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The Ontario Securities Commission

OSC Bulletin

October 21, 2005

Volume 28, Issue 42

(2005), 28 OSCB

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

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Toronto, Ontario
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Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

OCTOBER 21, 2005

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

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

The Harry S. Bray Hearing Room
Ontario Securities Commission
Cadillac Fairview Tower
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20 Queen Street West
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M5H 3S8

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Suresh Thakrar, FIBC	—	ST
Wendell S. Wigle, Q.C.	—	WSW

SCHEDULED OSC HEARINGS

TBA

Yama Abdullah Yaqeen

s. 8(2)

J. Superina in attendance for Staff

Panel: TBA

TBA

Cornwall *et al*

s. 127

K. Manarin in attendance for Staff

Panel: TBA

TBA

Robert Patrick Zuk, Ivan Djordjevic, Matthew Noah Coleman, Dane Alan Walton, Derek Reid and Daniel David Danzig

s. 127

J. Waechter in attendance for Staff

Panel: TBA

October 24, 2005

2:00 p.m.

Richard Ochnik and 1464210 Ontario Inc.

s. 127 and 127.1

M. Britton in attendance for Staff

Panel: PMM/HLM

October 27, 2005

2:00 p.m.

James Patrick Boyle, Lawrence Melnick and John Michael Malone

s. 127 and 127.1

Y. Chisholm in attendance for Staff

Panel: PMM

October 28, 2005

10:00 a.m.

John Illidge, Patricia McLean, David Cathcart, Stafford Kelley and Devendranauth Misir

S. 127 & 127.1

K. Manarin in attendance for Staff

Panel: HLM/RLS/WSW

November 1, 2005 2:00 p.m. to 4:00 p.m. November 2-4; 7-11; 16; 21-25; 28; 30; December 1; 6-8, 2005 10:00 a.m. to 4:30 p.m. November 29, 2005 2:30 p.m. to 4:30 p.m.	**Andrew Currah, Colin Halanen, Joseph Damm, Nicholas Weir, Penny Currah and Warren Hawkins** s.127 J. Waechter in attendance for Staff Panel: PMM/RWD/ST
November 16, 2005 10:00 a.m.	**Hollinger Inc., Conrad M. Black, F. David Radler, John A. Boultbee and Peter Y. Atkinson** s.127 J. Superina in attendance for Staff Panel: SWJ/RWD/MTM
November 23 & 24, 2005 10:00 a.m.	**Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton** s. 127 J. Cotte in attendance for Staff Panel: DLK/CSP
December 12, 2005 10:00 a.m.	**Olympus United Group Inc.** s.127 M. MacKewn in attendance for Staff Panel: TBA
December 12, 2005 10:00 a.m.	**Norshield Asset Management (Canada) Ltd.** s.127 M. MacKewn in attendance for Staff Panel: TBA
December 16, 2005 10:00 a.m.	**Portus Alternative Asset Management Inc., and Portus Asset Management, Inc.** s. 127 M. MacKewn in attendance for Staff Panel: TBA
January 11, 2006 10:00 a.m.	**Jose L. Castaneda** s.127 T. Hodgson in attendance for Staff Panel: TBA
March 2 & 3, 2006 10:00 a.m.	**Christopher Freeman** s. 127 and 127.1 P. Foy in attendance for Staff Panel: TBA
April 3 to 7, 2006 10:00 a.m.	**Momentas Corporation, Howard Rash, Alexander Funt, Suzanne Morrison and Malcolm Rogers** s. 127 and 127.1 P. Foy in attendance for Staff Panel: TBA
10:00 a.m. February 6 to March 3, 2006 (except Tuesdays) March 6 to April 28, 2006 (except Tuesdays and April 14). May 1 to May 19, May 24 to May 26, 2006 (except Tuesdays) June 12 to June 30, 2006 (except Tuesdays)	**Philip Services Corp. *et al*** s. 127 K. Manarin in attendance for Staff Panel: PMM/RWD/DLK

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

Andrew Keith Lech

S. B. McLaughlin

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

1.1.2 Commission Approval - Replacement of NI 44-101 Short Form Prospectus Distributions, Form 44-101F3, Companion Policy 44-101CP and Consequential Amendments

COMMISSION APPROVAL

REPLACEMENT OF
NATIONAL INSTRUMENT 44-101
***SHORT FORM PROSPECTUS DISTRIBUTIONS*,**
FORM 44-101F3 *SHORT FORM PROSPECTUS*,
COMPANION POLICY 44-101CP
SHORT FORM PROSPECTUS DISTRIBUTIONS

AND

CONSEQUENTIAL AMENDMENTS

All of the documents listed below are being published in today's Bulletin:

On **September 20, 2005**, the Commission approved the following rules (the **Rules**)

- National Instrument 44-101 *Short Form Prospectus Distributions*, including Form 44-101F1 *Short Form Prospectus*;
- Amendment Instrument for National Instrument 44-102 *Shelf Distributions*;
- Amendment Instrument for National Instrument 44-103 *Post-Receipt Pricing*;
- Amendment Instrument for National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*; and
- Amendment Instrument for Form 51-102F2 *Annual Information Form* of National Instrument 51-102 *Continuous Disclosure Obligations*.

The Commission also approved the following policies (the **Policies**):

- Companion Policy 44-101CP *Short Form Prospectus Distributions*;
- Amendments to Companion Policy 44-102CP to National Instrument 44-102 *Shelf Distributions*;
- Amendment to Companion Policy 44-103CP to National Instrument 44-103 *Post-Receipt Pricing*; and
- Amendments to Companion Policy 51-101CP to National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*.

Under section 143.3 of the *Securities Act* (Ontario), the Rules were delivered to the Minister of Government Services (the **Minister**) on **October 14, 2005**. The Minister may approve or reject the Rules or return them for further consideration. If the Minister approves the Rules or does not take any further action by **December 13, 2005**, the Rules will come into force on **December 30, 2005**.

The text of the Rules and the Policies can be found in Chapter 5 of today's Bulletin.

1.1.3 Request for Comment – Proposed Amendments to NI 45-106 Prospectus and Registration Exemptions and Adoption in Ontario of Local Prospectus and Registration Exemptions for Certain Capital Accumulation Plans as a Standard Template

REQUEST FOR COMMENT

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 45-106
PROSPECTUS AND REGISTRATION EXEMPTIONS
AND
ADOPTION OF LOCAL PROSPECTUS AND REGISTRATION EXEMPTIONS
FOR CERTAIN
CAPITAL ACCUMULATION PLANS

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

- Notice and Request for Comment regarding Proposed Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* and Adoption of Local Prospectus and Registration Exemptions for Certain Capital Accumulation Plans

- Appendix A – Summary of Comments and Responses to CSA Request for Comment 81-405 – Proposed Registration and Prospectus Exemption for Trades in Certain Capital Accumulation Plans (the "CAP Exemption")

- Appendix B - The text of the CAP Exemption adopted locally. In Ontario, the conditions described in the CAP Exemption will form the basis of discretionary exemptions the Ontario Securities Commission will consider.

- Appendix C –Proposed Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* for Certain Capital Accumulation Plans

- Appendix D – Additional Information Required in Ontario

These documents are published in Chapter 6 of the Bulletin.

1.1.4 Toronto Stock Exchange – Amendments to the Policy on Normal Course Issuer Bids and Debt Substantial Issuer Bids (Appendix F of the Company Manual)

**THE TORONTO STOCK EXCHANGE –
AMENDMENTS TO THE
POLICY ON NORMAL COURSE ISSUER BIDS AND
DEBT SUBSTANTIAL ISSUER BIDS
(APPENDIX F OF THE COMPANY MANUAL)**

REQUEST FOR COMMENTS

On August 2, 2002 Toronto Stock Exchange ("TSX") originally published for comment amendments to Parts V, VI and VII of TSX Company Manual (the "Manual"), including changes to TSX's policy on normal course issuer bids ("NCIBs"), debt substantial issuer bids ("DSIBs") and other bids through the facilities of TSX. Additional amendments to the Manual were published for comment on January 2, 2004. On November 5, 2004, certain amendments to the Manual were finalized with an effective date of January 1, 2005, other than the NCIB and DSIB policy which was republished for comment at that time. As a result of comments received on the Amendments, further changes have been made to the NCIB and DSIB policy amendments (the "Amendments"), and the Amendments are therefore being republished in Chapter 13 of this Bulletin.

1.1.5 Notice of Commission Approval - Rule 62-503 - Financing of Take-over Bids and Issuer Bids

**NOTICE OF COMMISSION APPROVAL
RULE 62-503 – FINANCING OF
TAKE-OVER BIDS AND ISSUER BIDS**

The Commission is publishing Rule 62-503 – *Financing of Take-over Bids and Issuer Bids* in today's Bulletin. The Rule clarifies the bid financing requirement that is set out in section 96 of the *Securities Act* by confirming the extent to which conditionality in a bid financing arrangement is acceptable.

The Rule was sent to the Minister of Government Services on October 20, 2005. It is published in Chapter 5 of this Bulletin.

1.1.6 CDS Notice and Request for Comment – Material Amendments to CDS Rules Relating to Eligibility Criteria for CAD RCP

THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED

MATERIAL AMENDMENTS TO CDS RULES ELIGIBILITY CRITERIA FOR CAD RCP

REQUEST FOR COMMENTS

The Ontario Securities Commission is publishing for a 30-day comment period the amendments filed by The Canadian Depository for Securities Limited (CDS) relating to eligibility criteria for CAD RCP. The description of the amendments is contained in Chapter 13 of this Ontario Securities Commission Bulletin.

1.1.7 CDS Notice and Request for Comment – Material Amendments to CDS Rules Relating to Entitlement Payments

THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED

MATERIAL AMENDMENTS TO CDS RULES ENTITLEMENT PAYMENTS

REQUEST FOR COMMENTS

The Ontario Securities Commission is publishing for a 30-day comment period the amendments filed by The Canadian Depository for Securities Limited (CDS) relating to entitlement payments. The description of the amendments is contained in Chapter 13 of this Ontario Securities Commission Bulletin.

1.1.8 CDS Notice and Request for Comment – Material Amendments to CDS Rules Relating to Qualifications for Participation – Foreign Institutions

THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED

MATERIAL AMENDMENTS TO CDS RULES QUALIFICATIONS FOR PARTICIPATION – FOREIGN INSTITUTIONS

REQUEST FOR COMMENTS

The Ontario Securities Commission is publishing for a 30-day comment period the amendments filed by The Canadian Depository for Securities Limited (CDS) relating to qualifications for participation – foreign institutions. The description of the amendments is contained in Chapter 13 of this Ontario Securities Commission Bulletin.

1.1.9 Agreement among the OSC, the BCSC, the ASC, and theAMF, with respect to the administration and application of surplus funds generated by operations of SEDAR

AGREEMENT AMONG THE ONTARIO SECURITIES COMMISSION (OSC), THE BRITISH COLUMBIA SECURITIES COMMISSION (BCSC), THE ALBERTA SECURITIES COMMISSION (ASC), AND THE AUTORITÉ DES MARCHÉS FINANCIERS (AMF), WITH RESPECT TO THE ADMINISTRATION AND APPLICATION OF SURPLUS FUNDS GENERATED BY OPERATIONS OF THE SYSTEM FOR ELECTRONIC DOCUMENT ANALYSIS AND RETRIEVAL (SEDAR)

The OSC, BCSC, ASC and AMF have entered into an agreement dated as of May 19, 2005. This agreement (the SEDAR Surplus Application Agreement) is being published today in the Bulletin in accordance with section 143.10 of the *Securities Act*. This agreement will become effective with respect to the OSC, subject to the approval of the responsible Minister, within 60 days after this publication.

The SEDAR Surplus Application Agreement sets out the agreement of the parties relating to the administration and application of surplus funds generated by SEDAR operations.

Questions may be referred to:

Rossana Di Lieto
Senior Legal Counsel
General Counsel's Office
(416) 593-8106
rdilieto@osc.gov.on.ca

Krista Martin Gorelle
Senior Legal Counsel
General Counsel's Office
(416) 593-3689
kgorelle@osc.gov.on.ca

SURPLUS APPLICATION AGREEMENT

This Surplus Application Agreement made as of the 19th day of May, 2005 among British Columbia Securities Commission ("**BCSC**") and Alberta Securities Commission ("**ASC**") and Ontario Securities Commission ("**OSC**") and l'Autorité des marchés financiers ("**AMF**") (hereinafter jointly called the "**Principal Administrators**").

WHEREAS each one of the Principal Administrators have executed the SEDAR Operations Agreement dated August 1, 2004 (the "**SEDAR Agreement**") to replace the Letter of Accord regarding the System for Electronic Document Analysis and Retrieval, dated April 28, 1995 (the "**LOA**");

WHEREAS the LOA was terminated effective July 31, 2004;

WHEREAS a surplus of **two million, eight hundred ninety thousand and two hundred eighty-two dollars and eighty-four cents ($2,890,282.84**) was accumulated from the SEDAR operations under the LOA up until October 31, 2003, and an additional surplus of **two million eight hundred ninety three thousand and nineteen dollars and sixty cents [$2,893,019.60]** was accumulated from the SEDAR operations during the period that extended between October 31, 2003 to July 31, 2004 (the aggregate thereof to be known as the "**Initial Surplus**");

WHEREAS the amounts representing the Initial Surplus were paid by CDS Inc. to the OSC in trust;

WHEREAS the SEDAR Agreement foresees the possibility of a surplus being accumulated in any one operating year ("**Annual Surplus**");

WHEREAS the Principal Administrators hereby wish to establish how the Initial Surplus and any subsequent Annual Surplus shall be administered and applied;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The OSC will deposit the Initial Surplus and any Annual Surplus (the "**Funds**") into a segregated account (an "Account") held with a bank listed in Schedule I or II to the Bank Act (Canada) or a trust company registered under applicable Ontario or federal legislation. The Account may be a deposit/chequing account or an investment account.

2. The OSC will invest the Funds in accordance with an investment policy, the prime consideration of which is the protection of principal and the selection of maturities appropriate to anticipated cash flow needs.

3. The OSC may, in its discretion, retain the services of an investment advisor to assist in the investment and management of the Funds.

4. Any interest or other amounts earned on the Funds, net of the OSC's out-of-pocket expenses, will be applied to the Account.

5. The Funds may only be paid out from the Account if the pay-out:

   (a) is in accordance with the terms of this Agreement; and

   (b) has been authorized in writing by a duly authorized representative of each one of the Principal Administrators

6. For greater certainty, section 5 above does not apply to a transfer from one type of account to another.

7. The Principal Administrators agree that the Initial Surplus and any Annual Surplus shall be used towards one or more of the following actions:

   a) the development or enhancement of SEDAR, as defined in the SEDAR Agreement;

   b) the development or enhancement of SEDI, as defined in the SEDAR Agreement;

   c) to permit the reduction in the SEDAR Fee Schedule, as defined in the SEDAR Agreement;

   d) the application towards the previous year's Shortfall, in accordance with the provisions of section 9.2.5 of the SEDAR Agreement.

8. Each of the Principal Administrators warrants and represents that the execution, delivery and performance of this Agreement (i) are within its powers, (ii) have been duly authorized by all necessary proceedings, and (iii) do not and will not contravene or constitute a default under, and are not and will not conflict with any judgment, decree or order, or any contract, agreement, or other undertaking or covenant applicable to such Principal Administrators.

9. The term of this Agreement shall correspond to the term of the SEDAR Agreement.

10. This Agreement shall be governed by and construed in accordance with the laws in force in the province of Ontario and the federal laws of Canada applicable therein. The Principal Administrators hereby irrevocably attorn to the jurisdiction of courts of the province of Ontario or

the Federal Court of Canada sitting in such province.

11. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, including any fax counterpart, and it shall not be necessary when making proof of this Agreement to account for more than one counterpart.

12. In order to have a coordinated effective date, in Alberta, British Columbia and Ontario, this agreement comes into effect on the date it is approved by the Minister in Ontario. In Québec, this agreement comes into effect on the date the AMF executes the agreement.

IN WITNESS WHEREOF, the duly authorized signatories of the parties have signed this Agreement this May 19, 2005.

BRITISH COLUMBIA SECURITIES COMMISSION

By: "Martin Eady"

ALBERTA SECURITIES COMMISSION

By: "Peter Valentine"

By: "David C. Linder"

ONTARIO SECURITIES COMMISSION

By: "Charlie Macfarlane"

L'AUTORITÉ DES MARCHÉS FINANCIERS

By: "Jean St-Gelais"

For purposes of the application of *An Act respecting the Ministère du Conseil executif* (R.S.Q., c. M-30),

Ministre responsable des Affaires intergouvernementales canadiennes, de la Francophonie canadienne, de l'Accord sur le commerce intérieur, de la Réforme des institutions démocratiques et de l'Accès à l'information

By: "Camille Horth"

1.3 News Releases

1.3.1 Extended Schedule for October 14 Public Forum on Market Structure Developments and Trade-Through Obligations

FOR IMMEDIATE RELEASE
October 12, 2005

EXTENDED SCHEDULE FOR
OCTOBER 14 PUBLIC FORUM
ON MARKET STRUCTURE DEVELOPMENTS
AND TRADE-THROUGH OBLIGATIONS

TORONTO – The public forum organized by the Ontario Securities Commission (OSC) to solicit discussion on the Canadian Securities Administrators' discussion paper on market structure developments and trade-through obligations will start at 8:45 am on Friday October 14, 2005. The forum, announced July 22, had initially been scheduled to begin at 10 am but has been extended in order to accommodate the number of submissions to be heard.

Presenters to the forum have submitted comment letters on the discussion paper, which are available under the heading "23-403 - CSA Discussion Paper - Market Structure Developments and Trade-Through Obligations" on the "Rules, Policies and Notices" page of the OSC's website (**www.osc.gov.on.ca**). Those interested in observing the forum are encouraged to attend. Please check in at the OSC's reception, 17th floor, 20 Queen Street West, Toronto.

For more information on the discussion paper or the public forum, please contact:

Randee Pavalow
(416) 593-8257
rpavalow@osc.gov.on.ca

Susan Greenglass
(416) 593-8140
sgreenglass@osc.gov.on.ca

Cindy Petlock
(416) 593-2351
cpetlock@osc.gov.on.ca

Darren Sumarah
(416) 593-2307
dsumarah@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)

1.3.2 OSC Prosecution Against Emilia von Anhalt and Jurgen von Anhalt

FOR IMMEDIATE RELEASE
October 12, 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 proceeding against Emilia von Anhalt and Jurgen von Anhalt was adjourned to December 1, 2005 in Court Room 111 at 9:00 a.m. A judicial pre-trial was commenced on October 7, 2005 and will be continued on December 1, 2005. No trial date has yet been set.

On May 5, 2005, the Ontario Securities Commission (OSC) charged Emilia von Anhalt and Jurgen von Anhalt with violations of the Ontario Securities Act. Information on the charges is summarized in an OSC media release dated May 10, 2005 available on the OSC's website (**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)

1.3.3 Joseph Edward Allen, Chateram Ramdhani, Abel da Silva and Syed Kabir

FOR IMMEDIATE RELEASE
October 13, 2005

OSC ISSUES DECISION IN THE MATTER OF JOSEPH EDWARD ALLEN, ABEL DA SILVA, CHATERAM RAMDHANI AND SYED KABIR

TORONTO – By Reasons dated October 12, 2005, the Ontario Securities Commission found that Joseph Edward Allen, Abel Da Silva, Chateram Ramdhani and Syed Kabir violated various provisions of the Ontario *Securities Act* and Rule 45-501, and acted contrary to the public interest.

The Commission found that Allen and his employees da Silva, Ramdhani and Kabir undertook a sales program for the shares in Andromeda Media Capital Corporation ("Andromeda"), through an Offering Memorandum for the sale of shares to accredited investors under Rule 45-501 of the *Act*. They obtained names of potential investors from a purchased list, sent investors a glossy brochure and a summary of the offering, and made follow-up phone calls to potential investors. If a potential investor agreed to make a purchase, they sent the investor an invoice for the purchase price, together with a subscription agreement. Allen, da Silva, Ramdhani and Kabir collected and forwarded to Andromeda signed subscription agreements and photocopies of investors' cheques payable to Andromeda. Collectively, Allen, da Silva, Ramdhani and Kabir sent approximately 30,000 brochures to potential investors and made approximately 1,000 phone calls per week to potential investors.

Through the sales effort of Allen, da Silva, Ramdhani and Kabir, the Andromeda securities offering raised $1,080,000 from approximately 240 investors. Allen was paid $600,624 in total fees or commissions on those sales. In turn, Allen paid a commission to his employees of 20% of the funds collected by them from sales of Andromeda shares.

The Commission found that, in conducting these trading activities without being registered under the Act, Allen, da Silva, Ramdhani and Kabir violated the registration requirements for market intermediaries under s. 25(1) and Rule 45-501 of the *Act*. The Commission found that they participated in a distribution of securities to investors without a prospectus or preliminary prospectus being filed and without an exemption being available to them. The Commission further found that Allen did not, at any time, disclose to investors that he or his employees would receive commissions on the sale of Andromeda securities, nor the rate of the commission.

"We are aware that some people are in the business of selling private placements to accredited investors without proper registration under the Act. This decision is a clear message that they are breaking Ontario securities law by doing so" said Michael Watson, Director of Enforcement.

A hearing in respect of the sanctions to be imposed will be scheduled in the near future. A copy of the Reasons for Decision is available on the OSC's website at **www.osc.gov.on.ca**.

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

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

1.3.4 OSC Releases Decision in the Matter of Betty Ho and K. Y. Ho

FOR IMMEDIATE RELEASE
October 14, 2005

OSC RELEASES DECISION
IN THE MATTER OF
BETTY HO AND K. Y. HO

TORONTO – The Ontario Securities Commission (OSC) issued a decision today in the matter of Betty Ho and K. Y. Ho. The allegations of OSC staff against the respondents were dismissed by the independent panel of Commissioners.

In its decision, the panel stated,

> "In that we have determined that it has not been established that it was a fact at the time the Respondents disposed of the shares that ATI would fall short of its forecasted revenue and earnings for Q3-2000, it follows that we could not find that the Respondents had actual knowledge of that fact. That the Respondents had such knowledge is a requirement in order to establish a violation of subsection 76(1) of the Act …
>
> "… Accordingly, we find that the allegations in paragraph 9(c) of the Statement of Allegations as to what the Respondents knew as a fact at the time they disposed of the shares have not been established."

Additionally, the panel found,

> "… that the donation of shares by K. Y. Ho to the charities were not "sales" for the purpose of subsection 76(1) of the Act."

A copy of the decision is made available on the OSC's web site (**www.osc.gov.on.ca**).

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

Eric Pelletier
Manager, Media Relations
416-595-8913

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

1.3.5 Francis Jason Biller

FOR IMMEDIATE RELEASE
October 17, 2005

IN THE MATTER OF
FRANCIS JASON BILLER

TORONTO – The Ontario Securities Commission (OSC) issued an order on October 12, 2005 that Francis Jason Biller permanently cease trading in securities, with certain exceptions allowing Biller to trade in his personal accounts. Among other things, the OSC also ordered that, apart from those exemptions necessary for Biller to trade in his personal accounts, any exemptions contained in Ontario securities law permanently do not apply to him and, further, that Biller is permanently prohibited from becoming or acting as a director or officer of a registrant. The Commission's reasons for the order are to be issued shortly.

In February 2000, the British Columbia Securities Commission issued an order prohibiting Biller from engaging in investor relations activities for a period of 10 years as a result of his involvement in Eron Mortgage and other related companies in British Columbia. On April 5, 2005, Biller pled guilty in the British Columbia Supreme Court to four counts of fraud and one count of theft contrary to the Criminal Code of Canada in relation to his involvement in Eron Mortgage. On September 8, 2005, the British Columbia Supreme Court sentenced Biller to a term of three years imprisonment. The OSC hearing to consider the appropriateness of an order in Ontario proceeded on September 29, 2005.

Copies of the Order, the Amended Notice of Hearing and Amended Statement of Allegations in this matter are available on the Commission's website at **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)

1.3.6 OSC Commences Proceedings Against Richard Ochnik and 1464210 Ontario Inc.

FOR IMMEDIATE RELEASE
October 18, 2005

OSC COMMENCES PROCEEDINGS AGAINST
RICHARD OCHNIK AND 1464210 ONTARIO INC.

TORONTO – The Ontario Securities Commission today announced that it has issued a Notice of Hearing and Statement of Allegation against Richard Ochnik and 1464210 Ontario Inc.

Staff of the Commission allege that between May 7, 2002 and November 18, 2002, Ochnik engaged in a RRSP/loan scheme. Staff allege that various individuals facing financial difficulty were promised a non-repayable loan if they collapsed their RRSPs and invested in 1464210. Between June 7, 2002 and December 31, 2002, 43 individuals invested a total of approximately $1.5 million in 1464210.

In respect of the sale of these securities Staff further allege that Ochnik and 1464210 sold the securities without being registered with the Commission and distributed the securities without filing a prospectus with the Commission.

Copies of the Notice of Hearing and Statement of Allegations are available on the OSC website **(www.osc.gov.on.ca**).

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

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 Joseph Edward Allen, Chateram Ramdhani, Abel da Silva and Syed Kabir

FOR IMMEDIATE RELEASE
October 13, 2005

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

AND

IN THE MATTER OF
JOSEPH EDWARD ALLEN, ABEL DA SILVA,
CHATERAM RAMDHANI, AND SYED KABIR

TORONTO – The Commission issued its Decision and Reasons following a hearing in the above matter.

A copy of the Decision and Reasons is available at **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)

1.4.2 Affinity Financial Group Inc., International Structured Products Inc., Affinity Restricted Securities Inc., Dionysus Investments Ltd., Brian Keith Mcwilliams, David John Lewis and Louis Sapi

FOR IMMEDIATE RELEASE
October 13, 2005

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

AND

IN THE MATTER OF
AFFINITY FINANCIAL GROUP INC.,
INTERNATIONAL STRUCTURED PRODUCTS INC.,
AFFINITY RESTRICTED SECURITIES INC.,
DIONYSUS INVESTMENTS LTD., BRIAN KEITH MCWILLIAMS,
DAVID JOHN LEWIS and LOUIS SAPI

TORONTO – The Commission issued an Order approving the Settlement Agreement between Staff of the Commission and David John Lewis

A copy of the Order and Settlement Agreement is available at **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)

1.4.3 ATI Technologies Inc., Kwok Yuen Ho, Betty Ho, Jo-Anne Chang, David Stone, Mary De La Torre, Alan Rae and Sally Daub

FOR IMMEDIATE RELEASE
October 14, 2005

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

AND

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

TORONTO – The Commission issued its Decision and Reasons in the above noted matter today.

A copy of the Decision and Reasons is available at **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)

1.4.4 Portus Alternative Asset Management Inc. and Boaz Manor

FOR IMMEDIATE RELEASE
October 13, 2005

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

AND

PORTUS ALTERNATIVE ASSET MANAGEMENT INC.
AND BOAZ MANOR

TORONTO – The Commission issued an Order today amending its Order of February 10, 2005.

Copies of the Orders are available at **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)

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 CFS Group Inc. - s.83

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., s. 83.

October 12, 2005

CFS Group Inc.
103 The East Mall
Etobicoke, ON M8Z 5X9

Attention: Domenic Scozzafava, Chief Financial Officer

Dear Sirs/Mesdames:

Re: CFS Group Inc. (the "Applicant") - Application to Cease to be a Reporting Issuer under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, and Québec (the "Jurisdictions")

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

As the Applicant has represented to the Decision Makers that,

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

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

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

2.1.2 Berjaya Forest Products (Luxembourg) S.À R.L. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – TSX-listed issuer reorganized and recapitalized pursuant to a plan of arrangement by converting to an "income fund" like structure – exchange of issuer's common shares for stapled units of a "newco" and subsequent amalgamation of issuer with "newco" – "newco" is reporting issuer in each of the Jurisdictions and stapled units are listed and posted for trading on the TSX – application for prospectus exemption for control block distribution of stapled units received by applicant in exchange for previously-owned common shares that were freely tradeable – relief granted subject to conditions.

Ontario Statutes

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

Applicable Rules

National Instrument 45-102 Resale of Securities, ss. 2.8

October 3, 2005

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

AND

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

AND

**IN THE MATTER OF
BERJAYA FOREST PRODUCTS
(LUXEMBOURG) S.À R.L. (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) for an exemption from the prospectus requirements in the Legislation for control distributions (as defined in National Instrument 45-102 (NI 45-102)) of stapled units (Stapled Units) of Taiga Building Products Ltd. (TBPL) by the Filer (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

(a) the British Columbia Securities Commission is the Principal Regulator for this application, and

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

Interpretation

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

Representation

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

1. Taiga Forest Products Ltd. (TFPL) was a publicly-traded corporation whose common shares (TFPL Shares) were listed on the Toronto Stock Exchange; before the Arrangement (described below), TFPL was (and had been for more than four months before the arrangement) a reporting issuer in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia and Prince Edward Island (the Reporting Jurisdictions) and was not in default of its continuous disclosure obligations under the Legislation in the Reporting Jurisdictions;

2. effective September 1, 2005 (the Effective Date), TFPL reorganized and recapitalized its business by way of a plan of arrangement (the Arrangement) under the *Business Corporations Act* (British Columbia) (the BCCA) by converting to an "income fund" like structure;

3. TBPL is a corporation amalgamated under the BCCA, with headquarters and a registered office in British Columbia;

4. under the Arrangement, shareholders of TFPL exchanged their TFPL Shares for Stapled Units of TBPL, on the basis of four Stapled Units for each TFPL Share; each Stapled Unit consists of one common share of TBPL and one 14% subordinated note of TBPL in the principal amount of $5.32;

5. as a result of this exchange, TFPL became a wholly-owned subsidiary of TBPL; on the Effective Date, TBPL was amalgamated with TFPL and certain of its wholly-owned subsidiaries, thereby transferring the business formerly carried on through TFPL to TBPL;

6. after the Arrangement, TBPL became a reporting issuer in each of the Reporting Jurisdictions where that concept exists and is not in default of its continuous disclosure requirements under the Legislation;

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

8. the Filer is a corporation continued under the laws of Luxembourg with its registered office in Luxembourg; the Filer is a wholly-owned subsidiary of Berjaya Group (Cayman) Limited, which is in turn a wholly-owned subsidiary of Berjaya Group Berhad, a Malaysian public company; the Filer is a holding company;

9. before the Arrangement, the Filer beneficially owned 3,167,452 TFPL Shares, all of which it had held for more than four months; as a result of the Arrangement, the Filer beneficially owns 12,669,808 Stapled Units, representing approximately 39.3% of the 32,205,680 issued and outstanding Stapled Units, registered in the name of Scotia Nominees (Tempatan) Sdn. Bhd;

10. the Filer cannot rely on the exemption from the prospectus requirements in section 2.8 of NI 45-102 to sell certain of the Stapled Units held by it because subsection 2.8(2)2 of NI 45-102 requires that the Filer have held the Stapled Units for at least four months, and does not take into consideration the time during which the Filer held its TFPL Shares.

Decision

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

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted, provided that:

(a) the conditions in subsection (2) of section 2.8 of NI 45-102 are satisfied, except that when determining the time that the Filer has held the Stapled Units under paragraph 2.8(2)2 of NI 45-102, the Filer can include the time that the Filer held TFPL Shares immediately before the Effective Date; and

(b) the Filer satisfies the requirements of subsections (3) and (4) of section 2.8 of NI 45-102 as if the selling security holder relied on subsection (2) of section 2.8.

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

2.1.3 Royal Trust Corporation of Canada and Royal Trust Company - MRRS Decision

Headnote

MRRS - Relief granted in respect of certain currently proposed and potential future advisers to the Applicants from the requirement for advisers to register in section 25(1)(c) of the Act.

Applicable Ontario Statutory Provisions

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

July 13, 2005

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

AND

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

AND

IN THE MATTER OF
ROYAL TRUST CORPORATION OF CANADA
AND THE ROYAL TRUST COMPANY

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the "**Decision Maker**") in each of Ontario, British Columbia, Alberta, Saskatchewan, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Nunavut and Yukon (the "**Jurisdictions**") has received an application from the Royal Trust Corporation of Canada and The Royal Trust Company (the "**Applicants**") for a decision pursuant to the securities legislation of the Jurisdictions (the "**Legislation**") seeking relief in each of the Jurisdictions from the adviser registration requirement in respect of certain currently proposed and potential future advisers to the Applicants to the extent that such advisers are not registered as an adviser in the applicable category in the Jurisdiction (such unregistered advisers being the "**Applicants' Advisers**"), to permit the Applicants to retain the Applicants' Advisers to provide investment advisory services to the Applicants in respect of accounts for which the Applicants act as trustee or as co-trustee with a third party.

Under the Mutual Reliance Review System for Exemptive Relief Applications

(a) the Ontario Securities Commission has acted as 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 Applicants:

2. Royal Trust Corporation of Canada is incorporated under the federal *Trust and Loan Companies Act*, has its head office in Toronto and is registered to carry on business in all Jurisdictions other than Yukon.

3. The Royal Trust Company is continued under the federal *Trust and Loan Companies Act*, has its head office in Montréal and is registered to carry on business in all Jurisdictions.

4. The Applicants provide estate and trust services through the trust services division of the Applicants. The performance of investment advisory services by the trust services division of the Applicants is solely incidental to the principal business or occupation of the Applicants.

5. The Applicants are not registrants (as such term, or equivalent term, is defined in the applicable securities laws of the Jurisdictions) and have no current intention of becoming registrants.

6. Each Applicant is eligible for and satisfies the exemption from the adviser registration requirement in those provinces in which it is registered to conduct its business pursuant to the express exemption (an "**Express Exemption**") available to trust corporations (or equivalent) under the securities legislation in those provinces namely, Ontario, British Columbia, Alberta, Saskatchewan, New Brunswick, Nova Scotia, Newfoundland and Labrador and Prince Edward Island.

7. Securities legislation in each of Northwest Territories, Nunavut and Yukon provides the relevant securities regulatory authority within each such territory with the discretionary authority to relieve the Applicants from having to comply with the adviser registration requirement in respect of the business that the respective Applicant carries on in the relevant territory. Orders relieving the Applicants from the adviser registration requirement were granted by the Registrar of each respective territory on October 13, October 19 and October 13, 2004, respectively.

8. The identity and relevant particulars of the currently proposed Applicants' Advisers are indicated in Schedule "A", including the applicable regulatory authority with which each such Applicants' Adviser is licensed or registered as an adviser. The Applicants may add or replace such Applicants' Advisers from time to time in the discretion of each such Applicant and consequently, the current list of proposed Applicants' Advisers is subject to change.

9. Each Applicant wishes to retain the Applicants' Advisers to provide investment advisory services to the Applicants in respect of accounts for which the Applicants act as trustee or co-trustee with a third party in the Jurisdictions. Each Applicant believes that the Applicants' Advisers will provide the Applicant with access to specialized expertise relating to specific market segments or relating to investment strategies for international investment management mandates, through their expertise or location in and familiarity and experience with foreign markets.

10. Each Applicant is bound by its statutory and common law fiduciary duties and obligations to the beneficiaries of the accounts for which it is trustee. The contract for investment advisory services between the Applicants and the Applicants' Advisers will in no way affect each Applicant's statutory and common law fiduciary duties and obligations to the beneficiaries of the accounts for which it is trustee and those beneficiaries will retain their right of action against the Applicants for any breach of trust.

11. The obligations and duties of the Applicants' Adviser and the Applicants will be set out in a written agreement between each Applicants' Adviser and the Applicants.

12. The Applicants' Adviser, if a resident of a province or territory of Canada, will be registered as an adviser in that Jurisdiction.

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 adviser registration requirement (or equivalent) contained in the Legislation shall not apply to the Applicants' Advisers with respect to their activities in providing investment advisory services to the Applicants in respect of the Applicants' estate and trust services business provided that:

(a) with respect to the relevant Jurisdiction, the Applicant to which the investment advisory services are being provided by the relevant Applicants' Adviser is in compliance with the requirements for the Applicant's reliance on the Express Exemption in such Jurisdiction;

(b) any currently proposed Applicants' Adviser or future Applicants' Advisers relying on this decision is licensed or registered with the applicable regulator, or otherwise legally qualified to provide investment advisory services, in the jurisdiction in which such Applicants' Adviser is ordinarily resident; and

(c) any Applicants' Adviser relying on this decision in advising the Applicants, complies with the licensing, registration or similar legal requirements applicable to such Applicant's Adviser in the jurisdiction in which

such Applicants' Adviser is ordinarily resident, as though the Applicants were resident in that jurisdiction when receiving the investment advice.

