-102 and MI 33-109, in order to ensure the integrity of NRD.

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## Chapter 7

# Insider Reporting

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

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

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

## Chapter 8

# Notice of Exempt Financings

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

Transaction Date	Purchaser	Security	Total Purchase Price (\$)	Number of Securities
31-Jul-2005	4 Purchasers	ABC American - Value Fund - Units	1,148,000.00	121,739.00
31-Jul-2005	3 Purchasers	ABC Fully-Managed Fund - Units	2,125,125.00	190,423.00
31-Jul-2005	14 Purchasers	ABC Fundamental - Value Fund - Units	2,443,255.00	122,162.00
19-Aug-2005	1544230 Ontario Inc.	Africo Resources Ltd. - Common Shares	40,741.00	27,160.00
11-Aug-2005	Andrew Best 4 Purchasers	Almaden Minerals Ltd. - Flow-Through Shares	87,500.00	50,000.00
15-Aug-2005	5 Purchasers	American Natural Energy Corporation - Common Shares	396,534.00	2,643,561.00
25-Jul-2005 to 05-Aug-2005	23 Purchasers	Antares Minerals Inc. - Units	1,336,200.00	2,227,000.00
11-Aug-2005	Growthworks Canadian Fund Ltd.	AnyWare Group Inc. - Debentures	1,000,000.00	1.00
18-Aug-2005	1657108 Ontario Limited Classroom Investments Inc.	Asia Opportunity Fund II, L.P. - Limited Partnership Interest	176,639,000.00	145,000,000.00
11-Aug-2005	Jayvee & Co.	Atna Resources Ltd. - Common Shares	400,000.00	500,000.00
19-Aug-2005	RBC Dominion Securities Inc.	BAR Investment Trust - Units	8,360,890.79	688,763.00
18-Aug-2005	15 Purchasers	Big Eagle Services Trust - Trust Units	11,950,000.00	2,399,000.00
22-Aug-2005	The Pirate's Cat Holding Corporation	Bluefield Financial Limited Partnership - Limited Partnership Units	256,439.00	256,439.00
03-Aug-2005	Max Klutka	Buffalo Gold Ltd. - Common Shares	27,166.00	150,000.00
03-Aug-2005	G. Scott Paterson 4 Purchasers	Buffalo Gold Ltd. - Common Shares	57,080.55	315,188.00
22-Aug-2005	MMV Financial Inc.	Camilion Solutions, Inc. - Option	1.00	1.00
04-Aug-2005	16 Purchasers	Carpathian Gold Inc. - Common Shares	293,333.33	2,933,333.00
09-Aug-2005	John Tucker	Catalina Energy Corp. - Units	50,000.00	500,000.00
10-Aug-2005	Neil Jacoby	Clean Current Power Systems Incorporated - Common Shares	206,500.00	590,000.00
15-Aug-2005	Donald M. Alloway BNY Trust Company of Canada	CNH Capital Canada Wholesale Trust - Notes	146,000,000.00	1.00
15-Jul-2005	Merrill Lynch Capital Canada Inc. ACE Canada	CNH Capital Canada Wholesale Trust I - Notes	175,416,798.00	2.00
08-Aug-2005	4 Purchasers	CNX Gas Corporation - Stock Option	5,220,800.00	326,300.00
16-Aug-2005	3 Purchasers	Columbus McKinnon Corporation - Notes	2,696,175.00	2,250,000.00
28-Nov-2004	Catherine Joan Stuart	Conematic Heating Systems Inc. - Shares	40,000.00	20,000.00
24-Aug-2005	A. Joseph Mascarin SC Holdco Inc.	Consolidated Odyssey Exploration Inc. - Units	120,000.00	600,000.00

**Notice of Exempt Financings**

24-Aug-2005	14 Purchasers	Cruiser Oil & Gas Ltd. - Common Shares	2,693,300.00	7,892,000.00
29-Jul-2005	TD Capital Private Equity Investors Partnership Canadian Imperial Bank of Commerce	CVC European Equity Partners IV (C) L.P. - Limited Partnership Interest	29,736,000.00	0.00
29-Jul-2005	CPP Investment Board Private Holdings Inc.	CVC European Equity Partners IV (D) L.P. - Limited Partnership Interest	297,360,000.00	0.00
25-Aug-2005	Gerald T. Cook	Cypress Hills Resource Corp. - Common Shares	10,000.00	75,000.00
11-Aug-2005	33 Purchasers	Cyries Energy Inc. - Units	32,952,660.00	529,360.00
01-Jul-2005	Alpha Transport Platform Inc.	Davidson Kempner International Ltd. - Shares	12,256,000.92	42,093.00
20-Jul-2005	Donald G. Milne Front Street Investment Management Inc.	Diamonds North Resources Ltd. - Units	243,000.00	324,000.00
12-Aug-2005	4 Purchasers	Dollarama Corporation - Notes	12,544,350.00	10,500,000.00
12-Aug-2005	4 Purchasers	Dollarama Group L.P. - Notes	12,544,350.00	10,500,000.00
11-Aug-2005	11 Purchasers	Dual Exploration Inc. - Receipts	2,751,000.00	1,572,000.00
17-Aug-2005	4 Purchasers	Dynamic Resources Corp. - Common Shares	30,000.00	600,000.00
16-Aug-2005	E2 Venture Fund Inc. VentureLink Brighter Future (Equity) Fund Inc.	Encelium Technologies Inc. - Promissory note	150,000.00	2.00
16-Aug-2005	E2 Venture Fund Inc. VentureLink Brighter Future (Equity) Fund Inc.	Encelium Technologies Inc. - Warrants	0.00	468,320.00
12-Aug-2005	6 Purchasers	Executive Development Corporation - Shares	626,240.64	652,334.00
18-Aug-2005	9 Purchasers	Find Energy Ltd. - Common Shares	3,537,800.00	465,500.00
19-Aug-2005	Harish/Neil Sethi	Fisgard Capital Corporation - Common Shares	15,000.00	15,000.00
11-Aug-2005	15 Purchasers	Fluid Audio Network, Inc. - Preferred Shares	308,962.00	176,550.00
05-Aug-2005	24 Purchasers	Forsys Metals Corp. - Units	2,700,000.00	9,000,000.00
12-Aug-2005	6 Purchasers	Fresco Microchip Inc. - Preferred Shares	531,724.00	500,001.00
09-Aug-2005	3 Purchasers	Geodex Minerals Ltd. - Units	12,000.00	120,000.00
17-Aug-2005	Michael James Desmeules	Gold Canyon Resources Inc. - Common Shares	22,800.00	40,000.00
03-Aug-2005 to	4 Purchasers	GoldQuest Mining Corporation - Units	160,000.00	800,000.00
08-Aug-2005 16-Aug-2005	20 Purchasers	Groundstar Resources Limited - Units	2,000,000.00	5,000,000.00
11-Aug-2005	JMM Trading LP	HSE Integrated Ltd. - Common Share Purchase Warrant	1,048,900.00	1,048,900.00
09-Aug-2005 to	6 Purchasers	IMAGIN Diagnostic Centres, Inc. - Preferred Shares	40,000.00	20,000.00
19-Aug-2005 22-Aug-2005	4 Purchasers	Intelligauge Inc. - Debentures	400,000.00	4.00
22-Aug-2005	4 Purchasers	Intelligauge Inc. - Warrants	0.00	371,917.00
22-Aug-2005	Scotia Capital ITF Horizon One Energy Plus Fund LP Horizon One Income Plus Fund	IROC Systems Corp. - Units	500,000.00	500.00
04-Aug-2005	Larry Popofsky	KVR Resources Ltd. - Flow-Through Shares	10,200.00	6,000.00