"Wendell S. Wigle"
Commissioner
Ontario Securities Commission

"David L. Knight"
Commissioner
Ontario Securities Commission

SCHEDULE "A"

Name		Jurisdiction of Registration	Regulator
13.	Capital Guardian Trust Company	USA and all provinces of Canada except Québec and Newfoundland	United States Securities and Exchange Commission (the "SEC") and the respective securities regulatory authority or regulator in each Canadian Jurisdiction of Registration
14.	Voyageur Asset Management Inc.	USA, Ontario, British Columbia and Alberta	SEC and the respective securities regulatory authority or regulator in each Canadian Jurisdiction of Registration
15.	Greystone Managed Investments Inc.	All provinces and territories of Canada except Northwest Territories	The respective securities regulatory authority or regulator in each Canadian Jurisdiction of Registration
16.	Boyar Asset Management Inc.	USA	SEC
17.	Mondrian Investment Partners Limited	UK and USA	Financial Services Authority and SEC

2.1.4 First Trust/Highland Capital Senior Loan Income Fund - MRRS Decision

Headnote

MRRS - Exemption granted to an investment fund from the requirement in National Instrument 81-106 Investment Funds Continuous Disclosure to calculate its net asset value on a daily basis subject to certain conditions and requirements.

Rules Cited

National Instrument 81-106 Investment Funds Continuous Disclosure, ss. 14.2(3), 17.1.

September 28, 2005

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, 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
FIRST TRUST/HIGHLAND CAPITAL SENIOR LOAN INCOME FUND
(the "Fund")

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 Fund for a decision under the securities legislation of the Jurisdictions (the "Legislation") for an exemption from the requirement contained in section 14.2(3)(b) of National Instrument 81-106 -- Investment Fund Continuous Disclosure ("NI 81-106") to calculate net asset value at least once every business day (the "Requested Relief").

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 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 Fund:

1. FT (NSI) Floating Rate Management Co. (the “Manager”) is a corporation incorporated under the laws of Nova Scotia. It intends to establish the Fund pursuant to a declaration of trust of the Manager in August or September 2005.

2. The Fund’s investment objectives will be: (i) to provide Unitholders with monthly distributions which will fluctuate with changes in short-term interest rates and (ii) to preserve and enhance the net asset value per unit of the Fund (the “Unit”) in order to return the original subscription price of $10.00 per Unit to unitholders (the “Unitholders”) on or about October 31, 2015.

3. The Fund will invest the net proceeds of the offering in a portfolio (and any funds borrowed pursuant to a leverage facility) in a portfolio consisting primarily of senior loans issued by U.S. issuers. The Fund may utilize derivatives from time to time including with respect to its foreign currency hedging strategy.

4. The Manager will be the trustee and manager of the Fund and will be responsible for providing or arranging for the provision of administrative services to the Fund.

5. The Manager will appoint First Trust Advisors L.P. (the “Investment Advisor”) as investment advisor to the Fund. It is expected that Highland Capital Management L.P. will be appointed the sub-advisor of the Trust.

6. A bank or other custodian meeting the criteria of section 6.2 of NI 81-102 will act as custodian of the assets of the Fund.

7. The Units will be redeemable at the option of the holder on an annual basis at a price computed by reference to the value of a proportionate interest in the net assets of the Fund. In addition, Units will be redeemable on a monthly basis at a price computed by reference to the market price of the Units. As a result, the Fund will not be a “mutual fund” and will be a non-redeemable investment fund under applicable securities legislation.

8. Unitholders that have redeemed their Units will receive payment on or before the 10th business day following the relevant redemption date.

9. The net asset value per Unit will be calculated weekly. The Manager will post the net asset value per Unit on its website.

10. The Units are expected to be listed and posted for trading on the Toronto Stock Exchange (the "TSX"). This is unlike securities of a conventional mutual fund in which there is normally no such market and where, as a result, holders of such securities who wish to liquidate their holdings must cause the fund to redeem their securities. Since the Units will be listed for trading on the TSX, Unitholders of the Units will not have to rely solely on the redemption feature of the Units in order to provide liquidity for their investment.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met. The Decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided the prospectus discloses:

(a) that the Net Asset Value calculation is available to the public upon request, and

(b) a toll-free telephone number or website that the public can access for this purpose;

for so long as:

(c) the Units are listed on the TSX; and

(d) the Fund calculates its net asset value at least weekly.

"Leslie Byberg"
Manager, Investment Funds
Ontario Securities Commission

2.1.5 Franklin Templeton Investments Corp. - MRRS Decision

Headnote

Approval for fund mergers. Exemption to send tailored simplified prospectus and not to send financial statements unless requested. Future oriented relief.

Rules Cited

National Instrument 81-102 - Mutual Funds, ss. 5.5(1)(b), 5.6(1)(f)(ii).

October 7, 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,
THE YUKON, THE 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
FRANKLIN TEMPLETON INVESTMENTS CORP.
(THE "MANAGER")**

AND

**FRANKLIN U.S. LARGE CAP GROWTH FUND,
FRANKLIN U.S. LARGE CAP GROWTH TAX CLASS OF
FRANKLIN TEMPLETON TAX CLASS CORP.,
FRANKLIN FLEX CAP GROWTH FUND,
FRANKLIN WORLD TELECOM FUND,
FRANKLIN WORLD TELECOM TAX CLASS OF
FRANKLIN TEMPLETON TAX CLASS CORP.,
FRANKLIN TECHNOLOGY FUND AND
FRANKLIN WORLD GROWTH 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 the Manager and the Terminating Funds (the "Filers") for a decision under the securities legislation of the Jurisdictions (the "Legislation") for:

(a) 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 pursuant to paragraph 5.5(1)(b) of National Instrument 81-102 ("NI 81-102") (the "Merger Approval Relief");

(b) an exemption from the requirement to deliver the Franklin Templeton Investment Funds simplified prospectus to securityholders of the Terminating Funds in connection with the Current Mergers and all future mergers of mutual funds managed by the Manager (the "Future Mergers") pursuant to clause 5.6(1)(f)(ii) of NI 81-102; and

(c) an exemption from the requirement to deliver the most recent annual and interim financial statements of the Continuing Funds to securityholders of the Terminating Funds in connection with the Current Mergers and all Future Mergers pursuant to clause 5.6(1)(f)(ii) of NI 81-102.

(The relief requested in items (b) and (c) are collectively referred to as the "Prospectus and Financial Statement Delivery 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, Franklin U.S. Large Cap Growth Tax Class, Franklin World Telecom Tax Class, Franklin Flex Cap Growth Tax Class, Franklin Technology Tax Class and Franklin World Growth Tax Class;

"Continuing Funds" means Franklin Flex Cap Growth Tax Class, Franklin Technology Tax Class and Franklin World Growth Tax Class, each a class of special shares of Franklin Templeton Tax Class Corp.;

"Fund" or **"Funds"** means, individually or collectively, the Terminating Funds and the Continuing Funds;

"Tax Act" means the *Income Tax Act* (Canada).

Representations

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

1. The Manager is a corporation incorporated under the laws of Ontario. The Manager is the manager of each of the Funds and the trustee of each of the Funds other than the Classes. The head office of the Manager is located in Toronto, Ontario.

2. Franklin Templeton Tax Class Corp. is an open-end mutual fund corporation incorporated under the laws of Alberta on June 1, 2001. Each of the Classes is a separate class of special shares of Franklin Templeton Tax Class Corp.

3. Each of the Funds, other than the Classes, is an open-end mutual fund trust established under the laws of Ontario by declarations of trust.

4. The Manager intends to merge the Terminating Funds into the Continuing Funds as follows:

   (a) Franklin U.S. Large Cap Growth Fund, Franklin U.S. Large Cap Growth Tax Class and Franklin Flex Cap Growth Fund into Franklin Flex Cap Growth Tax Class (sometimes referred to as the "Flex Cap Growth Merger");

   (b) Franklin World Telecom Fund, Franklin World Telecom Tax Class and Franklin Technology Fund into Franklin Technology Tax Class (sometimes referred to as the "Technology Merger"); and

   (c) Franklin World Growth Fund into Franklin World Growth Tax Class (sometimes referred to as the "World Growth Merger").

5. Pursuant to the Current Mergers, securityholders of each Terminating Fund will receive securities with the same value and in the same series of the applicable Continuing Fund as they currently own in the Terminating Fund.

6. Securities of the Funds are currently qualified for sale by a simplified prospectus and annual information form dated June 6, 2005, which has been filed and receipted in all of the Jurisdictions.

7. 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.

8. 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.

9. 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.

10. No sales charges will be payable in connection with the acquisition by a Continuing Fund of the investment portfolio of an applicable Terminating Fund.

11. 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 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.

12. 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 before the effective date of the Current Mergers.

13. A material change report and amendments to the current simplified prospectus and annual information form of the Funds were filed via SEDAR on August 12, 2005 with respect to the proposed Current Mergers and proposed changes in the fundamental investment objectives of each of the Continuing Funds.

14. A notice of meeting, a management information circular and a proxy in connection with meetings of securityholders were mailed to securityholders of the Terminating Funds and Continuing Funds on September 16, 2005 and were filed via SEDAR on September 19, 2005.

15. Securityholders of the Terminating Funds and Continuing Funds will be asked to approve the Current Mergers at meetings to be held on October 11, 2005. The Manager, as the sole Class A common shareholder of Franklin Templeton Tax Class Corp., will also approve the Current Mergers, as required under corporate law. The change of fundamental investment objectives of the Continuing Funds will be considered at the same meeting.

16. Each Terminating Fund will merge into the applicable Continuing Fund on or about the close of business on October 21, 2005 and the Continuing Funds will continue as publicly offered open-end mutual funds governed by the laws of Alberta.

17. The Current Mergers will be structured as follows:

- Each securityholder of the Terminating Fund will receive securities of the same series of the corresponding Continuing Fund with a value equal to the value of their securities in the Terminating Fund as determined on the date of the Current Mergers. After this step is complete, securityholders of each Terminating Fund will become securityholders of the corresponding Continuing Fund;

- On the effective date of the Current Mergers, the net assets attributable to a Terminating Fund will be included in the portfolio of assets attributable to the corresponding Continuing Fund; and

- Each Terminating Fund will be wound up as soon as reasonably practical following implementation of the Current Mergers and in any event not later than December 31, 2005.

18. The Manager will pay for the costs of the Current Mergers. These costs consist mainly of brokerage charges associated with the merger-related trades that occur after the date of the Current Mergers and legal, proxy solicitation, printing, mailing and regulatory fees.

19. 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:

(a) In the case of the Flex Cap Growth Merger, the fundamental investment objectives of the applicable Terminating Funds and Continuing Fund are not substantially similar;

(b) Certain of the Mergers are either not a "qualifying exchange" or a tax-deferred transaction under the Tax Act;

(c) The current simplified prospectus of the Franklin Templeton Investment Funds was not 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 were sent to securityholders of the Terminating Funds; and

(d) The most recent annual and interim financial statements for the Continuing

Funds were not sent to the securityholders of the Terminating Funds but, instead, the Manager prominently disclosed in the information circular sent to securityholders of the Terminating Funds that they could obtain the most recent interim and annual financial statements of the Continuing Funds by accessing the SEDAR website at www.sedar.com, by accessing the Manager's website at www.franklintempleton.ca, by calling a toll-free number or by contacting the Manager at service@franklintempleton.ca.

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 Merger Approval Relief is granted; and

(II) The Prospectus and Financial Statement Delivery 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) 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;

(d) 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, by accessing the Manager's website at www.franklintempleton.ca, by calling a toll-free number or by contacting the Manager at service@franklintempleton.ca; and

(e) upon request by a securityholder for financial statements, the Manager 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.

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.

"Rhonda Goldberg"
Assistant Manager, Investment Funds Branch
Ontario Securities Commission

2.1.6 Canada Dominion Resources 2005 Limited Partnership - MRRS Decision

Headnote

Limited partnership exempted from interim financial reporting requirements for third quarter of first financial year.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5, as am, ss. 77(1), 79, 80(b)(iii).

September 23, 2005

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

AND

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

AND

**IN THE MATTER OF
CANADA DOMINION RESOURCES 2005 LIMITED
PARTNERSHIP (the "Filer")**

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the "**Decision Maker**") in each of Ontario, British Columbia, Alberta, Saskatchewan, Nova Scotia, New Brunswick, and Newfoundland and Labrador (the "**Jurisdictions**") has received an application from the Filer for a decision pursuant to the securities legislation of the Jurisdictions (the "**Legislation**") that the requirement under the Legislation that the Filer file with the Decision Makers and send to its securityholders (the "**Limited Partners**") its third quarter interim financial statements for September 30, 2005 (the "**Third Quarter Interim Financial Statements**") shall not apply to the Filer.

Under the Mutual Reliance Review System for Exemptive Relief Applications

(a) the Ontario Securities Commission (the "**OSC**") 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 is a limited partnership formed pursuant to the provisions of the *Limited Partnerships Act* (Ontario) on January 28, 2005.

2. The principal place of business and the registered office of the Filer is Suite 5500, King Street West, Toronto, Ontario, M5H 4A9.

3. The Filer's financial year-end is December 31.

4. The Filer was formed to provide for a tax-assisted investment in a diversified portfolio of equity securities, comprised principally of flow through shares ("**Flow-Through Shares**"), of companies engaged in oil and gas or mining exploration, development, and/or production or certain energy production that may incur Canadian renewable and conservation expense, pulp, paper or forestry development, processing, and/or production, or a related resource business, such as pipeline or service company or utility ("**Resource Companies**") with a view to earning income and achieving capital appreciation for Limited Partners.

5. The Filer was granted a decision document dated March 30, 2005, by the OSC in its capacity as principal regulator under National Policy 43-201 Mutual Reliance Review System for Prospectuses and Annual Information Forms on behalf of the Decision Makers and on behalf of the securities regulatory authority or regulator in such of the provinces and territories of Canada, which decision document evidences the issue of final receipts for the Filer's prospectus (the "**Prospectus**") dated March 28, 2005 relating to an offering of up to 4,000,000 limited partnership units ("**Partnership Units**").

6. The Partnership Units have not been and will not be listed or quoted for trading on any stock exchange or market.

7. It is the current intention of the Filer to transfer its assets to Dynamic Managed Portfolios Ltd., an open-ended mutual fund corporation amalgamated under the laws of Canada, or any other mutual fund corporation managed by Goodman & Company, Investment Counsel Ltd. (or its successor or acceptable affiliated entity) ("**DMP Ltd.**"), on a tax deferred basis in exchange for redeemable resource class shares of DMP Ltd.

("**DMP Resource Fund**"). Within 60 days after such transfer, such shares of DMP Ltd. will be distributed to the partners (including the Limited Partners), pro rata, on a tax-deferred basis upon the dissolution of the Filer. Such transaction is subject, inter alia, to regulatory approval and in event that it is not implemented prior to July 1, 2007, the Filer may: (i) be dissolved and its net assets distributed pro rata to the partners (including the Limited Partners); or (ii) subject to approval by extraordinary resolution of the partners of the Filer, continue in operation with an actively managed portfolio, in which case it will follow a similar investment strategy to that of DMP Resource Fund.

8. Since its formation on January 28, 2005, the Filer's activities primarily included (i) collecting subscriptions from Limited Partners; (ii) investing the available funds of the Filer in Flow-Through Shares of Resource Companies and (iii) incurring expenses to maintain the Filer.

9. Unless a material change takes place in the business and affairs of the Filer, the Limited Partners will obtain adequate financial information concerning the Filer from the semi-annual financial statements and the annual report containing audited financial statements of the Filer together with the auditors' report thereon distributed to the Limited Partners. The Prospectus and the semi-annual financial statements provide sufficient background materials and the explanations necessary for a Limited Partner to understand the Filer's business, its financial position and its future plans, including dissolution on or before July 1, 2007.

10. In light of the limited range of business activities to be conducted by the Filer and the nature of the investment of the Limited Partners in the Filer, the requirements to file and send (as applicable) the Third Quarter Interim Financial Statements to the Limited Partners may impose a material financial burden on the Filer without producing a corresponding benefit to the Limited Partners.

11. The Prospectus discloses that by purchasing Partnership Units, each Limited Partner acknowledges and agrees that he or she has given to Canada Dominion Resources 2005 Corporation, the general partner of the Filer, the irrevocable power of attorney contained in Section 3.05 of the Amended and Restated Limited Partnership Agreement dated as of March 28, 2005, attached to and forming part of the Prospectus, and has thereby, in effect, consented to the making of this application for exemptions from reporting obligations under the Legislation to file and send the Filer's Third Quarter Interim Financial Statements.

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

"Paul Moore"
Vice Chair
Ontario Securities Commission

"Suresh Thakrar"
Commissioner
Ontario Securities Commission

2.1.7 AGS Energy 2005-1 Limited Partnership - MRRS Decision

Headnote

Limited partnership exempted from interim financial reporting requirements for third quarter of first financial year.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am, ss. 77(1), 79, 80(b)(iii).

September 26, 2005

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

AND

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

AND

IN THE MATTER OF
AGS ENERGY 2005-1 LIMITED PARTNERSHIP (the "Filer")

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the "**Decision Maker**") in each of Ontario, British Columbia, Alberta, Saskatchewan, Nova Scotia, New Brunswick and Newfoundland and Labrador (the "**Jurisdictions**") has received an application from the Filer for a decision pursuant to the securities legislation of the Jurisdictions (the "**Legislation**") that the requirement under the Legislation that the Filer file with the Decision Makers and send to its securityholders (the "**Limited Partners**") its third quarter interim financial statements for September 30, 2005 (the "**Third Quarter Interim Financial Statements**") shall not apply to the Filer.

Under the Mutual Reliance Review System for Exemptive Relief Applications

(a) the Ontario Securities Commission (the "**OSC**") 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 is a limited partnership formed pursuant to the provisions of the *Limited Partnerships Act* (Ontario) on January 17, 2005.

2. The principal place of business and the registered office of the Filer is Suite 1500, York Street, Toronto, Ontario, M5J 1S9.

3. The Filer's financial year-end is December 31.

4. The Filer was formed to provide for a tax-assisted investment in a diversified portfolio of equity securities, comprised principally of flow through shares ("**Flow-Through Shares**"), of companies engaged primarily in oil and gas exploration and development and, to a lesser extent, mining exploration (the "**Resource Companies**") with a view to achieving capital appreciation and maximizing tax benefits for Limited Partners.

5. The Filer was granted a decision document, dated February 28, 2005, by the OSC in its capacity as principal regulator under National Policy 43-201 Mutual Reliance Review System for Prospectuses and Annual Information Forms on behalf of the Decision Makers and on behalf of the securities regulatory authority or regulator for the provinces of Québec, and Prince Edward Island, which decision document evidences the issue of final receipts for the Filer's prospectus (the "**Prospectus**") dated February 28, 2005 relating to an offering of up to 1,200,000 limited partnership units ("**Partnership Units**").

6. The Partnership Units have not been and will not be listed or quoted for trading on any stock exchange or market.

7. It is the current intention of the Filer that on or about February 28, 2007, AGS Resource 2005-1 GP Inc. as general partner of the Filer (the "**General Partner**") will propose to the Limited Partners at a special meeting of securityholders of the Filer to consider a liquidity alternative including, without limitation, a mutual fund rollover transaction pursuant to which assets of the Filer would be transferred to an open-ended mutual fund corporation (the "**Mutual Fund**") managed by the General Partner (or an affiliate of the General Partner to be determined by the General Partner in its sole discretion) on a tax deferred basis in exchange for redeemable shares of the Mutual

Fund. Within 60 days after such transfer, such shares of the Mutual Fund will be distributed to the partners (including the Limited Partners) pro rata, on a tax-deferred basis upon the dissolution of the Filer. There is no assurance that the General Partner will propose any liquidity alternative to the Limited Partners. As well, the completion of a liquidity alternative is subject, inter alia, to all necessary regulatory approvals and approval by the Limited Partners. In the event that a liquidity alternative is not completed by April 30, 2007, the Filer will be terminated by May 1, 2007 and the partners (including the Limited Partners) will receive a pro rata share of the net assets of the Filer.

8. Since its formation on January 17, 2005, the Filer's activities primarily included (i) collecting subscriptions from the Limited Partners, (ii) investing the available funds of the Filer in Flow-Through Shares of Resource Companies, and (iii) incurring expenses as part of its ongoing administration.

9. Unless a material change takes place in the business and affairs of the Filer, the Limited Partners will obtain adequate financial information concerning the Filer from the semi-annual financial statements and the annual report containing audited financial statements of the Filer together with the auditors' report thereon distributed to the Limited Partners. The Prospectus and the semi-annual financial statements provide sufficient background materials and the explanations necessary for a Limited Partner to understand the Filer's business, its financial position and its future plans, including dissolution on or before May 1, 2007.

10. In light of the limited range of business activities to be conducted by the Filer and the nature of the investment of the Limited Partners in the Filer, the requirement to file and send the Third Quarter Interim Financial Statements to the Limited Partners may impose a material financial burden on the Filer without producing a corresponding benefit to the Limited Partners.

11. The Prospectus discloses that by purchasing Partnership Units, each Limited Partner acknowledges and agrees that he or she has given to AGS Resource 2005-1 GP Inc., the general partner of the Filer, the irrevocable power of attorney contained in Article 18 of the Amended and Restated Limited Partnership Agreement dated as of February 28, 2005, attached to and forming part of the Prospectus, and has thereby, in effect, consented to the making of this application for exemption from the reporting obligation under the Legislation to file and send the Filer's Third Quarter Interim Financial Statements.

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 requirement contained in the Legislation to file and send to the Limited Partners the Filer's Third Quarter Interim Financial Statements shall not apply to the Filer provided that this exemption shall terminate upon the occurrence of a material change in the affairs of the Filer unless the Filer satisfies the Decision Makers that the exemption should continue, which satisfaction shall be evidenced in writing.

Paul Moore"
Vice Chair
Ontario Securities Commission

"Suresh Thakrar"
Commissioner
Ontario Securities Commission

2.1.8 Business Development Bank Of Canada and BDC Investment Fund - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - application to revoke and replace a previously issued order dated October 4, 2000 which granted prospectus and registration relief in respect of an employee savings and investment plan. Current application made due to amendments to the investment objectives of the Issuer.

Ontario Statutes

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

October 7, 2005

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

AND

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

AND

**IN THE MATTER OF
BUSINESS DEVELOPMENT
BANK OF CANADA ("BDC") AND
THE BDC INVESTMENT FUND (THE "FUND")
(COLLECTIVELY, THE "FILERS")**

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the "Decision Makers") in each of the Jurisdictions have received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the "Legislation") to repeal their decision dated October 4, 2000 and replace it with this decision such that the requirements contained in the Legislation to file a prospectus and receive a receipt therefor and register as a dealer ("Prospectus and Registration Requirements") shall, following a proposed amendment to the investment objective of the Fund, continue not to apply to the distribution of units ("Units") of the Fund pursuant to the "Employee Savings and Investment Plan" ("ESIP") of BDC to employees of BDC resident in the Jurisdictions who elect to participate in the ESIP (the "Requested Relief").

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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

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

Interpretation

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

Representations

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

1. BDC is a financial institution, all of the shares (the "BDC Shares") of which are owned by the Government of Canada and whose head office is located in Montreal, Québec.

2. The BDC Shares are not listed on any stock exchange in Canada.

3. BDC has approximately 1,300 employees eligible to participate in the ESIP located in each of the provinces and territories of Canada.

4. The ESIP was established for the purpose of providing a corporate-sponsored savings plan and investment opportunity to the employees of BDC that will support the linkage between employees and overall BDC performance.

5. In connection with the ESIP, the Fund was established by trust agreement dated November 1, 2000, pursuant to the *Civil Code of Québec*.

6. All permanent employees of BDC not participating in any other long-term incentive plan of BDC ("Eligible Employees") may participate in the ESIP.

7. Units of the Fund are non-transferable.

8. Participation by Eligible Employees in the ESIP is voluntary and Eligible Employees are not induced to purchase Units of the Fund by expectation of employment or continued employment with BDC.

9. Eligible Employees participating in the ESIP ("Members") may acquire Units of the Fund by contributing up to a maximum of 6% of their annual salary through payroll deductions ("Member Contributions"), which are directed either to a tax-sheltered group registered retirement savings plan or a non tax-sheltered savings account or a combination of both.

10. BDC provided a discretionary contribution in the amount of $2,000 on behalf of each eligible individual employed by BDC as of the last business day of September 2000 ("BDC Initial Discretionary Contribution").

11. Member Contributions are matched by BDC in an amount representing at least 25% (up to a maximum of 65%) of the total uninterrupted Member Contributions during the preceding fiscal year of BDC based on the overall financial performance of the BDC ("BDC Contributions").

12. The Fund is currently restricted to investing approximately 95% of its assets in notes issued by BDC guaranteed by the Government of Canada (the "BDC Notes"). The BDC Notes bought by the Fund have an initial term greater than one year. The remaining approximate 5% of the Fund's assets are invested in debt securities having a term to maturity of less than one year and issued or guaranteed by the Government of Canada or a Canadian provincial government and in banker's acceptances issued by Canadian banks.

13. The BDC Notes are traded on the Canadian over-the-counter market and certain of them are traded on The Toronto Stock Exchange. The Fund acquires three types of BDC Notes which are currently available on the market: fixed interest rate notes, floating interest rate notes and structured notes. Fixed interest rate notes have a fixed interest rate for their entire term while the interest rate on floating interest rate notes fluctuates. The return on structured notes is based on factors other than an interest rate such as the return of a market index.

14. A Canadian trust company (the "Trustee") acts as trustee and custodian of the Fund.

15. BDC acts as manager to the Fund and engages a portfolio manager and investment counselor registered in Québec and Ontario, as portfolio manager of the Fund (the "Portfolio Manager").

16. Prior to acceptance of any undertaking by Eligible Employees to invest in the Fund, BDC provides the Eligible Employees with the rules of the ESIP and an information brochure, disclosing, among other things, the investment objectives of the Fund, the method of valuation of Units for purchase and redemption, the voting rights of unitholders and the Canadian income tax consequences of acquisition, holding and disposal of Units.

17. The initial value of $10 per unit fluctuates with the market price of the BDC Notes bought by the Fund. The value of the Fund is calculated on the 15th day of each month (a "Valuation Day") by the Trustee. Subscriptions and redemptions are processed by the Trustee if received before 4:00 p.m. (EST) on a Valuation Day.

18. Members may redeem Units purchased through Member Contributions for cash up to a maximum of two times per year on any Valuation Day. No redemption of Units purchased through BDC Initial Discretionary Contributions (except for the initial fifty percent (50%) of Units purchased) or BDC Contributions will be permitted while the Member remains an employee of BDC.

19. For its services as trustee and custodian, the Trustee is paid an annual fee of approximately $25,000, including a basic fee and a variable fee based upon assets under administration and the number of securities transactions effected by the Fund.

20. The Portfolio Manager is paid fees calculated as a percentage of assets under management, subject to minimum annual fees of $15,000.

21. All of the fees to the Trustee, Portfolio Manager and other service providers to the Fund are paid by BDC in the Fund's first operating year. BDC may require the Fund to pay those fees and expenses after the Fund's first year.

22. Audited annual financial statements of BDC are provided to Members within 140 days of its fiscal year end. The audited annual financial statements of the Fund are also provided to Members within the same time period.

23. The principal reason the Fund is structured as a unit trust is for the benefit of employees of BDC, so as to allow them to place Units in a registered retirement savings plan and receive revenue and capital gains relating to their Units on a tax-deferred basis.

24. Exemptions from the Prospectus and Registration Requirements contained in the Legislation in connection with the purchase of shares of an issuer by its employees are not available to BDC because its governing law does not permit the issue of shares to its employees.

25. On October 4, 2000, the Decision Makers issued a MRRS decision document (the "Initial Decision") providing that the Prospectus and Registration Requirements contained in the Legislation shall not apply, on certain conditions, to an issuance of Units of the Fund to Members. The Initial Decision was rendered based on a representation of BDC regarding the Fund's current investment objective.

26. BDC is proposing to amend the investment objective of the Fund such that it will be restricted to investing at least 90% of its assets in debt securities issued by BDC guaranteed by the Government of Canada and debt securities issued

and guaranteed by the Government of Canada or a Canadian provincial government having an initial term to maturity of greater than one year. The remaining 10% of the Fund's assets will be invested in debt securities having a term to maturity of less than one year issued by BDC and guaranteed by the Government of Canada or issued or guaranteed by the Government of Canada or a Canadian provincial government and, subject to a maximum of 5%, in banker's acceptances issued by Canadian banks.

Decision

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

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

(i) prior to the initial issuance of Units of the Fund to an Eligible Employee, such Eligible Employee is provided with a statement that as a consequence of this Decision certain protections, rights and remedies provided by the Legislation, including statutory rights of rescission and damages, will not be available in respect of the Units of the Fund issued pursuant to this Decision;

(ii) prior to the initial issuance of Units of the Fund to an Eligible Employee, such Eligible Employee is provided with an Information Brochure containing relevant information concerning the Fund, including the Canadian income tax consequences of acquiring, holding and disposing of Units thereof;

(iii) the proposed amendment to the investment objective of the Fund is approved by unitholders holding a majority of the Units of the Fund or by a majority of the votes cast at a meeting of unitholders called for the purpose of obtaining unitholder approval of the proposed amendment; and

(iv) the first trade of Units by an Eligible Employee must be made pursuant to a prospectus as required under the Legislation unless the conditions set out in subsection 2.6(3) of National Instrument 45-102 - Resale of Securities are satisfied or the trade is made in reliance on a prospectus exemption contained in the Legislation.

"Josée Deslauriers"
Directrice des marchés des capitaux
Authorité des marchés Financiers

2.1.9 Rogers Telecom Holdings Inc. - s. 83

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.

October 13, 2005

Torys LLP
Suite 3000, 79 Wellington St. W.
Box 270, TD Centre
Toronto, ON M5K 1N2

Attn: Raymond Archer

Dear Mr. Archer:

Re: Rogers Telecom Holdings Inc. (the "Applicant") - Application to Cease to be a Reporting Issuer under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions")

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

As the Applicant has represented to the Decision Makers that,

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

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

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

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

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

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

2.1.10 Enterra Energy Trust and Kingsbridge Capital Limited - MRRS Decision

Headnote

Application by a TSX- and NASDAQ-listed issuer and offshore purchaser for exemptive relief in relation to a proposed distribution of securities by the issuer by way of an "equity line of credit" – an equity line of credit is an agreement with a public company under which a purchaser makes a commitment at signing to purchase a specified dollar amount of securities on terms that enable the company to determine the timing and dollar amount of securities the purchaser will receive – the company has the right, but not the obligation, to sell the securities which are the subject of the equity line to the purchaser, up to a specified maximum dollar amount, in a series of draw downs over a specified period of time – purchaser purchases at a predetermined percentage discount (the "discount to market") from the volume weighted average price of the company's securities over a period of trading days – as a result of the discount to market and the delayed nature of the purchase, the purchaser has strong economic incentive simultaneously to resell (or sell short, or otherwise hedge) the securities which are the subject of a draw down to convert the discount to cash and to reduce as much as possible investment risk – purchaser may be considered to be acting as an "underwriter" – a draw down under an equity line of credit may be considered to be an indirect distribution of securities by the company to purchasers in the secondary market through the equity line purchaser acting as underwriter – in the present application, resales by the purchaser will generally be made in the U.S.; however, short sale and hedging transactions may involve, directly or indirectly, trades in Canada – relief granted to the issuer and purchaser from certain registration, prospectus and prospectus form requirements, subject to terms and conditions, including a 10% restriction on the number of securities that may be distributed under an equity line in any 12-month period; a requirement that the prospectus include certain disclosure identifying the purchaser as an underwriter and describing the contractual rights of purchasers who purchase from the equity line purchaser; a requirement that the issuer advise the TSX and, upon request, the Decision Makers at the time a draw down notice is issued; certain restrictions on the permitted activities of the purchaser; and certain notification and disclosure requirements.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 1(1) (definition of "distribution" and "underwriter"), 25(1)(a), 59(1), 71(1), 74(1), 147.

Applicable Ontario Rules

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

October 12, 2005

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA, SASKATCHEWAN AND ONTARIO

AND

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

AND

IN THE MATTER OF

ENTERRA ENERGY TRUST

AND

IN THE MATTER OF
KINGSBRIDGE CAPITAL LIMITED

MRRS DECISION DOCUMENT

Background

1. The local securities regulatory authority or regulator (the Decision Maker) in each of Alberta, Saskatchewan and Ontario (the Jurisdictions) has received an application from Enterra Energy Trust (Enterra) and Kingsbridge Capital Limited (Kingsbridge) in connection with secondary offerings (Secondary Offerings) by Kingsbridge into the United States of America (the US) of trust units (Trust Units) of Enterra to be purchased by Kingsbridge pursuant to an equity drawdown facility (the Facility) for a decision under the securities legislation of the Jurisdictions (the Legislation) that:

   1.1 the requirement under the Legislation that Kingsbridge and its directors, officers and certain of its employees be registered under the Legislation to conduct underwriting activities (the Registration Requirement) does not apply to Kingsbridge or its directors, officers or employees with respect to the Secondary Offerings;

   1.2 the requirement under the Legislation that the short form base shelf prospectus (the Prospectus) to be filed by Enterra include a certificate executed by Kingsbridge as underwriter (the Underwriter Certificate Requirement) does not apply with respect to the Secondary Offerings;

   1.3 the requirement under the Legislation that the Prospectus include the disclosure specified by item 6.3

Determination of Price of Form 44-101F3 *Short Form Prospectus* (the Prospectus Form Requirement) does not apply in respect of the pricing of the Secondary Offerings;

1.4 the requirement under the Legislation that Kingsbridge send or deliver to a purchaser of a security, within two business days of a sale, the latest prospectus and any amendment (the Prospectus Delivery Requirement) does not apply to Kingsbridge or to dealers through which Kingsbridge sells the Trust Units in the US in the Secondary Offerings; and

1.5 the right of a purchaser under the Legislation to withdraw from a purchase of a security within two business days after receipt by the purchaser of the Prospectus or any amendment (the Withdrawal Right) does not apply to a purchaser under a Secondary Offering.

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

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

Interpretation

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

Representations and Statements

5. Enterra makes the following representations to the Decision Makers:

5.1 Enterra is an open-ended unincorporated investment trust created by a trust indenture governed by the laws of Alberta with its head and principal office in Calgary, Alberta.

5.2 Enterra is a reporting issuer under the securities legislation of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick and Nova Scotia.

5.3 The Trust Units trade on the Toronto Stock Exchange and the NASDAQ National Market.

5.4 Enterra, in its sole discretion, determines how many Trust Units to sell under the Facility within specified minimum and maximum dollar amounts for each drawdown. The price at which Kingsbridge purchases Trust Units in a particular drawdown under the Facility is determined by applying a pre-determined percentage discount to the fifteen day volume-weighted average trading price of the Trust Units on the NASDAQ National Market (or other US exchange on which the Trust Units trade at the time) subject to Toronto Stock Exchange minimum pricing rules. The number of Trust Units in a particular drawdown is determined accordingly.

5.5 The number of Trust Units issuable in any 12-month period under one or more equity lines of credit, including the Facility, will not exceed 3,440,800.

5.6 Enterra will provide a copy of each Drawdown Notice to the Toronto Stock Exchange and, if requested to do so, to the Decision Makers, prior to or immediately upon its issuance.

5.7 Immediately following the closing of a drawdown under the Agreement, Enterra will issue a news release (i) announcing the closing of the drawdown, and (ii) stating that the Prospectus is available on the *System for Electronic Document Analysis and Retrieval* (SEDAR) and the EDGAR website of the US Securities and Exchange Commission (SEC).

5.8 Enterra intends to file the Prospectus with the securities commissions of British Columbia, Alberta, Saskatchewan and Ontario. The Prospectus will qualify, among other potential offerings, the Secondary Offerings.

5.9 The Prospectus will be prepared in accordance with the requirements of National Instrument 44-102 *Shelf Distributions*, as varied by the relief granted in this Decision.

5.10 Enterra and Enterra Energy Corp. (Corp) will provide to each purchaser in a Secondary Offering:

5.10.1 a contractual right of action for damages exercisable against Enterra, Corp, every director of Corp. as at the date of the Prospectus, and every other person who signs the Prospectus; and

5.10.2 a contractual right of rescission excerciseable against Enterra, on the same terms (including defences and limitations) as the right of rescission that would be provided under the Legislation to a purchaser of Trust Units directly from Enterra.

5.11 The Prospectus will disclose in plain language (the Disclosure): (i) that any sales of Trust Units acquired by Kingsbridge under the Facility, including any delivery of Trust Units to satisfy any short sales or similar hedging strategies will be made pursuant to the Prospectus; (ii) the contractual rights described in paragraph 5.10; (iii) that Secondary Offering purchasers of Trust Units will not be entitled to any rights of withdrawal under the Legislation; (iv) that Kingsbridge is considered to be an underwriter as such term is defined under applicable Canadian and US securities laws; (v) that Kingsbridge will have liability as an underwriter under US federal securities laws; and (vi) the relief, provided by this Decision, from the Registration Requirement and the Underwriter Certificate Requirement.

5.12 Enterra intends to file, pursuant to the multijurisdictional disclosure system (MJDS), a registration statement on Form F-10 (the Registration Statement) with the SEC that includes the Prospectus as modified in accordance with the MJDS rules (the US Prospectus).

6. Kingsbridge makes the following representations to the Decision Makers:

6.1 Kingsbridge is a corporation organized and existing under the laws of the British Virgin Islands with its head and principal office in Tortola, British Virgin Islands.

6.2 Kingsbridge has been established to, among other things, purchase and sell, as principal, securities of public companies including, without limitation, the purchase of equity securities pursuant to equity drawdown facilities.

6.3 Kingsbridge is not a registrant under the securities legislation of any province or territory of Canada or under securities legislation in the US.

7. Enterra and Kingsbridge jointly make the following representations to the Decision Makers:

7.1 Enterra and Kingsbridge have entered into a Trust Unit Purchase Agreement (the Agreement) governing the Facility, under which:

7.1.1 Kingsbridge has committed to purchase up to US$100,000,000 of Trust Units in a series of drawdowns over a 24-month period; and

7.1.2 Enterra has the right, but not the obligation, to sell the Trust Units to Kingsbridge, up to a specified maximum drawdown amount, in a series of drawdowns over that 24-month period.

7.2 When Enterra gives Kingsbridge notice that it intends to make a drawdown under the Facility (a Drawdown Notice), Kingsbridge is obligated to purchase from Enterra the dollar amount of Trust Units specified in the Drawdown Notice at the Discounted Price. The first drawdown is to be up to US$25,000,000. Each subsequent drawdown can be in a dollar amount up to the lesser of (i) 4% of Enterra's market capitalization as defined in the Agreement and (ii) US$25,000,000. There will be at least 20 consecutive trading days between each drawdown.

8. Kingsbridge seeks relief from the Registration Requirements in respect of the Secondary Offerings because it will sell Trust Units acquired by it under the Facility over an exchange outside Canada and will have no direct contract with purchasers.

9. Kingsbridge seeks relief from the Underwriter Certificate Requirement because Kingsbridge will not be acting as a conventional underwriter with respect to the Facility.

10. Kingsbridge seeks relief from the Prospectus Delivery Requirement in respect of the Secondary Offerings, on its own behalf and on behalf of dealers through which it sells the Trust Units in the US pursuant to the Registration Statement, because they will not necessarily know the identity of the ultimate purchasers of Trust Units sold in market transactions.

11. Enterra and Kingsbridge seek relief from the Prospectus Form Requirement in respect of the Secondary Offerings because the price at which Kingsbridge

will sell Trust Units in Secondary Offerings is presently unknown but will be determined between Kingsbridge and each purchaser of Trust Units either directly or by reference to then-prevailing market prices.

Decision

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

13. The Decision of the Decision Makers under the Legislation is that:

    13.1 the Registration Requirement does not apply to Kingsbridge or to its directors, officers or employees in respect of Secondary Offerings of Trust Units purchased by Kingsbridge under the Agreement;

    13.2 the Underwriter Certificate Requirement and the Prospectus Form Requirement do not apply to the Prospectus with respect to Secondary Offerings;

    13.3 the Prospectus Delivery Requirement does not apply to Secondary Offerings; and

    13.4 Withdrawtal Rights do not apply to Secondary Offerings;

    for so long as all of the representations in paragraphs 5.5, 5.6, 5.7, 5.10 and 5.11 remain true and provided that:

    13.5 Kingsbridge complies with US federal securities laws applicable to the Secondary Offerings; and

    13.6 upon request of a Decision Maker, Kingsbridge provides full particulars of trading and hedging activities, by Kingsbridge or by its associates, affiliates or insiders, relating to securities of Enterra.

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

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

2.1.11 Falcon Trust/Fiducie Falcon - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Issuer of mortgage pass-through certificates previously granted an exemption from the requirements to file annual and interim financial statements, subject to certain conditions. Issuer granted an exemption from the requirements in Multilateral Instrument 52-109 to file annual and interim certificates, subject to certain conditions, including the requirement to file alternative forms of annual and interim certificates.

Instrument cited

Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings.

October 17, 2005

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,
MANITOBA, ONTARIO, QUEBEC,
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
FALCON TRUST/FIDUCIE FALCON
(the "Filer")

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the "**Decision Maker**") in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") for an exemption from the requirements in Multilateral Instrument 52-109 – Certification of Disclosure in Issuers' Annual and Interim Filings ("MI 52-109") to file interim certificates and annual certificates, subject to certain conditions (the "**Requested Relief**").

Under the Mutual Reliance Review System for Exemptive Relief Applications:

1. the Ontario Securities Commission is the principal regulator for this application; and

2. 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

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

1. The Filer is a special purpose vehicle created pursuant to a declaration of trust made as of July 10, 2002 under the laws of the Province of Ontario, the beneficiary of which is a charity registered under the Income Tax Act (Canada). The only security holders of the Filer are and will be the holders (the "**Certificateholders**") of its asset-backed securities (the "**Certificates**").

2. The head office of the Filer is located in Toronto, Ontario. The issuer trustee (the "**Issuer Trustee**") is CIBC Mellon Trust Company, whose registered and principal office is located in Toronto, Ontario. The head office of Scotia Capital Inc., the administrative agent of the Filer, is also located in Toronto, Ontario.

3. The financial year-end of the Filer is December 31.

4. The Filer filed short form prospectuses (collectively, the "**Prospectuses**") dated October 4, 2002 and January 12, 2004 with each of the Canadian provincial securities regulatory authorities for the issuance of approximately $147,000,000 and $172,645,950, respectively, aggregate principal amount of Commercial Mortgage Pass-Through Certificates, Series 2002-SMU and Series 2003-SMU, respectively (collectively, the "**Issued Certificate**s") and received receipts for the Prospectuses from each of the Canadian provincial securities regulatory authorities.

5. The Filer is a reporting issuer, or the equivalent, in each of the provinces of Canada that provides for a reporting issuer regime.

6. Pending this decision, the Filer has complied with the alternative filings as contemplated by this decision by filing an annual certificate for the fiscal year ended December 31, 2004 (the "**2004 Fiscal Yea**r") in the form set out in Schedule "A" to this decision and interim certificates for the interim periods ended March 31, 2005 (the "**2005 First Quarter**") and June 30, 2005 (the "**2005 Second Quarter**") in the form set out in Schedule "B" to this decision. Accordingly, the Filer has not filed an annual certificate for the 2004 Fiscal Year or interim certificates for the 2005 First Quarter or the 2005 Second Quarter in the forms of Form 52-109 FT1 or Form 52-109FT2, respectively, as specified in MI 52-109.

7. To the Filer's knowledge, other than as set out in paragraph 0 above, it is currently not in default of any applicable requirement under the securities legislation thereunder.

8. The Filer is a "venture issuer" as defined in National Instrument 51-102 – *Continuous Disclosure Obligations* ("**NI 51-102**").

9. As a special purpose vehicle, the Filer does not carry on any activities except in respect of the issuance of Certificates, the origination of commercial mortgages and the purchase and acquisition of assets in connection therewith (the "**Securitized Assets**").

10. The Filer has no material assets or liabilities other than its rights and obligations arising from originating commercial mortgages and acquiring Securitized Assets in respect of the Issued Certificates.

11. Each particular series or class of Certificates, including each of the two series of Issued Certificates, will (and does, in the case of the two series of Issued Certificates) represent undivided co-ownership interests in a particular pool of Securitized Assets.

12. Certificateholders only have recourse to the particular pool of Securitized Assets securing their series and class of Certificates and do not have recourse to any assets of the Filer.

13. Pursuant to an MRRS decision document dated November 22, 2002 (the "**2002 Decision**") and a decision document dated August 30, 2005 of the New Brunswick Securities Commission (together with the 2002 Decision, the "**Previous Decisions**"), the Filer is exempted, on certain terms and conditions, from the requirements of the securities legislation in the Jurisdictions concerning, inter alia, the preparation, filing and delivery of interim and annual financial statements (the "**Financial Statements**").

14. Pursuant to Section 13.2 of NI 51-102, the Filer has delivered a notice dated May 28, 2004 to the Decision Makers stating that it intends to rely on the 2002 Decision to the same extent and on the same terms as contained therein.

15. For each offering of Certificates, the discrete pool of Securitized Assets will be deposited with a custodian pursuant to a servicing agreement or other custodial arrangement (each a "**Servicing Agreement**") that the Filer will enter into which will govern the rights of Certificateholders and their respective entitlement to the Securitized Assets.

16. Each Servicing Agreement will also provide for the fulfilment of certain administrative functions relating to the Certificates, such as the maintenance of a register of holders of Certificates and the preparation of periodic reports (the "**Reports**") to Certificateholders containing financial and other information in respect of the applicable pool of Securitized Assets and Certificates, by the master servicer (the "Master Servicer"), the special servicer (the "**Special Servicer**") and the reporting agent (the "**Reporting Agent**") for such pool of Securitized Assets.

17. Pursuant to the Servicing Agreement in respect of the Issued Certificates, respectively, and as contemplated in the Previous Decisions:

    a) the Master Servicer shall deliver annually statement of compliance signed by a senior officer of each applicable Master Servicer or other party acting in a similar capacity on behalf of the Filer for the applicable pool of Securitized Assets (the "**Compliance Certificat**e"), certifying that the Master Servicer of such other party acting in a similar capacity has fulfilled all of its obligations under the related Servicing Agreement during the year or, if there has been a default in the fulfilment of any such obligation, specifying each such default and the status thereof; and

    b) the Master Servicer shall obtain annually an accountant's report in form and content acceptable to the Decision Makers prepared by a firm of independent public or chartered accountants acceptable to the Decision Makers (the "**Accountants' Report**") respecting compliance by the Master Servicer or other party acting in a similar capacity on behalf of the Filer with minimum servicing standards identified in the Uniform Single Attestation Program (USAP) or such other servicing standard acceptable to the Decision Makers (in all material respects, except for such material exceptions or errors in records that, in the opinion of such firm, are required to be reported).

18. In accordance with the Previous Decisions, within 60 days of the end of each interim period (as defined in NI 51-102) of the Filer, the Filer or its duly appointed representative or agent will post on the applicable website or mail to Certificateholders who so request and will contemporaneously file through SEDAR management's decision and analysis ("**MD&A"**) with respect to the applicable pool of Securitized Assets included in the Filer's Annual Information Form ("**AIF**") filed with the Decision Makers (as supplemented by any short form prospectuses filed by the Filer during the intervening period).

19. In accordance with the Previous Decisions, within 140 days of the end of each financial year of the Filer, the Filer or its duly appointed representative or agent will post on the applicable website or mail to Certificateholders who so request and will contemporaneously file through SEDAR:

    a) MD&A with respect to the applicable pool of Securitized Assets included in the Filer's AIF filed with the Decision Makers (as supplemented by any short form prospectuses filed by the Filer during the intervening period);

    b) the Compliance Certificate referenced in paragraph 0 above for the applicable pool of Assets, certifying that the Master Servicer or such other party acting in a similar capacity has fulfilled all of its obligations under the related Pooling and Servicing Agreement during the year or, if there has been a default, specifying each such default and the status thereof; and

    c) the Accountants' Report referenced in paragraph 0 above respecting compliance by the Master Servicer (or such other party acting in a similar capacity) with the Uniform Single Attestation Program (USAP) (except that the Master Servicer does not have to have in effect a fidelity bond and errors and omissions policy required under Article VII of the USAP so long as it maintains a minimum rating of "A" (or its equivalent) from prescribed rating organizations) or such other servicing standard acceptable to the Decision Makers.

Decision

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

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted, provided that:

1. the Filer is not required to prepare, file and deliver Financial Statements under the Legislation, whether pursuant to exemptive relief or otherwise;

2. for each financial year of the Filer, within 140 days of the end of the financial year, the Filer or its duly appointed representative or agent will file through SEDAR an annual certificate in the form set out in

Schedule “A” of this MRRS decision document and personally signed by a person who, at the time of filing of the annual certificate, is a senior officer of the Filer, a Servicer or an administrative agent of the Filer;

3. if the Filer voluntarily files an AIF for a financial year after it has filed the annual certificate referred to in paragraph 0 above for the financial year, the Filer will file through SEDAR a second annual certificate that:

a) is in the form set out in Schedule “A” of this MRRS decision document;

b) is personally signed by a person who, at the time of filing of the second annual certificate, is a senior officer of the same person or company of which the senior officer who signed the annual certificate referred to in paragraph 0 above is an officer; and

c) certifies the AIF in addition to the other documents identified in the annual certificate;

4. for each interim period, within 60 days of the end of the interim period, the Filer or its duly appointed representative or agent will file through SEDAR an interim certificate in the form set out in Schedule “B” of this MRRS decision document and personally signed by a person who, at the time of filing of the interim certificate, is a senior officer of the Filer, a Servicer or an administrative agent of the Filer; and

5. the Requested Relief will cease to be effective in a Jurisdiction on the earlier of:

a) June 1, 2008; and

b) the date on which a rule regarding the continuous disclosure requirements for issuers of asset-backed securities comes into force in a Jurisdiction.

“Erez Blumberger”
Assistant Manager, Corporate Finance
Ontario Securities Commission

SCHEDULE “A”

Certification of annual filings for issuers of asset-backed securities

I, ***<identify (i) the certifying individual, (ii) his or her position in relation to the issuer and (iii) the name of the issuer>***, certify that:

1. I have reviewed the following documents of ***<identify issuer>*** (the issuer):

(a) the servicer reports for each month in the financial year ended <***insert financial year end***> (the servicer reports);

(b) annual MD&A in respect of the issuer’s pool(s) of assets for the financial year ended <***insert the relevant date***> (the annual MD&A);

(c) AIF for the financial year ended <***insert the relevant date***> (the AIF); [if applicable] and

(d) each annual statement of compliance regarding fulfillment of the obligations of the servicer(s) under the related servicing agreement(s) for the financial year ended ***<insert the relevant date>*** (the annual compliance certificate(s)),

(the servicer reports, the annual MD&A, the AIF [if applicable] and the annual compliance certificate(s) are together the annual filings);

2. Based on my knowledge, the annual filings, taken as a whole, do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make the statements not misleading in light of the circumstances under which they were made, with respect to the periods covered by the annual filings;

3. Based on my knowledge, all of the distribution, servicing and other information and all of the reports on assessment of compliance with servicing criteria for asset-backed securities and the annual accountant’s report respecting compliance by the servicer(s) with servicing criteria for asset-backed securities required to be filed under the decision(s) ***<identify the decision(s)>*** as of the date of this certificate, other than material change reports and press releases, have been filed with the securities regulatory authorities through SEDAR;

4. **Option #1** ***<use this alternative if a servicer is providing the certificate>***
I am responsible for reviewing the activities performed by the servicer(s) and based on my knowledge and the compliance review(s)

conducted in preparing the annual compliance certificate(s), and except as disclosed in the annual filings, the servicer(s) [has/have] fulfilled [its/their] obligations under the servicing agreement(s); and

Option #2 *<use this alternative if the Issuer or the administrative agent is providing the certificate>*
Based on my knowledge and the annual compliance certificate(s), and except as disclosed in the annual filings, the servicer(s) [has/have] fulfilled [its/their] obligations under the servicing agreement(s); and

5. The annual filings disclose all material instances of noncompliance with the servicing criteria based on the [servicer's/servicers'] assessment of compliance with such criteria.

[In giving the certifications above, I have reasonably relied on information provided to me by the following unaffiliated parties <***insert name of issuer, servicer, sub-servicer, co-servicer, administrative agent, reporting agent or trustee*** >.]

Date: <*insert date of filing*>

____
[Signature]
[Title]
< ***indicate the capacity in which the certifying officer is providing the certificat***e >

SCHEDULE "B"

<u>Certification of interim filings for issuers of asset-backed securities</u>

I, ***<identify (i) the certifying individual, (ii) his or her position in relation to the issuer and (iii) the name of the issuer>***, certify that:

1. I have reviewed the following documents of ***<identify issuer>*** (the issuer):

   (a) the servicer reports for each month in the interim period ended ***<insert relevant date>*** (the servicer reports); and

   (b) interim MD&A in respect of the issuer's pool(s) of assets for the interim period ended ***<insert the relevant date>*** (the interim MD&A),

   (the servicer reports and the interim MD&A are together the interim filings);

2. Based on my knowledge, the interim filings, taken as a whole, do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make the statements not misleading in light of the circumstances under which they were made, with respect to the periods covered by the interim filings; and

3. Based on my knowledge, all of the distribution, servicing and other information required to be filed under the decision(s) ***<identify the decision(s)>*** as of the date of this certificate, other than material change reports and press releases, have been filed with the securities regulatory authorities through SEDAR.

[In giving the certifications above, I have reasonably relied on information provided to me by the following unaffiliated parties ***<insert name of issuer, servicer, sub-servicer, co-servicer, administrative agent, reporting agent or trustee >***.]

Date: ***<insert date of filing>***

____
[Signature]
[Title]
< indicate the capacity in which the certifying officer is providing the certificate >

2.1.12 Premium Brands Operating GP Inc. - s. 83

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., s. 83.

October 12, 2005

Borden Ladner Gervais LLP
1200 Waterfront Centre
200 Burrard Street, PO Box 48600
Vancouver, BC V7X 1T

Attention: Kathleen Keilty

Dear Madam:

Re: Premium Brands Operating GP Inc. (the "Applicant") - Application to Cease to be a Reporting Issuer under the securities legislation of Alberta, Saskatchewan, Ontario, Québec, New Brunswick and Newfoundland and Labrador (the "Jurisdictions")

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

As the Applicant has represented to the Decision Makers that:

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

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

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

4. the Applicant is not in default of any 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 12th day of October, 2005.

"Blaine Young"
Director, Legal Services & Policy Development
Alberta Securities Commission

2.1.13 Premium Brands Holdings Limited Partnership - s. 83

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., s. 83.

October 12, 2005

Borden Ladner Gervais LLP
1200 Waterfront Centre
200 Burrard Street, PO Box 48600
Vancouver, BC V7X 1T2

Attention: Kathleen Keilty

Dear Madam:

Re: Premium Brands Holdings Limited Partnership (the "Applicant") - Application to Cease to be a Reporting Issuer under the securities legislation of Alberta, Saskatchewan, Ontario, New Brunswick and Newfoundland and Labrador (the "Jurisdictions")

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

As the Applicant has represented to the Decision Makers that:

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

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

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

4. the Applicant is not in default of any 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 12th day of October, 2005.

"Blaine Young"
Director, Legal Services & Policy Development
Alberta Securities Commission

2.1.14 Medical Discovery Management Corporation - MRRS Decision

Headnote

Approval granted for a change of control of a manager of labour sponsored investment funds.

Rules Cited

National Instrument 81-102 Mutual Funds, s. 5.5(2).

October 11, 2005

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

AND

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

AND

**IN THE MATTER OF
MEDICAL DISCOVERY MANAGEMENT CORPORATION
(THE "FILER")**

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (each, a "Decision Maker", and together, the "Decision Makers") in each of the Jurisdictions has received an application from the Filer dated August 29, 2005 (the "Application") for approval pursuant to Section 5.5(2) of National Instrument 81-102 – *Mutual Funds* ("NI 81-102") for a change of control of the Filer.

Under the Mutual Reliance Review System for Exemptive Relief Applications

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

(b) his MRRS decision document evidences the decision of each Decision Maker, as applicable.

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 the manager of Canadian Medical Discoveries Fund Inc. ("CMDF") and Canadian Medical Discoveries Fund II Inc. ("CMDF II" and, together with CMDF, the "Funds"). CMDF is a reporting issuer, where such status exists, in the Jurisdictions, where such status exists. CMDF II is a reporting issuer, where such status exists, in the Jurisdictions, except for the provinces of Saskatchewan, New Brunswick and Nova Scotia.

2. The Funds are registered as labour sponsored investment fund corporations under the *Community Small Business Investment Funds Act* (Ontario). The Funds are also registered as labour sponsored venture capital corporations under the *Income Tax Act* (Canada). CMDF has also been approved as a qualifying fund pursuant to the *Labour-sponsored Venture Capital Corporation Act* (Saskatchewan).

3. On August 17, 2005, MDS Capital Corp. (the "Purchaser"), and Stilco Investments Limited (the "Seller") executed a purchase agreement (the "Purchase Agreement"). Pursuant to the Purchase Agreement, the Seller has agreed, among other things, to sell all of the shares of the Filer the Seller owns to the Purchaser, thereby resulting in a change of control of the Filer.

4. Prior to the change of control of the Filer, the authorized capital of the Filer consists of an unlimited number of common shares, of which 500 are held by the Purchaser and 500 are held by the Seller.

5. A notice regarding the change of control of the Filer was mailed to shareholders of the Funds on August 18, 2005. Amendments dated August 26, 2005 to the Funds' prospectuses regarding the change of control of the Filer have been filed.

6. Since inception of the Funds, the Purchaser has assisted the Filer in identifying, screening and analyzing eligible investments.

7. The Purchaser is a private corporation incorporated under the laws of the Province of Ontario. The purchaser is

one of Canada's largest venture capital fund managers and is focused on providing financial support and other services to help build private health care and life sciences companies.

8. Upon the change of control of the Filer, the Funds will be managed in a consistent manner as prior to the change of control.

9. New appointments of directors have been made to the Filer and the Funds on August 25, 2005. The appointments were intended to fill existing vacancies on the board of directors of the Filer and the Funds and were not a result of the change of control.

Decision

Each of the Decision Makers is satisfied that, based on the information and representations contained in the Application and this decision, and for the purposes described in the Application, the Decision Makers, as applicable, hereby grant approval pursuant to Section 5.5(2) of NI 81-102 in respect of the change of control of the Filer.

The approval provided herein is subject to compliance with all applicable provisions of NI 81-102.

"Leslie Byberg"
Manager, Investment Funds Branch

2.1.15 Norcast Income Fund - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Relief granted from the requirement for an income trust to include a pro forma interim income statement of an acquired business in a business acquisition report provided that the business acquisition report includes the financial statements pertaining to the acquired business that were included in the income trust's final prospectus, and the Fund's MD&A filed with its interim financial statements includes a discussion of pro forma results with a comparison to the preceding year.

National Instruments Cited

National Instrument 51-102 Continuous Disclosure Obligations.

October 18, 2005

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO,
QUEBEC, 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
NORCAST INCOME FUND
(the Fund)**

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 Fund for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Fund from the requirement under paragraph 8.4(3)(b)(ii) of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) that the Fund include a *pro forma* income statement of the Fund for the six months ended June 30, 2005 in its business acquisition report in respect of the Acquisition (as defined below) (the **Requested Relief**).

Under the Mutual Reliance Review System for Exemptive Relief Applications

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

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

Interpretation

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

Representations

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

1.1 The Fund is an open-ended limited purpose trust established under the laws of the Province of Ontario pursuant to a declaration of trust dated as of May 10, 2005 and amended and restated on June 15, 2005.

1.2 The Fund filed a prospectus dated June 15, 2005 (the **Prospectus**) in each of the provinces and territories of Canada in connection with the initial public offering of 7,702,500 units (**Units**) of the Fund.

1.3 The Fund became a reporting issuer, or the equivalent, in each of the provinces and territories of Canada upon the filing of the Prospectus and, to the best of its knowledge, is currently not in default of any applicable requirements under the securities legislation thereunder, except in respect of the requirements in paragraph 8.4(3)(b)(ii) of NI 51-102 as it pertains to the business acquisition report of the Fund dated September 5, 2005, from which this application is seeking relief.

1.4 The Fund is also a reporting issuer or the equivalent in Prince Edward Island, the Yukon, the Northwest Territories and Nunavut, however, an application is not being made to the securities regulatory authorities for this province and the territories as the Fund understands that NI 51-102 has not been adopted in those jurisdictions.

1.5 The Units are listed on the Toronto Stock Exchange. As at September 2, 2005, the Fund had 7,702,500 Units issued and outstanding.

1.6 The Fund was formed for the purpose of indirectly acquiring and holding a 100% interest in Norcast Casting Company Ltd.

1.7 Norcast Casting Company Ltd. is a company incorporated under the laws of the Province of Ontario and is a manufacturer of mill liners and small grinding media for the global mining industry.

1.8 On June 22, 2005, the date of closing of its initial public offering, the Fund acquired all of the shares of Norcast Casting Company Ltd. for a purchase price of approximately CDN$84,053,500 (the **Acquisition**).

1.9 The Prospectus contained the following financial statements (the **Fund's Prospectus Financial Statements**):

(i) unaudited financial statements of Norcast Casting Company Ltd. for the three months ended March 31, 2005 and March 31, 2004;

(ii) audited financial statements of Norcast Casting Company Ltd. for the three years ended December 31, 2004, December 31, 2003 and December 31, 2002;

(iii) a *pro forma* consolidated balance sheet of the Fund as at March 31, 2005;

(iv) a *pro forma* consolidated income statement of the Fund for the year ended December 31, 2004;

(v) a *pro forma* consolidated income statement of the Fund for the three month period ended March 31, 2005; and

(vi) a compilation report for the Fund to accompany the *pro forma* financial statements signed by the Fund's auditor.

1.10 On August 11, 2005, the Fund filed interim financial statements for the interim period ended June 30, 2005 (the **Interim Financial Statements**). The Interim Financial Statements included a consolidated balance sheet as at June 30, 2005, and a statement of operations, consolidated statement of retained earnings and consolidated statement of cash flow, each for the period from May 10, 2005 to June 30, 2005. The Interim Financial Statements gave effect to the Acquisition as of June 22, 2005.

1.11 The Management Discussion and Analysis (**MD&A**) that was filed concurrently with the Interim Financial Statements presented combined operating results for the 13 weeks ended June 30, 2005 and the 26 weeks ended June 30, 2005. These combined results combined the actual results of the Fund and Norcast over the applicable period and compared those results to the results Norcast for the same period in the prior financial year.

1.12 A copy of each of the Interim Financial Statements and the MD&A are available on SEDAR.

1.13 As the Fund had no material assets prior to the Acquisition, the Acquisition constitutes a “significant acquisition” of the Fund for the purposes of NI 51-102 requiring the Fund to file a business acquisition report on or before September 5, 2005 pursuant to section 8.2 of NI 51-102.

1.14 Pursuant to section 8.4 of NI 51-102, a business acquisition report must be accompanied by certain financial statements, including:

[8.4(3)(b)] a pro forma income statement of the reporting issuer that gives effect to significant acquisitions completed after the ending date of the reporting issuer’s most recently completed financial year for which financial statements are required to have been filed, as if they had taken place at the beginning of that financial year, for each of the following financial periods:

(i) the reporting issuer’s most recently completed financial year for which financial statements are required to have been filed; and

(ii) the reporting issuer’s most recently completed interim period that ended after the period in subparagraph (i) for which financial statements are required to have been filed;

1.15 Concurrently with filing the application, the Fund has filed a business acquisition report which includes the Fund’s Prospectus Financial Statements.

Decision

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

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted.

“John Hughes”
Manager
Ontario Securities Commission

2.1.16 Northwater Fund Management Inc. et al. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – investment fund exempt from disclosing the names of the issuers of its portfolio assets provided that certain alternative disclosure is given in the statement of investment portfolio and the summary of investment portfolio.

Rules Cited

National Instrument 81-106 *Investment Fund Continuous Disclosure*, s. 3.5, s. 6.2, and Form 81-106F1, Part B, Item 5.

October 11, 2005

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,
MANITOBA, ONTARIO, QUÉBEC, NEW BRUNSWICK,
NOVA SCOTIA, 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
NORTHWATER FUND MANAGEMENT INC. (THE FILER)
AND NORTHWATER MARKET-NEUTRAL TRUST,
NORTHWATER FIVE-YEAR MARKET-NEUTRAL TRUST
AND
NORTHWATER TOP 75 INCOME TRUSTS*PLUS*
(collectively, the Trusts)**

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer and the Trusts for a decision under National Instrument 81-106 Investment Fund Continuous Disclosure (NI 81-106) for an exemption from the following provisions of NI 81-106 (the Requested Relief):

(a) the requirement in paragraph 3.5(1)1 of NI 81-106 to include in the statement of investment portfolio for each Trust the name of the issuer of each portfolio asset; and

(b) with respect to the preparation of both management reports of fund performance (MRFPs) under Part 4 of NI 81-106 and quarterly portfolio disclosure under Part 6 of NI 81-106, both required to be prepared in accordance with Form 81-106F1 or parts thereof (the Summary of Investment Portfolio), the requirement in Item 5(2)(b), Part B of Form 81-106F1 to disclose the names of the top 25 positions held by each Trust.

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 is the manager of each Trust and the trustee of Northwater Five-Year Market-Neutral Trust (NMN5) and Northwater Top 75 Income Trusts*PLUS* (NTP).

2. Each Trust is a reporting issuer in those Jurisdictions whose securities legislation contemplates such status and is a "non-redeemable investment fund" under NI 81-106. The Trusts distributed their securities in each Jurisdiction pursuant to prospectuses dated July 18, 1997 in respect of Northwater Market-Neutral Trust (NMNT), dated June 21, 2004 and December 6, 2004 in respect of NMN5 and dated February 15, 2005 in respect of NTP.

3. Each Trust invests directly or indirectly in a portfolio of hedge funds (each, a Hedge Fund Portfolio) that utilize market-neutral strategies and the returns to investors in each Trust are based, in whole or in part, as applicable, on the returns of the respective Hedge Fund Portfolio.

4. The hedge funds (the Underlying Hedge Funds) that comprise the Hedge Fund Portfolios are private investment funds, the managers of which are typically located in the U.S., Canada, Europe, Australia and Asia and, other than certain funds that are subject to the reporting requirements of the Irish Stock Exchange as a result of their listing thereon, are generally not subject to any continuous disclosure requirements in any jurisdiction.

5. The investment restrictions for each Hedge Fund Portfolio (other than for NMNT) require that the Hedge Fund Portfolio must be invested in a minimum of 25 underlying hedge funds and a minimum of 7 distinct investment strategies, and the investment restrictions for NMNT require that at no time may more than 10% of the Trust's property consist of securities of any one issuer.

6. The Filer believes that disclosure of the names of the Underlying Hedge Funds is contrary to the interests of the unitholders of the Trusts and would potentially decrease the value of the Underlying Hedge Fund investments held by the Trusts.

7. The Filer, as a fiduciary to the Trusts, believes it is in the best interests of the Trusts and the unitholders to tailor the disclosure related to the Hedge Fund Portfolio by providing information that is meaningful and will assist the unitholders in assessing the investment characteristics and risk of the individual investments held in the Hedge Fund Portfolio as well as the portfolio as a whole rather than disclosing the individual names of the Underlying Hedge Funds.

8. The requested relief is intended as a modest adjustment to certain requirements of NI 81-106 to better take into account the operations of the Trusts while remaining faithful to the public interest objective underlying NI 81-106.

Decision

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

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted, provided that

1. in the statement of investment portfolio or Summary of Investment Portfolio of a Trust,

    (a) each Underlying Hedge Fund is identified by a unique name;

    (b) the unique name assigned to each Underlying Hedge Fund will be used consistently whenever the Underlying Hedge Fund is referred to, will not be changed and will not be used to identify a different Underlying Hedge Fund;

    (c) if an investment in any one of the Underlying Hedge Funds represents more than 5% of the net assets of a Trust, the name of that Underlying Hedge Fund is disclosed;

2. the Summary of Investment Portfolio for each Trust discloses the allocation of the Underlying Hedge Funds by investment strategy, including

    (a) the number of Underlying Hedge Funds in each investment strategy category;

    (b) the current dollar value of each investment strategy category;

    (c) the percentage of the Hedge Fund Portfolio invested in each investment strategy category; and

    (d) the largest individual Underlying Hedge Fund holding for each investment strategy as a percentage of the total net asset value of the Trust;

3. in the statement of investment portfolio, or the notes to that statement, of each Trust, the Hedge Fund Portfolio is broken down into subgroups showing:

    (a) the geographic location of the Underlying Hedge Funds;

    (b) the age or date of creation of the Underlying Hedge Funds; and

    (c) the size of the Underlying Hedge Funds;

4. the Summary of Investment Portfolio for each Trust discloses

    (a) any non-arm's length relationship between an Underlying Hedge Fund and any of a Trust, the Filer (or an affiliate of the Filer), or another investment fund managed by the Filer (or an affiliate of the Filer); and

    (b) whether any other investment fund managed by the Filer (or an affiliate of the Filer) is invested in the same Underlying Hedge Fund;

5. the interim financial statements for the Trusts are reviewed by the auditor;

6. the information required by subsection 3.5(1) of NI 81-106 is provided at least

quarterly to the advisory board of the Trusts; and

7. this Decision terminates upon the coming into force of any legislation or rule of the Decision Makers dealing with subsection 3.5(1) of NI 81-106, Item 5 in Part B of Form 81-106F1, or any matters relating to the portfolio disclosure provided by hedge funds or investment funds that invest in hedge funds.

"Leslie Byberg"
Manager, Investment Fund Branch
Ontario Securities Commission

2.2 Orders

2.2.1 Affinity Financial Group Inc., International Structured Products Inc., Affinity Restricted Securities Inc., Dionysus Investments Ltd., Brian Keith Mcwilliams, David John Lewis and Louis Sapi - ss. 127, 127.1

October 12, 2005

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

AND

IN THE MATTER OF
AFFINITY FINANCIAL GROUP INC.,
INTERNATIONAL STRUCTURED PRODUCTS INC.,
AFFINITY RESTRICTED SECURITIES INC.,
DIONYSUS INVESTMENTS LTD., BRIAN KEITH MCWILLIAMS,
DAVID JOHN LEWIS and LOUIS SAPI

ORDER
DAVID JOHN LEWIS

WHEREAS on September 19, 2005 the Ontario Securities Commission (the "Commission") issued a Notice of Hearing and Statement of Allegations pursuant to sections 127 and 127.1 of the Securities Act, R.S.O. 1990 c.S-5, as amended (the "Act") in respect of Affinity Financial Group Inc., International Structured Products Inc., Affinity Restricted Securities Inc., Dionysus Investments Ltd., Brian Keith McWilliams, David John Lewis ("Lewis") and Louis Sapi;

AND WHEREAS Lewis entered into a settlement agreement with Staff of the Commission dated September 21, 2005 (the "Settlement Agreement") in which he agreed to a proposed settlement of the proceeding, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for Lewis 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 dated September 21, 2005 attached to this Order is approved;

2. pursuant to clause 1 of subsection 127(1) of the Act, Lewis' registration under Ontario securities law is terminated;

3. pursuant to clause 7 of subsection 127(1) of the Act, Lewis must resign any

positions that he holds as a director or officer of a registrant;

4. pursuant to clause 8 of subsection 127(1) of the Act, Lewis is permanently prohibited from acting as a director or officer of a registrant; and

5. pursuant to section 127.1 of the Act, Lewis must pay the sum of $10,000.00 towards the costs of the investigation of this matter.

“Robert Shirriff”

“Carol Perry”

2.2.2 Portus Alternative Asset Management Inc. And Boaz Manor - s. 144

October 13, 2005

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

AND

PORTUS ALTERNATIVE ASSET MANAGEMENT INC. and BOAZ MANOR

ORDER
(Section 144)

WHEREAS on February 10, 2005, the Ontario Securities Commission (the “Commission”) ordered, pursuant to clause 2 of subsection 127(1) of the *Securities Act*, R.S.O. 1990 c. S.5, as amended (the “Act”), that trading in any securities by Portus Alternative Asset Management Inc. ("Portus") cease, except with respect to certain pre-authorized periodic withdrawals;

AND WHEREAS, pursuant to section 144 of the Act, the Executive Director of the Commission has applied for an Order varying the Commission's Order dated February 10, 2005 in the manner set out herein;

AND WHEREAS, between approximately February of 2003 and May of 2003, Portus offered the Market Neutral Preservation Fund (the “MNPF”) product to investors. The MNPF structure is a non-prospectus qualified mutual fund purportedly offered directly to accredited investors by way of Offering Memorandum;

AND WHEREAS, the MNPF was designed to be advantageous from a taxation perspective through, among other things, the use of a derivative structure involving non-dividend paying Canadian securities including shares of Precision Drilling Corp. (“Precision”) and Patheon Inc. (“Patheon”);

AND WHEREAS, Precision has announced its intention to reorganize into an income trust. Pursuant to such reorganization, in exchange for their non-dividend paying shares, shareholders in Precision will receive units in the income trust, common shares in Weatherford International Ltd (currently owned by Precision) and cash. This would result in unfavourable tax consequences for investors in the MNPF as a consequence of the related distribution of income and/or capital gains;

AND WHEREAS, KPMG Inc. (“KPMG”), as Receiver over Portus, intends to bring a motion before Justice Campbell of the Ontario Superior Court of Justice (Commercial List) on October 14, 2005, requesting an Order authorizing it to take such action as it considers appropriate for the purposes of removing the shares of Precision from the Canadian basket of non-dividend paying securities purchased in connection with the MNPF and

replacing those shares with other non-dividend paying securities;

AND WHEREAS, the Receiver states in its Eleventh Report dated October 7, 2005 that it is necessary to remove the shares of Precision from the MNPF structure in order to preserve the integrity of the MNPF structure and to avoid the adverse tax consequences associated with the reorganization of Precision into an income trust;

AND WHEREAS, the making of this Order is not prejudicial to the public interest;

AND WHEREAS by Commission order made on June 29, 2005 pursuant to section 3.5(3) of the Act, each of Susan Wolburgh Jenah, Paul M. Moore, Robert W. Davis, Harold P. Hands and Paul K. Bates, acting alone, is authorized to make orders under section 144 of the Act;

IT IS HEREBY ORDERED that, pursuant to section 144 of the Act, the Commission's Temporary Order of February 10, 2005 is varied to permit the Receiver to take such action as it considers appropriate (including trading in the shares of Precision and Patheon) for the purposes of removing the shares of Precision from the Canadian basket of non-dividend paying securities purchased in connection with the MNPF structure and replacing those shares with other non-dividend paying securities.