**Notice of Exempt Financings**

17-Aug-2005	Robert W. Sterne Barbara Joan Sterne	Labrador Technologies Inc. - Shares	35,000.00	350,000.00
18-Aug-2005	9 Purchasers	Lakota Resources Inc. - Units	182,500.00	365,000.00
30-Jun-2005	Golden Apple Infrastructure Inc. Ontario Teachers Pension Plan Board	Macquarie Infrastructure Investment Management Limited - Notes	17,125,647.00	2.00
16-Aug-2005	5 Purchasers	Marketvision Direct, Inc. - Common Shares	86,600.00	433,000.00
19-Aug-2005	Blackboard Ventures Inc.	Mayfield XII - Limited Partnership Interest	9,104,250.00	7,500,000.00
12-Aug-2005	3 Purchasers	MDX Medical Inc. - Units	32,100.00	428,000.00
11-Aug-2005	10 Purchasers	MediSystem Technologies Inc. - Common Shares	2,358,400.00	857,600.00
09-Aug-2005	5 Purchasers	Member Partners' Consolidated Properties Limited Partnership - Limited Partnership Units	645,000.00	645,000.00
22-Aug-2005	Wirth Associates	Mercator Minerals, Ltd. - Units	69,000.00	75,000.00
02-Aug-2005	RBC Capital Partners	Metalmark Capital Partners, L.P. - Limited Partnership Interest	12,125,000.00	12,125,000.00
16-Aug-2005	Royal Trust Corporation	Midwest Banc Holdings, Inc. - Shares	222,600.00	10,600.00
11-Aug-2005	3 Purchasers	Nalco Holding Company - Common Stock	18,410,000.00	1,000,000.00
19-Aug-2005	Al Sayani Mel Clarke	Natural Data Inc. - Common Shares	20,000.00	40,000.00
15-Aug-2005	Jeannie Wile	New Cantech Ventures Inc. - Non Flow-Through Shares	75,000.00	500,000.00
19-Aug-2005	9 Purchasers	Northcastle Securitization LP 2005-1 - Notes	117,000,000.00	117,000,000.00
19-Aug-2005	3 Purchasers	O'Donnell Emerging Companies Fund - Units	2,000.00	293.00
17-Aug-2005	Doug Forrester	Orko Gold Corporation - Common Share Purchase Warrant	25,000.00	100,000.00
23-Aug-2005	Kensington Fund of Funds II;L.P.	Polar Enterprise Partners II - Limited Partnership Units	2,000,000.00	20,000.00
23-Jul-2005	Mitchley Investment Club	Pratten Properties 276 L.P. - Limited Partnership Units	15,000.00	15,000.00
23-Aug-2005	31 Purchasers	ProEx Energy Ltd. - Common Shares	16,563,300.00	1,335,750.00
12-Aug-2005	31 Purchasers	Quorum Information Technologies Inc. - Units	4,161,065.00	42,677.00
09-Aug-2005	Salida Multi Strategy Hedge Fund	Range Royalty Limited Partnership - Warrants	172,500.00	69,000.00
09-Aug-2005	Salida Multi Strategy Hedge Fund	Range Royalty Limited Partnership - Warrants	37,500.00	15,000.00
09-Aug-2005	Salida Multi Strategy Hedge Fund	Range Royalty Limited Partnership - Warrants	25,000.00	10,000.00
09-Aug-2005	Salida Multi Strategy Hedge Fund	Range Royalty Limited Partnership - Warrants	125,000.00	50,000.00
12-Aug-2005	Nursing Homes and Related Industries Pension Plan	Real Assets US Social Equity Index Fund - Units	16,640.00	2,307.00
10-Aug-2005	MFC Global Investment Management Salida Capital Corp.	Refco Inc. - Common Stock	990,000.00	45,000.00
17-Aug-2005	Credit Union Central of Ontario	Rocket Trust - Bonds	10,000,000.00	10,000,000.00
16-Aug-2005	21 Purchasers	Rubicon Minerals Corporation - Units	4,496,505.00	5,917,700.00
17-Aug-2005	3 Purchasers	Sacre-Coeur Minerals, Ltd. - Common Shares	75,000.00	75,000.00

**Notice of Exempt Financings**

17-Aug-2005	Marsulex Inc.	Seaway Networks Inc. - Common Shares	12,928,472.00	1.00
24-Aug-2005	Massimiliano Fantuz	Shop to It Inc. - Common Shares	60,000.00	100,000.00
18-Aug-2005	Manufacturers Life Insurance Company	SPE-VFC Trust II - Shares	6,050,000.00	2.00
16-Aug-2005	3 Purchasers	Tasman Exploration Ltd. - Common Shares	2,821,250.00	1,525,000.00
16-Aug-2005	3 Purchasers	Tasman Exploration Ltd. - Flow- Through Shares	1,167,250.00	725,000.00
03-Oct-2004 to	Owen Nolan	TekConnect Corporation - Units	377,030.00	6.00
30-Jun-2005	Greg DeVires			
18-Aug-2005	Donald A. Wright	The CAP 2005 LP - Units	1,900,000.00	50.00
22-Aug-2005	14 Purchasers	UC Resources Ltd. - Units	174,000.00	17,400,000.00
03-Aug-2005	64 Purchasers	UEX Corporation - Units	19,702,750.00	7,435,000.00
11-Aug-2005	7 Purchasers	United Reef Limited - Units	252,525.00	1,683,500.00
31-Mar-2005 to	15 Purchasers	Uranco Inc. - Shares	1,434,527.00	1,596,046.00
23-Aug-2005				
12-Aug-2005	Majescor Resources Inc.	Vaaldiam Resources Ltd. - Common Shares	114,000.00	150,000.00
31-Jul-2005	3 Purchasers	Van Arbor Canadian Advantage Fund - Units	53,059.00	2,965.00
15-Aug-2005 to	13 Purchasers	Vedron Gold Inc. - Units	750,000.00	5,000,000.00
23-Aug-2005				
10-Aug-2005	3 Purchasers	Virginia Gold Mines Inc. - Flow- Through Shares	2,670,937.50	288,750.00
17-Aug-2005	13 Purchasers	ViXS Systems Inc. - Preferred Shares	8,284,379.00	7,076,432.00
12-Aug-2005	Don Lillie	Welton Energy Corporation - Common Shares	267,735.00	178,490.00
10-Aug-2005	8 Purchasers	Wesdome Gold Mines Inc. - Units	4,677,300.00	3,118,200.00
10-Aug-2005	4 Purchasers	Wesdome Gold Mines Inc. - Warrants	0.00	202,943.00
25-Aug-2005	Marek Przeclawski	Zephyr Alternative Power Inc. - Debentures	30,000.00	1.00

## Chapter 11

# IPOs, New Issues and Secondary Financings

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**Issuer Name:**

Acuity Multi-Cap Total Return Trust

Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated August 26, 2005

Mutual Reliance Review System Receipt dated August 29th, 2005

**Offering Price and Description:**

Maximum \$\* (\* Units)

Price: \$10.00 per Unit

Minimum Purchase: 100 Units

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

CIBC World Markets Inc.

BMO Nesbitt Burns Inc.

National Bank Financial Inc.

RBC Dominion Securities Inc.

Scotia Capital Inc.

TD Securities Inc.

HSBC Securities (Canada) Inc.

First Associates Investments Inc.

Canaccord Capital Corporation

Desjardins Securities Inc.

Dundee Securities Corporation

Raymond James Ltd.

Wellington West Capital Inc.

Berkshire Securities Inc.

IPC Securities Corporation

**Promoter(s):**

Acuity Funds Ltd.

**Project #824261**

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**Issuer Name:**

AltaGas Utility Group Inc.

Principal Regulator - Alberta

**Type and Date**

Preliminary Prospectus dated August 29th, 2005

Mutual Reliance Review System Receipt dated August 30th, 2005

**Offering Price and Description:**

\$\*-\* Common Shares

Price: \$\* per Common Share

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

Clarus Securities Inc.

RBC Dominion Securities Inc.

BMO Nesbitt Burns Inc.

National Bank Financial Inc.

Scotia Capital Inc.

**Promoter(s):**

AltaGas Income Trust

AltaGas Holding Limited Partnership No. 1

**Project #827472**

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**Issuer Name:**

Ascendant Copper Corporation

Principal Regulator - British Columbia

**Type and Date:**

Amended and Restated Preliminary Prospectus dated August 26, 2005

Mutual Reliance Review System Receipt dated August 29, 2005

**Offering Price and Description:**

\$\*-\* Common Shares

Price: \$\* per Share

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

Haywood Securities Inc.

Canaccord Capital Corporation

**Promoter(s):**

Paul Grist

William Jurika

**Project #800714**

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**Issuer Name:**

Astral Mining Corporation  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Prospectus dated August 23, 2005  
Mutual Reliance Review System Receipt dated August 24, 2005

**Offering Price and Description:**

\$1,500,000.00 - 3,750,000 Units  
Price: \$0.40 per Unit

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

Haywood Securities Inc.

**Promoter(s):**

Manfred Kurschner

**Project #822584**

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**Issuer Name:**

ATS Andlauer Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated August 25, 2005  
Mutual Reliance Review System Receipt dated August 26, 2005

**Offering Price and Description:**

\$ \* - \* Units  
Price: \$10.00 per Unit

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

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

**Promoter(s):**

ATS Andlauer Transportation Services Inc.

**Project #823351**

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**Issuer Name:**

BMO Capital Trust  
Bank of Montreal  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated August 29, 2005  
Mutual Reliance Review System Receipt dated August 29, 2005

**Offering Price and Description:**

\$\* Trust Capital Securities- Series E (BMO BOaTS-Series E (TM))

Price: \$1,000 per BMO BOaTS- Series E

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

BMO Nesbitt Burns Inc.

**Promoter(s):**

-

**Project #824916/824957**

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**Issuer Name:**

Bonnett's Energy Services Trust  
Principal Regulator - Alberta

**Type and Date:**

Amended and Restated Preliminary Prospectus dated August 29, 2005  
Mutual Reliance Review System Receipt dated August 30, 2005

**Offering Price and Description:**

\$ \* - \* Trust Units  
Price: \$10.00 per Trust Units

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

Raymond James Ltd.  
Sprott Securities Inc.  
Westwind Partners Inc.

**Promoter(s):**

Bonnett's Wireline Services Ltd.  
The Testers Inc.