"Paul Moore"

2.2.3 Mystique Energy, Inc. - s.83.1(1

Headnote

Subsection 83.1(1) – Issuer deemed to be a reporting issuer in Ontario – Issuer already a reporting issuer in British Columbia and Alberta – Issuer's securities listed for trading on the TSX Venture Exchange – Continuous disclosure requirements in British Columbia and Alberta substantially same as those in Ontario.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 83.1(1).

October 14, 2005

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

AND

IN THE MATTER OF
MYSTIQUE ENERGY, INC.

ORDER
(Subsection 83.1(1))

UPON the application of Mystique Energy, Inc. (the **Issuer**) for an order, pursuant to subsection 83.1(1) of the Act, deeming the Issuer to be a reporting issuer for the purposes of Ontario securities law;

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

AND UPON the Issuer representing to the Commission as follows:

1. The Issuer was incorporated on August 31, 1993 pursuant to the Business Corporations Act (Alberta) under the name "578303 Alberta Inc.". The Issuer changed its name to "Kingfisher Capital Corporation" by Certificate of Amendment dated November 19, 1993 and to "Schwanberg International Incorporated" by Certificate of Amendment dated January 24, 1994. Effective January 1, 2004, the wholly-owned subsidiaries of the Issuer, namely, "Lanex Resources Inc.", "Macroplus Energy Inc." and "650256 Alberta Ltd." were amalgamated into the Issuer. Finally, the Issuer changed its name to "Mystique Energy, Inc." by Certificate of Amendment dated January 19, 2004.

2. The head office of the Issuer is located at Suite 900, 805 – 8th Avenue SW, Calgary, Alberta, T2P 1H7.

3. The Issuer is authorized to issue an unlimited number of common shares (the **Common**

Shares) and preferred shares, of which 44,205,332 Common Shares are issued and outstanding. An aggregate of 3,223,400 of the Issuer's Common Shares are also reserved for issuance on the exercise of stock options granted by the Issuer to its directors, officers, employees and consultants, and a further 8,240,867 Common Shares are reserved for issuance upon the exercise of outstanding share purchase warrants.

4. The Issuer's Common Shares are listed and posted for trading on the TSX Venture Exchange (**TSXV**) under the symbol "MYS".

5. The Issuer has been a reporting issuer under the *Securities Act* (Alberta) (the **Alberta Act**) since on or about September 19, 1995 and became a reporting issuer under the *Securities Act* (British Columbia) (the *BC Act*) on November 19, 1999 as a consequence of the Alberta Stock Exchange/Vancouver Stock Exchange merger.

6. The Issuer is not a reporting issuer or equivalent under the securities legislation of any other jurisdiction in Canada.

7. The Issuer is not in default of any requirements of the Alberta Act, the BC Act or the TSXV.

8. The continuous disclosure requirements of the Alberta Act and the BC Act are substantially the same as the requirements under the Act.

9. The continuous disclosure materials filed by the Issuer under the BC Act since November 19, 1999 under the Alberta Act since March 23, 1998 are available on the System for Electronic Document Analysis and Retrieval.

10. The Issuer has not been the subject of any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority.

11. Neither the Issuer nor any of its officers, directors or shareholders holding sufficient securities of the Issuer to affect materially the control of the Issuer has:

    (a) been the subject of any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority;

    (b) entered into a settlement agreement with a Canadian securities regulatory authority; or

    (c) been subject to any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor making an investment decision.

12. Neither the Issuer nor any of its officers, directors or shareholders holding sufficient securities to affect materially the control of the Issuer, is or has been subject to:

    (a) any known ongoing or concluded investigations by:

        (i) Canadian securities regulatory authorities; or

        (ii) a court or regulatory body, other than a Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision; or

    (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver manager or trustee within the preceding 10 years,

    other than a review by the Alberta Securities Commission regarding a private placement of Common Shares by the Issuer to M.H. (Mike) Shaikh, an independent director of the Issuer, and the disclosure made by the Issuer with respect to a private transaction between Mr. Shaikh and two other former directors of the Issuer pursuant to which Mr. Shaikh had an option to acquire certain Common Shares from the former directors.

13. None of the officers or directors of the Issuer, nor any of its shareholders holding sufficient securities of to affect materially the control of the Issuer, is or has been at the time of such event, an officer or director of any other issuer which is or has been subject to:

    (a) any cease trade or similar orders, or orders that denied access to any exemptions under Ontario securities law, for a period of more than 30 consecutive days, within the preceding 10 years; or

    (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver manager or trustee, within the preceding 10 years.

14. The Issuer shall remit all participation fees due and payable by it pursuant to Ontario Securities Commission Rule 13-502 Fees by no later than two business days from the date of this Order.

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

IT IS HEREBY ORDERED pursuant to subsection 83.1(1) of the Act that the Issuer be deemed to be a reporting issuer for the purpose of Ontario securities law.

"Iva Vranic"
Manager, Corporate Finance
Ontario Securities Commission

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Joseph Edward Allen, Chateram Ramdhani, Abel da Silva and Syed Kabir

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

AND

**JOSEPH EDWARD ALLEN, ABEL DA SILVA,
CHATERAM RAMDHANI, AND SYED KABIR**

Hearing: May 24 - 27, 2005

Panel:	Robert L. Shirriff, Q.C.	-	Commissioner (Chair of the Panel)
	Suresh Thakrar	-	Commissioner
	David L. Knight, FCA	-	Commissioner
Counsel:	Jane Waechter James Alexis Levine student-at-law	-	On behalf of Staff of the Ontario Securities Commission
Respondents:	Joseph E. Allen	-	On behalf of himself
	Chateram Ramdhani	-	On behalf of himself

DECISION AND REASONS

INTRODUCTION

[1] This is a hearing before the Ontario Securities Commission (the “Commission”) pursuant to sections 127 and 127.1 of the *Securities Act,* R.S.O. 1990, C. s.5 as amended (the “Act”) to consider whether it is in the public interest to make an order against the respondents, Joseph Edward Allen (“Allen”), Chateram Ramdhani (“Ramdhani”), Abel da Silva (“da Silva”), and Syed Kabir (“Kabir”) (collectively the “Respondents”).

[2] This hearing arose as a result of a statement of allegations filed by staff of the Commission (“Staff”) on November 4, 2004. The conduct that led to this statement of allegations being issued occurred between September 2002 and June 2003. The statement alleges that the Respondents have violated securities law and acted contrary to the public interest. Staff’s allegations against the Respondents may be summarized as follows:

(1) the Respondents were trading without appropriate registration contrary to section 25(1)(a) of the Act and to the public interest;

(2) the Respondents engaged in a distribution of securities to investors who did not qualify as accredited investors and for which no other exemption was available under the Act, in violation of section 53 of the Act;

(3) the Respondents failed to disclose commissions received in connection with their trades of securities contrary to section 36 of the Act and to the public interest;

(4) the Respondents made representations to investors with the intention of effecting trades in securities contrary to section 38 of the Act and to the public interest; and

(5) the Respondents used high-pressure sales tactics when selling securities to members of the public contrary to the public interest.

[3] Counsel for Staff seeks an order of the Commission pursuant to sections 127 and 127.1 of the Act that:

a. trading in any securities by the Respondents cease permanently or for such period as is specified by the Commission;

b. any exemptions contained in Ontario securities law do not apply to the Respondents permanently or for such period as is specified by the Commission;

c. the Respondents disgorge to the Commission any amounts obtained as a result of their non-compliance with the Act;

d. the Respondents be reprimanded;

e. the Respondents be ordered to pay the costs of the Commission investigation and the hearing; and

f. such other orders as the Commission may deem appropriate.

[4] Further, counsel for Staff also seeks an order pursuant to section 37 of the Act that the Respondents cease permanently to telephone from within Ontario to any residence within or outside Ontario for the purpose of trading in any security or in any class of securities.

[5] At the outset of this hearing, the parties indicated that they wished to make further submissions and introduce additional evidence relevant to sanctions, only if this panel were to find that the Respondents have breached the Act and/or acted contrary to the public interest. We granted this request. Accordingly, in these reasons, we are required to make a finding only as to whether the Respondents violated the provisions of the Act and/or acted contrary to the public interest.

[6] Further, we have considered the written submissions filed by counsel for Staff and by the respondents Allen and Ramdhani after the hearing on the merits. Counsel for Staff filed submissions on June 6, 2005. The respondent Allen filed his written submissions on July 15, 2005 and the respondent Ramdhani filed his written submissions on July 21, 2005.

PRELIMINARY ISSUES

A. Unrepresented Respondents

[7] Two of the Respondents, Allen and Ramdhani, were present at the hearing but were not represented by counsel. However, at the outset of this hearing, they expressly consented to have the hearing proceed without the assistance of counsel.

[8] The other two Respondents, da Silva and Kabir failed to appear at the hearing and were not represented by counsel.

B. da Silva and Kabir's Failure to Appear at the Hearing

[9] If an oral hearing is held, a party is entitled to notice of it and to be present at all times while evidence and submissions are being presented in order to obtain full disclosure of the case the party has to meet. However, pursuant to section 7 of the *Statutory Powers Procedure Act*, RSO. 1990, c. S.22 (the "SPPA"), where a party who has been given proper notice of a hearing fails to respond or to attend, the tribunal may proceed in the party's absence and the party is not entitled to any further notice in the proceeding.

[10] The respondents da Silva and Kabir were not present at the hearing but counsel for Staff has established to our satisfaction that they had received notice of the date and place of this hearing.

[11] The panel is satisfied that the respondent da Silva was aware of this hearing as the order scheduling this hearing was sent to his counsel by both the office of the Secretary of the Commission and by counsel for Staff. Further, an affidavit of service was produced at the hearing to demonstrate that the notice of hearing had been provided to his counsel.

[12] The panel is also satisfied that the respondent Kabir was given notice of this hearing. Indeed, the Commission issued an order on November 22, 2004 to the effect that Kabir had been effectively served with the notice of hearing and the statement of allegations, pursuant to Rule 1.3(3) of the Rules of Practice, and had been provided with reasonable notice of this proceeding. The order also provided for the future method of service on Kabir which we find was followed by Staff.

[13] After reviewing the evidence presented by counsel for Staff at the hearing, we concluded that both da Silva and Kabir had been served with the notice of this hearing and the statement of allegations and had chosen not to appear.

C. Use of Hearsay Evidence

[14] In this case, counsel for Staff adduced both oral and documentary evidence which was hearsay. Amanda Downs ("Downs") is an investigator at the Commission and Andrea Robinson ("Robinson") is an employee of Andromeda Media Capital Corporation ("Andromeda"). Staff counsel relies on statements made to Downs and to Robinson during telephone inquiries conducted by them with persons who purchased or were asked to purchase securities of Andromeda. Counsel offers these statements for the truth of their contents. Counsel also submits that these statements are reliable evidence because they are corroborated by other evidence.

[15] Evidence in Commission proceedings is governed by section 15 of the SPPA, which provides that the Commission may admit evidence at a hearing "whether or not…[that evidence is] admissible as evidence in a court." Hence, hearsay evidence is admissible in proceedings before the Commission.

[16] With respect to the admission and reliance upon hearsay evidence we have applied the test adopted by the panel in the YBM Magnex International Inc. matter (see Ruling of the panel in Hearing Transcript dated July 18, 2001 at pp. 1-10). There the panel stated that threshold reliability and ultimate reliability must be distinguished when considering the reliability of a hearsay statement. Threshold reliability is concerned with whether the circumstances surrounding the statement itself provide circumstantial guarantees of trustworthiness. Ultimate reliability requires that the statement be corroborated by and consistent with other evidence.

[17] We recognize that corroboration is an important factor in assessing the weight to be given to hearsay evidence. As stated in *Re E.A. Manning Ltd.* (1995), 18 O.S.C.B. 5317 at para. 28:

> As permitted by subs. 15(1) of the *Statutory Powers Procedure Act*, we admitted hearsay evidence. However, when such evidence was the only evidence on a particular issue, we have given it very little weight. To the extent that the evidence was corroborative of other evidence, on the other hand, we were prepared to give it greater weight.

[18] For some findings of fact in this case we have relied in part upon hearsay evidence which we believe meets these tests of both threshold and ultimate reliability and we have given what we consider to be the proper weight to it.

[19] Of the Respondents, only Allen chose to give oral evidence under oath and subject to cross-examination. Both the respondents Allen and Ramdhani made certain factual admissions during their submissions to the panel and the questioning of witnesses. We considered this evidence and the factual admissions in arriving at our decision.

D. Commission's Jurisdiction over Trades in Securities in a Different Province

[20] In this case, sales of securities of Andromeda were made by the Respondents to investors in Ontario and in Alberta. A substantial portion of the activities surrounding the sales of these securities by the Respondents took place in Ontario. The issuer is located in Welland, Ontario. The Respondent's offices and operations were based in Toronto, Ontario. The promotional materials were mailed from Toronto. The phone calls made by the Respondents were made from their Toronto offices and cheques in payment for the purchase of Andromeda securities were also sent to this location.

[21] The Commission has jurisdiction over a trade in securities, notwithstanding that the purchaser is in a different province, provided that some substantial aspect of the transaction occurred within Ontario. In *Gregory & Co. Inc. v. Quebec Securities Commission,* [1961] S.C.R. 584, at para. 10, the Supreme Court of Canada concluded that the fact that the offices and operations of the vendor were in Montreal was sufficient to give the Quebec Securities Commission jurisdiction over sales to extra-provincial purchasers.

THE FACTS

[22] The event that gave rise to the activities of the Respondents being considered at this hearing was an offering to the public by Andromeda, an Ontario corporation, of its common shares and warrants to purchase common shares.

[23] Andromeda arose from a reverse takeover of E-Commatrix.com Inc., a company founded in 1999 which had previously been the web development arm of Trimedia Marketing and Publicity Inc.

[24] Andromeda has never filed a preliminary prospectus or a prospectus with the Commission.

[25] Andromeda retained a consultant to explore available methods for raising capital. Following advice from the consultant, the company decided to pursue sales of its securities to accredited investors pursuant to the requirements of Ontario Securities Commission Rule 45-501. The consultant also referred Andromeda to the respondent Allen, who was described as an expert in the raising of capital for junior public companies by way of the "Accredited Investor Exemption".

[26] In August 2002, Andromeda issued a private offering memorandum for the sale to accredited investors of a maximum of 2 million units, comprising common shares and warrants to purchase common shares of the company, at a price of $1.00 per unit. Each unit consisted of one common share and a warrant to purchase one half common share of Andromeda.

[27] On August 23, 2002, Allen entered into what was entitled a Business Consultant Agreement (the "Agreement") with Andromeda whereby he agreed as a consultant to "refer potential investors to the Company and discuss the merits of the Company with potential and existing investors". Pursuant to the Agreement, Allen agreed to devote a minimum of 160 hours per month to his duties for a period of 6 to 8 months. According to the Agreement, Allen's compensation for his services was to be an amount equal to 60 % of the funds collected by him from the offering; 20% was to reimburse him for overhead/expenses and 40% was to pay his commission.

[28] Pursuant to the Agreement, between September 2002 and June 2003, Allen and his employees (including the other respondents, the "Salesmen") undertook a sales program for Andromeda's securities. Allen paid a commission to the Salesmen of 20% of the funds collected by them from sales of Andromeda securities.

[29] A certain type of investor was targeted: individuals aged 40 to 60 with reported income exceeding $100,000 and who owned businesses with between 5 and 50 employees. Allen or his staff sent a glossy brochure and a summary of the offering to potential investors whose names were obtained from a purchased list. Allen or one of the Salesmen then made follow-up phone calls to potential investors and if one expressed interest, the investor was sent further material by XpressPost or courier. If an investor agreed to make a purchase, Allen or one of the Salesmen would send an "invoice" for the purchase price, together with a subscription agreement. Allen collected and forwarded to Andromeda signed subscription agreements and photocopies of the investors' cheques made payable to Andromeda. The majority of the investors were not provided with a copy of the offering memorandum.

[30] The Respondents sent approximately 30,000 brochures to potential investors and made approximately 1,000 phone calls per week to potential investors.

[31] Through the sales efforts of Allen and the Salesmen, the Andromeda securities offering raised $1,080,000 from approximately 240 investors. The company filed a Form 45-501F for Ontario investors, certifying that the investor purchased the securities pursuant to the accredited investor exemption. Allen was represented on those forms to be the sales agent for Andromeda.

[32] Allen was paid $600,624 in total fees or commission by Andromeda pursuant to the Agreement.

[33] Andromeda declared the offering closed in June 2003.

[34] The Respondents sold Andromeda's securities to accredited investors and also to investors who were not accredited investors. After the closing of the offering, Andromeda attempted to contact and interview these investors and to refund the purchase price to those investors who did not qualify as accredited investors.

THE ISSUES

[35] This proceeding raises the following issues:

a) Did the Respondents trade without appropriate registration?

b) Did the Respondents engage in a distribution of securities to investors who did not qualify as accredited investors and for which no other exemption was available under the Act?

c) Did the Respondents fail to disclose commissions received in connection with their trades of securities?

d) Did the Respondents make prohibited representations to investors during the course of an offering?

e) Did the Respondents use high-pressure sales tactics when selling securities to members of the public?

PARTIES' SUBMISSIONS

A. Staff

[36] Counsel for Staff submits that:

(a) at all relevant times, the Respondents were trading in securities without being registered to do so, contrary to section 25 of the Act and to the public interest. Neither the accredited investor exemption under Rule 45-501,

nor any other exemption from registration is available to the Respondents. They acted as market intermediaries and thus were required to be properly registered;

(b) the Respondents distributed securities to investors without a prospectus or preliminary prospectus being filed and receipts obtained, contrary to section 53 of the Act; and

(c) the Respondents acted as principal or agent in connection with a trade in securities without disclosing the commission charged in respect of the trade contrary to section 36 of the Act and to the public interest.

[37] Counsel for Staff also submits that the Respondents made prohibited representations during the course of the offering, contrary to section 38 of the Act and to the public interest. Counsel submits that the Respondents made representations to potential investors to the effect that Andromeda's shares would be listed on an exchange for trading and provided investors with inaccurate and misleading information about Andromeda and its common shares, including:

(a) that Andromeda had a major contract with Bell Mobility;

(b) that Andromeda's shares were heavily traded in the over-the-counter market; and

(c) that institutional investors would make purchases of large blocks of Andromeda's shares.

[38] Counsel for Staff further submits that the Respondents used high-pressure sales tactics when selling securities to members of the public contrary to the public interest including: taking an aggressive and demanding tone when dealing with investors, suggesting that legal action would be taken if investors did not pay for investment commitments that were tentative and sending couriers to pick up cheques where an investor had not committed to purchase.

B. Allen

[39] In his written submission, the respondent Allen rejects the submissions by Staff counsel. In particular, he submits that at no time did he ever hold himself out as being in the business of trading in the securities of Andromeda and others. On the contrary, he submits that he was hired by Andromeda to refer potential investors to the company for purposes of distributing securities in a private placement. He submits that he was advised by the company on all matters pertaining to the distribution and had no authority to make any decisions to accept or deny a potential subscription from a potential investor. He basically asserts that the activities undertaken by him did not require him to be registered.

[40] Further, Allen denies that high pressure sales tactics were used by him and Ramdhani except for one instance where a courier was sent to a potential investor. He submits that shareholders were happy with how they were introduced to Andromeda. As to the allegation of misrepresentations made to potential investors, Allen asserts that Staff was unable to provide any direct evidence to corroborate this assertion.

[41] In his written submissions, Allen did not address the allegation that he failed to disclose commissions received in connection with an offering. However, in his evidence, Allen acknowledges that neither he nor his Salesmen disclosed their commissions to investors.

C. Ramdhani

[42] In his written submissions, the respondent Ramdhani states that while there has been some dispute about the facts: "There has been no denial that a trade of Andromeda common shares did take place; or that of sending brochures to potential investors in Andromeda's common shares; calling and soliciting investments in Andromeda; making representations to investors about Andromeda and the offering; sending invoices and subscription agreement (sic) to investors; receiving cheques and signed subscription agreements from investors; and sending the completed documentation and funds to Andromeda." Ramdhani submits that the Respondents and Staff have "different criteria for the application of some of the key term (sic), that is, different conceptions of what is named by that term".

[43] Further Ramdhani submits:

(a) that an exemption from the registration requirements of the Act is available to the Respondents by virtue of the fact that Andromeda made a filing with the Commission under the exempt distribution and that the Commission was aware or ought to have been aware that Allen and others were raising capital for Andromeda;

(b) that the Commission has no jurisdiction or authority over all of the trades in securities of Andromeda made by the Respondents in Alberta or any other province; and

(c) that Allen assured the other respondents that all the people they were contacting were "screened for accredited investor status" and Allen alone must be held responsible for showing "disregard for the interests of investors". He also argues that the President of Andromeda knew that Allen employed a number of salesmen to raise money and that he never raised any objection.

[44] Ramdhani submits that he did not use high pressure sales tactics and that the majority of investors were comfortable with the sales approach of all the Respondents except those of Allen.

THE LAW

[45] Section 25(1)(a) of the Act sets out the general registration requirements for trading in securities:

> No person or company shall,
>
> (a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer.

[46] Pursuant to section 53(1) of the Act, no company shall trade in a security where such trade would be a distribution of such security, unless a preliminary prospectus and a prospectus have been filed and receipts obtained from the Commission:

> No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company where such trade would be a distribution of such security, unless a preliminary prospectus and a prospectus have been filed and receipts therefor obtained from the Director.

[47] OSC Rule 45-501 provides certain exemptions from the registration requirements for trading in securities. One of the categories of exemptions includes the sale of securities to "accredited investors". Section 2.3 of Rule 45-501 provides that sections 25 and 53 of the Act do not apply to trades in securities if the purchaser is an accredited investor and purchases as principal. However, section 3.4 of Rule 45-501 removes the registration exemption for market intermediaries.

[48] The definition of market intermediary is set out at section 204(1) of the Regulation to the Act, R.R.O. 1990, Regulation 1015 (the "Regulation"):

> "market intermediary" means a person or company that engages or holds himself, herself or itself out as engaging in Ontario in the business of trading in securities as principal or agent, other than trading in securities purchased by the person or company for his, her or its own account for investment only and not with a view to resale or distribution, and, without limiting the generality of the foregoing, includes a person or company that engages or holds himself, herself or itself out as engaging in the business of,
>
> (a) entering into agreements or arrangements with underwriters or issuers, in connection with distributions of securities, to purchase or sell such securities,
>
> (b) participating in distributions of securities as a selling group member,
>
> (c) making a market in securities, or
>
> (d) trading in securities with accounts fully managed by the person or company as agent or trustee,
>
> whether or not the person or company engages in trading in securities purchased for investment only.

[49] Section 36(1)(f) of the Act requires the disclosure of a commission in respect of a trade in a security. Section 36(1)(f) states:

> Every registered dealer who has acted as principal or agent in connection with any trade in a security shall promptly send by prepaid mail or deliver to the customer a written confirmation of the transaction, setting forth,
>
> …
>
> the commission, if any, charged in respect of the trade; and
>
> ...

[50] Section 38 of the Act states:

(1) No person or company, with the intention of effecting a trade in a security, other than a security that carries an obligation of the issuer to redeem or purchase, or a right of the owner to require redemption or purchase, shall make any representation, written or oral, that he, she or it or any person or company,

(a) will resell or repurchase; or

(b) will refund all or any of the purchase price of, such security.

(2) No person or company, with the intention of effecting a trade in a security, shall give any undertaking, written or oral, relating to the future value or price of such security.

(3) Subject to the regulations, no person or company, with the intention of effecting a trade in a security, shall, except with the written permission of the Director, make any representation, written or oral, that such security will be listed on any stock exchange or quoted on any quotation and trade reporting system, or that application has been or will be made to list such security upon any stock exchange or quote such security on any quotation and trade reporting system, unless,

(a) application has been made to list or quote the securities being traded, and securities of the same issuer are currently listed on any stock exchange or quoted on any quotation and trade reporting system; or

(b) the stock exchange or quotation and trade reporting system has granted approval to the listing or quoting of the securities, conditional or otherwise, or has consented to, or indicated that it does not object to the representation.

…

ISSUES ANALYSIS

A. Did the Respondents trade without appropriate registration? and

B. Did the Respondents engage in a distribution of securities to investors who did not qualify as accredited investors and for which no other exemption was available under the Act?

Trading of Securities

Allen

[51] Andromeda hired Allen, who was described as an expert in the raising of capital for public companies by way of the accredited investor exemption. Based on this referral, Allen entered into the Agreement with Andromeda whereby he agreed to "refer potential investors to the Company and discuss the merits of the Company with potential and existing investors" (see paragraph [27] of these Reasons for further details).

[52] Pursuant to the Agreement, between September 2002 and June 2003, Allen and his employees (including the Salesmen) undertook a sales program for Andromeda's securities.

[53] In the course of the sales program, Allen and his staff sent brochures to potential investors whose names were obtained from a purchased list. Allen, or a salesperson employed by Allen, then made follow-up phone calls to these potential investors. If a potential investor expressed interest, the investor would be sent further material by XpressPost or courier. If an investor agreed to a purchase, an "invoice" and a subscription agreement would be sent to the investor. Allen collected signed subscription agreements and forwarded to Andromeda photocopies of the investors' cheques (see paragraph [29] of these Reasons for further details).

[54] On several occasions, Allen confirmed his involvement in the sale of Andromeda's securities and the nature of his business activities. For instance, in an e-mail to Robinson dated May 14, 2003, Allen wrote "we negotiate private placements for a living".

[55] Further, in a letter dated August 6, 2003 addressed to Downs, Allen wrote:

Since August, 2002 Andromeda Media Capital Corporation ("Andromeda") has been raising capital through a private offering of common shares and warrants being offered to purchasers who are accredited investors pursuant to the requirements of OSC Rule 45-501. I have been employed by Andromeda throughout this period as a consultant to assist in the selling effort. My personal Corporation J. Allen Capital Inc., holds the lease on the premises at Suite 1205,

20 Bay Street, Toronto but has not otherwise participated in the offering. Mr. Kabir was employed by me to assist me in the solicitation of qualified investors, but he was never an employee of J. Allen Capital Inc.

[56] In addition to sales made to investors in Ontario, securities of Andromeda were sold to investors in Alberta. Downs testified that Mark Arsenault, the manager of investigations at the Alberta Securities Commissions (the "ASC"), told her that the ASC had received complaints about Allen selling Andromeda securities in Alberta.

[57] At the hearing, Gilbert McIntee ("McIntee"), an investor, testified that he purchased 2,000 Andromeda units in or around March 2003 through da Silva from J. Allen Capital. He also testified that he was contacted again by Allen "not too long after that" to make an additional purchase.

[58] McIntee also gave evidence as to his status as an accredited investor. Based on his evidence, we concluded that he did not qualify as an accredited investor within the meaning of Rule 45-501.

[59] Based on the evidence before us, we conclude that the respondent Allen solicited, negotiated, and acted in furtherance of trades in securities of Andromeda, and therefore traded in those securities.

Ramdhani

[60] At the hearing, Allen testified that he engaged staff to help him with the sales of Andromeda's securities including the respondent Ramdhani.

[61] During his cross-examination of Downs, the respondent Ramdhani made the following comments in relation to alleged complaints from persons residing in Alberta who were solicited to purchase securities of Andromeda:

> Q. …I'm suggesting to you that this person -- if this person complains about me, he actually did buy and did agree to accept a courier, because a second thing we do not do in our business, we do not tell the courier to go and pick up a cheque. It's an envelope that they're picking up.
>
> So I'm suggesting to you, Ms. Downs, that this person, if he did buy, he knew that courier is coming out to pick up a cheque, and this is no negative billing. He agreed to purchase. I do not -- I cannot remember this person, but I remember the incident in Medicine Hat at that time. I also remember speaking to a wife of somebody who was contacted and she said—

[62] At the hearing, during the course of an exchange with the Chair of the panel, Ramdhani also confirmed that he had spoken to potential investors residing in Alberta regarding purchases of securities of Andromeda.

[63] Documentary evidence presented to us established that some solicitations to potential investors had been made by an individual called "Ram". When asked who "Ram" was during the course of his cross-examination, Allen identified the respondent Ramdhani who was then present in the hearing room.

[64] During his cross-examination of Allen, Ramdhani confirmed that he had been involved in selling securities with Allen and that in fact, Allen had terminated his employment:

> Q. Okay. Mr. Allen, is it correct to say that on the day that you terminated me, my employment with you, you gave -- the reason is that you are seeking to become a limited market dealer and no other reason?
>
> A. No, that's not correct.
>
> Q. So Mr. Allen, why did you wait at least two months after the Medicine Hat incident to terminate my employment with you? It doesn't seem correct.
>
> A. I don't recall waiting.

[65] Ramdhani admitted his involvement in his own written submissions:

> There has been no denial that a trade of Andromeda common shares did take place; or that of sending brochures to potential investors in Andromeda's common shares; calling and soliciting investments in Andromeda; making representations to investors about Andromeda and the offering; sending invoices and subscription agreement (sic) to investors; receiving cheques and signed subscription agreements from investors; and sending the completed documentation and funds to Andromeda.

[66] Based on the evidence before us, we conclude that the respondent Ramdhani solicited, negotiated, and acted in furtherance of trades in securities of Andromeda, and therefore traded in those securities.

da Silva

[67] At the hearing, Allen testified that he engaged Abel da Silva as one of the Salesmen. He described da Silva as being "quite a salesman".

[68] Downs testified that McIntee had been contacted by da Silva of J. Allen Capital to sell him securities of Andromeda. As a result of this call, she said that McIntee invested $2,000 in Andromeda securities in March 2003. Although Downs's evidence is hearsay, we find it reliable and we give it appropriate weight, as it is corroborated by the direct evidence given by McIntee and Allen.

[69] McIntee testified that da Silva contacted him by telephone to sell him securities of Andromeda and confirmed that he purchased 2,000 Andromeda units at a cost of $2,000.

[70] Allen further testified that after da Silva's sale to McIntee, Allen made a follow-up call to McIntee to ask him to make an additional purchase.

[71] Allen also testified that he and the Salesmen had set up a system for keeping track of sales of Andromeda securities, using post-it notes. He explained that, as many of the investors sent cheques drawn on corporate accounts, the post-it notes were used to identify the name of the person that should appear on the certificate evidencing the securities and the name of the salesman who had been involved with the specific sale. Several cheques had post-it notes on them confirming the involvement of the respondent da Silva in the sales program.

[72] Based on the evidence before us, we conclude that the respondent da Silva solicited, negotiated, and acted in furtherance of trades in securities of Andromeda, and therefore traded in those securities.

Kabir

[73] In a response to a letter addressed to him by Downs, Allen wrote that Kabir was employed by him personally to assist in the solicitation of qualified investors for the Andromeda offering.

[74] At the hearing, Allen testified that he hired Kabir as one of the Salesmen.

[75] Allen testified that Kabir had been involved in the sales of securities of Andromeda. A cheque payable to Andromeda by a company had a post-it note on it identifying the person for whom a certificate should be issued. The post-it note also identified "Syed" as the salesman who had sold the shares to this investor.

[76] Robinson also testified that, in the course of an audit she conducted, she talked to five investors who told her that Kabir was the individual who sold them Andromeda's securities. Although this is hearsay evidence, we find it reliable and we give it appropriate weight as it is corroborated by the direct evidence of Allen who testified as to Kabir's involvement in the sales of Andromeda securities.

[77] Based on the evidence before us, we find that the respondent Kabir solicited, negotiated, and acted in furtherance of trades in securities of Andromeda, and therefore traded in those securities.

Market Intermediary

[78] Market intermediaries are persons or companies that engage or hold themselves out as engaging in Ontario in the business of trading in securities as principals or agents, other than trading in securities purchased by those persons or companies for their own account for investment only and not with a view to resale or distribution.

[79] The respondent Allen argued that at no time did he ever hold himself out as being in the business of trading in the securities of Andromeda. On the contrary, he submits that he was hired by Andromeda to refer potential investors to the company for purposes of distributing shares in a private placement.

[80] We disagree with Allen's characterization of his activities. Despite his attempt to structure his retainer by Andromeda as that of an employee of the company, in order to avoid registration requirements, we find that he acted as a market intermediary and not as an employee of Andromeda.

[81] We conclude that:

(1) Allen was paid an aggregate fee or commission of 60% of the funds collected by him and his staff from the sale of securities of Andromeda; 40% as commission to him and 20% to reimburse his overhead/expenses;

(2) Allen had little or no supervision from Andromeda. He provided his own office and equipment, hired and paid his own staff, took on the risk of loss if no securities were sold, and had substantial opportunities for profit; and

(3) Allen threatened Andromeda on several occasions that he would switch investors to other offerings if Andromeda did not accept investors sourced by him or his staff, which supports the allegation that he was involved in the business of trading in securities.

[82] Further, we also find that none of the Respondents were employees of Andromeda. Indeed, the evidence shows that the Respondents, except for Allen, had no direct contact with Andromeda and, for a period of time, Andromeda was not aware of their involvement in its offering.

[83] Hence, we conclude that Allen and the other respondents were engaged in the distribution of securities of Andromeda as market intermediaries to members of the public purportedly pursuant to the accredited investor exemption in Rule 45-501.

Registration Requirements

[84] Section 25(1)(a) of the Act requires that a person not trade in a security unless that person is registered as a dealer, or as a salesperson, partner, or officer of a registered dealer.

[85] Further, a person need not actually effect a sale of a security to be engaged in trading. Merely preparing a market, or accepting funds can constitute a "trade" within the meaning of the Act (see for example *Re Guard Inc.* (1996), 19 O.S.C.B. 3737, at para. 77 and *Re Lett* (2004), 27 O.S.C.B. 3215, at paras. 55 and 61).

[86] The registration requirements of the Act do not apply to a trade in a security if the purchaser is an accredited investor and purchases as principal through a person who is a registered market intermediary. Hence, an unregistered trader of securities cannot avoid the registration requirements simply by trading in securities to accredited investors under Rule 45-501.

[87] We conclude that at all relevant times, neither Allen nor any of the other respondents were registered under section 25 of the Act in any capacity.

Findings

Did the Respondents trade without appropriate registration?

[88] Based on our findings as to the activities carried out by the Respondents, we find that the Respondents have solicited, negotiated, and acted in furtherance of trades in securities of Andromeda and therefore traded in those securities without being properly registered, contrary to section 25 of the Act.

Did the Respondents engage in a distribution of securities to investors who did not qualify as accredited investors and for which no other exemption was available under the Act?

[89] We also find that the Respondents participated in a distribution of securities of Andromeda to investors without a prospectus or preliminary prospectus being filed and receipts obtained and without an exemption being available to them, contrary to section 53 of the Act.

ISSUE ANALYSIS

C. Did the Respondents fail to disclose commissions received in connection with their trades in securities?

[90] Pursuant to section 36(1)(f), every registered dealer who acts as principal or agent in connection with a trade is required to disclose any commission charged in respect of that trade to the customer.

[91] A dealer who is not registered, but who is conducting activities for which registration is required, engages in conduct contrary to public interest if he or she fails to disclose to investors the commissions charged on a trade (see *Re Costello* (2003) 26 O.S.C.B. 1617, aff'd (2004), 242 D.L.R. (4th) 301 (Div. Ct.) at para. 44).

[92] The evidence establishes that Allen's agreed overall fee or commission for his services was 60% of the funds he collected from the offering. This commission is substantial and we consider that knowledge of it was material to potential investors. Indeed, some may have been discouraged from investing had they known that 60% of their investment would be paid out as fees or commissions.

[93] However, the respondent Allen did not, at any time, disclose to investors that he or the Salesmen would receive commissions on the sales of Andromeda securities, nor the rate of the commission. At the hearing, Allen confirmed this fact. Allen testified that he and the Salesmen did not tell the investors that they were paid commissions.