**Project #820006**

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**Issuer Name:**

Brascan SoundVest Focused Business Trust  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated August 24, 2005  
Mutual Reliance Review System Receipt dated August 24, 2005

**Offering Price and Description:**

Maximum: \$ \* - \* (Units)  
Price: \$10.00 per Unit  
Minimum Purchase: 100 Units

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

RBC Dominion Securities Inc.  
CIBC World Markets Inc.  
BMO Nesbitt Burns Inc.  
National Bank Financial Inc.  
Scotia Capital Inc.  
TD Securities Inc.  
Desjardins Securities Inc.  
HSBC Securities (Canada) Inc.  
Raymond James Ltd.  
Canaccord Capital Corporation  
Dundee Securities Corporation  
Trilon Securities Corporation  
Wellington West Capital Inc.  
First Associates Investments Inc.  
MGI Securities Inc.

**Promoter(s):**

Brascan Focused Business Management Ltd.

**Project #822333**

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**Issuer Name:**

Canada Dominion Resources 2005 II Limited Partnership  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated August 26, 2005  
Mutual Reliance Review System Receipt dated August 26, 2005

**Offering Price and Description:**

\$50,000,000.00 (maximum) - 2,000,000 Limited Partnership Units  
Price per Unit: \$25.00  
Minimum Subscription: \$5,000.00 (200 Units)

**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.  
Wellington West Capital Inc.

**Promoter(s):**

Canada Dominion Resources 2005 II Corporation

**Project #823658**

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**Issuer Name:**

Connor, Clark & Lunn Conservative Income Fund II  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated August 23, 2005  
Mutual Reliance Review System Receipt dated August 24, 2005

**Offering Price and Description:**

\$ \* (Maximum) - \* Units

Price: \$10.00 per Unit

Minimum Purchase: 100 Units

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

Scotia Capital Inc.  
CIBC World Markets Inc.  
BMO Nesbitt Burns Inc.  
RBC Dominion Securities Inc.  
TD Securities Inc.  
National Bank Financial Inc.  
HSBC Securities (Canada) Inc.  
Richard Partners Financial Limited  
Wellington West Capital Inc.  
Desjardins Securities Inc.  
Raymond James Ltd.  
Canaccord Capital Corporation  
First Associates Investments Inc.

**Promoter(s):**

Connor, Clark & Lunn Capital Markets Inc.

**Project #822318**

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**Issuer Name:**

EnCana Corporation  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Shelf Prospectus dated August 24, 2005  
Mutual Reliance Review System Receipt dated August 24, 2005

**Offering Price and Description:**

\$1,000,000,000.00

Medium Term Notes  
(unsecured)

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

BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
Desjardins Securities Inc.  
HSBC Securities (Canada) Inc.  
Merrill Lynch Canada Inc.  
RBC Dominion Securities Inc.  
Scotia Capital Inc.  
TD Securities Inc.

**Promoter(s):**

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**Project #822456**

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**Issuer Name:**

Explorer III Resource Limited Partnership  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated August 23, 2005  
Mutual Reliance Review System Receipt dated August 24, 2005

**Offering Price and Description:**

\$ \* (maximum) - \* (maximum – Units)

\$10,000,000.00 (minimum) - (minimum – 400,000 Units)

Price: \$25.00 per Unit. Minimum Subscription: \$2,500.00

**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.  
Berkshire Securities Inc.  
Canaccord Capital Corporation  
Dundee Securities Corporation  
First Associates Investments Inc.  
HSBC Securities (Canada) Inc.  
Raymond James Ltd.  
Wellington West Capital Inc.  
Desjardins Securities Inc.  
GMP Securities Ltd.  
Middlefield Capital Corporation  
Research Capital Corporation

**Promoter(s):**

Explorer III Resource Management Limited  
Middlefield Group Limited

**Project #822102**

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**Issuer Name:**

First Trust/Highland Capital Senior Loan Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated August 23, 2005  
Mutual Reliance Review System Receipt dated August 24,  
2005

**Offering Price and Description:**

\$ \* Maximum - \* Units  
Price: \$10.00 per Unit  
Minimum Purchase: 200 Units

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

CIBC World Markets Inc.  
RBC Dominion Securities Inc.  
Scotia Capital Inc.  
BMO Nesbitt Burns Inc.  
National Bank Financial Inc.  
TD Securities Inc.  
HSBC Securities (Canada) Inc.  
Raymond James Ltd.  
Canaccord Capital Corporation  
Desjardins Securities Inc.  
Dundee Securities Corporation  
First Associates Investments Inc.  
GMP Securities Inc.  
Wellington West Capital Inc.

**Promoter(s):**

FT (NSI) Floating Rate Management Co.  
First Defined Portfolio Management Co.

**Project #822362**

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**Issuer Name:**

Mavrix Resource Fund 2005 - II Limited Partnership  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated August 25, 2005  
Mutual Reliance Review System Receipt dated August 29,  
2005

**Offering Price and Description:**

Maximum Offering: \$50,000,000.00 (5,000,000 Units)  
Minimum Offering: \$5,000,000.00 (500,000 Units)  
Minimum Subscription: 500 Units  
Subscription Price: \$10.00 per Unit

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

Canaccord Capital Corporation  
TD Securities Inc.  
Dundee Securities Corporation  
HSBC Securities (Canada) Inc.  
Desjardins Securities Inc.  
IPC Securities Corporation  
Wellington West Capital Inc.  
Raymond James Ltd.  
Berkshire Securities Inc.  
Bieber Securities Inc.  
First Associates Investments Inc.  
MGI Securities Inc.  
Research Capital Corporation  
Sprott Securities Inc.  
Union Securities Ltd.

**Promoter(s):**

Mavrix Resources Fund 2005 - II Management Limited  
Mavrix Fund Management Inc.

**Project #824926**

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**Issuer Name:**

Morneau Sobeco Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated August 24, 2005  
Mutual Reliance Review System Receipt dated August 25, 2005

**Offering Price and Description:**

\$ \* - \* Units

Price: \$ \* per Unit

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

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

**Promoter(s):**

W.F. Morneau Services Inc.

**Project #822829**

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**Issuer Name:**

Pan-Ocean Energy Corporation Limited  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated August 26, 2005  
Mutual Reliance Review System Receipt dated August 26, 2005

**Offering Price and Description:**

Cdn \$32,000,000.00 - 1,000,000 Class B Subordinated  
Voting Shares

Price: Cdn\$ 32.00 per Class B Share

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

GMP Securities Ltd.  
Haywood Securities Inc.  
Jennings Capital Inc.  
Research Capital Corporation

**Promoter(s):**

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**Project #824335**

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**Issuer Name:**

Polar North America Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated August 24, 2005  
Mutual Reliance Review System Receipt dated August 25, 2005

**Offering Price and Description:**

\$ \* - \* Units

Price: \$10.00 per Unit

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

RBC Dominion Securities Inc.  
CIBC World Markets Inc.

**Promoter(s):**

WNA Holding Company

**Project #822832**

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**Issuer Name:**

Royal Bank of Canada  
Principal Regulator - Quebec

**Type and Date:**

Preliminary Short Form Base Shelf Prospectus dated  
August 29, 2005  
Mutual Reliance Review System Receipt dated August 29,  
2005

**Offering Price and Description:**

\$5,000,000,000.00 Debt Securities (Subordinated  
Indebtedness)

First Preferred Shares

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

-

**Promoter(s):**

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**Project #825077**

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**Issuer Name:**

Sacre-Coeur Minerals, Ltd.  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Prospectus dated August 25, 2005  
Mutual Reliance Review System Receipt dated August 26, 2005

**Offering Price and Description:**

\$12,000,000.00 - 8,000,000 Units  
Price: \$1.50 per Unit

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

Haywood Securities Inc.  
Credifinance Securities Limited  
Sprott Securities Inc.  
First Associates Investments Inc.

**Promoter(s):**

Irwin Olian Jr.

**Project #823474**

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**Issuer Name:**

Top 10 Canadian Financial Trust  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated August 26, 2005  
Mutual Reliance Review System Receipt dated August 26, 2005

**Offering Price and Description:**

\$150,000,013.00 - \$ \* Minimum  
Price : \$16.10 per Unit

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

RBC Dominion Securities Inc.  
CIBC World Markets Inc.  
Scotia Capital Inc.  
TD Securities Inc.  
BMO Nesbitt Burns Inc.  
National Bank Financial Inc.  
Desjardins Securities Inc.  
HSBC Securities (Canada) Inc.  
Canaccord Capital Corporation  
Dundee Securities Corporation  
First Associates Investments Inc.  
Raymond James Ltd.

**Promoter(s):**

Mulvihill Capital Management Inc.

**Project #823820**

**Issuer Name:**

Birch Mountain Resources Ltd.  
Principal Regulator - Alberta

**Type and Date:**

Final Short Form Prospectus dated August 26, 2005  
Mutual Reliance Review System Receipt dated August 26, 2005

**Offering Price and Description:**

\$36,000,000.00 - 9,000,000 Common Shares  
Price: \$4.00 per Common Share

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

RBC Dominion Securities Inc.  
TD Securities Inc.  
Acumen Capital Finance Partners Limited  
Westwind Partners Inc.

**Promoter(s):**

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**Project #820460**

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**Issuer Name:**

Caisse centrale Desjardins  
Principal Regulator - Quebec

**Type and Date:**

Final Shelf Prospectus dated August 23, 2005  
Mutual Reliance Review System Receipt dated August 24, 2005

**Offering Price and Description:**

\$5,000,000,000.00 Medium Term Deposit Notes

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

BMO Nesbitt Burns Inc.  
Desjardins Securities Inc.  
Scotia Capital Inc.  
TD Securities Inc.  
CIBC World Markets Inc.  
RBC Dominion Securities Inc.  
Merrill Lynch Canada Inc.  
National Bank Financial Inc.  
Laurentian Bank Securities Inc.  
Casgrain & Company Ltd.  
Deutsche Bank Securities Limited  
Societe Generale Securities Inc.  
HSBC Securities (Canada) Inc.

**Promoter(s):**

-

**Project #819788**

**Issuer Name:**

Canadian Natural Resources Limited  
Principal Regulator - Alberta

**Type and Date:**

Final Shelf Prospectus dated August 29, 2005  
Mutual Reliance Review System Receipt dated August 30, 2005

**Offering Price and Description:**

\$2,000,000,000.00 -Medium Term Notes  
(unsecured)

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

BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
RBC Dominion Securities Inc.  
Scotia Capital Inc.

**Promoter(s):**

-

**Project #821208**

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**Issuer Name:**

Canadian Superior Energy Inc.  
Principal Regulator - Alberta

**Type and Date:**

Final Short Form Prospectus dated August 30, 2005  
Mutual Reliance Review System Receipt dated August 30, 2005

**Offering Price and Description:**

5,500,000 Common Shares and 2,750,000 Warrants  
issuable  
upon the exercise of 5,500,000 previously issued Special  
Warrants

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

Brant Securities Limited

**Promoter(s):**

-

**Project #820098**

**Issuer Name:**

Capital Maniwaki inc.  
Principal Regulator - Quebec

**Type and Date:**

Final Prospectus dated August 23, 2005  
Mutual Reliance Review System Receipt dated August 25, 2005

**Offering Price and Description:**

Minimum Offering: \$500,001.00 or 3,333,340 common  
shares

Maximum Offering: \$750,000.00 or 5,000,000 common  
shares

Price: \$0.15 per common share

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

Investro Securities Inc.  
Union Securities Ltd.

**Promoter(s):**

M. Claude Chassé

**Project #789200**

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**Issuer Name:**

Connacher Oil and Gas Limited  
Principal Regulator - Alberta

**Type and Date:**

Final Short Form Prospectus dated August 26, 2005  
Mutual Reliance Review System Receipt dated August 26, 2005

**Offering Price and Description:**

\$50,000,690.00  
27,027,400 Common Shares

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

GMP Securities Ltd.  
TD Securities Inc.  
Jennings Capital Inc.  
Octagon Capital Corporation  
Salman Partners Inc.