[94] Although Allen stated that neither he nor his staff disclosed to investors what commission they would be paid, we have no corroborative evidence to establish that the other respondents, Ramdhani, da Silva and Kabir, who were involved in trading securities of Andromeda, failed to disclose their commissions.

Finding

[95] We find that the respondent Allen's failure to disclose the commission he earned in respect of sales of securities of Andromeda was contrary to section 36(1)(f) of the Act and to the public interest.

ISSUES ANALYSIS

D. Did the Respondents make prohibited representations to investors during the course of an offering?

E. Did the Respondents use high-pressure sales tactics when selling securities to members of the public?

[95] Counsel for Staff submits that the Respondents made prohibited representations with the intention of effecting trades in securities of Andromeda and that they used high-pressure sales tactics when selling these securities to members of the public.

Finding

[96] While there is some evidence on the record to support Staff's submissions, it is, in our view, anecdotal, mostly in the form of uncorroborated hearsay evidence. Hence, we find that Staff has not established these allegations.

CONCLUSION

[97] By engaging in trades in securities of Andromeda without appropriate registration, the Respondents have violated section 25(1) of the Act, and have engaged in conduct contrary to the public interest.

[98] By engaging in a distribution of securities of Andromeda to investors who did not qualify as accredited investors and for which no other exemption was available under the Act, the Respondents violated section 53 of the Act and have engaged in conduct contrary to the public interest.

[99] By failing to disclose commissions received in connection with his trades in securities of Andromeda, the respondent Allen violated section 36 of the Act and acted contrary to the public interest.

[100] As a result of this Decision, the parties shall contact the Secretary's office within the next 10 days in order to set time limits for the filing of written submissions and to set a date for a hearing relevant to the matter of sanctions.

DATED at Toronto this 12th day of October, 2005.

"Robert L. Shirriff"

"Suresh Thakrar"

"David L. Knight"

3.1.2 Affinity Financial Group Inc., International Structured Products Inc., Affinity Restricted Securities Inc., Dionysus Investments Ltd., Brian Keith Mcwilliams, David John Lewis and Louis Sapi

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

AND

IN THE MATTER OF
AFFINITY FINANCIAL GROUP INC.,
INTERNATIONAL STRUCTURED PRODUCTS INC.,
AFFINITY RESTRICTED SECURITIES INC.,
DIONYSUS INVESTMENTS LTD., BRIAN KEITH MCWILLIAMS,
DAVID JOHN LEWIS and LOUIS SAPI

SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION AND
DAVID JOHN LEWIS

I. INTRODUCTION

1. In a notice of hearing and statement of allegations issued September 19, 2005, (the “Notice of Hearing”), the Ontario Securities Commission (the “Commission”) announced that it proposes to hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act* (the “Act”), it is in the public interest for the Commission to make an order:

    (a) that this Settlement Agreement be approved;

    (b) that the registration of International Structured Products Inc. (“ISP”), Brian Keith McWilliams (“McWilliams”) and David John Lewis (“Lewis”) be terminated;

    (c) that trading in any securities by Affinity Financial Group Inc, (“Affinity”), ISP, Affinity Restricted Securities Inc. (“ARS”) and Dionysus Investments Ltd. (“Dionysus”), cease permanently;

    (d) that the exemptions contained in Ontario securities law do not apply to Affinity, ISP, ARS and Dionysus permanently;

    (e) that McWilliams, Lewis and Louis Sapi (“Sapi”) be required to resign any positions that they hold as a director or officer of a registrant;

    (f) that McWilliams, Lewis and Sapi be permanently prohibited from acting as a director or officer of a registrant; and

    (g) that McWilliams, Lewis and Sapi be required to pay costs of the investigation of this matter.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (“Staff”) agree to recommend settlement of the proceeding initiated in respect of Lewis by the Notice of Hearing in accordance with the terms and conditions set out below. Lewis consents to the making of an order against him in the form attached as Schedule “A” on the basis of the facts set out below.

III. STATEMENT OF FACTS

Acknowledgment

3. For the purposes of this settlement agreement, Lewis agrees with the facts set out in this Part III.

Factual Background

The Affinity Respondents

4. Affinity is an Ontario corporation with a registered address at 195 The West Mall in Etobicoke, Ontario.

5. ISP, formerly Affinity Capital Markets Inc., is an Ontario corporation with a registered address at 195 The West Mall in Etobicoke, Ontario. Under the name Affinity Capital Markets Inc., ISP was registered with the Commission as a Dealer in the category of Limited Market Dealer from August 28, 2000 to August 28, 2002.

6. ARS is an Ontario corporation with a registered address at 195 The West Mall in Etobicoke, Ontario. ARS has never been registered with the Commission.

7. Dionysus is a company incorporated in the Bahamas. Dionysus has never been registered with the Commission. Dionysus was struck off the companies register of the Bahamas on May 3, 2004.

8. ISP and ARS are direct and indirect wholly-owned subsidiaries of Affinity. Affinity is jointly owned by McWilliams, Lewis and Sapi.

9. Affinity had a number of other subsidiaries and related companies, including Dionysus. These companies provided financial planning and reporting services to their clients and sold mutual funds and insurance products.

The Individual Respondents

10. McWilliams is an individual who was registered with the Commission as a Salesperson in the category of Limited Market Dealer between August 28, 2000 and December 31, 2002. At all material times, he was the Treasurer, Secretary and a Director of Affinity. He was also the President and a Director of ISP, and the President and a Director of ARS.

11. Lewis is an individual who was registered with the Commission as a Salesperson in the category of Mutual Fund Dealer from April 13, 1993 to May 6, 2002 and in the category of Limited Market Dealer from April 13, 1993 to December 31, 2002. At all material times, he was the President and a Director of Affinity. He was also the Secretary, Treasurer and a Director of ISP, and the Vice-President, Secretary, Treasurer and a Director of ARS.

12. Sapi is an individual who has never been registered with the Commission. He was a Director of ARS from March 30, 2001 to July 6, 2001. He was a Director of Affinity at all material times.

The Rule 144 Loan Program

13. In the period between October 1998 and June 2002 (the “Material Period”) ISP and then ARS and Dionysus (collectively, “ARS”) solicited their clients to invest in a program where their funds would be used to make loans to insiders of reporting issuers located in the United States. The insiders would pledge restricted securities of the issuer as collateral for the loans. Clients would receive either the interest payments on the loans or the proceeds of the sale of the restricted securities in return for their investment. This was referred to as the Rule 144 Loan Program.

14. The Rule 144 Loan Program was established, managed and operated by a company named American Financial Group (“AFG”) that operated out of Miami, Florida and its principal David Siegel (“Siegel”) (collectively, the “Americans”).

15. ARS’ marketing materials relating to the Rule 144 Loan Program stated that “[ARS], at its discretion, may determine to which deals and to what amount, an investor’s funds will be allocated”. They further stated that “[i]nvestors will have no right to participate in the management of any of the investment programs, and each investor must be willing to entrust all aspects of the management of his investments to [ARS]”.

16. ARS executed an Investment Advisory Agreement with its clients who invested in the Rule 144 Loan Program. This agreement authorized ARS to “continuously review, supervise and administer the investment programs of the [i]nvestor, to determine in the discretion of [ARS] the assets to be held uninvested”. It further stated that “the investment and reinvestment of the assets of the [i]nvestor, including the purchase or sale of any securities or the borrowing of any funds on behalf of the [i]nvestor…shall be exclusively within the control and discretion of [ARS]”.

17. As noted above, the Rule 144 Loan Program was managed by the Americans. The Americans provided ARS with monthly statements for each investor. ARS prepared monthly account statements on its letterhead for its clients based solely on information provided to it by the Americans.

18. ARS employed sales representatives, all of whom were licensed as mutual fund salespeople and/or limited market dealers, to promote the Rule 144 Loan Program to its clients.

19. During the Material Period, at least 161 of ARS' clients invested at least $30,937,941 in the Rule 144 Loan Program. ARS thereby acted as an adviser without registration, contrary to section 25(1)(c) of the Act.

Disclosure and Due Diligence

20. ARS orally disclosed to most of its clients that the Americans, and in particular Siegel, would select and administer the Rule 144 loans and would make all Rule 144 Loan Program investment decisions.

21. Before beginning to solicit its clients for the Rule 144 Loan Program, ARS reviewed AFG's history with the Rule 144 Loan Program and its history with other investments. ARS did not research Siegel's regulatory status or history. Siegel had previously been enjoined as a result of an enforcement action brought by the United States Securities and Exchange Commission (the "SEC") in response to his participation in a stock manipulation scheme.

ARS' Commissions and Fees from the Rule 144 Loan Program

22. ARS' clients were charged an initial commission of between 0% and 3% of the money invested in the Rule 144 Loan Program. This commission was disclosed to ARS' clients in its marketing materials. ARS represents that its sales agents received 75% of this commission and ARS received the remaining 25%.

23. The Rule 144 Loan Program generated earnings in two ways. If a loan was repaid partially or in full, all of the interest paid by the borrower was transferred directly to ARS' client. If a loan went into default, 80% of the gain generated on the disposition of the share collateral was paid to ARS' client, 10% was retained by the Americans and 10% was paid to ARS. This fee was titled a "performance fee" and was disclosed to ARS' clients in the Investment Advisory Agreement.

24. ARS also received a "loan origination fee" from the Americans for every investment in the Rule 144 Loan Program made by its clients. ARS represents that it believed that this fee was paid out of the money earned by the Americans in the Rule 144 Loan Program and not from its clients' investments in the program.

25. ARS represents that it received approximately $1,336,000 from loan origination fees, performance fees and commissions during the Material Period. Of this amount, ARS represents that it paid at least $395,000 to brokers and referring companies. In total, ARS represents that it earned net proceeds of approximately $950,000.

Outcome of the Rule 144 Loan Program

26. On June 19, 2002, ARS was advised by AFG that Siegel had gone missing and had taken all records relating to the Rule 144 Loan Program with him. Three days later, McWilliams and Lewis flew to Florida to investigate the situation. The FBI was contacted as were securities regulators, including the Ontario Securities Commission.

27. When Siegel was finally located several weeks later, he stated that he had lost investor funds through poor hedging strategies and general mismanagement of the Rule 144 loans. Siegel also stated he had provided false statements to ARS while he tried to "trade his way out of trouble".

28. On July 24, 2002, the SEC initiated enforcement proceedings against the Americans, and later secured the appointment of a Receiver to attempt to recover the proceeds of the Rule 144 Loan Program.

29. On January 27, 2005, the Receiver stated in a report to investors that Siegel may have lost the majority of their funds through bad loans and bad stock purchases. The Receiver also stated that despite Siegel's representations that he was selling shares short to offset the shares taken as collateral for the loans, there were very few short sales actually made. The Receiver also stated that although Siegel represented to investors and their reporting agents [such as ARS] that he was selling the shares held as collateral at a profit, this was not the case.

30. On March 28, 2005, the SEC obtained a final judgment against Siegel affirming his violations of US securities laws in the course of the Rule 144 Loan Program, barring him from acting as a director or officer of any issuer, and requiring him to pay disgorgement as well as interest and civil penalties.

31. At the date of this agreement, the court-appointed Receiver is continuing his efforts to locate and redistribute the investor funds entrusted to Siegel and AFG through the Rule 144 Loan Program. No funds have been redistributed, and the receiver has informed investors that they should expect to receive "very little, if anything" from his efforts.

32. The Affinity Respondents represent that, as a result of the collapse of the Rule 144 Loan Program, they have ceased carrying on business and are now dormant. They represent that they do not expect to operate ever again.

Lewis' Role

33. Lewis was a director and officer of Affinity, ISP and ARS. As the owner of one third of Affinity's shares, Lewis benefited financially from ARS' participation in the "Rule 144 Loan Program".

34. Lewis therefore acquiesced in ARS' breaches of Ontario securities law as outlined above.

IV. TERMS OF SETTLEMENT

35. Lewis agrees that it is in the public interest that the Commission make an order:

(a) terminating his registration under Ontario securities law;

(b) requiring him to resign any positions that he holds as director or officer of a registrant;

(c) permanently prohibiting him from becoming or acting as a director or officer of a registrant; and

(d) requiring him to pay the sum of $10,000 towards the costs of Staff's investigation of this matter.

36. In addition, Lewis undertakes not to re-apply for registration under Ontario securities law for a period of at least 7 years from the date of this agreement. He further undertakes to enroll in and successfully complete the Conduct and Practices Handbook Course before making any re-application for registration.

37. Lewis undertakes to pay the sum of $10,000 as set out in paragraph 35(d) above to the Commission by October 1, 2005, failing which this settlement agreement will be null and void and the order in the form attached as Schedule "A" will not be made by the Commission.

V. STAFF COMMITMENT

38. If this settlement agreement is approved and an order in the form attached as Schedule "A" is made by the Commission, Staff will not initiate any proceeding under Ontario securities law in respect of any conduct or alleged conduct of Lewis in relation to the facts set out in Part III of this settlement agreement, subject to the provisions of paragraph 42 below.

VI. PROCEDURE FOR APPROVAL OF SETTLEMENT

39. Approval of this settlement will be sought at a public hearing before the Commission scheduled for a date to be agreed to by Staff and Lewis, in accordance with the procedures set out in this settlement agreement and the Commission's Rules of Practice.

40. Staff and Lewis agree that if this settlement agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted respecting Lewis in this matter, and Lewis agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.

41. Staff and Lewis agree that if this settlement agreement is approved by the Commission, neither Staff nor Lewis will make any public statement inconsistent with this settlement agreement.

42. If Lewis fails to honour the agreements contained in paragraph 36, 37 or 41 of this settlement agreement, Staff reserve the right to bring proceedings under Ontario securities law against Lewis based on the facts set out in Part III of this settlement agreement, as well as the breach of the agreement.

43. 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 Lewis will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing, unaffected by this agreement or the settlement negotiations.

44. Whether or not this settlement agreement is approved by the Commission, Lewis 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.

VII. DISCLOSURE OF AGREEMENT

45. 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 Lewis and Staff or as may be required by law.

46. Any obligations of confidentiality shall terminate upon approval of this settlement agreement by the Commission.

VIII. EXECUTION OF AGREEMENT

47. This settlement agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

48. A facsimile copy of any signature shall be effective as an original signature.

Dated this 21st day of September, 2005

"David John Lewis"
David John Lewis

Dated this 21st day of September, 2005

Staff of the Ontario Securities Commission
Per:

"Michael Watson"
Michael Watson
Director, Enforcement Branch

Schedule "A"

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

AND

IN THE MATTER OF
AFFINITY FINANCIAL GROUP INC.,
INTERNATIONAL STRUCTURED PRODUCTS INC.,
AFFINITY RESTRICTED SECURITIES INC.,
DIONYSUS INVESTMENTS LTD., BRIAN KEITH MCWILLIAMS,
DAVID JOHN LEWIS and LOUIS SAPI

ORDER
DAVID JOHN LEWIS

WHEREAS on September 19, 2005 the Ontario Securities Commission (the "Commission") issued a Notice of Hearing and Statement of Allegations pursuant to sections 127 and 127.1 of the Securities Act, R.S.O. 1990 c.S-5, as amended (the "Act") in respect of Affinity Financial Group Inc., International Structured Products Inc., Affinity Restricted Securities Inc., Dionysus Investments Ltd., Brian Keith McWilliams, David John Lewis ("Lewis") and Louis Sapi;

AND WHEREAS Lewis entered into a settlement agreement with Staff of the Commission dated September 21, 2005 (the "Settlement Agreement") in which he agreed to a proposed settlement of the proceeding, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for Lewis 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 dated September 21, 2005 attached to this Order is approved;

2. pursuant to clause 1 of subsection 127(1) of the Act, Lewis' registration under Ontario securities law is terminated;

3. pursuant to clause 7 of subsection 127(1) of the Act, Lewis must resign any positions that he holds as a director or officer of a registrant;

4. pursuant to clause 8 of subsection 127(1) of the Act, Lewis is permanently prohibited from acting as a director or officer of a registrant; and

5. pursuant to section 127.1 of the Act, Lewis must pay the sum of $10,000.00 towards the costs of the investigation of this matter.

DATED at Toronto this day of , 2005

____________________________ ____________________________

3.1.3 ATI Technologies Inc., Kwok Yuen Ho, Betty Ho, Jo-Anne Chang, David Stone, Mary De La Torre, Alan Rae and Sally Daub

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

AND

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

Hearing: April 12 - 14, 18, 20, 22, 25, 27, 29, May 13, 16, 18 - 20, 30, June 1 - 3, 10, 2005

Panel:	Susan Wolburgh Jenah	-	Vice-Chair (Chair of the Panel)
	M. Theresa McLeod	-	Commissioner
	H. Lorne Morphy, Q.C.	-	Commissioner
	-		
Counsel:	Matthew Britton	-	For Staff of the
	Tyler Hodgson	-	Ontario Securities Commission
	John Lorn McDougall, Q.C.	-	For Kwok Yuen Ho
	Randy Bennett		
	Joel Wiesenfeld	-	For Betty Ho
	Andrew Gray		

DECISION AND REASONS

Overview

1. On May 24, 2000, ATI Technologies Inc. ("ATI"), a corporation whose shares trade on the TSX and Nasdaq, announced that there would be a shortfall in its forecasted revenue and earnings for Q3-2000.

2. Following that announcement, the price of ATI shares fell, in a two-day period, from $25.45 to $12.00, a loss of 52%.

3. As a result of the investigation that followed, this proceeding was commenced on January 16, 2003.

4. In the proceeding, the respondents Kwok Yuen Ho (K.Y. Ho) and Betty Ho (the "Respondents") were alleged to have traded in the securities of ATI prior to the above announcement contrary to subsection 76(1)[1] of the *Securities Act*, R.S.O. 1990, c. S. 5, (as amended) (the "Act").

5. At the relevant time, K.Y. Ho was an insider in that he was the chief executive officer and a member of the board of ATI. Betty Ho, his wife, while having no involvement in ATI, treated herself as an insider because of her spousal relationship with K.Y. Ho. Both of them were substantial shareholders of ATI.

6. This hearing involved only the allegations against the Respondents. The allegations against the other respondents have been previously dealt with by the Commission. Those allegations differ from those against the Respondents.

The Issues

7. In paragraph 9(c) of the Statement of Allegations the specific allegations of the alleged breaches by the Respondents of subsection 76(1) of the Act are set out:

[1] Subsection 76(1) of the Act states:

No person or company in a special relationship with a reporting issuer shall purchase or sell securities of the reporting issuer with the knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed.

> *That between April 24, 2000 and May 2, 2000, K.Y. Ho and Betty Ho traded 494,900 ATI shares. At the time these shares were traded, they were in a special relationship with ATI and had knowledge of a material fact with respect to ATI that had not been generally disclosed. The material fact was that ATI would fall short of its forecasted revenue and earnings for Q3-2000. Of these shares, 240,900 ATI shares were sold from an account in the name of Betty Ho for total proceeds of approximately $6,954,279. By selling the shares prior to the issuance of the news release on May 24, 2000, K.Y. Ho and Betty Ho avoided a loss of $3,352,824. The remaining 254,000 shares were donated to charities from an account in the name of K.Y. Ho. By donating the shares prior to the issuance of the news release, K.Y. Ho was able to maximize his tax benefit and avoid a loss in the value of the shares of $3,585,100.*

8. There is no issue that the shares were disposed of by the Respondents between April 24, 2000 and May 2, 2000 as alleged, or that K.Y. Ho was a person in a special relationship with ATI given that he was an insider.

9. Also, there is no issue that the fact that ATI would suffer a shortfall in its forecasted revenue and earnings for Q3-2000 was a material fact for the purpose of subsection 76(1) of the Act. It is also not contested that the Respondents must be shown to have had subjective or actual knowledge of that fact at the time of the disposition of the shares.

10. The two main issues that are in dispute as against the Respondents are:

(a) was the fact that ATI would suffer a shortfall in its forecasted revenue and earnings for Q3-2000 a material fact at the time of the disposition of the shares? and

(b) if it was, did the Respondents have knowledge of it at the time they disposed of their shares?

11. There is one further issue concerning K.Y. Ho. It is alleged that he “traded” 254,000 shares of ATI by donating them to charities and that by donating them prior to the issuance of the news release, he was able to maximize his tax benefit. This raises the question as to whether a donation to a charity is a “sale” for the purpose of subsection 76(1) of the Act.

12. Each of these issues will be considered after discussing the standard of proof and the use of hearsay evidence.

<u>The Standard of Proof</u>

13. While the standard of proof in administrative proceedings is the civil standard of the balance of probabilities, Staff conceded that, this being an alleged violation of subsection 76(1) of the Act, it could only discharge its burden by clear and convincing proof based on cogent evidence.

14. This standard of proof was recently affirmed in *Investment Dealers Association of Canada v. Boulieris* (2004), 27 O.S.C.B. 1597 (O.S.C.) at paras. 33 and 34, affirmed [2005] O.J. No. 1984 (Div. Ct.) where the Commission considered the standard required for proving a serious complaint against a person. The Commission noted in that case that the standard of proof and the nature of the evidence which is required to meet that standard, are integral to the duty of administrative tribunals to provide a fair hearing.

15. We accept, as a matter of a fundamental fairness, that reliable and persuasive evidence is required to make adverse findings where those findings will have serious consequences for a respondent.

<u>The Use of Hearsay Evidence</u>

16. Early in the hearing, an issue concerning hearsay evidence arose from the manner in which Staff chose to lead its evidence.

17. Staff did not call as witnesses anyone who had been employed at ATI during the period of Q3-2000 or at any other time. The three witnesses that Staff did call were Jody Sikora, a Staff investigator, Keith Patterson, an expert on the income tax implications that flowed from donations of shares to charities and Konstantino Papageorgiou, a market analyst who at the relevant time followed technology stocks, including ATI.

18. Mr. Sikora, during the course of his investigation, with the assistance of an order issued under section 11 of the Act, obtained documents from ATI and other sources. Those documents included e-mails sent to and by senior sales and other executives of ATI. K.Y. Ho was a recipient of many of these e-mails and also authored some of them.

19. Staff introduced into evidence through Mr. Sikora several large books of these documents. Objection was taken by the Respondents’ counsel to the admissibility of many of these documents on the basis that they were hearsay evidence and that the authors of the documents could have and should have been called by Staff.

20. Staff relied on subsection 15(1) of the *Statutory Powers Procedures Act*, R.S.O. 1990, c. S. 22, (as amended) (the "SPPA") as the basis for permitting the introduction of this hearsay evidence. It provides:

> *15(1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,*
>
> *(a) any oral testimony; and*
>
> *(b) any document or other thing,*
>
> *relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.*

21. There are numerous rationales for permitting tribunals to accept hearsay evidence under this provision. Generally, those rationales focus on the fact that administrative tribunals are expected to be less formal and less contentious than court proceedings and, accordingly, the evidentiary requirements for admissibility may or should be less stringent.

22. Tribunals have a discretion under subsection 15(1) of the SPPA as to what evidence they will admit. In exercising that discretion, a tribunal must have regard to the complaint before it. The more serious and contentious the complaint, the more a tribunal in exercising its discretion under subsection 15(1) of the SPPA, must have regard to the rights of the person who is the subject of the complaint.

23. Insider trading is a serious violation of the Act. The mere allegation of insider trading can have significant adverse repercussions for a respondent. The finding of insider trading can have consequences that are even more severe.

24. The courts have determined that the discretion under subsection 15(1) of the SPPA must be exercised so as not to infringe the *Rules of Natural Justice*. In *Lischka v. Criminal Injuries Compensation Board* (1982), 37 O.R. 2nd, 134 (Div. Ct.), Justice Galligan in giving the judgment of the court stated at page 135:

> *It is my opinion that the evidence of the police officer, albeit from a technical point of view hearsay and opinion, was admissible because of the provisions of s. 15(1) of the Statutory Powers Procedures Act, R.S.O. 1980, c. 484. I am not prepared to say that there could be no case in which admission of hearsay and opinion evidence could not amount to denial of natural justice even though its admission is authorized by s. 15. I do not think that this is one of those cases.*

25. However, *Re B and Catholic Children's Aid Society of Metropolitan Toronto* (1987), 59 O.R. 2nd, 417 (Div. Ct.), was such a case. In that case, hearsay evidence had been admitted pursuant to subsection 15(1) of the SPPA. After referring to the above dictum, Craig J., stated at page 421:

> *It is our view that in the circumstances mentioned, where the appellant was denied the right to cross-examine the alleged victim, the admission of the hearsay evidence did amount to a denial of natural justice; the hearing in this case fell below the minimum requirement of fairness.*

26. The concerns raised by the Respondents focus on this fundamental issue of fairness. While it is for Staff to determine the form and substance of the evidence it will present, it is incumbent upon the Panel to be satisfied that both the nature and the form of that evidence is such that a respondent has a fair hearing.

27. The Panel's ruling at the time was to admit the books of documents into evidence. However, it was indicated in the ruling that the ultimate weight to be given to the hearsay documents would involve considerations of both natural justice and reliability.

28. In considering the issue of reliability, regard must be had for the fact that many of the e-mails included in the books of documents are expressions of the opinions and concern of some ATI executives as to whether the Q3-2000 forecasts would be met.

29. Without the authors of those e-mails being called, the opinions or expressions of concern expressed in those e-mails could not be tested by cross-examination and it is not known what facts were or were not considered by them at the time the e-mails were sent. By reason thereof, in considering the ultimate reliability of such evidence, little weight can be given to those e-mails sent by persons who were not called as witnesses.

30. With that background, we will now turn to the specific issues.

Issue 1 – Was it a Fact at the Time of the Disposition of Shares that ATI Would Fall Short of its Forecasted Revenue and Earnings for Q3-2000?

31. One of the key elements of subsection 76(1) of the Act is the existence of a material fact with respect to the reporting issuer that had not been generally disclosed at the time of the disposition of the shares.

32. The material fact alleged in this case is that ATI would fall short of its forecasted revenue and earnings for Q3-2000. That fact was made public on May 24, 2000 and the shares were disposed of by the Respondents between April 24 – May 2, 2000.

33. The question this first issue raises is whether in the time period of April 24 – May 2, 2000, it was already an established fact that ATI would fall short of its forecasted revenue and earnings for Q3-2000 as Staff alleges, or was it not a fact, as the Respondents assert, until shortly before the public announcement on May 24, 2000.

34. As already noted, Staff did not call anyone as a witness who had been employed at ATI in Q3-2000 or at any other time. Rather, the evidence led by Staff on this issue was confined to e-mails and other documents which had been obtained from ATI and other sources and were contained in the books of documents entered into evidence.

35. Of those e-mails and documents relevant to this issue, Staff relied heavily on e-mails that had been sent by certain members of ATI's senior management in April 2000. Many of these e-mails contained expressions of concern and opinions regarding whether or not ATI would achieve its forecasts for Q3-2000. Some of them were very pessimistic as to the state of sales and revenue and whether the Q3-2000 forecasts would be met.

36. Certain of the authors of those e-mails were called as witnesses by K.Y. Ho. Those witnesses rejected the inferences that Staff would have us draw from their e-mails. Rather, those witnesses testified that during the period April 24 – May 2, 2000 they believed the forecasts of Q3-2000 would be achieved.

37. K.Y. Ho called seven witnesses including himself. These witnesses included a number of senior executives of ATI and two directors. Most of these witnesses had direct knowledge of ATI's affairs not only in Q3-2000 but also for numerous previous quarters. Together, they gave a very complete picture as to the nature of the graphic card industry of which ATI was a part, the factors that affect ATI's operations and performance and, in particular, ATI's situation in Q3-2000.

38. Their evidence was credible and we accept it. What follows about ATI and its operations and where ATI was in meeting Q3-2000 forecasts at the time that the Respondents disposed of their shares, is based on their evidence.

39. ATI commenced operations in 1985 and by 2000 was a leader in the high-tech graphic card industry. In 1993 it went public and its shares traded on the TSX and Nasdaq.

40. Evidence was given that the graphic card industry is highly competitive both as to technological innovations and price. By reason of these strong competitive factors, customers can and do significantly control the market and the buying patterns.

41. We heard evidence that this has resulted in a "hockey stick" pattern of sales, not only in the graphic card industry, but also in other high-tech industries. This pattern of sales is so named in that typically for a major part of a sales quarter, sales will be flat like the blade of a hockey stick and then, in the last few weeks of a quarter, they will rise rapidly like the shaft of a hockey stick.

42. Major customers contribute to the sales pattern by delaying purchases until the last few weeks of a quarter with the expectation that suppliers, such as ATI, anxious to make their quarterly forecasts, will offer better prices or other concessions in those last few weeks of a quarter in order to induce sales.

43. The effect of this hockey stick pattern is that, in a typical quarter, it will not be known with any degree of certainty until the last few weeks of that quarter whether or not the forecasted revenue and earnings will be achieved.

44. ATI's fiscal year was September 1 – August 31, 2000 so that Q3-2000 was March 1 – May 31, 2000.

45. On April 6, 2000, ATI had its quarterly conference call in which guidance was given on its forecasts for Q3-2000 to brokerage analysts who followed the high-tech industries and ATI in particular.

46. In preparation for the conference call, e-mails were received from those within ATI who were responsible for the various sales channels in which they provided their best estimates of sales revenue for the quarter. Based on this and other data, the then CFO gave revenue and margin guidance for the Q3-2000 to the analysts on April 6, 2000.

47. We also heard evidence as to the procedures that ATI had in place in order that both the directors and senior executives could consistently monitor sales revenue and other data. These procedures included weekly reports which were distributed to both directors and executives. These reports traced actual against forecasted sales as well as the amount of committed orders that had been received but not yet filled.

48. While these weekly reports in April 2000 were showing sales lagging behind forecasts, K.Y. Ho and the other ATI executives and directors called by him as witnesses during the hearing, testified as to the confidence that existed within ATI that Q3-2000 forecasts would be achieved or even surpassed. This confidence was based in part on the fact that ATI had in the past, with one exception, achieved its forecasts. It was also based on the extent of the committed orders in hand and the fact that with the "hockey stick pattern of sales" it was not unusual to have sales lagging until the last few weeks of a quarter.

49. The one exception when ATI did not meet its forecasts was in Q3-1994. As a result of this, there was an awareness within ATI of the adverse repercussions of that failure and, in order to avoid its reoccurrence, the weekly reports to executives and directors of ATI and other procedures had been implemented in order that forecasted sales and revenues could be more closely and carefully monitored.

50. April 26, 2000 was the day on which K.Y. Ho instructed his broker to make the donations of shares to three charities which formed the basis of the allegations against him.

51. On that same day, the then CFO of ATI prepared an analysis of projected revenue for Q3 based on recent sales reports. As a result of this review, he again projected Q3 revenue in an amount very similar to that which he had given on the April 6 guidance call to analysts.

52. It was not until the second week of May 2000 that serious doubts started to emerge as to whether the Q3 forecasts would be achieved. We heard evidence that May 10 was the key turning point in the quarter in this regard. At the May 10 weekly sales meeting, the sales report from Europe referred to the cancellation of an order from Fujitsu due to a shortage of Intel CPUs. Intel was the largest manufacturer of CPUs in the world at the time. K.Y. Ho testified that this information was “scary” because, if a large company like Fujitsu was on allocation of CPUs from Intel, smaller companies too would be on allocation. Without CPUs, computers could not be built, and without computers, there would be no need for anyone to purchase components such as the graphic boards produced by ATI.

53. After taking time to assess the impact of this development and with the benefit of input from ATI’s sales teams in the various channels, the decision was made to issue the announcement on May 24 that the Q3 forecasts would not be achieved due in large part to the component shortage described above.

54. With this evidence called by K.Y. Ho, we have been able to place in context the e-mails and other documents relied upon by Staff to support its allegations against the Respondents. After having carefully considered all of the evidence, we find that it has not been established that it was a fact at the time of the disposition of the shares by the Respondents that ATI would fall short of its forecasted revenue and earnings for Q3-2000.

Issue 2: What was the Respondents’ Knowledge at The Time They Disposed of The Shares as to Whether ATI Would Fall Short of its Forecasted Revenue and Earnings for Q3-2000?

55. In that we have determined that it has not been established that it was a fact at the time the Respondents disposed of the shares that ATI would fall short of its forecasted revenue and earnings for Q3-2000, it follows that we could not find that the Respondents had actual knowledge of that fact. That the Respondents had such knowledge is a requirement in order to establish a violation of subsection 76(1) of the Act.

56. However, for completeness, we propose dealing with what the Respondents knew when they disposed of the Shares and the allegations that Staff has made in that regard.

57. It should be noted at the outset that Staff in its closing written submissions has changed its position as to what the Respondents knew when they disposed of the Shares.

58. As to K.Y. Ho, Staff states:

> *It is respectfully submitted that there is an abundance of evidence that K.Y. Ho possessed materials facts, including confidential information about poor sales and low margins at the time of his trading. There is also evidence that K.Y. Ho would have “known” that there was some probability that ATI would fall short of its forecasts revenue and earnings for Q3. (emphasis added)*

59. As to Betty Ho, Staff states:

> *Given all the circumstances, the Panel is entitled to draw the inference from the evidence that Betty Ho traded her shares on the advice of her husband with the intent of applying the tax credit received from his donations and avoiding the capital gains tax incurred on the sale of her shares.*

60. We are of the view that these new allegations are significantly at variance with the allegations against the Respondents made in paragraph 9(c) of the Statement of Allegations. We do not accept that it is open to Staff in its closing submissions to change its allegations from those asserted in the Statement of Allegations, particularly without seeking an order permitting an amendment to the Statement of Allegations.

61. These new allegations are also at variance with a letter sent by Staff to counsel for the various respondents, dated February 19, 2004. This letter is referred to in a pre-hearing decision in this proceeding, dated on October 19, 2004 following a motion brought by K.Y. Ho. That letter contains the following statement:

> *I confirm that it is Staff's position that the Commission should make an order based on the allegations as set out in the Statement of Allegations. Staff does not allege nor intend to make submissions on any other theory of liability than is alleged in the Statement of Allegations.*

62. Even if we were prepared to accept this revised allegation against Betty Ho, the content of the allegation is not one that is prohibited by subsection 76(1) of the Act.

63. A requirement of subsection 76(1) is that the person trading be in a special relationship with the reporting issuer. Subsection 76(5) defines when a person will be considered to be in such a relationship.

64. That definition does not include a person who has received advice from an insider to trade shares as is the new allegation against Betty Ho.

65. Even if it did, Staff has not demonstrated that Betty Ho sold her shares on the advice of her husband, K.Y. Ho. In submitting that she had sold her shares based on such advice, Staff argued that K.Y. Ho had a direct interest in Betty Ho's shares even though he had gifted them to her. Staff maintained that despite her being legally able to sell the shares, she could only do so with her husband's input.

66. Staff augmented this submission by asserting that Betty Ho was aware that there were trading windows at ATI and that her only source for determining when they were open was her husband. The fact that Betty Ho chose to govern herself and her trades in ATI shares in accordance with the applicable trading guidelines at ATI and to voluntarily respect the trading windows of ATI, as a non-insider of ATI, seems to the Panel to be a reasonable and prudent course of action on her part. Accordingly, we do not draw any adverse inferences from this.

67. We heard no other evidence that would support the inference that Staff would have us draw that Betty Ho sold her shares because K.Y. Ho advised her to do so. In fact, the evidence of Betty Ho was that she did not sell her shares because of anything she knew concerning ATI or on the basis of any advice that she received from her husband.

68. In so testifying, Betty Ho noted that there was a rule of conduct within ATI that the wives of the executives could not be informed of anything concerning the corporate business affairs of ATI and that this rule was observed.

69. Contrary to the inferences that Staff would have us draw, it was the evidence of Betty Ho that the disposition of her shares was effected in reliance upon the advice of her broker. She had her own brokerage account in which she had very substantial holdings of ATI shares which had been gifted to her by K.Y. Ho in May 1999, as well as shares of several other companies. Betty Ho's broker, Andrew LeFeuvre, who appeared as a witness on her behalf, advised Betty Ho that she should sell some of her ATI shares in order to diversify her holdings. He was concerned that she should do so because of her very large ATI holdings relative to her remaining portfolio of securities. In that the trading window for insiders of ATI was open at the end of April and early May 2000, and the market price of ATI shares had reached the target level at which Betty Ho had previously expressed an interest in selling, he urged her to sell some of her ATI shares while the window was open.

70. Mr. LeFeuvre confirmed this advice in the evidence he gave. He stated that all of Betty Ho's trades in ATI shares were solicited by him. In fact, despite the persistent reminders from Mr. LeFeuvre that Betty Ho ought to diversify, he testified that she was extremely reluctant to sell any ATI shares. She finally agreed to sell some shares but only if she could sell in the $30 range, and even then, her orders were in very small amounts relative to her remaining holdings.