**Promoter(s):**

-

**Project #821138**

**Issuer Name:**

Crystallex International Corporation

**Type and Date:**

Final Short Form Shelf Prospectus dated August 23, 2005

Received on August 25, 2005

**Offering Price and Description:**

C\$75,000,000.00 - Senior Unsecured Notes

Common Shares - Warrants - Units

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

-

**Promoter(s):**

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**Project #810430**

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**Issuer Name:**

Firm Capital Mortgage Investment Trust

Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated August 23, 2005

Mutual Reliance Review System Receipt dated August 24, 2005

**Offering Price and Description:**

\$22,098,500.00 - 1,930,000 Units

Price: \$11.45 per Unit

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

TD Securities Inc.

BMO Nesbitt Burns Inc.

Desjardins Securities Inc.

RBC Capital Markets

Sprott Securities Inc.

**Promoter(s):**

-

**Project #819745**

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**Issuer Name:**

Golden Dawn Minerals Inc.

Principal Regulator - British Columbia

**Type and Date:**

Final Prospectus dated August 25, 2005

Mutual Reliance Review System Receipt dated August 30, 2005

**Offering Price and Description:**

Minimum Public Offering of \$1,200,000.40 (3,761,906 units)

Maximum Public Offering of \$1,600,000.30 (5,095,239 units)

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

Canaccord Capital Corporation

**Promoter(s):**

Wolfgang Wiese

**Project #793220**

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**Issuer Name:**

Great Lakes Carbon Income Fund

Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated August 24, 2005

Mutual Reliance Review System Receipt dated August 24, 2005

**Offering Price and Description:**

\$178,125,000.00 - 14,250,000 Units

Price: \$12.50 per Unit

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

BMO Nesbitt Burns Inc.

RBC Dominion Securities Inc.

National Bank Financial Inc.

Genuity Capital Markets

Scotia Capital Inc.

TD Securities Inc.

**Promoter(s):**

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**Project #820095**

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**Issuer Name:**

RBC Private Short-Term Income Pool  
RBC Private Canadian Bond Pool  
RBC Private Corporate Bond Pool  
RBC Private Income Pool  
RBC Private Global Bond Pool  
RBC Private Dividend Pool  
RBC Private Canadian Growth and Income Equity Pool  
RBC Private Canadian Equity Pool  
RBC Private O'Shaughnessy Canadian Equity Pool  
RBC Private Core Canadian Equity Pool  
RBC Private Canadian Mid Cap Equity Pool  
RBC Private U.S. Equity Pool  
RBC Private U.S. Large Cap Equity Pool  
RBC Private RSP U.S. Large Cap Index Pool  
RBC Private U.S. Value Equity Pool  
RBC Private O'Shaughnessy U.S. Value Equity Pool  
RBC Private U.S. Growth Equity Pool  
RBC Private O'Shaughnessy U.S. Growth Equity Pool  
RBC Private U.S. Mid Cap Equity Pool  
RBC Private U.S. Small Cap Equity Pool  
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RBC Private RSP International Index Pool  
RBC Private EAFE Equity Pool  
RBC Private European Equity Pool  
RBC Private Asian Equity Pool  
RBC Private Global Titans Equity Pool  
RBC Private World Equity Pool  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated August 22, 2005  
Mutual Reliance Review System Receipt dated August 24, 2005

**Offering Price and Description:**

Mutual fund trust units at net asset value

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

RBC Asset Management Inc.  
RBC Asset Management Inc.  
The Royal Trust Company

**Promoter(s):**

RBC Asset Management Inc.

**Project #807142**

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**Issuer Name:**

Sceptre Balanced Growth Fund  
Sceptre Bond Fund  
Sceptre Income Trusts Fund  
Sceptre Canadian Equity Fund  
Sceptre Equity Growth Fund  
Sceptre Global Equity Fund  
Sceptre Money Market Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated August 23, 2005  
Mutual Reliance Review System Receipt dated August 24, 2005

**Offering Price and Description:**

Class A Units and Class O Units @ Net Asset Value

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

Sceptre Investment Counsel Limited

**Promoter(s):**

Sceptre Investment Counsel Limited

**Project #806038**

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**Issuer Name:**

Sentry Select FIDAC U.S. Mortgage Trust  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated August 30, 2005  
Mutual Reliance Review System Receipt dated August 30, 2005

**Offering Price and Description:**

-

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

CIBC World Markets Inc.  
RBC Dominion Securities Inc.  
National Bank Financial Inc.  
BMO Nesbitt Burns Inc.  
Scotia Capital Inc.  
Canaccord Capital Corporation  
HSBC Securities (Canada) Inc.  
Raymond James Ltd.  
Berkshire Securities Inc.  
Dundee Securities Corp.  
First Associates Investments Inc.  
Wellington West Capital Inc.  
Desjardins Securities Inc.  
IPC Securities Corporation  
Rothenberg Capital Management

**Promoter(s):**

Sentry Select Capital Corp.

**Project #811020**

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**Issuer Name:**

Strategic Energy Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated August 29, 2005  
Mutual Reliance Review System Receipt dated August 29, 2005

**Offering Price and Description:**

Maximum: \$150,000,000.00 (10,668,259 units @ \$14.0604 per unit)

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

First Associates Investments Inc.  
Canaccord Capital Corporation  
HSBC Securities (Canada) Inc.  
Raymond James Ltd.  
Berkshire Securities Inc.  
Desjardins Securities Inc.  
Dundee Securities Corporation  
Wellington West Capital Inc.  
GMP Securities Ltd.  
Industrial Alliance Securities Inc.  
IPC Securities Corporation  
Jory Capital Inc.  
Research Capital Corporation  
Rothenberg Capital Management Inc.  
Octagon Capital Corporation

**Promoter(s):**

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**Project #810734**

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**Issuer Name:**

TELUS Corporation  
Principal Regulator - British Columbia

**Type and Date:**

Final Short Form Shelf Prospectus dated August 24, 2005  
Mutual Reliance Review System Receipt dated August 24, 2005

**Offering Price and Description:**

\$3,000,000,000.00 -Debt Securities -Preferred Shares -  
Non-Voting Shares -Common Shares  
Warrants to Purchase Equity Securities -Warrants to  
Purchase Debt Securities  
Share Purchase Contracts -Share Purchase or Equity Units

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

-

**Promoter(s):**

-

**Project #819488**

**Issuer Name:**

Uranium City Resources Inc.  
Principal Regulator - Ontario

**Type and Date:**

Amendment No. 1 dated August 19, 2005 to Final  
Prospectus dated July 11, 2005  
Mutual Reliance Review System Receipt dated August 26, 2005

**Offering Price and Description:**

Minimum Offering: \$3,000,000.00 of Flow-Through Units  
and/or Regular Units  
Maximum Offering: \$5,000,000.00 of Flow-Through Units  
and/or Regular Units  
\$0.60 Per Flow-Through Unit  
\$0.55 Per Regular Unit

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

Northern Securities Inc.

**Promoter(s):**

GLR Resources Inc.

**Project #777424**

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**Issuer Name:**

VentureLink Diversified Income Fund Inc.

**Type and Date:**

Final Prospectus dated August 26, 2005  
Received on August 29, 2005

**Offering Price and Description:**

Class A Shares, Series III and Class A Shares, Series IV

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

Skylon Advisors Inc.

**Promoter(s):**

-

**Project #812698**

**Issuer Name:**

Easton Drilling Fund 2005 Limited Partnership  
Principal Jurisdiction - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated June 22nd, 2005  
Withdrawn on August 25th, 2005

**Offering Price and Description:**

\$50,000,000 (Maximum Offering)  
5,000,000 Limited Partnership Units  
\$15,000,000 (Minimum Offering)  
1,500,000 Limited Partnership Units  
PRICE: \$10.00

MINIMUM PURCHASE: 500 Units

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

National Bank Financial Inc.  
First Associates Investments Inc.  
TD Securities Inc.  
Dundee Securities Corporation  
GMP Securities Ltd.  
HSBC Securities (Canada) Inc.  
Raymond James Ltd.  
Berkshire Securities Inc.  
MGI Securities Inc.  
Richardson Partners Financial Ltd.

**Promoter(s):**

EDF 2005 GP Inc.  
CC Capital Structured Products Inc.

**Project #800275**

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## Chapter 12

# Registrations

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### 12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Brookshire Capital Corporation	Limited Market Dealer	August 24, 2005
Change in Category	Portfolio Strategies Corporation	From: Mutual Fund Dealer To: Mutual Fund Dealer and Limited Market Dealer	August 25, 2005

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## Chapter 13

# SRO Notices and Disciplinary Proceedings

### 13.1.1 Notice of Commission Approval - Technical Amendments to CDS Rules - Procedure Maintenance Clarifications, Stylistic Amendments and Error Corrections

#### THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED

#### TECHNICAL AMENDMENTS TO CDS RULES PROCEDURE MAINTENANCE CLARIFICATIONS, STYLISTIC AMENDMENTS AND ERROR CORRECTIONS

#### NOTICE OF COMMISSION APPROVAL

##### A. Description of the Rule

The amendments proposed pursuant to this Notice concern miscellaneous procedure maintenance clarifications, stylistic amendments, and error corrections for CDS procedures.

The procedures marked for the proposed amendments may be accessed at the CDS website at <http://www.cds.ca/cdshome.nsf/Pages/-EN-Documentation?Open>.

Specifically, these amendments address the following:

##### Stylistic Amendments

1. Section 8.9.2 (Inquiring on family ACV and sector limits) of Participating in CDS Services (Release 2.4) has been revised for a stylistic change.
2. Section 10.4.1 (Temporary increases in excess of the company cap) of Participating in CDS Services (Release 2.4) has been revised for a stylistic change.
3. Section 13.1.4 (Making collateral contributions) of Participating in CDS Services (Release 2.4) has been revised for a stylistic change.
4. Section 14.3 (Active federated participant's collateral pool) of Participating in CDS Services (Release 2.4) has been revised to replace "Federated participant" with "Caisse Centrale Desjardins".

##### Clarification Amendments (including stylistic amendments)

5. In the preamble to Chapter 8 of the Trade and Settlement Procedures (Release 2.3), a stylistic change was made in addition to a clarification that

only trades reported from NSCC can settle by certificate-based settlement.

6. Section 4.4 (Modifying non-exchange trades) of the Trade and Settlement Procedures (Release 2.3) has been revised (row "Changing trade details" in the table has been updated for stylistic changes).

##### Clarification Amendments (including error correction)

7. Section 3.5 (Processing transactions to third parties) of the CDS/DTC Cross-Border Movement Service Participant Procedures (Release 3.1) has been amended to clarify that deliveries being made to central securities depository accounts are subject to the cutoff times. There has also been an error correction (DTCC changed to DTC in item 3).

##### Clarification Amendments

8. Section 3.6 (Processing transactions to fourth parties) has been added to the CDS/DTC Cross-Border Movement Service Participant Procedures (Release 3.1).
9. In the preamble to Chapter 3 of the Trade and Settlement Procedures (Release 2.3), clarification of the source for trades originating from the Canadian Trading and Quotation system has been made.
10. Section 8.5 (Haircuts) of Participating in CDS Services (Release 2.4) has been clarified to indicate the haircut rates apply to unrated public sector debt securities.
11. Section 8.7 (CDSX issuer ratings) has been added to Participating in CDS Services (Release 2.4).
12. The "Covering obligations" paragraph on page 135 of Participating in CDS Services (Release 2.4) has been clarified by a reference to obtaining additional information.
13. Section 12.8 (Processing Suspension) of Participating in CDS Services (Release 2.4) has been revised to indicate that not only defaulting participants can be suspended.
14. Section 13.1 (Acceptable Collateral) of Participating in CDS Services (Release 2.4) has been revised to include a reference to CDSX issuer ratings.

15. In the preamble to Chapter 14 of Participating in CDS Services (Release 2.4), a clarification edit has been made.
16. Section 14.2 (Settlement agents' collateral pool) of Participating in CDS Services (Release 2.4) has been revised to include a new identified settlement agent with ledger and CUID.
17. Section 14.4 (Receivers of credit collateral pools) of Participating in CDS Services (Release 2.4) has been revised to clarify membership in the collateral pools.
18. Section 15.6.2 (CNS and ACCESS collateral requirements) of Participating in CDS Services (Release 2.4) has been revised to include the deadline for submitting collateral to participant funds.
19. Section 16.1 (DetNet margin collateral) of Participating in CDS Services (Release 2.4) has been revised to clarify that if required collateral is not received by the deadline, the participant is suspended.
20. On page 201 of Participating in CDS Services (Release 2.4), a form number has been updated.
21. Section 6.7 (Managing short positions) of CDSX Procedures and User Guide (Release 2.3) has been revised to indicate that non-delivery of additional collateral by the deadline results in suspension.