71. The trades effected by Betty Ho were carried out through her long established brokerage account and there was no attempt on her part to in any way conceal her trading as is often seen in insider trading cases.

72. As with Betty Ho, even if we were prepared to entertain the new allegation made in closing submissions by Staff as to what K.Y. Ho knew at the time he disposed of his shares, the evidence does not support this new allegation.

73. To establish, for the purposes of subsection 76(1) of the Act, that a respondent knew an undisclosed material fact at the time of the disposition of shares, it must be shown that the respondent had subjective or actual knowledge of that alleged fact at that time.

74. The evidence of K.Y. Ho was that he had no knowledge that ATI would not meet its forecasts of Q3-2000 when he disposed of the shares. To the contrary, his evidence was that he was confident that the forecasts for Q3-2000 would be achieved. He based that confidence on a number of factors including the hockey stick effect on sales in the graphic card industry and on the fact that ATI had received a considerable number of orders which he expected would be filled before the end of the quarter. He further gave reasons as to why he thought that certain executives in ATI who had expressed concerns or pessimism in their e-mails about whether sales and revenue forecasts would be achieved, were incorrect in those beliefs.

75. This evidence of K.Y. Ho stood the test of cross-examination and we accept it.

76. Accordingly, we find that the allegations in paragraph 9(c) of the Statement of Allegations as to what the Respondents knew as a fact at the time they disposed of the shares have not been established.

Issue 3 - Did the Charitable Donations by K.Y. Ho Constitute "Trades"?

77. As noted earlier in these Reasons, in addition to the usual issues to be determined in an insider trading case, there was a novel issue raised as to whether the donation of shares by K.Y. Ho to charities were "sales" for the purpose of subsection 76(1) of the Act.

78. This question does not appear to have been previously considered by the Commission.

79. Staff did not refer us to any case law or legal analysis in support of its position. In their written closing submissions, Staff states as follows:

> *There is evidence that a donation of shares can result in considerable tax savings for a donor. The value of the donation is determined at the time that the sales are donated to the charity. By donating his shares in advance of the general disclosure of the material fact that ATI would not make its Q3 earnings and revenue expectations, K.Y. Ho avoided a loss in the value of the charitable donations. (emphasis added)*

80. Staff's argument that a considerable tax benefit can result from charitable donations appears to be in aid of establishing valuable consideration so that the donations in question would be equated to "sales". While this position was advanced by Staff in hypothetical terms, there was no direct evidence led by Staff during the hearing to establish that K.Y. Ho did, in fact, realize considerable tax savings as a result of his donations of ATI Shares. As Betty Ho's counsel put it in closing submissions, Staff failed to adduce evidence of the size of any capital gain or tax benefit that may have been incurred or obtained and Staff failed to ask the Respondents, who testified at the hearing, if either of them actually made use of the tax receipts received by Mr. Ho. This leaves the Panel to speculate on this aspect of Staff's case.

81. Furthermore, even if the donor received some tax benefit from having made a gift of shares to a charity, this alone does not clear the hurdle of establishing that such a gift should be deemed to constitute a "sale" for purposes of the Act in these circumstances.

82. Counsel for K.Y. Ho cited the U.S. decision of *Truncale v. Blumberg et al.*, 80 F. Supp. 387 (S.D.N.Y. 1948), where it was held that a gift made in good faith is not a "sale" for the purpose of the U.S. securities law.

83. In the *Truncale* decision, it was argued that a donor's gift of donations to charities were "sales" so as to constitute insider trading, with the alleged profits consisting of a tax deduction to the donor. The Court rejected this argument, stating as follows:

> *By no stretch of the imagination, however, can a gift to charity or indeed to anyone else when made in good faith and without pretense or subterfuge, be considered a sale or anything in the nature of a sale. It is the very antithesis of a sale; and there is no reason to suppose that the Congress intended the statute to apply to gifts. (emphasis added)*

84. In a similar vein, in OSC Policy 57-602, in the context of applications to vary cease trade orders to permit a party to establish a tax loss, the Commission states as follows at paragraph 3:

> *If the disposition is by way of gift, the Commission is of the view that it is not a "trade" within the meaning of section 1(1) of the Act even though it may be viewed as a "disposition" for the purposes of the Income Tax Act (Canada).*

85. Although this Policy Statement remains in effect, it was not addressed by Staff, nor was any effort made to distinguish it from the case at hand.

86. There was no submission made by Staff – nor could there be on the evidence – that the gifts of shares by K.Y. Ho to the three charities were other than gifts made in good faith. They were each made to a significant charity and each is a matter of public record.

87. K.Y. Ho testified that his commitment to make the donations of shares to the subject charities began to take shape during 1998 and 1999. He had hoped and planned to carry out these commitments earlier than the actual date of the donations, but, for various reasons described below, he had been unable to complete the transfer of shares to the charities as the trading windows for insiders were not open for much of the time leading up to April 2000.

88. K.Y. Ho's commitment to make a donation to Princess Margaret Hospital began in the fall of 1998 at the urging of Dr. Fleck, a fellow ATI director who testified at the hearing. It was apparently agreed that the donation would be made in the summer of 1999. The actual donation of shares did not occur until April 2000 due to the following combination of factors:

(i) the trading windows at ATI were closed for a good portion of this time due to the loss of a Dell design contract to nVidia in the summer 1999, followed by an ATI share buyback in October 1999 and the ArtX acquisition in February 2000;

(ii) in Q3, the trading window for ATI insiders did not open until April 10, 2000 at which time K.Y. Ho. was traveling in the Far East; and

(iii) in order to make the donations as planned, K.Y Ho needed to borrow 150,000 shares from Betty Ho (which he subsequently repaid) and Betty Ho forgot to make the necessary arrangements for the transfer to occur until prompted by her husband to do so on April 22 or 23, 2000.

89. We also heard evidence that K.Y. Ho's planned donation to Havergal, a private school, which his two daughters and two nieces were attending, dated back to 1999. Similarly, in September 1999, K.Y. Ho toured the Yee Hong Centre and at that time indicated to his fundraising Chairman that he intended to make a significant donation.

90. Accordingly, we have determined that the donations of shares by K.Y. Ho to the charities were not "sales" for the purpose of subsection 76(1) of the Act.

Conclusion

91. For all of the above reasons the allegations against the Respondents are dismissed.

Dated at Toronto this 14th day of October, 2005.

"Susan Wolburgh Jenah"

"M. Theresa McLeod"

"H. Lorne Morphy"

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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
Central Asia Gold Limited	06 Oct 05	18 Oct 05		**13 Oct 05**
RTICA Corporation	03 Oct 05	14 Oct 05	**14 Oct 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
Canadex Resources Limited	04 Oct 05	17 Oct 05	17 Oct 05		

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
ACE/Security Laminates Corporation	06 Sept 05	19 Sept 05	19 Sept 05		
Argus Corporation Limited	25 May 04	03 Jun 04	03 Jun 04		
Canadex Resources Limited	04 Oct 05	17 Oct 05	17 Oct 05		
Fareport Capital Inc.	13 Sept 05	26 Sept 05	26 Sept 05		
Hip Interactive Corp.	04 Jul 05	15 Jul 05	15 Jul 05		
HMZ Metals Inc.	24 Aug 05	06 Sept 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		
Xplore Technologies Corp.	04 Jul 05	15 Jul 05	15 Jul 05		

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Chapter 5

Rules and Policies

5.1.1 CSA Notice - Replacement of NI 44-101 Short Form Prospectus Distributions, Form 44-101F3 Short Form Prospectus and Companion Policy 44-101CP Short Form Prospectus Distributions

NOTICE

REPLACEMENT OF
NATIONAL INSTRUMENT 44-101 *SHORT FORM PROSPECTUS DISTRIBUTIONS*,
FORM 44-101F3 *SHORT FORM PROSPECTUS*
AND
COMPANION POLICY 44-101CP *SHORT FORM PROSPECTUS DISTRIBUTIONS*

October 21, 2005

Introduction

We, the Canadian Securities Administrators (CSA), are replacing the following instruments, which came into effect in December 2000:

- National Instrument 44-101 *Short Form Prospectus Distributions* (Former NI 44-101) and

- Form 44-101F3 *Short Form Prospectus*,

with the following instruments, respectively:

- National Instrument 44-101 *Short Form Prospectus Distributions* (New NI 44-101), and

- Form 44-101F1 *Short Form Prospectus* (New Form).

(In this Notice, New NI 44-101 and the New Form are collectively referred to as the “Instrument”.)

The Companion Policy 44-101CP *Short Form Prospectus Distributions* (the Policy), which includes explanations, discussion and examples on how the CSA will interpret and apply the Instrument, is also being replaced.

Concurrently with the publication of this Notice, we are also publishing another CSA Notice that sets out related amendments (the Consequential Amendments) required to conform the following instruments to the Instrument:

- National Instrument 44-102 *Shelf Distributions*

- National Instrument 44-103 *Post-Receipt Pricing*

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

- Form 51-102F2 *Annual Information Form* of National Instrument 51-102 *Continuous Disclosure Obligations.*

Members of the CSA in the following jurisdictions have made, or expect to make, the Instrument

- a rule in each of British Columbia, Alberta, Manitoba, Ontario, Nova Scotia, Prince Edward Island, New Brunswick and Newfoundland and Labrador;

- a commission regulation in Saskatchewan and a regulation in Québec; and

- a policy in the Northwest Territories, Yukon and Nunavut.

The Policy has been, or is expected to be, adopted in all jurisdictions.

In British Columbia and Ontario, the implementation of the Instrument is subject to ministerial approval.

In Ontario, the Instrument and the other materials required to be delivered to the minister responsible for the oversight of the Ontario Securities Commission were delivered on **October 14, 2005**.

In Québec, the Instrument is a regulation made under section 331.1 of *The Securities Act* (Québec) and must be approved, with or without amendment, by the Minister of Finance. The Instrument will come into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation.

Provided all necessary ministerial approvals are obtained, the Instrument and Consequential Amendments will come into force on **December 30, 2005**.

Substance and Purpose

The Instrument modifies the qualification, disclosure and other requirements of the short form prospectus system so that this prospectus system can build on and be more consistent with recent developments and initiatives of the CSA. For example, the Instrument

- permits more reporting issuers to use the short form prospectus system by eliminating the minimum market capitalization requirement and the requirement that an issuer be a reporting issuer for a certain length of time before it can use the short form prospectus system;

- eliminates duplication and inconsistencies between the short form prospectus system and both National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) and National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) (together, the "CD Rules"), thereby better integrating the disclosure regimes for the primary and secondary markets;

- further streamlines the short form prospectus system by, for example, eliminating the requirement for regulatory review of an issuer's initial annual information form before the issuer could file a short form prospectus; and

- addresses deficiencies or ambiguities in Former NI 44-101 that the CSA had identified over the past four years.

Summary of Written Comments

On January 7, 2005, we published the Instrument and Policy for comment. The comment period ended in April 2005. During the comment period, we received submissions from 14 commenters. Appendix A lists the names of the commenters and Appendix B summarizes their comments and our responses.

When we published the Instrument and Policy for comment, we also requested comments on possible further changes in prospectus regulation; namely, whether we should permit certain eligible issuers to access public capital solely by filing a final prospectus without regulatory review. Appendix C summarizes the comments that we received in response to those proposed changes. We will keep those comments in mind when we return to deliberating whether such changes to the prospectus system ought to be made. We will also continue with the CSA project to harmonize and nationalize the general prospectus requirements, including the disclosure requirements of a long form prospectus. For now, the CSA has decided to proceed with the changes to, and expansion of, the short form prospectus system included in the Instrument.

We would like to thank everyone for taking the time to provide us with comments.

Summary of Changes to the Instrument and Policy

After considering the comments, we made some changes to the Instrument and the Policy that were published for comment in January 2005. We do not believe these changes are material and are not republishing the Instrument or the Policy for a further comment period. The changes are summarized in Appendix D.

Questions

Please refer your questions to any of the following:

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Appendix A

List of Commenters

	COMMENTER	DATE
1.	Shawn Allen	January 31, 2005
2.	Aur Resources Inc.	March 8, 2005
3.	Canadian Trading and Quotation System Inc.	March 29, 2005
4.	Macleod Dixon	April 7, 2005
5.	Canaccord Capital Corporation	April 8, 2005
6.	Investment Dealers Association of Canada	April 8, 2005
7.	Ontario Bar Association - Securities Law Subcommittee of the Business Law Section	April 8, 2005
8.	Torys LLP	April 8 and 26, 2005
9.	TSX Group	April 8, 2005
10.	Ernst & Young	April 11, 2005
11.	Osler, Hoskin & Harcourt LLP	April 11, 2005
12.	Stikeman Elliott LLP	April 11, 2005
13.	KPMG LLP	April 12, 2005
14.	Borden Ladner Gervais LLP	April 13, 2005

Appendix B

Summary of Comments on Instrument and Policy

Item	Reference	Summarized Comment	CSA Response
Part A: Comments in Response to Questions in CSA Notice dated January 7, 2005			
1. Question 1 - Alternative A vs. B[2]			
1.1	Preference for Alternative B	None of the commenters expressed a preference for Alternative A. Eleven out of fourteen commenters expressed their preference for Alternative B. Some of the comments supporting Alternative B were: • Investors are now receiving timely, comprehensive information from reporting issuers through continuous disclosure (CD) filings and there is no reason to discriminate against issuers based on their market capitalization or the length of time the issuer has been a reporting issuer. • Alternative B will significantly improve the ability of junior issuers, in particular, to access equity markets on a more timely and cost efficient basis. This proposal will benefit the junior market as a whole. • The preference for Alternative B is significantly influenced by the qualification requirement that issuers have a Canadian listing.	The commenters overwhelmingly supported Alternative B. We will proceed with Alternative B, which will broaden access to the short form prospectus system.
1.2	Qualification criteria – review of annual information forms (AIF)	One commenter urged the CSA to review the first AIF filed by a new reporting issuer that did not file a long-form initial public offering prospectus with the same rigour used to review an initial public offering prospectus.	All reporting issuers are subject to the CSA's CD review program, which CSA Staff Notice 51-312 *Harmonized Continuous Disclosure Review Program* describes in greater detail. We believe our CD review program adequately addresses the commenter's concerns because we review AIFs as well as issuers' other CD documents. We also note that, whether we review a document or not, the onus remains with the issuer to ensure it complies with prescribed disclosure requirements.

[2] Question 1: The changes reflected in Alternative A of Part 2 of Proposed NI 44-101 are necessary to update and harmonize Current NI 44-101 with the CD Rules and other regulatory developments. Alternative B, however, represents a significant broadening of access to the short form prospectus system. Do you believe this broadening of access is appropriate? What are your views on the proposed qualification criteria set out as Alternative B?

Item	*Reference*	*Summarized Comment*	*CSA Response*
1.3	Qualification criteria – definition of AIF	One commenter recommended that the proposed definition of AIF be changed so that it would be consistent with the definition of AIF in proposed National Instrument 45-106 *Prospectus and Registration Exemptions,* which definition takes into account alternative forms of an "acceptable" AIF other than an AIF under the CD Rules.	We have not changed the definition of AIF. We believe that section 2.7 of NI 44-101, which exempts new reporting issuers and successor issuers from the requirement to have a current AIF, is sufficient.
1.4	Qualification criteria – novel securities	One commenter questioned whether, absent pre-filing consultations, any issuer that proposes to distribute novel securities should be qualified to use a short-form prospectus.	We believe that current procedures adequately address the commenter's concerns. National Policy 43-201 *Mutual Reliance Review System for Prospectuses* encourages pre-filing consultations and enables the regulator to take more time to review a preliminary prospectus if the regulator requires the additional time. If we adopt further changes to our offering system (such as eliminating preliminary prospectus and prospectus review and receipt) the commenter's concerns regarding novel securities will be reconsidered in that context.
1.5	Qualification criteria – reference to NI 51-102 *Continuous Disclosure Obligations*	One commenter suggested replacing, in sections 2.2, 2.3 and 2.4 of NI 44-101, "applicable securities legislation" with "NI 51-102" in the phrase "periodic and timely disclosure documents that the issuer is required to have filed in that jurisdiction under <u>applicable securities legislation</u>".	We cannot limit this criterion to NI 51-102. For example, certain investment funds can use the short form prospectus system, but their CD filing obligations arise out of NI 81-106 not NI 51-102. We also believe that disclosure documents under all applicable securities legislation should be filed in order for an issuer to be qualified to use the short form prospectus system.
1.6	Qualification criteria – venture issuers	Two commenters suggested that venture issuers be required to comply with the disclosure and governance obligations of non-venture issuers to be qualified to use the short form prospectus system. One commenter suggested that a venture issuer choosing to access the short form distribution system be required to file its annual financial statements, annual MD&A and AIF within 90 days of its financial year end.	NI 44-101 harmonizes and integrates the short form prospectus regime with the CD regime. Other than the requirement to have a current AIF (which is a base disclosure document for a short form prospectus), we do not think it is necessary to change the CD and corporate governance obligations of venture issuers to permit them to use the short form prospectus system.
1.7	Qualification criteria – issuers whose operations have ceased or whose principal asset is cash or exchange listing	One commenter suggested changing the qualification criteria in 2.2(e). There may be circumstances where an issuer has operations but whose principal asset is cash or cash equivalents. Nevertheless, the issuer should be qualified to file a short form prospectus.	We disagree. We generally believe that an issuer whose principal asset is cash or cash equivalents will not have significant operations and should not be qualified to file a short form prospectus. If there are exceptional circumstances and such an issuer would like to be qualified to file a short form prospectus, the issuer may apply for exemptive relief from this qualification criterion.

Item	Reference	Summarized Comment	CSA Response
1.8	Qualification criteria - short form eligible exchange	Two commenters suggested that the Canadian Trading and Quotation System Inc. be included in the definition of "short form eligible exchange". Both commenters also noted that the definition will make it difficult to accommodate new exchanges. They suggested changing the definition so that any exchanges recognized by a CSA jurisdiction in the future would automatically also become a "short form eligible exchange".	We agree with the commenters' first suggestion. We have added the Canadian Trading and Quotation System Inc. to the definition of "short form eligible exchange". We have not, however, made the second change to the definition suggested by the commenters. We believe that the criteria to be recognized as an exchange are different from the criteria to be recognized as a short form eligible exchange. There may be exchanges that we recognize in the future which should not be "short form eligible exchanges".
2. Question 2 - Credit Supporter Disclosure Undertaking (Subparagraph 4.2(b)(ii) of NI 44-101) [3]			
2.1	Supportive	Four commenters expressed general support for the requirement to deliver an undertaking in respect of credit supporter disclosure under subparagraph 4.2(b)(ii)	We acknowledge these comments.
2.2	Not supportive	One commenter did not agree with the requirement to deliver an undertaking in respect of credit supporter disclosure. The commenter's view was that the issue is satisfactorily addressed in NI 51-102 where the issuer does not have to file CD if the credit supporter does so. Also, the indenture between the issuer and the credit supporter will contain covenants to ensure the credit supporter is in compliance with applicable rules. Therefore, the risk of the credit supporter not providing the required disclosure is minimal.	NI 51-102 does not currently require any credit supporter disclosure by the issuer though there is an exemption in section 13.4 of NI 51-102 from providing issuer disclosure if appropriate credit supporter disclosure is provided instead. We note that the indenture is a private agreement and compliance with it does not necessarily ensure public disclosure.
2.3	From either issuer or credit supporter	One commenter suggested that the undertaking in respect of credit supporter disclosure could come from either the issuer or the credit supporter.	We believe the undertaking should come from the issuer because: • the periodic and timely disclosure of the credit supporter will be filed on the issuer's SEDAR profile; and • issuers and credit supporters can structure their agreements so that the issuer can meet its obligations pursuant to the undertaking.
2.4	Type of disclosure	Three commenters asked for clarification of the type of timely and periodic disclosure of the credit supporter that would have to be filed pursuant to the undertaking delivered. One commenter	We have clarified in subparagraph 4.2(b)(ii) that the undertaking will be to file the credit supporter's periodic and timely disclosure that is similar to the disclosure required in section 12.1 of Form 44-

[3] Question 2: Is the requirement to deliver an undertaking of the issuer to file the periodic and timely disclosure of applicable credit supporters under paragraph 4.3(b)2 of Proposed NI 44-101 an appropriate response to our concern about the lack of adequate credit supporter disclosure in the secondary market? If not, why not? Please also suggest alternatives to this requirement.

Item	Reference	Summarized Comment	CSA Response
		asked whether the undertaking could be limited to periodic and timely disclosure required by applicable home jurisdiction corporate/securities laws. One commenter asked for clarification particularly in regard to foreign public companies that are not reporting issuers in Canada. One commenter noted that if neither subsection 12.1(1) nor subsection 12.1(2) of Form 44-101F1 applies to the credit supporter, it may be difficult for the issuer on an on-going basis to undertake that certain credit supporter information will be filed.	101F1. We have also added guidance in Companion Policy 44-101CP.
2.5	Best efforts	One commenter suggested that, rather than undertaking to file credit supporter disclosure, the issuer undertake to use its "best efforts" to adhere to the credit supporter disclosure requirements in section 12.1 on a CD basis.	We believe that an issuer can structure its agreements with a credit supporter to ensure that the periodic and timely disclosure of the credit supporter is available for the issuer to file on its SEDAR profile. Accordingly, we believe that a "best efforts" standard is inappropriate.
3. Question 3 - Credit Supporter Exemption (Item 13 of Form 44-101F1) [4]			
3.1	General - supportive	One commenter expressed general support for the exemptions for certain issues of guaranteed securities contained in Item 13 of Form 44-101F1.	We acknowledge the comment.
3.2	General - not supportive	One commenter stated that the exemptions in Item 13 of Form 44-101F1 are inappropriate. NI 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* and NI 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* already facilitate the direct offering of securities in Canada by foreign issuers. Investors should be provided with financial statements of the subsidiary entities because the consolidating summary financial information described in Item 13 is too sparse to allow any meaningful financial analysis.	The exemptions in Item 13 are consistent with exemptive relief that has been granted to date. The basis for granting relief and the principle supporting the exemptions is that full financial disclosure regarding both an issuer and any credit supporters is not required in all cases. We believe investors are primarily interested in the financial position and results of operations of the parent entity (whether that is the issuer or the guarantor). The consolidating summary financial information described in Item 13 is intended to address regulatory concerns regarding the disclosure of structural subordination (as discussed below) when only parent entity financial information is provided.
3.3	Auditor's report	One commenter expressed several concerns about the form and content of the auditor's report on the proposed	We acknowledge the comment. We have deleted instructions 1(b) and 1(c) from Item 13 of Form 44-101F1 and we have

[4] Question 3: Is each of the exemptions in Item 13 of Proposed Form 1 appropriate? If not, why not? Are there any other exemptions we should include? If so, why? Is each of the conditions to the exemptions in Item 13 of Proposed Form 1 necessary to ensure that investors have all the information they need to make informed investment decisions? If not, why not? Are there any other conditions we should include? If so, why?

Item	Reference	Summarized Comment	CSA Response
		consolidating summary financial information. • A U.S. auditor of a U.S. credit supporter may not be able to opine that the consolidating summary financial information is "fairly stated". • In the case of a Canadian credit supporter: (i) there are no Canadian professional standards for preparing consolidating summary financial information; and (ii) the type of opinion that would be expressed is not covered under Canadian GAAS. • Instruction 1(c) to Item 13 requires the summary financial information of the subsidiary entities to be derived from financial statements of the subsidiary that are audited for the same periods that the parent company's financial statements have been audited. Such an audit requirement will render the exemption useless to most multinational issuers.	replaced them with an instruction stating that an entity's annual or interim financial information must be derived from the entity's financial information underlying the corresponding consolidated financial statements of the issuer or parent credit supporter included in the short form prospectus.
3.4	Recent acquisitions	One commenter noted that paragraph (g) of Rule 3-10 of Regulation S-X provides guidance as to when the financial statements of recently acquired subsidiary issuers or subsidiary guarantors is required. We should consider whether comparable guidance for the exemptions in Item 13 is necessary.	We do not believe that guidance comparable to the guidance in Rule 3-10 paragraph (g) is necessary because the exemptions in Rule 3-10 are structured differently than the exemptions in Item 13. Paragraph (g) ensures that the financial statements of a significant recently acquired issuer or guarantor are included in a registration statement filed with the SEC. In contrast, the financial statements of a significant recently acquired issuer or guarantor must be included in a short form prospectus as a part of a business acquisition report (of the parent issuer or guarantor) regardless of whether one of the exemptions in Item 13 applies.
3.5	Subsection 13.1(e)	One commenter believes that the condition in subsection 13.1(e) is redundant given that under subsection 13.1(a), the credit support provider must have provided full and unconditional credit support for the securities being offered.	We disagree. Subsection 13.1(e) is not redundant. The purpose of subsection 13.1(e) is to ensure that issuers with one or more subsidiary credit supporters look to the exemption in section 13.2 rather than the exemption in section 13.1.
3.6	Subsection 13.1(f)	One commenter expressed the view that the consolidating summary financial information contemplated by sections 13.1(f)(ii), 13.2(f)(ii) and 13.3(f)(ii) would not add meaningful disclosure for an	Including consolidating summary financial information will alleviate regulatory concerns relating to the disclosure of "structural subordination".

Item	Reference	Summarized Comment	CSA Response
		investor and therefore should be deleted.	Structural subordination occurs, for example, when an issuer is a subsidiary of a credit supporter and the credit supporter has other subsidiaries that are not themselves credit supporters. Upon the insolvency of the credit supporter, investors relying on its full and unconditional guarantee would not have direct claims against the assets of the non-issuer subsidiaries. Instead, investors would only have claims against the equity of these subsidiaries. Moreover, these claims would be subordinate to the claims of the subsidiaries' creditors. Paragraphs 13.1(f)(ii), 13.2(f)(ii) and 13.3(f)(ii) require disclosure of consolidating summary financial information for the issuer, the credit supporters, and any non-credit supporter subsidiaries. The disclosure of this information will enable investors to generally identify those assets against which they would only have indirect and subordinated claims in the event of insolvency.
4. Question 4 - Disclosure of Interests of Experts (Item 15 of Form 44-101F1) [5]			
4.1	Supportive	Three commenters expressly agreed with the disclosure requirements contained in Item 15. Some commenters suggested conforming changes be made to Form 51-102F2 *Annual Information Form.*	We acknowledge these comments and have made conforming changes to section 16.2 of Form 51-102F2 *Annual Information Form* (see CSA Notice of Consequential Amendments).
4.2	Not supportive	One commenter strongly objected to including Canadian auditors within the scope of this provision. The CSA should work with the Auditing and Assurance Standards Board of the CICA to effect appropriate amendments to the professional standards in Section 5751 and/or Section 7110 if the CSA believes it is desirable for an auditor to confirm independence every time a reporting issuer files a prospectus.	We have considered the comment and continue to believe that the disclosure requirement is not overly onerous. Therefore, we have retained the current requirement, in which the independence disclosure requirement for Canadian auditors is based on their compliance with applicable rules of professional conduct in their jurisdiction.
4.3	Alternative	One commenter suggested that, instead of the disclosure required by section 15.2 of Form 44-101F1, that section require disclosure affirming that the board of directors, or similar body, has determined whether each person or company described in paragraphs 15.1(a) and (b) is	We have not made the suggested change because we believe that disclosure of the expert's actual interest in the issuer is relevant to investors.

[5] Question 4: Does Item 15 of Proposed Form 1 accomplish its objective, which is to ensure disclosure of any ownership interests that would be perceived as creating a potential conflict of interest on the part of an expert? If not, what changes should be made to the parameters?

Item	Reference	Summarized Comment	CSA Response
		independent of the issuer and its management.	
Part B: Comments on Other NI 44-101 Matters			
5. General			
5.1	Multijurisdictional Disclosure System (MJDS)	Two commenters urged us to ensure that the proposed rule would not adversely affect MJDS.	We have confirmed with staff of the SEC that the proposed rule will not adversely affect MJDS.
5.2	U.S. proposal for new prospectus system for well known seasoned issuers	One commenter urged the CSA to introduce amendments to the prospectus system to ensure that issuers who are interlisted in Canada and the United States can take advantage of a proposed prospectus system that the SEC has not yet implemented for “well-known seasoned issuers”.	We have not yet made any changes to the short form system to accommodate interlisted issuers as a result of the SEC changes to the U.S. offering regime. We will consider further changes to our offering systems in response to the SEC proposals as appropriate.
5.3	Extending period for filing preliminary to 4 business days	One commenter agreed with our proposal to add two more business days to the period that an issuer has to file and obtain a receipt for a preliminary short form prospectus after it has entered into an underwriting agreement. This change should assist with due diligence and the preparation of the preliminary prospectus in more complex transactions.	We acknowledge this comment.
5.4	Requirement to restate financial statements	One commenter stated that there are no regulatory requirements for a reporting issuer to file restated annual financial statements for certain subsequent events such as retroactive changes in accounting principles and discontinued operations (“Type A” subsequent events in the CICA Handbook).	We will consider this comment in a broader context than NI 44-101 amendments because any decision on this issue is not limited to prospectus situations.
5.5	Review of unaudited financial statements	One commenter noted that, depending on the local generally accepted auditing standards, foreign auditors may not have a professional responsibility to review of interim financial statements included in the prospectus. In the absence of this review of unaudited interim financial statements, it may be difficult to determine whether the prospectus contains full, true and plain disclosure.	We acknowledge the comment. We have included a requirement in section 4.3 of NI 44-101 that any unaudited financial statements included in or incorporated by reference into the short form prospectus must have been reviewed in accordance with the relevant standards set out in the CICA Handbook for a review of financial statements by an entity's auditor or a public accountant's review of financial statements, or other acceptable foreign review standards. Although NI 44-101 retains the review requirement, the comfort letter addressed to the regulators evidencing that review is no longer required.
6. Significant Acquisitions and Business Acquisition Reports			
6.1	Reliance on business acquisition reports (BARS)	Two commenters endorsed the CSA’s decision to rely on the business acquisition reports for significant acquisition	We acknowledge the comment.

Item	Reference	Summarized Comment	CSA Response
		disclosure. In particular, the elimination of the requirement to include financial statements where there have been multiple insignificant acquisitions is a great improvement.	
6.2	Transition	One commenter noted that there may be some acquisitions that have taken place in the last three completed financial years for which disclosure is currently required but for which a BAR was not required to have been filed. For example, a BAR was not required because the acquisition closed before March 30, 2004. The CSA should consider whether any transitional rules are required to fill the gap until the BAR requirements have been in place for three years.	We acknowledge the comment but believe that transitional rules are not necessary. Although no BAR will be filed for significant acquisitions completed prior to March 30, 2004, we are satisfied that, in respect of such acquisitions, an issuer's consolidated financial statements incorporated by reference would include adequate disclosure about the acquired business. For example, a December 31 financial year-end issuer will include at least nine months of operations of the acquired business in its consolidated annual audited financial statements. We also note that under NI 44-101, a BAR will require inclusion of financial statements for only the two most recently completed financial years of an acquired business and that only BARs filed since the beginning of the most recently completed financial year must be incorporated by reference into a short form prospectus.
6.3	Exemption from NI 51-102 BAR requirement	One commenter suggested that NI 51-102 be amended to provide an exemption from the requirement to file a BAR where a prospectus contains the information and financial statements that would otherwise be required in a BAR. This exemption would parallel the present exemption when disclosure is contained in an information circular.	We will consider this comment in the context of amendments to NI 51-102.
6.4	Pro forma statements for multiple acquisitions in BARs	One commenter suggested amending the pro forma financial statements requirements in NI 51-102 to require them to reflect, in addition to the acquisition that is the subject of the BAR, all significant acquisitions made during the periods covered by the audited and unaudited pro forma income statements of the issuer included in the BAR, to the extent not already reflected in the underlying historical statements.	We will consider this comment in the context of amendments to NI 51-102.
6.5	Auditor's compilation report on pro forma financial statements	One commenter would prefer that the CSA eliminate requirements for a compilation report on pro forma financial statements and rely on the enhanced professional standards in section 7110 of the CICA Handbook instead.	We will consider this comment in the context of amendments to NI 51-102 because the pro forma financial statements requirements in NI 44-101 were deleted in reliance on the business acquisition report requirements in NI 51-102.

Item	Reference	Summarized Comment	CSA Response
7. NI 44-101 - Specific Sections			
7.1	Part 2 - notice declaring intention to qualify for short form prospectus system	One commenter questioned whether this notice would be made available on SEDAR to the public, and whether the notice expired after a period of time. The rule was not clear whether any procedures are required to be taken by the issuer if the issuer subsequently decides not to file a prospectus.	The purpose of the notice is merely to announce that the issuer intends to be qualified to use the short form prospectus system. We have moved this qualification criteria to section 2.8. In that section, we have clarified what the notice should state (see new Appendix A), when it must be filed, and to which regulator. Issuers must file the notice on SEDAR and it will be publicly available. The notice will not have an expiry date and will remain in effect until the issuer withdraws it. There should not be any market implications resulting from this notice since it is not tied to a pending offering or transaction.
7.2	Subsection 2.7(1) - new reporting issuers	One commenter suggested that an IPO prospectus of a new reporting issuer under subsection 2.7(1) be deemed to be a "current AIF" so that it can be incorporated by reference into the short form prospectus under section 11.1 of Form 44-101F1.	An IPO prospectus does not need to be deemed to be a “current AIF”. For a new reporting issuer relying on the subsection 2.7(1) qualification exemption in NI 44-101, section 11.3 of Form 44-101F1 requires disclosure that would have otherwise been in a current AIF to be included in a short form prospectus. The issuer may satisfy the section 11.3 disclosure requirement by incorporating by reference its IPO prospectus (see also General Instruction 5 of Form 44-101F1).
7.3	Section 4.4 - consent of experts	One commenter suggested that section 4.4 of proposed NI 44-101 be amended to accept the inclusion in the short form prospectus of the form of auditor’s consent in CICA Handbook Section 7110 as satisfying the consent requirements that would otherwise apply under section 4.4.	We believe that the Handbook’s auditor’s consent is not sufficient for purposes of the short form prospectus. It does not include the statement that the auditor has read the short form prospectus and has no reason to believe that there are any misrepresentations in information derived from the following: the report, financial statements on which the auditor reported, knowledge of the auditor as a result of the services performed, or knowledge as a result of the audit of the financial statements. We believe these statements are an integral part of the auditor's consent.
7.4	Subsection 4.5(3) - translation into French	One commenter noted that, under current practice, if an issuer is not able to complete the translation of all documents to be incorporated by reference before the issuer files its preliminary prospectus, the issuer can apply for exemptive relief directly from the Autorité des Marchés Financiers (AMF). The commenter asked if subsection 4.5(3) would require an issuer to apply to the principal regulator for exemptive relief (either through the MRRS system or in the cover letter for the	The issuer must apply directly to the AMF for this relief, which would be evidenced by a decision document of the AMF, if granted. We have amended subsection 8.2(1) of NI 44-101 to add a reference to subsection 4.5(3) in the phrase “…other than an exemption, in whole or in part, from Part 2”. This makes it clearer that exemptive relief from subsection 4.5(3) must be evidenced by a decision document and not the issuance of a receipt.

Item	Reference	Summarized Comment	CSA Response
		preliminary prospectus) rather than directly to the AMF.	
7.5	Section 7.1(c) - news release to be issued and filed	This section requires a news release be issued and filed prior to dealers being permitted to solicit expressions of interest. One commenter suggested that this section be amended so that the news release would only have to be issued, and not filed, before dealers could commence soliciting. The issuance of the press release is the more important of the two steps in this process and that, although the distinction may seem like a minor one, the practical implications in the context of "bought deal" financings can be significant.	We acknowledge the comment but have not made the suggested change. SEDAR is the central repository for regulatory filings and we believe news releases should be on SEDAR.
8. Form 44-101F1 - Specific Sections			
8.1	Item 3 - consolidated capitalization	One commenter suggested deleting the requirement for Item 3 (Consolidated Capitalization) in Form 44-101F1 because: • the short form prospectus disclosure should not focus on share and loan capital • a material change report disclosing any change in this information would be incorporated by reference.	We have not made the suggested change because we believe the prospectus should have a summary of all changes to the issuer's share and loan capital, including the changes that will occur from the distribution. We believe this information is easier to understand if it is presented, on a consolidated basis, in one place in the prospectus.
8.2	Section 6.1 - earnings coverage ratio less than one	One commenter suggested that the disclosure of earnings coverage ratios of less than one continue to be on the cover page disclosure.	We agree and have added this requirement back in as section 1.13 of Form 44-101F1.
8.3	Section 6.1 - earnings coverage ratio calculation	One commenter suggested that all interest, whether accrued on current or long-term debt, should be used as the sole basis for the calculation of earnings coverage ratios. The commenter noted that the ability of an issuer to meet its interest requirements should not be impacted by the classification of debt as current or non-current.	To facilitate historical comparability, we have retained the requirement that issuers disclose an earnings coverage ratio that, as calculated, excludes interest on current debt. However, under instruction (5) to section 6.1 of Form 44-101F1 issuers are also required to disclose an earnings coverage ratio that is calculated as though all debt outstanding was classified as long term.
8.4	Section 9.1 - resource property	One commenter noted that, if a material part of the proceeds of the distribution is to be expended on a particular resource property, section 9.1 requires an issuer to disclose, for that property, information required under section 5.5 of Form 51-102F2 that, in turn, refers to disclosure requirements of NI 51-101 *Standards of Disclosure for Oil and Gas Activities*. This section is unclear whether an issuer would be required to include in its prospectus reports in the form of Form 51-101F2 *Report on Reserves Data by Independent*	This comment highlighted for us an unintended result of the reference to section 5.5 of Form 51-102F2 in section 9.1. The disclosure required by section 9.1 is intended to be property-specific, yet the disclosure that section 5.5 refers to is company-wide. We have deleted section 9.1's reference to section 5.5 of Form 51-102F2. Section 9.1 will continue to apply to mining properties.

Item	Reference	Summarized Comment	CSA Response
		Qualified Reserves Evaluator or Auditor and Form 51-101F3 *Management and Directors on Oil and Gas Disclosure* for that property.	
8.5	Item 10 - significant acquisition (acceleration of financial statements)	One commenter noted that subsection 10.1(3) of Form 44-101F1 appeared to accelerate the inclusion in a prospectus of annual and quarterly financial statements for certain significant acquisitions. This acceleration seemed to be more onerous than significant acquisition filing requirements under existing prospectus rules.	We did not intend to accelerate the inclusion of financial statements of certain significant acquisitions. We have amended section 10.1 of Form 44-101F1 and added subsection 4.10(2) to the Companion Policy to clarify which financial statements of a significant acquisition should be included in a short form prospectus.
8.6	Item 10 - significant acquisition (type of disclosure)	One commenter was not clear on whether disclosure of the impact of a significant proposed acquisition, as required under paragraph 10.1(2)(d) of Form 44-101F1 should be quantitative or qualitative. Quantitative disclosure is probably not going to be very accurate in these situations since audited results of the acquired business would not yet be available.	We have replaced subsection 10.1(2) of Form 44-101F1 that was published for comment with an instruction that requires the issuer to provide the information required by sections 2.1 through 2.6 of Form 51-102F4 *Business Acquisition Reports*. This change, in effect, substitutes old paragraph 10.1(2)(d) with section 2.4 of Form 51-102F4. Section 2.4 requires issuers to describe any plans or proposals for material changes in the issuer's business affairs or the affairs of the acquired business which may have a significant effect on the results of the operations and financial position of the issuer. From our reviews of business acquisition reports, we have noted that, in response to section 2.4, issuers disclose both quantitative and qualitative information and that the disclosure varies to the extent the information is known and how specific the issuer can be.
8.7	Item 10 - significant acquisitions: (materiality test for full, true and plain disclosure) (See also section 4.10 of Companion Policy)	One commenter recommended that there be a hard and fast rule that financial statements are only required at and above the 40% level. In light of the requirement to file a BAR including financial statements at the 20% level, which presumably reflects a regulatory view on materiality, issuers may feel bound to include financial statements at the 20% threshold anyway. In the alternative, paragraph 4.10(c) of the Companion Policy should be clarified to explain when to provide evidence rebutting the presumption regarding the requirement for financial statement disclosure if the significance tests are satisfied at the 40% level. Paragraph 4.10(c) should also clarify to whom to provide such evidence and whether an exemption is required. Furthermore, if a formal process is to be followed, that process should be spelled	We do not believe that a bright line test is appropriate. We have amended section 4.10 of the Companion Policy to state that we presume that the inclusion of financial statements or other information is required for all acquisitions that are, or would be, significant under Part 8 of NI 51-102 instead of referring to significant acquisitions at the 40% level. Issuers can rebut this presumption if they can provide evidence that the financial statements or other information required by Part 8 of NI 51-102 are not required for the prospectus to contain full, true and plain disclosure. We encourage issuers to utilize the pre-filing procedures in National Policy 43-201 *Mutual Reliance Review System for Prospectuses* if the issuer intends to omit from its short form prospectus the financial statements or other information

Item	Reference	Summarized Comment	CSA Response
		out. Note that if financial statements are required to be included in a short form prospectus pursuant to a regulatory review, they could be very difficult and costly to obtain on a timely basis.	required by Part 8 of NI 51-102.
8.8	Section 11.1 - mandatory incorporation by reference	Two commenters noted that the term "disclosure document", in paragraph 11.1(8) of Form 44-101F1, seemed to refer to all filed documents, not just those documents filed, or required to be filed, pursuant to an undertaking.	We did not intend to capture all disclosure documents filed. We only intended to capture those documents that the issuer filed pursuant to an undertaking. We have made appropriate changes to this section.
9. Companion Policy 44-101CP - Specific Sections			
9.1	Subsections 1.8(7) and 2.6(4) - successor issuer	One commenter suggested that we consider expanding the examples to cover a "reverse spin-off" where, in accordance with the substance of the transaction, the entity legally spun-off should be considered to be the successor issuer.	We do not believe that a "reverse spin - off" is a frequently occurring transaction. We would consider granting exemptive relief for this kind of transaction on a case-by-case basis.

Appendix C

Summary of Comments on Possible Further Changes in Prospectus Regulation

Following is a summary of the comments we received in response to questions 5 to 7 in CSA Notice dated January 7, 2005 concerning whether further changes to the securities offering systems should be made. We will keep this comments in mind when we return to deliberating whether further changes to the securities offering systems ought to be made.

1. Question 5 - Eliminating preliminary prospectuses and prospectus review[6]		
1.1	Supportive	Five commenters supported the elimination of preliminary prospectuses and prospectus review. Reasons cited included the following: • Eliminating these requirements will result in more timely and certain market access for issuers. • Eliminating these requirements will result in lower costs of raising capital. • In light of anticipated adoption in Ontario and possibly other jurisdictions of secondary market civil liability there does not appear to be a valid policy rationale to support these requirements other than in the context of an initial public offering.
1.2	Not Supportive	Three commenters did not support the elimination of preliminary prospectuses and prospectus review. Reasons cited include the following: • Eliminating these requirements may have adverse implications for MJDS. • Eliminating these requirements may create a situation where an issuer who is (unknown to it) the subject of a pending investigation or continuous disclosure review that raises serious concerns sells securities without buyers being made aware of the possible problems. • If Alternative B is adopted, the advantages of a system with no preliminary prospectus and prospectus review will be provided by the shelf prospectus system. • A preliminary prospectus is a very important document in the marketing of a prospective distribution of securities. As a document filed on SEDAR it also contains information relevant to the secondary market trading of the securities of an existing reporting issuer. • The harmonized continuous disclosure reviews described in CSA Notice 51-312 warrant a reduction in, but not elimination of, the regulatory review of prospectus filings. • Certain required disclosure is no less onerous than the disclosure required in a long form prospectus and there is no reason to reduce regulatory oversight from what is currently imposed.
1.3	Delivery versus filing of preliminary prospectus	One commenter suggested that delivery of preliminary prospectuses should be eliminated but filing a preliminary prospectus is not particularly onerous. The CSA should implement a system similar to the rights offering system in which there is a period for staff to object.
1.4	Effect on due diligence process	One commenter suggested that a “final prospectus only” regime might add significantly to the pressure and strain already placed on the role of the underwriter and the director due diligence process. The same commenter was also of the view that the elimination of the

[6] Question 5: *General* Do you believe that issuers, investors or other market participants would benefit from the elimination of preliminary prospectuses and prospectus review? What are the principal benefits of such a system? Are there any potential drawbacks? Are you concerned about a lack of regulatory review in the context of a prospectus offering? Are you concerned that expediting the prospectus filing would put undue pressure on the due diligence process?

		preliminary prospectus requirement may "forfeit some of the long-standing market integrity created by the preliminary and final prospectus receipt regime".
2. Question 6 - Additional qualification criteria and restrictions [7]		
2.1	Seasoning	Two commenters supported a seasoning requirement. One of these commenters believed that the need for adequate information about an issuer to be available and accessible for a period of time dictates such an eligibility requirement. Three commenters did not support a seasoning requirement. One of these commenters noted that rather than restrict new, but potentially compliant issuers, from using the system for a seasoning period, the objective may be better achieved by penalizing non-compliant issuers.
2.2	Unresolved issues in CD	Four commenters supported a prohibition from offering securities if the regulator has identified significant unresolved issues relating to the issuer's CD. One of these commenters supports such a prohibition only if the unresolved issue would result in a cease trade order. One commenter did not support a blanket prohibition from offering securities if the regulator has identified significant unresolved issues relating to the issuer's CD. The facts and circumstances need to be assessed on a case-by-case basis, taking into consideration the nature and complexity of the issues.
2.3	Types of securities	Four commenters supported a restriction on types of eligible securities to disallow securities that may not be supported by the issuer's CD.
2.4	Regulatory review	One commenter noted that it is critical that regulatory review of CD occur on a regular basis. Though this review may not take place at the time of an offering, issuers must be motivated to ensure that their CD as well as any supplementary disclosure included in a prospectus meets the full, true and plain disclosure standard. If an issuer's disclosure is found to be inadequate, the penalties must be significant enough to motivate them to comply in the future.
2.5	Minimum market capitalization	Two commenters suggested that consideration be given to an eligibility requirement based on a minimum market cap threshold.
3. Question 7 - Marketing Regime Triggered by Press Release[8]		
3.1		One commenter supported a marketing regime that is triggered on the issuance of a press release or other public notice announcing a proposed offering. While the suggested trigger is somewhat subjective, it may prevent premature disclosure that could occur if the trigger is based on more objective measures and may also prevent illegal insider trading in advance of a public announcement. That notice should be provided to the market in the event that the transaction is not completed within a reasonable period of time. One commenter noted that given the opportunity issuers would use this alternative, depending on the issuer and the securities being marketed.

[7] Question 6: *Qualification Criteria* If we eliminate the preliminary prospectus and prospectus review as contemplated above, do you think we should impose more onerous restrictions on this offering system, given the lack of regulatory review at the time of the offering? Such restrictions could include additional qualification criteria and restrictions, such as the following:

- a one year seasoning requirement to ensure eligible issuers have filed required CD for a minimum period and to allow for regulators to review such CD;
- a prohibition from offering securities if the regulator has identified significant unresolved issues relating to the issuer's CD; and
- a restriction on types of eligible securities to disallow securities which may not be supported by the issuer's CD.

Do you think these are appropriate?

[8] Question 7: Do you believe that a marketing regime triggered on the issuance of a press release or other public notice announcing a proposed offering is workable and would be utilized by issuers and dealers? If so, should the press release or public notice be required on "the issuer forming a reasonable expectation that an offering will proceed" or on some other event?

		Three commenters expressed concerns regarding the suggested marketing regime: • One commenter believes the approach suggested does not go far enough. Issuers will be reluctant to issue the type of press release that is suggested and, if the offering does not proceed, there will be market consequences and possibly some embarrassment on the part of the issuer. Furthermore, the same commenter was critical of the fact that, under the new Instrument, pre-filing marketing will continue to be permitted only in the case of bought deals. A prohibition on pre-filing marketing outside of the bought deal context unjustifiably prohibits underwriters from gauging market interest prior to making an underwriting commitment. • One commenter believes that a marketing regime involving public notification of a forthcoming offering through a media release or term sheet, in tandem with reliance on the continuous disclosure regime, still leaves potential for abuse in the offering process. • One commenter believed that the obligation of an issuer to issue a press release upon having determined to proceed with a public offering is a timely disclosure matter that should not be separately regulated by NI 44-101. Issuers and underwriters should not be permitted to trade securities with knowledge of undisclosed material information regarding the issuer but issuers should not be subject to a requirement that requires premature disclosure of an issuer's consideration of its capital requirements thereby inhibiting an issuer's ability to access the capital markets on an efficient basis.
4. Other Ideas		
4.1	Eliminate prospectus requirement for seasoned issuers	One commenter suggested removing the prospectus requirement for certain secondary market offerings made by seasoned issuers.

Appendix D

Summary of Changes

The following summarizes the changes to the Instrument and the Policy from the version published for comment in January 2005.

NI 44-101

Qualification to File a Short Form Prospectus – In January 2005, we sought comment on two alternative versions for the Instrument's qualification requirements: Alternative A, which retained the same qualification requirements that were in Former NI 44-101; and Alternative B, which eliminated the seasoning and minimum market capitalization requirements thereby permitting more reporting issuers to use the short form prospectus system. The commenters widely favoured Alternative B. We have decided to proceed with implementing that version of the Instrument's qualification requirements.

Definition of Short Form Eligible Exchange – We have added the Canadian Trading and Quotation System Inc. to the definition of "short form eligible exchange".

Notice Declaring Intention to be Qualified – The version of New NI 44-101 published in January 2005 had, as one of the qualification criteria, a requirement that issuers file a notice declaring they intend to be qualified to use the short form prospectus system. We have moved this qualification criteria to section 2.8 and have clarified in section 2.8 what the notice should state (see new Appendix A) as well as where and when it must be filed. Issuers will only be required to file the notice with one regulator, but will be able to use the short form prospectus system in all jurisdictions provided the issuer meets the other qualification criteria.

Alternative Disclosure for Successor Issuers – We have added, in section 2.7(2)(b)(ii) of NI 44-101 and section 11.3(2) of Form 44-101F1, reference to Item 14.5 of Form 51-102 F5 *Information Circular*. This change adds TSXV capital pool company information circulars to the types of disclosure that a successor issuer could have for it to be exempt from the current annual information form qualification criterion.

New Transition Section - We have added subsection 2.8(5) of NI 44-101 to address a transition issue that would have otherwise affected those issuers or credit supporters not yet required to file an AIF under the CD Rules, but who had filed, after their previously completed financial year, an AIF in the form of former Form 44-101F1 *Annual Information Form.*

This new section conclusively deems issuers and credit supporters that had an AIF in the form of Form 44-101F1 as it was on May 18, 2005 (Form 44-101F1 was revoked on May 19, 2005) to have a current AIF so that the issuer or credit supporter will still be qualified to file a short form prospectus even if its AIF is in the form of former Form 44-101F1. Issuers will no longer need to rely on this transition section once they have filed their AIF in the form of AIF required by the applicable CD Rule.

Review of Unaudited Financial Statements – We have added section 4.3 to require any unaudited financial statements included in or incorporated by reference into a short form prospectus to be reviewed in accordance with the relevant standards set out in the CICA Handbook for a review of financial statements by an entity's auditor or a public accountant's review of financial statements. This review requirement is consistent with the former comfort letter requirement that was in subparagraph 10.3(b)1(i) of Former NI 44-101. In effect, New NI 44-101 retains the review requirement, but no longer requires the comfort letter addressed to the regulator evidencing that review.

Because National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* permits certain issuers to include in a prospectus financial statements that have been audited in accordance with certain foreign auditing standards, section 4.3 permits issuers who have included financial statements audited in accordance with foreign auditing standards in a short form prospectus to use certain foreign review standards for the review of unaudited financial statements.

Evidence of Exemption – We have added into section 8.2 a reference to subsection 4.5(3) so that it is clearer that relief from the French translation requirement must be evidenced by a decision document from the AMF and not by a receipt for the short form prospectus.

Form 44-101F1

Earnings Coverage Ratio – New section 1.13 retains the requirement, formerly in Form 44-101F3 *Short Form Prospectus*, that any earnings coverage ratio of less than one be disclosed on the cover page.

Resource Property Disclosure – In section 9.1 we have deleted the reference to section 5.5 of Form 51-102F2 *Annual Information Form*. The disclosure required by section 9.1 is intended to be property-specific yet the disclosure required by

section 5.5 (which is the annual summary of reserves data and other information for an oil and gas reporting issuer) is company-wide. Section 9.1 will continue to apply to issuers with mining properties.

Significant Acquisitions – In section 10.1, we deleted subsection (2), which had previously listed the type of disclosure issuers were to provide for probable acquisitions and, instead, added Instruction (1), which requires issuers to provide the disclosure required by sections 2.1 through 2.6 of Form 51-102F4 *Business Acquisition Reports.* In substance, the disclosure requirement has not changed from what we had published for comment because the disclosure requirements previously listed in subsection (2) were similar to the disclosure requirements in sections 2.1 through 2.6 of Form 51-102F4. We have also added Instruction (2), which states that the financial statements or other information required to be included under subsection 10.1(3) must be either: (i) the financial statements or other information required by Part 8 of NI 51-102; or (ii) satisfactory alternative financial statements or other information. Subsection 4.10(2) of Companion Policy 44-101CP provides further guidance on what we believe would be “satisfactory alternative financial statements or other information”.

Mandatory Incorporation by Reference – We have added paragraph 9 to subsection 11.1(1). Disclosure documents of the type listed in paragraphs 1 through 7 of subsection 11.1(1) that are filed by an issuer under an exemption in lieu of the documents actually listed must be incorporated by reference into a short form prospectus.

*Exemptions for Certain Issues of Guaranteed Securitie*s – We have deleted instructions 1(b) and (c) of Item 13 of the version of Form 44-101F1 published for comment and replaced them with instruction 1(c) of Item 13 of Form 44-101F1. Instructions 1(b) and (c) of Item 13 of the version of Form 44-101F1 published for comment would have required an entity’s annual summary financial information to be derived from the entity’s comparative audited annual financial statements for the corresponding period. This would impose a stand-alone audit requirement on every subsidiary of the issuer, parent credit supporter, or subsidiary credit supporter, even if the subsidiary would not otherwise be audited on a stand-alone basis. We did not intend to impose such a requirement.

Interests of Experts – In response to the commenters, we have conformed the requirement for disclosure about interests of experts in section 16.2 of Form 51-102F2 *Annual Information Form* so that it is the same as what we had published for comment in section 15.2 of Form 44-101F1. Because the interests of experts disclosure requirements are now in section 16.2 of Form 51-102F2, section 15.2 has been changed so as to only require an issuer to update, in its short form prospectus, the information about interests of experts previously disclosed in its current AIF.

List of Exemptions – We have added a requirement for issuers to list all exemptions from the provisions of NI 44-101 or Form 44-101F1 granted to the issuer applicable to the distribution or the short form prospectus, including all exemptions to be evidenced by the issuance of a receipt for the short form prospectus pursuant to section 8.2 of NI 44-101. We have added this requirement to ensure issuers provide adequate disclosure about such exemptions.

Companion Policy 44-101CP

Timely and Periodic Disclosure Documents – We have added section 2.5 to clarify that the qualification criterion that the issuer have filed all timely and periodic disclosure documents also applies to those documents that an issuer has undertaken to file, must file as a condition of any exemptive relief granted, or has represented that it will file in a representation made to obtain exemptive relief.

Undertaking in Respect of Credit Support Disclosure – We have added section 3.5 to provide guidance about the types of disclosure documents to which the undertaking would relate, depending on whether the credit supporter is a reporting issuer, an SEC registrant or otherwise.

Recent and Proposed Acquisitions – We have amended section 4.10 of 44-101CP to state that we presume that financial statements or other information would be required for all acquisitions that are, or would be, significant under Part 8 of NI 51-102 instead of referring to acquisitions at the 40% level. Issuers can still rebut this presumption if they can provide evidence that the financial statements or other information required by Part 8 of NI 51-102 are not necessary for the prospectus to contain full, true and plain disclosure. This section also states that we encourage issuers to utilize the pre-filing procedures in National Policy 43-201 *Mutual Reliance Review System for Prospectuses* if the issuer intends to omit from its short form prospectus the financial statements or other information required by Part 8 of NI 51-102.

In addition, new subsection 4.10(2) provides guidance about when we would consider it acceptable for an issuer to provide financial statements or other information for periods other than what Part 8 of NI 51-102 requires.

NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS

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NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS

PART 1 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions - In this Instrument

"AIF" has the same meaning as in NI 51-102 for a reporting issuer other than an investment fund, and for an investment fund means an annual information form as such term is used in NI 81-106;

"alternative credit support" means support, other than a guarantee, for the payments to be made by an issuer of securities, as stipulated in the terms of the securities or in an agreement governing rights of, or granting rights to, holders of the securities, that

(a) obliges the person or company providing the support to provide the issuer with funds sufficient to enable the issuer to make the stipulated payments, or

(b) entitles the holder of the securities to receive, from the person or company providing the support, payment if the issuer fails to make a stipulated payment;

"applicable CD rule" means, for a reporting issuer other than an investment fund, NI 51-102 and, for an investment fund, NI 81-106;

"approved rating" has the same meaning as in NI 51-102;

"approved rating organization" has the same meaning as in NI 51-102;

"asset-backed security" has the same meaning as in NI 51-102;

"business acquisition report" has the same meaning as in NI 51-102;

"cash equivalent" means an evidence of indebtedness that has a remaining term to maturity of 365 days or less and that is issued, or fully and unconditionally guaranteed as to principal and interest, by

(a) the government of Canada or the government of a jurisdiction of Canada,

(b) the government of the United States of America, the government of one of the states of the United States of America, the government of another sovereign state or a permitted supranational agency, if, in each case, the evidence of indebtedness has an approved rating, or

(c) a Canadian financial institution, or other entity that is regulated as a banking institution, loan corporation, trust company, or insurance company or credit union by the government, or an agency of the government, of the country under whose laws the entity is incorporated or organized or a political subdivision of that country, if, in either case, the Canadian financial institution or other entity has outstanding short term debt securities that have received an approved rating from any approved rating organization;

"cash settled derivative" means a derivative, the terms of which provide for settlement only by means of cash or cash equivalent the amount of which is determinable by reference to the underlying interest of the derivative;

"convertible" means, if used to describe securities, that the rights and attributes attached to the securities include the right or option to purchase, convert into or exchange for or otherwise acquire equity securities of an issuer, or any other security that itself includes the right or option to purchase, convert into or exchange for or otherwise acquire equity securities of an issuer;

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

"current AIF" means,

(a) if the issuer has filed an AIF for its most recently completed financial year, that AIF, or

(b) the issuer's AIF filed for the financial year immediately preceding its most recently completed financial year if

(i) the issuer has not filed an AIF for its most recently completed financial year, and

(ii) the issuer is not yet required under the applicable CD rule to have filed its annual financial statements for its most recently completed financial year,

“current annual financial statements” means,

(a) if the issuer has filed its comparative annual financial statements in accordance with the applicable CD rule for its most recently completed financial year, those financial statements together with the auditor’s report accompanying the financial statements and, if there has been a change of auditors since the comparative period, an auditor’s report on the financial statements for the comparative period, or

(b) the issuer’s comparative annual financial statements filed for the financial year immediately preceding its most recently completed financial year, together with the auditor’s report accompanying the financial statements and, if there has been a change of auditors since the comparative period, an auditor’s report on the financial statements for the comparative period if

(i) the issuer has not filed its comparative annual financial statements for its most recently completed financial year, and

(ii) the issuer is not yet required under the applicable CD rule to have filed its annual financial statements for its most recently completed financial year;

“derivative” means an instrument, agreement or security, the market price, value or payment obligation of which is derived from, referenced to, or based on an underlying interest;

“designated foreign jurisdiction” has the same meaning as in NI 52-107;

“equity securities” means securities of an issuer that carry a residual right to participate in the earnings of the issuer and, upon the liquidation or winding up of the issuer, in its assets;

“executive officer” has the same meaning as in NI 51-102;

“foreign disclosure requirements” has the same meaning as in NI 52-107;

“Form 44-101F1” means Form 44-101F1 *Short Form Prospectus* of this Instrument;

“Form 51-102F2” means Form 51-102F2 *Annual Information Form* of NI 51-102;

“Form 51-102F3” means Form 51-102F3 *Material Change Report* of NI 51-102;

“Form 51-102F4” means Form 51-102F4 *Business Acquisition Report* of NI 51-102;

“Form 51-102F5” means Form 51-102F5 *Information Circular* of NI 51-102;

“full and unconditional credit support” means

(a) alternative credit support that

(i) entitles the holder of the securities to receive payment from the credit supporter, or enables the holder to receive payment from the issuer within 15 days of any failure by the issuer to make a payment as stipulated, and

(ii) results in the securities receiving the same credit rating as, or a higher credit rating than, the credit rating they would have received if payment had been fully and unconditionally guaranteed by the credit supporter, or would result in the securities receiving such a rating if they were rated, or

(b) a guarantee of the payments to be made by the issuer of securities as stipulated in the terms of the securities or in an agreement governing rights of, or granting rights to, holders of the securities such that the holder of the securities is entitled to receive payment from the guarantor within 15 days of any failure by the issuer to make a payment as stipulated;

“information circular” has the same meaning as in NI 51-102;

“interim period” has the same meaning as in the applicable CD rule;

“investment fund” has the same meaning as in NI 81-106;

“material change report” means, for a reporting issuer other than an investment fund, a completed Form 51-102F3, and for an investment fund, a completed Form 51-102F3 adjusted as directed by NI 81-106;

“MD&A” has the same meaning as in NI 51-102 in relation to a reporting issuer other than an investment fund, and in relation to an investment fund means an annual or interim management report of fund performance as defined in NI 81-106;

“mineral project” has the same meaning as in NI 43-101;

“NI 13-101” means National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*;

“NI 43-101” means National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;

“NI 44-102” means National Instrument 44-102 *Shelf Distributions*;

“NI 51-102” means National Instrument 51-102 *Continuous Disclosure Obligations*;

“NI 52-107” means National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;

“NI 81-106” means National Instrument 81-106 *Investment Fund Continuous Disclosure*;

“non-convertible” means, if used to describe a security, a security that is not convertible;

“permitted supranational agency” means the International Bank for Reconstruction and Development, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the Caribbean Development Bank, the European Bank for Reconstruction and Development, the African Development Bank and any person or company prescribed under paragraph (g) of the definition of “foreign property” in subsection 206(1) of the ITA;

“reorganization” means

(a) a statutory amalgamation,

(b) a statutory merger, or

(c) a statutory arrangement;

“restricted security” has the same meaning as in NI 51-102;

“short form eligible exchange” means each of the Toronto Stock Exchange, Tier 1 and Tier 2 of the TSX Venture Exchange and the Canadian Trading and Quotation System Inc.;

“special warrant” means a security that, by its terms or the terms of an accompanying contractual obligation, entitles or requires the holder to acquire another security without payment of material additional consideration and obliges the issuer of either security to undertake efforts to file a prospectus to qualify the distribution of the other security;

“successor issuer” means an issuer existing as a result of a reorganization, other than, in the case where the reorganization involved a divestiture of a portion of an issuer’s business, an issuer that succeeded to or otherwise acquired the portion of the business divested;

“underlying interest” means, for a derivative, the security, commodity, financial instrument, currency, interest rate, foreign exchange rate, economic indicator, index, basket, agreement, benchmark or any other reference, interest or variable, and, if applicable, the relationship between any of the foregoing, from, to or on which the market price, value or any payment obligation of the derivative is derived, referenced or based; and

“U.S. credit supporter” means a credit supporter that

(a) is incorporated or organized under the laws of the United States of America or any state or territory of the United States of America or the District of Columbia,

(b) either

(i) has a class of securities registered under section 12(b) or section 12(g) of the 1934 Act, or

(ii) is required to file reports under section 15(d) of the 1934 Act,

(c) has filed with the SEC all 1934 Act filings for a period of 12 calendar months immediately before the filing of the preliminary short form prospectus,

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

(e) is not a commodity pool issuer;

"U.S. GAAS" has the same meaning as in NI 52-107.

1.2 References to Information Included in a Document - References in this Instrument to information included in a document refer to both information contained directly in the document and information incorporated by reference in the document.

1.3 References to Information to be Included in a Document - Provisions of this Instrument that require an issuer to include information in a document require an issuer either to insert the information directly in the document or to incorporate the information in the document by reference.

1.4 Interpretation of "short form prospectus" - In this Instrument, other than in Parts 4 through 8 or unless otherwise stated, a reference to a short form prospectus includes a preliminary short form prospectus.

1.5 Interpretation of "payments to be made" - For the purposes of the definition of "full and unconditional credit support", payments to be made by an issuer of securities as stipulated in the terms of the securities include any amounts to be paid as dividends in accordance with, and on the dividend payment dates stipulated in, the provisions of the securities, whether or not the dividends have been declared.

PART 2 QUALIFICATION TO FILE A PROSPECTUS IN THE FORM OF A SHORT FORM PROSPECTUS

2.1 Short Form Prospectus

(1) An issuer shall not file a prospectus in the form of Form 44-101F1 unless the issuer is qualified under any of sections 2.2 through 2.6 to file a prospectus in the form of a short form prospectus.

(2) An issuer that is qualified under any of sections 2.2 through 2.6 to file a prospectus in the form of a short form prospectus for a distribution may file, for that distribution,

(a) a preliminary prospectus, prepared and certified in the form of Form 44-101F1; and

(b) a prospectus, prepared and certified in the form of Form 44-101F1.

2.2 Basic Qualification Criteria - An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of any of its securities in the local jurisdiction, if the following criteria are satisfied:

(a) the issuer is an electronic filer under NI 13-101;

(b) the issuer is a reporting issuer in at least one jurisdiction of Canada;

(c) the issuer has filed with the securities regulatory authority in each jurisdiction in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction

(i) under applicable securities legislation,

(ii) pursuant to an order issued by the securities regulatory authority, or

(iii) pursuant to an undertaking to the securities regulatory authority;

(d) the issuer has, in at least one jurisdiction in which it is a reporting issuer,

(i) current annual financial statements, and

(ii) a current AIF;

(e) the issuer's equity securities are listed and posted for trading on a short form eligible exchange and the issuer is not an issuer

(i) whose operations have ceased, or

(ii) whose principal asset is cash, cash equivalents, or its exchange listing.

2.3 Alternative Qualification Criteria for Issuers of Approved Rating Non-Convertible Securities

(1) An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of non-convertible securities in the local jurisdiction, if the following criteria are satisfied:

(a) the issuer is an electronic filer under NI 13-101;

(b) the issuer is a reporting issuer in at least one jurisdiction of Canada;

(c) the issuer has filed with the securities regulatory authority in each jurisdiction in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction

(i) under applicable securities legislation,

(ii) pursuant to an order issued by the securities regulatory authority, or

(iii) pursuant to an undertaking to the securities regulatory authority;

(d) the issuer has, in at least one jurisdiction in which it is a reporting issuer,

(i) current annual financial statements, and

(ii) a current AIF;

(e) the securities to be distributed

(i) have received an approved rating on a provisional basis,

(ii) are not the subject of an announcement by an approved rating organization, of which the issuer is or ought reasonably to be aware, that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, and

(iii) have not received a provisional or final rating lower than an approved rating from any approved rating organization.

(2) Paragraph (1)(e) does not apply to an issuer filing a short form prospectus that is a base shelf prospectus under NI 44-102.

2.4 Alternative Qualification Criteria for Issuers of Guaranteed Non-Convertible Debt Securities, Preferred Shares and Cash Settled Derivatives

(1) An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of non-convertible debt securities, non-convertible preferred shares or non-convertible cash settled derivatives in the local jurisdiction, if the following criteria are satisfied:

(a) a credit supporter has provided full and unconditional credit support for the securities being distributed,

(b) at least one of the following is true:

(i) the credit supporter satisfies the criteria in paragraphs 2.2(a), (b), (c) and (d) if the word "issuer" is replaced with "credit supporter" wherever it occurs;

(ii) the credit supporter is a U.S. credit supporter and the issuer is incorporated or organized under the laws of Canada or a jurisdiction of Canada;

(c) unless the credit supporter satisfies the criteria in paragraph 2.2(e) if the word "issuer" is replaced with "credit supporter" wherever it occurs, at the time the preliminary short form prospectus is filed

(i) the credit supporter has outstanding non-convertible securities that

(A) have received an approved rating,

(B) have not been the subject of an announcement by an approved rating organization, of which the issuer is or ought reasonably to be aware, that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, and

(C) have not received a rating lower than an approved rating from any approved rating organization, and

(ii) the securities to be issued by the issuer

(A) have received an approved rating on a provisional basis,

(B) have not been the subject of an announcement by an approved rating organization, of which the issuer is or ought reasonably to be aware, that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, and

(C) have not received a provisional or final rating lower than an approved rating from any approved rating organization.

(2) Subparagraph (1)(c)(ii) does not apply to an issuer filing a short form prospectus that is a base shelf prospectus under NI 44-102.

2.5 Alternative Qualification Criteria for Issuers of Guaranteed Convertible Debt Securities or Preferred Shares - An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of convertible debt securities or convertible preferred shares in the local jurisdiction, if the following criteria are satisfied:

(a) the debt securities or the preferred shares are convertible into securities of a credit supporter that has provided full and unconditional credit support for the securities being distributed;

(b) the credit supporter satisfies the criteria in section 2.2 if the word "issuer" is replaced with "credit supporter" wherever it occurs.

2.6 Alternative Qualification Criteria for Issuers of Asset-Backed Securities

(1) An issuer established in connection with a distribution of asset-backed securities is qualified to file a prospectus in the form of a short form prospectus for a distribution of asset-backed securities in the local jurisdiction, if the following criteria are satisfied:

(a) the issuer is an electronic filer under NI 13-101;

(b) the issuer has, in at least one jurisdiction of Canada,

(i) current annual financial statements, and

(ii) a current AIF;

(c) the asset-backed securities to be distributed

(i) have received an approved rating on a provisional basis,

(ii) have not been the subject of an announcement by an approved rating organization, of which the issuer is or ought reasonably to be aware, that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, and

(iii) have not received a provisional or final rating lower than an approved rating from any approved rating organization.

(2) Paragraph (1)(c) does not apply to an issuer filing a short form prospectus that is a base shelf prospectus under NI 44-102.

2.7 Exemptions for New Reporting Issuers and Successor Issuers

(1) Paragraph 2.2(d), paragraph 2.3(1)(d) and paragraph 2.6(1)(b) do not apply to an issuer if

(a) the issuer is not exempt from the requirement in the applicable CD rule to file annual financial statements within a prescribed period after its financial year end, but the issuer has not yet been required under the applicable CD rule to file annual financial statements, and

(b) unless the issuer is seeking qualification under section 2.6, the issuer has filed and obtained a receipt for a final prospectus that included the issuer's comparative annual financial statements for its most recently completed financial year or the financial year immediately preceding its most recently completed financial year, together with the auditor's report accompanying those financial statements and, if there has been a change of auditors since the comparative period, an auditor's report on the financial statements for the comparative period.

(2) Paragraph 2.2(d), paragraph 2.3(1)(d) and paragraph 2.6(1)(b) do not apply to an issuer if

(a) the successor issuer is not exempt from the requirement in the applicable CD rule to file annual financial statements within a prescribed period after its financial year end, but the issuer has not yet, since the completion of the reorganization which resulted in the successor issuer, been required under the applicable CD rule to file annual financial statements, and

(b) an information circular relating to the reorganization that resulted in the successor issuer was filed by the successor issuer or an issuer that was a party to the reorganization, and such information circular

(i) complied with applicable securities legislation, and

(ii) included disclosure in accordance with Item 14.2 or 14.5 of Form 51-102F5 for the successor issuer.

2.8 Notice of Intention and Transition

(1) An issuer is not qualified to file a short form prospectus under this Part unless it has filed a notice declaring its intention to be qualified to file a short form prospectus at least 10 business days prior to the issuer filing its first preliminary short form prospectus after the notice

(a) with its notice regulator, and

(b) in substantially the form of Appendix A.

(2) The notice under subsection (1) is effective until withdrawn.

(3) For the purposes of subsection (1), "notice regulator" means, as determined on the date the notice is filed, the securities regulatory authority or regulator of the jurisdiction of Canada

(a) in which the issuer's head office is located, if the issuer is not an investment fund and the issuer is a reporting issuer in that jurisdiction,

(b) in which the investment fund manager's head office is located, if the issuer is an investment fund and the issuer is a reporting issuer in that jurisdiction, or

(c) with which the issuer has determined that it has the most significant connection, if paragraphs (a) and (b) do not apply to the issuer.

(4) For the purposes of this section, if, on December 29, 2005, an issuer had a current AIF under National Instrument 44-101 *Short Form Prospectus Distributions* that was in force on December 29, 2005, the issuer is deemed to have filed a notice on December 14, 2005 declaring its intention to be qualified to file a short form prospectus.

(5) For the purposes of this Part, if, on December 29, 2005, an issuer or a credit supporter had an annual information form in Form 44-101F1 *AIF*, prior to its repeal on May 18, 2005, that was a current AIF under National Instrument 44-101 *Short Form Prospectus Distributions* that was in force on December 29, 2005, the issuer or credit supporter is deemed to have a current AIF under this Part until the date it is first required under the applicable CD rule to file its annual financial statements.