Error Correction

22. In the preamble to Chapter 13 of Participating in CDS Services (Release 2.4), the reference to fining participants for not delivering collateral by the applicable deadline has been deleted.
23. In section 5.1 (Making additional contributions) of New York Link Participant Procedures (Release 21.1) the reference to fining participants for not delivering collateral by the applicable deadline has been deleted.

**B. Reasons for Technical Classification**

The amendments proposed pursuant to this Notice are considered technical amendments. These amendments concern matters of a technical nature in routine operating procedures and administrative practices relating to settlement services or are amendments pertaining to stylistic formatting.

**C. Effective Date of the Rule**

The effective date for these amendments is August 8, 2005.

**Questions**

Questions regarding this notice may be directed to:

Toomas Marley,  
Vice-President, Legal and Corporate Secretary,  
The Canadian Depository for Securities Limited,  
85 Richmond Street West,  
Toronto, Ontario M5H 2C9

Fax: 416-365-1984  
e-mail: [attention@cds.ca](mailto:attention@cds.ca)

**13.1.2 Notice of Commission Approval - Technical Amendments to CDS Rules - CMS and IRMS Changes**

**THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED**

**TECHNICAL AMENDMENTS TO CDS RULES  
CMS AND IRMS CHANGES**

**NOTICE OF COMMISSION APPROVAL**

**A. Description of the Rule**

The amendments proposed pursuant to this Notice concern Collateral Management System ("CMS") and Internal Risk Management System ("IRMS") changes.

The procedures marked for the proposed amendments may be accessed at the CDS website at <http://www.cds.ca/cdshome.nsf/Pages/-EN-Documentation?Open>.

Specifically, these amendments address the following:

1. Section 13.1.5 (Valuation of contributions) of Participating in CDS Services (Release 2.4) has been revised to clarify that foreign exchange risk is not included when US securities are pledged to a US dollar pool but is included when Canadian securities are pledged to a US dollar pool.

**B. Reasons for Technical Classification**

The amendments proposed pursuant to this Notice are considered technical amendments. These amendments concern matters of a technical nature in routine operating procedures and administrative practices relating to settlement services or are amendments pertaining to stylistic formatting.

**C. Effective Date of the Rule**

The effective date for these amendments is August 8, 2005.

**Questions**

Questions regarding this notice may be directed to:

Toomas Marley,  
Vice-President, Legal and Corporate Secretary,  
The Canadian Depository for Securities Limited,  
85 Richmond Street West,  
Toronto, Ontario M5H 2C9

Fax: 416-365-1984  
e-mail: [attention@cds.ca](mailto:attention@cds.ca)

**13.1.3 Notice of Commission Approval - Technical Amendments to CDS Rules - CNS and ACCESS**

**THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED**

**TECHNICAL AMENDMENTS TO CDS RULES  
CNS AND ACCESS**

**NOTICE OF COMMISSION APPROVAL**

**A. Description of the Rule**

The amendments proposed pursuant to this Notice concern the calculation of collateral for CNS and ACCESS participant funds.

The procedures marked for the proposed amendments may be accessed at the CDS website at <http://www.cds.ca/cdshome.nsf/Pages/-EN-Documentation?Open>.

Specifically, these amendments address the following:

1. Section 15.6 (Calculating the IRMS collateral requirement) of Participating in CDS Services (Release 2.4) has been revised to indicate a new calculation basis for collateral. IRMS means the CDS Internal Risk Management System. The new formula incorporates the diversification benefits between the outstanding position component and the mark-to-market component.

**B. Reasons for Technical Classification**

The amendments proposed pursuant to this Notice are considered technical amendments. These amendments are consequential amendments intended to implement a material rule that has been delivered to the OSC for consideration.

**C. Effective Date of the Rule**

The effective date for these amendments is August 8, 2005.

**Questions**

Questions regarding this notice may be directed to:

Toomas Marley,  
Vice-President, Legal and Corporate Secretary,  
The Canadian Depository for Securities Limited,  
85 Richmond Street West,  
Toronto, Ontario M5H 2C9

Fax: 416-365-1984  
e-mail: [attention@cds.ca](mailto:attention@cds.ca)



**13.1.4 Notice of Commission Approval - Technical Amendments to CDS Rules - Enhancement to B2B Compliance Reporting**

**THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED**

**TECHNICAL AMENDMENTS TO CDS RULES  
ENHANCEMENT TO B2B COMPLIANCE REPORTING**

**NOTICE OF COMMISSION APPROVAL**

**A. Description of the Rule**

The amendments proposed pursuant to this Notice concern enhancements to B2B Compliance Reporting.

The procedures marked for the proposed amendments may be accessed at the CDS website at <http://www.cds.ca/cdshome.nsf/Pages/-EN-Documentation?Open>.

Specifically, these amendments address the following:

1. Section 23.1 (Participant Trade Matching Compliance report) of the CDS Reporting Procedures (Release 2.3) has been updated for stylistic changes as well as providing the process classification codes.
2. Section 6.8 (Monitoring compliance with IDA regulations) of Trade and Settlement Procedures (Release 2.3) has been revised to include details on monitoring for compliance.

**B. Reasons for Technical Classification**

The amendments proposed pursuant to this Notice are considered technical amendments. These amendments concern matters of a technical nature in routine operating procedures and administrative practices relating to settlement services or are amendments pertaining to stylistic formatting.

**C. Effective Date of the Rule**

The effective date for these amendments is August 8, 2005.

**Questions**

Questions regarding this notice may be directed to:

Toomas Marley,  
Vice-President, Legal and Corporate Secretary,  
The Canadian Depository for Securities Limited,  
85 Richmond Street West,  
Toronto, Ontario M5H 2C9

Fax: 416-365-1984  
e-mail: [attention@cds.ca](mailto:attention@cds.ca)

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