PART 3 DEEMED INCORPORATION BY REFERENCE

3.1 Deemed Incorporation by Reference of Filed Documents - If an issuer does not incorporate by reference in its short form prospectus a document required to be incorporated by reference under section 11.1 or 12.1 of Form 44-101F1, the document is deemed for purposes of securities legislation to be incorporated by reference in the issuer's short form prospectus as of the date of the short form prospectus to the extent not otherwise modified or superseded by a statement contained in the short form prospectus or in any other subsequently filed document that also is, or is deemed to be, incorporated by reference in the short form prospectus.

3.2 Deemed Incorporation by Reference of Subsequently Filed Documents - If an issuer does not incorporate by reference in its short form prospectus a subsequently filed document required to be incorporated by reference under section 11.2 or 12.1 of Form 44-101F1, the document is deemed for purposes of securities legislation to be incorporated by reference in the issuer's short form prospectus as of the date the issuer filed the document to the extent not otherwise modified or superseded by a statement contained in the short form prospectus or in any other subsequently filed document that also is, or is deemed to be, incorporated by reference in the short form prospectus.

3.3 Incorporation by Reference - A document deemed by this Instrument to be incorporated by reference in another document is deemed for purposes of securities legislation to be incorporated by reference in the other document.

PART 4 FILING REQUIREMENTS FOR A SHORT FORM PROSPECTUS

4.1 Required Documents for Filing a Preliminary Short Form Prospectus - An issuer that files a preliminary short form prospectus shall

(a) file the following with the preliminary short form prospectus:

(i) **Signed Copy** - a signed copy of the preliminary short form prospectus;

(ii) **Qualification Certificate** - a certificate, dated as of the date of the preliminary short form prospectus, executed on behalf of the issuer by one of its executive officers

(A) specifying which of the qualification criteria set out in Part 2 the issuer is relying on in order to be qualified to file a prospectus in the form of a short form prospectus, and

(B) certifying that

(I) all of those qualification criteria have been satisfied, and

(II) all of the material incorporated by reference in the preliminary short form prospectus and not previously filed is being filed with the preliminary short form prospectus;

(iii) **Material Incorporated by Reference** - copies of all material incorporated by reference in the preliminary short form prospectus and not previously filed;

(iv) **Material Documents** - copies of all documents referred to in subsection 12.1(1) or 12.2(1) of NI 51-102 or section 16.4 of NI 81-106, as applicable, that relate to the securities being distributed, and that have not previously been filed;

(v) **Mining Reports** - if the issuer has a mineral project, the technical reports required to be filed with a preliminary short form prospectus under NI 43-101;

(vi) **Reports and Valuations** - a copy of each report or valuation referred to in the preliminary short form prospectus for which a consent is required to be filed under section 4.4 and that has not previously been filed, other than a technical report that

(A) deals with a mineral project or oil and gas activities, and

(B) is not otherwise required to be filed under paragraph (v); and

(b) deliver to the regulator, concurrently with the filing of the preliminary short form prospectus, the following:

(i) **Authorization to Collect, Use and Disclose Personal Information** - an authorization in the form set out in Appendix B to the indirect collection, use and disclosure of personal information including, for each director and executive officer of an issuer, each promoter of the issuer or, if the promoter is not an individual, each director and executive officer of the promoter, for whom the issuer has not previously delivered the information;

(ii) **Auditor's Comfort Letter regarding Audited Financial Statements** - a signed letter to the regulator from the auditor of the issuer or of the business, as applicable, prepared in accordance with the form suggested for this circumstance by the Handbook, if a financial statement of an issuer or a business included in a preliminary short form prospectus is accompanied by an unsigned audit report.

4.2 Required Documents for Filing a Short Form Prospectus - An issuer that files a short form prospectus shall

(a) file the following with the short form prospectus:

(i) **Signed Copy** - a signed copy of the short form prospectus;

(ii) **Material Incorporated by Reference** - copies of all material incorporated by reference in the short form prospectus and not previously filed;

(iii) **Material Documents** - copies of all documents referred to in subsection 12.1(1) or 12.2(1) of NI 51-102 or section 16.4 of NI 81-106, as applicable, that relate to the securities being distributed, and that have not previously been filed;

(iv) **Other Reports and Valuations** - a copy of each report or valuation referred to in the short form prospectus, for which a consent is required to be filed under section 4.4 and that has not previously been filed, other than a technical report that

(A) deals with a mineral project or oil and gas activities of the issuer, and

(B) is not otherwise required to be filed under subparagraph 4.1(a)(v);

(v) **Issuer's Submission to Jurisdiction** - a submission to jurisdiction and appointment of agent for service of process of the issuer in the form set out in Appendix C, if an issuer is incorporated or organized in a foreign jurisdiction and does not have an office in Canada;

(vi) **Non-Issuer's Submission to Jurisdiction** - a submission to jurisdiction and appointment of agent for service of process of the selling security holder, promoter or credit supporter, as applicable, in the form set out in Appendix D, if a selling security holder, promoter or credit supporter of an issuer is incorporated or organized under a foreign jurisdiction and does not have an office in Canada or is an individual who resides outside of Canada;

(vii) **Expert's Consents** - the consents required to be filed under section 4.4;

(viii) **Credit Supporter's Consent** - the written consent of the credit supporter to the inclusion of its financial statements in the short form prospectus, if financial statements of a credit supporter are required under section 12.1 of Form 44-101F1 to be included in a short form

prospectus and a certificate of the credit supporter is not required under section 21.3 of Form 44-101F1 to be included in the short form prospectus; and

(b) deliver the following to the regulators, no later than the filing of the short form prospectus:

(i) **Blacklined Prospectus** - a copy of the short form prospectus, blacklined to show changes from the preliminary short form prospectus;

(ii) **Undertaking in Respect of Credit Supporter Disclosure** – if disclosure about a credit supporter is required to be included in the short form prospectus under section 12.1 of Form 44-101F1, an undertaking of the issuer, in a form acceptable to the regulators, to file the periodic and timely disclosure of the credit supporter similar to the disclosure required under section 12.1 of Form 44-101F1, for so long as the securities being distributed are issued and outstanding.

4.3 Review of Unaudited Financial Statements

(1) Any unaudited financial statements of an issuer or an acquired business included in or incorporated by reference into a short form prospectus must have been reviewed in accordance with the relevant standards set out in the Handbook for a review of financial statements by an entity's auditor or a public accountant's review of financial statements.

(2) Despite subsection (1),

(a) if the financial statements of the issuer or acquired business have been audited in accordance with U.S. GAAS, the unaudited financial statements may be reviewed in accordance with U.S. review standards,

(b) if the financial statements of the issuer or acquired business have been audited in accordance with International Standards on Auditing, the unaudited financial statements may be reviewed in accordance with international review standards, or

(c) if the financial statements of the issuer or acquired business have been audited in accordance with auditing standards that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer is subject, the unaudited financial statements may be reviewed in accordance with review standards that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer is subject.

4.4 Consents of Experts

(1) If any solicitor, auditor, accountant, engineer or appraiser, or any other person or company whose profession or business gives authority to a statement made by that person or company, is named in a short form prospectus or an amendment to a short form prospectus, either directly or in a document incorporated by reference,

(a) as having prepared or certified any part of the short form prospectus or the amendment,

(b) as having opined on financial statements from which selected information included in the short form prospectus has been derived and which audit opinion is referred to in the short form prospectus either directly or in a document incorporated by reference, or

(c) as having prepared or certified a report or valuation referred to in the short form prospectus or the amendment, either directly or in a document incorporated by reference;

the issuer shall file no later than the time the short form prospectus or the amendment is filed, the written consent of the person or company to being named and to the use of that report, valuation, statement or opinion.

(2) The consent referred to in subsection (1) shall

(a) refer to the report, valuation, statement or opinion stating the date of the report, valuation, statement or opinion, and

(b) contain a statement that the person or company referred to in subsection (1)

(i) has read the short form prospectus, and

(ii) has no reason to believe that there are any misrepresentations in the information contained in it that are

(A) derived from the report, valuation, statement or opinion, or

(B) within the knowledge of the person or company as a result of the services performed by the person or company in connection with the report, financial statements, valuation, statement or opinion.

(3) In addition to any other requirement of this section, the consent of an auditor or accountant shall also state

(a) the dates of the financial statements on which the report of the person or company is made, and

(b) that the person or company has no reason to believe that there are any misrepresentations in the information contained in the short form prospectus that are

(i) derived from the financial statements on which the person or company has reported, or

(ii) within the knowledge of the person or company as a result of the audit of the financial statements.

(4) Subsection (1) does not apply to an approved rating organization that issues a rating to the securities being distributed under the preliminary short form prospectus or short form prospectus.

4.5 Language of Documents

(1) A person or company must file a document required to be filed under this Instrument in the French language or in the English language.

(2) Despite subsection (1), if a person or company files a document only in the French language or only in the English language but delivers to an investor or prospective investor a version of the document in the other language, the person or company must file that other version not later than when it is first delivered to the investor or prospective investor.

(3) In Québec, the preliminary short form prospectus, the short form prospectus, the permanent information record and any document incorporated by reference must be in the French language or in the French language and the English language.

PART 5 AMENDMENTS TO A SHORT FORM PROSPECTUS

5.1 Form of Amendment

(1) An amendment to a preliminary short form prospectus or a short form prospectus shall consist of either an amendment that does not fully restate the text of the preliminary short form prospectus or short form prospectus or an amended and restated preliminary short form prospectus or short form prospectus.

(2) An amendment to a preliminary short form prospectus or a short form prospectus shall contain the certificates required by securities legislation and, in the case of an amendment that does not fully restate the text of the preliminary short form prospectus or short form prospectus, shall be numbered and dated as follows:

"Amendment No. [insert amendment number] dated [insert date of amendment] to [Preliminary] Short Form Prospectus dated [insert date of preliminary short form prospectus or short form prospectus]."

5.2 Required Documents for Filing an Amendment - An issuer that files an amendment to a preliminary short form prospectus or short form prospectus shall

(a) file a signed copy of the amendment,

(b) deliver to the regulator a copy of the preliminary short form prospectus or short form prospectus blacklined to show the changes made by the amendment, if the amendment is also a restatement of the preliminary short form prospectus or short form prospectus,

(c) file or deliver any supporting documents required under this Instrument or other provisions of securities legislation to be filed or delivered with a preliminary short form prospectus or a short form prospectus, as the case may be, unless the documents originally filed or delivered with the preliminary short form prospectus or short form prospectus as the case may be, are correct as of the date the amendment is filed, and

(d) in case of an amendment to a short form prospectus, file any consent letter required under this Instrument to be filed with a short form prospectus, dated as of the date of the amendment.

5.3 Auditor's Comfort Letter - If an amendment to a preliminary short form prospectus materially affects, or relates to, an auditor's comfort letter delivered under section 4.1, the issuer shall deliver with the amendment a new auditor's comfort letter.

5.4 Forwarding Amendments - An amendment to a preliminary short form prospectus shall be forwarded to each recipient of the preliminary short form prospectus according to the record of recipients to be maintained under securities legislation.

5.5 Amendment to Preliminary Short Form Prospectus

(1) The regulator shall issue a receipt for an amendment to a preliminary short form prospectus as soon as reasonably possible after the amendment is filed.

(2) Despite subsection (1), in British Columbia, the regulator shall issue a receipt for an amendment to a preliminary short form prospectus in accordance with the *Securities Act* (British Columbia).

5.6 Amendment to Short Form Prospectus

(1) If, after a receipt is issued for a short form prospectus but prior to the completion of the distribution under such short form prospectus, securities in addition to the securities previously disclosed in the prospectus are to be distributed, the person or company making the distribution must file an amendment to the short form prospectus disclosing the additional securities, as soon as practical, and in any event no later than 10 days after the decision to increase the number of securities offered is made.

(2) The regulator shall issue a receipt for an amendment to a short form prospectus required to be filed under this section or under securities legislation unless the regulator considers that it is not in the public interest to do so, or unless otherwise required by securities legislation.

(3) The regulator shall not refuse to issue a receipt under subsection (2) without giving the person or company who filed the short form prospectus an opportunity to be heard.

(4) A distribution or an additional distribution must not proceed until a receipt for an amendment to a short form prospectus that is required to be filed is issued by the regulator.

PART 6 NON-FIXED PRICE OFFERINGS AND REDUCTION OF OFFERING PRICE UNDER SHORT FORM PROSPECTUS

6.1 Non-Fixed Price Offerings and Reduction of Offering Price under Short Form Prospectus

(1) Every security distributed under a short form prospectus shall be distributed at a fixed price.

(2) Despite subsection (1), securities for which the issuer is qualified under Part 2 to file a prospectus in the form of a short form prospectus may be distributed for cash at non-fixed prices under a short form prospectus if, at the time of the filing of the preliminary short form prospectus, the securities have received a rating, on a provisional or final basis, from at least one approved rating organization.

(3) Despite subsection (1), if securities are distributed for cash under a short form prospectus, the price of the securities may be decreased from the initial offering price disclosed in the short form prospectus and, after such a decrease, changed from time to time to an amount not greater than the initial offering price, without filing an amendment to the short form prospectus to reflect the change, if

(a) the securities are distributed through one or more underwriters that have agreed to purchase all of the securities at a specified price,

(b) the proceeds to be received by the issuer or selling security holders or by the issuer and selling security holders are disclosed in the short form prospectus as being fixed, and

(c) the underwriters have made a reasonable effort to sell all of the securities distributed under the short form prospectus at the initial offering price disclosed in the short form prospectus.

(4) Despite subsections (2) and (3), the price at which securities may be acquired on exercise of rights shall be fixed.

PART 7 SOLICITATIONS OF EXPRESSIONS OF INTEREST

7.1 Solicitations of Expressions of Interest - The prospectus requirement does not apply to solicitations of expressions of interest before the filing of a preliminary short form prospectus for securities to be qualified for distribution under a short form prospectus in accordance with this Instrument, if

(a) the issuer has entered into an enforceable agreement with an underwriter who has, or underwriters who have, agreed to purchase the securities,

(b) the agreement referred to in paragraph (a) has fixed the terms of the distribution and requires that the issuer file a preliminary short form prospectus for the securities and obtain from the regulator a receipt, dated as of a date that is not more than four business days after the date that the agreement is entered into, for the preliminary short form prospectus,

(c) the issuer has issued and filed a news release announcing the agreement immediately upon entering into the agreement,

(d) upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each person or company who has expressed an interest in acquiring the securities, and

(e) except as provided in paragraph (a), no agreement of purchase and sale for the securities is entered into until the short form prospectus has been filed and a receipt obtained.

PART 8 EXEMPTION

8.1 Exemption

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

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

(3) An application made to the securities regulatory authority or regulator for an exemption from the provisions of this Instrument shall include a letter or memorandum describing the matters relating to the exemption, and indicating why consideration should be given to the granting of the exemption.

(4) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

8.2 Evidence of Exemption

(1) Subject to subsection (2) and without limiting the manner in which an exemption under this Part may be evidenced, the granting under this Part of an exemption, other than an exemption, in whole or in part, from Part 2 or subsection 4.5(3), may be evidenced by the issuance of a receipt for a short form prospectus or an amendment to a short form prospectus.

(2) An exemption under this Part may be evidenced in the manner set out in subsection (1) only if

(a) the person or company that sought the exemption

(i) sent to the regulator the letter or memorandum referred to in subsection 8.1(3) on or before the date of the filing of the preliminary short form prospectus, or

(ii) sent to the regulator the letter or memorandum referred to in subsection 8.1(3) after the date of the filing of the preliminary short form prospectus and received a written acknowledgement from the regulator that the exemption may be evidenced in the manner set out in subsection (1); and

(b) the regulator has not before, or concurrently with, the issuance of the receipt sent notice to the person or company that sought the exemption, that the exemption sought may not be evidenced in the manner set out in subsection (1).

PART 9 TRANSITION, REPEAL AND EFFECTIVE DATE

9.1 Applicable Rules - A short form prospectus may, at the issuer's option be prepared in accordance with securities legislation in effect at either the date of issuance of a receipt for the preliminary short form prospectus or the date of issuance of a receipt for the short form prospectus.

9.2 Repeal - National Instrument 44-101 *Short Form Prospectus Distributions* and Form 44-101F3 *Short Form Prospectus*, both of which came into force on December 31, 2000, are repealed on December 30, 2005.

9.3 Effective Date - This Instrument comes into force on December 30, 2005.

NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS

APPENDIX A
NOTICE DECLARING INTENTION
TO BE QUALIFIED UNDER
NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS
(“NI 44-101”)

[date]

To: [the issuer’s notice regulator (as defined in subsection 2.8(2) of NI 44-101), and any other securities regulatory authority or regulator of a jurisdiction of Canada with whom the issuer may voluntarily file this notice]

[name of issuer] (the “Issuer”) intends to be qualified to file a short form prospectus under NI 44-101. The Issuer acknowledges that it must satisfy all applicable qualification criteria prior to filing a preliminary short form prospectus. This notice does not evidence the Issuer’s intent to file a short form prospectus, to enter into any particular financing or transaction or to become a reporting issuer in any jurisdiction. This notice will remain in effect until withdrawn by the Issuer.

[signature of Issuer]
[name and title of duly authorized signing officer of Issuer]

NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS

APPENDIX B
AUTHORIZATION OF INDIRECT COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION

The attached Schedule 1 contains information concerning the full name, position with or relationship to the issuer named below (the "Issuer"), name and address of employer, if other than the Issuer, full residential address, date and place of birth and citizenship (the "Information") of each director, executive officer, and any promoter of the issuer, and, in the case of a promoter, of each director and executive officer of the promoter. The Issuer is required by securities legislation to deliver the Information to the regulators listed in Schedule 2, unless the Information was previously delivered.

The Issuer confirms that each person or company listed in Schedule 1:

(a) has been notified by the Issuer

(i) of the Issuer's delivery to the regulator of the Information in Schedule 1 pertaining to that person or company,

(ii) that the Information is being collected indirectly by the regulator under the authority granted to it in securities legislation,

(iii) that the Information is being collected and used for the purpose of enabling the regulator to administer and enforce securities legislation, including those obligations that require or permit the regulator to refuse to issue a receipt for a prospectus if it appears to the regulator that the past conduct of management or promoters of the Issuer affords reasonable grounds for belief that the business of the Issuer will not be conducted with integrity and in the best interests of its securityholders, and

(iv) of the contact, business address and business telephone number of the regulator in the local jurisdiction as set out in the attached Schedule 2, who can answer questions about the regulator's indirect collection of the Information;

(b) has read and understands and has signed the Notice of Collection, Use and Disclosure of Personal Information by Regulators attached hereto as Schedule 3; and

(c) has, by signing the Notice, authorized the indirect collection, and use and disclosure of the Information by the regulator as described in Schedule 3.

Date: ______________________________

____
Name of Issuer

Per: ______________________________

____
Name

____
Official Capacity

(Please print the name of the individual whose signature appears in the official capacity)

Schedule 1 to
Authorization of Indirect
Collection, Use and Disclosure of Personal Information

Personal Information

[Name of Issuer]

Part 1

Full Name (including previous name(s) if any)	Position with or Relationship to Issuer	Name and Address of Employer, if other than Issuer	Full Residential Address	Date and Place of Birth	Citizenship

Part 2

For any of the above noted individuals with a residential address outside of Canada, please provide the following additional information:

Full Name	Previous Address(es) (5-year history)	Dates Residing in Foreign Country	Height and Weight	Eye Colour	Hair Colour	Passport Nationality and Number

Schedule 2 to
Authorization of Indirect
Collection, Use and Disclosure of Personal Information

Local Jurisdiction	Regulator
Alberta	Information Officer Alberta Securities Commission Suite 400 300 - 5th Avenue S.W Calgary, Alberta T2P 3C4 Telephone: (403) 297-6454 E-mail: inquiries@seccom.ab.ca www.albertasecurities.com
British Columbia	Review Officer British Columbia Securities Commission P.O. Box 10142 Pacific Centre 701 West Georgia Street Vancouver, British Columbia V7Y 1LZ Telephone: (604) 899-6854 Toll Free within British Columbia and Alberta: (800) 373-6393 E-mail: inquiries@bcsc.bc.ca www.bcsc.bc.ca
Manitoba	Director, Corporate Finance The Manitoba Securities Commission 1130 - 405 Broadway Winnipeg, Manitoba R3C 3L6 Telephone: (204) 945-2548 E-mail: securities@gov.mb.ca www.msc.gov.mb.ca
New Brunswick	Director Corporate Finance and Chief Financial Officer New Brunswick Securities Commission Suite 606, 133 Prince William Street Saint John, New Brunswick E2L 4Y9 Telephone: (506) 658-3060 Fax: (506) 658-3059 E-mail: information@nbsc-cvmnb.ca
Newfoundland and Labrador	Director of Securities Department of Government Services and Lands P.O. Box 8700 West Block, 2nd Floor, Confederation Building St. John’s, Newfoundland A1B 4J6 Telephone: (709) 729-4189 www.gov.nf.ca/gsl/cca/s
Northwest Territories	Securities Registries Department of Justice Government of the Northwest Territories P.O. Box 1320, Yellowknife, Northwest Territories X1A 2L9 www.justice.gov.nt.ca/SecuritiesRegistry/SecuritiesRegistry.html
Nova Scotia	Deputy Director, Compliance and Enforcement Nova Scotia Securities Commission P.O. Box 458 Halifax, Nova Scotia B3J 2P8 Telephone: (902) 424-5354 www.gov.ns.ca/nssc

Nunavut	Government of Nunavut Legal Registries Division P.O. Box 1000 – Station 570 Iqaluit, Nunavut X0A 0H0 Telephone: (867) 975-6590
Ontario	Administrative Assistant to the Director of Corporate Finance Ontario Securities Commission 19th Floor, 20 Queen Street West Toronto, Ontario M5H 2S8 Telephone: (416) 597-0681 E-mail: Inquiries@osc.gov.on.ca www.osc.gov.on.ca
Prince Edward Island	Deputy Registrar, Securities Division Shaw Building 95 Rochford Street, P.O. Box 2000, 4th Floor Charlottetown, Prince Edward Island C1A 7N8 Telephone: (902) 368-4550 www.gov.pe.ca/securities
Québec	Autorité des marchés financiers Stock Exchange Tower P.O. Box 246, 22nd Floor 800 Victoria Square Montréal, Québec H4Z 1G3 Attention: Responsable de l'accès à l'information Telephone: (514) 395-0337 Toll Free in Québec: (877) 525-0337 www.lautorite.qc.ca
Saskatchewan	Director Saskatchewan Financial Services Commission 6th Floor, 1919 Saskatchewan Drive Regina, Saskatchewan S4P 3V7 Telephone: (306) 787-5842 www.sfsc.gov.sk.ca
Yukon	Registrar of Securities Department of Justice Andrew A. Philipsen Law Centre 2130 - 2nd Avenue, 3rd Floor Whitehorse, Yukon Territory Y1A 5H6 Telephone: (867) 667-5005

Schedule 3 to
Authorization of
Indirect Collection, Use and Disclosure of
Personal Information

Notice of Collection, Use and Disclosure of Personal Information by Regulators

The regulators listed in Schedule 2 collect the personal information in Schedule 1 to the Authorization of Indirect Collection, Use and Disclosure of Personal Information under the authority granted to them under provincial and territorial securities legislation.

The regulators collect the personal information in Schedule 1 for the purpose of enabling the regulators to administer and enforce provincial and territorial securities legislation, including those provisions that require or permit the regulators to refuse to issue a receipt for a prospectus if it appears to the regulators that the past conduct of management or promoters of the Issuer affords reasonable grounds for belief that the business of the Issuer will not be conducted with integrity and in the best interests of its securityholders.

You understand that by signing this document, you are consenting to the Issuer submitting your personal information in Schedule 1 (the "Information") to the regulators and to the collection and use by the regulators of the Information, as well as any other information that may be necessary to administer and enforce provincial and territorial securities legislation. This may include the collection of information from law enforcement agencies, other government or non-governmental regulatory authorities, self-regulatory organizations, exchanges, and quotation and trade reporting systems to conduct background checks, verify the Information and perform investigations and conduct enforcement proceedings as required to ensure compliance with provincial and territorial securities legislation.

You also understand and agree that the Information the regulators collect about you may also be disclosed, as permitted by law, where its use and disclosure is for the purposes described above. The regulators may also use a third party to process Information, but when this happens, the third party will be carefully selected and obligated to comply with the limited use restrictions described above and with provincial and federal privacy legislation.

Warning: It is an offence to submit information that, in a material respect and at the time and in the light of the circumstances in which it is submitted, is misleading or untrue.

Questions

If you have any questions about the collection, use, and disclosure of the information you provide to the regulators, you may contact the regulator in the jurisdiction in which the required information is filed, at the address or telephone number listed in Schedule 2.

I have read and understand the foregoing and consent to the indirect collection, use and disclosure of the personal information pertaining to me that is set out in the Authorization.

Date: ______________________________

____
Signature

____
Name

NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS

APPENDIX C
ISSUER FORM OF SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

1. Name of issuer (the “Issuer”):

   ____

2. Jurisdiction of incorporation, or equivalent, of Issuer:

   ____

3. Address of principal place of business of Issuer:

   ____

4. Description of securities (the “Securities”):

   ____

5. Date of the short form prospectus (the “Short Form Prospectus”) under which the Securities are offered:

   ____

6. Name of agent for service of process (the “Agent”):

   ____

7. Address for service of process of Agent in Canada (the address may be anywhere in Canada):

   ____

8. The Issuer designates and appoints the Agent at the address of the Agent stated above as its agent upon whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the “Proceeding”) arising out of, relating to or concerning the distribution of the Securities made or purported to be made under the Short Form Prospectus or the obligations of the Issuer as a reporting issuer, and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring such Proceeding.

9. The Issuer irrevocably and unconditionally submits to the non-exclusive jurisdiction of

   (a) the judicial, quasi-judicial and administrative tribunals of each of the provinces [and territories] of Canada in which the securities are distributed under the Short Form Prospectus; and

   (b) any administrative proceeding in any such province [or territory],

   in any Proceeding arising out of or related to or concerning the distribution of the Securities made or purported to be made under the Short Form Prospectus or the obligations of the issuer as a reporting issuer.

10. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file a new submission to jurisdiction and appointment of agent for service of process in this form at least 30 days before termination of this submission to jurisdiction and appointment of agent for service of process.

11. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file an amended submission to jurisdiction and appointment of agent for service of process at least 30 days before any change in the name or above address of the Agent.

12. This submission to jurisdiction and appointment of agent for service of process shall be governed by and construed in accordance with the laws of [insert province or territory of above address of Agent].

Dated: ______________________ ______________________________

Signature of Issuer

____

Print name and title of signing officer of Issuer

AGENT

The undersigned accepts the appointment as agent for service of process of [insert name of Issuer] under the terms and conditions of the appointment of agent for service of process stated above.

Dated: ______________________________ ____
Signature of Agent

____
Print name of person signing and, if Agent is not an individual, the title of the person

NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS

APPENDIX D
NON-ISSUER FORM OF SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

1. Name of issuer (the "Issuer"):

   ____

2. Jurisdiction of incorporation, or equivalent, of Issuer:

   ____

3. Address of principal place of business of Issuer:

   ____

4. Description of securities (the "Securities"):

   ____

5. Date of the short form prospectus (the "Short Form Prospectus") under which the Securities are offered:

   ____

6. Name of person filing this form (the "Filing Person"):

   ____

7. Filing Person's relationship to Issuer:

   ____

8. Jurisdiction of incorporation, or equivalent, of Filing Person, if applicable, or jurisdiction of residence of Filing Person:

   ____

9. Address of principal place of business of Filing Person:

   ____

10. Name of agent for service of process (the "Agent"):

    ____

11. Address for service of process of Agent in Canada (which address may be anywhere in Canada):

    ____

12. The Filing Person designates and appoints the Agent at the address of the Agent stated above as its agent upon whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the "Proceeding") arising out of, relating to or concerning the distribution of the Securities made or purported to be made under the Short Form Prospectus, and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring the Proceeding.

13. The Filing Person irrevocably and unconditionally submits to the non-exclusive jurisdiction of

    (a) the judicial, quasi-judicial and administrative tribunals of each of the provinces [and territories] of Canada in which the securities are distributed under the Short Form Prospectus; and

    (b) any administrative proceeding in any such province [or territory],

    in any Proceeding arising out of or related to or concerning the distribution of the Securities made or purported to be made under the Short Form Prospectus.

14. Until six years after completion of the distribution of the Securities made under the Short Form Prospectus, the Filing Person shall file a new submission to jurisdiction and appointment of agent for service of process in this form at least 30 days before termination of this submission to jurisdiction and appointment of agent for service of process.

15. Until six years after completion of the distribution of the Securities under the Short Form Prospectus, the Filing Person shall file an amended submission to jurisdiction and appointment of agent for service of process at least 30 days before a change in the name or above address of the Agent.

16. This submission to jurisdiction and appointment of agent for service of process shall be governed by and construed in accordance with the laws of [insert province or territory of above address of Agent].

Dated: ______________________________

____
Signature of Filing Person

____
Print name of person signing and, if the Filing Person is not an individual, the title of the person

AGENT

The undersigned accepts the appointment as agent for service of process of [insert name of Filing Person] under the terms and conditions of the appointment of agent for service of process stated above.

Dated: ______________________________

____
Signature of Agent

____
Print name of person signing and, if Agent is not an individual, the title of the person

NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS

FORM 44-101F1
SHORT FORM PROSPECTUS

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NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS

FORM 44-101F1
SHORT FORM PROSPECTUS

INSTRUCTIONS

(1) *The objective of the short form prospectus is to provide information concerning the issuer that an investor needs in order to make an informed investment decision. This Form sets out specific disclosure requirements that are in addition to the general requirement under securities legislation to provide full, true and plain disclosure of all material facts relating to, and, in Québec, not to make any misrepresentation likely to affect the value or market price of, the securities to be distributed. Certain rules of specific application impose prospectus disclosure obligations in addition to those described in this Form.*

(2) *Terms used and not defined in this Form that are defined or interpreted in the Instrument shall bear that definition or interpretation. Other definitions are set out in National Instrument 14-101* Definitions*.*

(3) *In determining the degree of detail required, a standard of materiality should be applied. Materiality is a matter of judgement in the particular circumstance, and should generally be determined in relation to an item's significance to investors, analysts and other users of information. An item of information, or an aggregate of items, is considered material if it is probable that its omission or misstatement would influence or change an investment decision with respect to the issuer's securities. In determining whether information is material, take into account both quantitative and qualitative factors. The potential significance of items should be considered individually rather than on a net basis, if the items have an offsetting effect. This concept of materiality is consistent with the financial reporting notion of materiality contained in the Handbook.*

(4) *Unless an item specifically requires disclosure only in the preliminary short form prospectus, the disclosure requirements set out in this Form apply to both the preliminary short form prospectus and the short form prospectus. Details concerning the price and other matters dependent upon or relating to price, such as the number of securities being distributed, may be left out of the preliminary short form prospectus, along with specifics concerning the plan of distribution, to the extent that these matters have not been decided.*

(5) *Any information required in a short form prospectus may be incorporated by reference in the short form prospectus, other than confidential material change reports. Clearly identify in a short form prospectus any document incorporated by reference. If an excerpt of a document is incorporated by reference, clearly identify the excerpt in the short form prospectus by caption and paragraph of the document. Any material incorporated by reference in a short form prospectus is required under sections 4.1 and 4.2 of the Instrument to be filed with the short form prospectus unless it has been previously filed.*

(6) *The disclosure must be understandable to readers and presented in an easy to read format. The presentation of information should comply with the plain language principles listed in section 4.2 of Companion Policy 44-101CP* Short Form Prospectus Distributions*. If technical terms are required, clear and concise explanations should be included.*

(7) *No reference need be made to inapplicable items and, unless otherwise required in this Form, negative answers to items may be omitted.*

(8) *Where the term "issuer" is used, it may be necessary, in order to meet the requirement for full, true and plain disclosure of all material facts, and in Québec, disclosure of all material facts likely to affect the value or the market price of the securities to be distributed, to also include disclosure with respect to the issuer's subsidiaries and investees. If it is more likely than not that a person or company will become a subsidiary or investee, it may be necessary to also include disclosure with respect to the person or company.*

(9) *An issuer that is a special purpose entity may have to modify the disclosure items to reflect the special purpose nature of its business.*

(10) *If disclosure is required as of a specific date and there has been a material change or change that is otherwise significant in the required information subsequent to that date, present the information as of the date of the change or a date subsequent to the change instead.*

(11) *If the term "class" is used in any item to describe securities, the term includes a series of a class.*

(12) Disclosure in a preliminary short form prospectus or short form prospectus must be consistent with National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities *(NI 51-101) if the issuer is engaged in oil and gas activities (as defined in NI 51-101).*

Item 1 Cover Page Disclosure

1.1 Required Language - State in italics at the top of the cover page the following:

"No securities regulatory authority has expressed an opinion about these securities and it is an offence to claim otherwise."

1.2 Preliminary Short Form Prospectus Disclosure - Every preliminary short form prospectus shall have printed in red ink and italics on the top of the cover page the following, with the bracketed information completed:

"A copy of this preliminary short form prospectus has been filed with the securities regulatory authority[ies] in [each of/certain of the provinces/provinces and territories of Canada] but has not yet become final for the purpose of the sale of securities. Information contained in this preliminary short form prospectus may not be complete and may have to be amended. The securities may not be sold until a receipt for the short form prospectus is obtained from the securities regulatory authority[ies]."

INSTRUCTION

Issuers shall complete the bracketed information by

(a) inserting the names of each jurisdiction in which the issuer intends to offer securities under the short form prospectus;

(b) stating that the filing has been made in each of the provinces of Canada or each of the provinces and territories of Canada; or

(c) identifying the filing jurisdictions by exception (i.e., every province of Canada or every province and territory of Canada, except [excluded jurisdiction]).

1.3 Disclosure Concerning Documents Incorporated by Reference - State the following in italics on the cover page, with the first sentence in bold type and the bracketed information completed:

"Information has been incorporated by reference in this prospectus from documents filed with securities commissions or similar authorities in Canada. Copies of the documents incorporated herein by reference may be obtained on request without charge from the secretary of the issuer at [insert complete address and telephone number], and are also available electronically at www.sedar.com. [Insert if the offering is made in Québec - "For the purpose of the Province of Québec, this simplified prospectus contains information to be completed by consulting the permanent information record. A copy of the permanent information record may be obtained without charge from the secretary of the issuer at the above-mentioned address and telephone number and is also available electronically at www.sedar.com."]

1.4 Basic Disclosure about the Distribution - State the following, immediately below the disclosure required under sections 1.1, 1.2 and 1.3, with the bracketed information completed:

[PRELIMINARY] SHORT FORM PROSPECTUS

[INITIAL PUBLIC OFFERING OR NEW ISSUE AND/OR SECONDARY OFFERING]

(Date)

[Name of Issuer]

[number and type of securities qualified for distribution under the short form prospectus, including any options or warrants, and the price per security]

1.5 Name and Address of Issuer - State the full corporate name of the issuer or, if the issuer is an unincorporated entity, the full name under which the entity exists and carries on business and the address(es) of the issuer's head and registered office.

1.6 Distribution

(1) If the securities are being distributed for cash, provide the information called for below, in substantially the following tabular form or in a note to the table:

	Price to public **(a)**	**Underwriting discounts or commissions** **(b)**	**Proceeds to issuer or selling security holders** **(c)**
Per security			
Total			

(2) If there is an over-allotment option, describe the terms of the option and the fact that the short form prospectus qualifies both the grant of the option and the issuance or transfer of securities that will be issued or transferred if the option is exercised.

(3) If the distribution of the securities is to be on a best efforts basis, provide totals for both the minimum and maximum subscriptions, if applicable.

(4) If debt securities are distributed at a premium or a discount, state in bold type the effective yield if held to maturity.

(5) Disclose separately those securities that are underwritten, those under option and those to be sold on a best efforts basis and, in the case of a best efforts distribution, the latest date that the distribution is to remain open.

(6) In column (b) of the table, disclose only commissions paid or payable in cash by the issuer or selling security holder and discounts granted. Set out in a note to the table

(a) commissions or other consideration paid or payable by persons or companies other than the issuer or selling security holder;

(b) consideration other than discounts granted and cash paid or payable by the issuer or selling security holder, other than securities described in section 1.10 below; and

(c) any finder's fees or similar required payment.

(7) If a security is being distributed for the account of a selling security holder, state the name of the selling security holder and a cross-reference to the applicable section in the short form prospectus where further information about the selling security holder is provided. State the portion of expenses of the distribution to be borne by the selling security holder and, if none of the expenses of the distribution are being borne by the selling security holder, include a statement to that effect and discuss the reasons why this is the case.

1.7 Non-Fixed Price Distributions - If the securities are being distributed at non-fixed prices, disclose

(a) the discount allowed or commission payable to the underwriter;

(b) any other compensation payable to the underwriter and, if applicable, that the underwriter's compensation will be increased or decreased by the amount by which the aggregate price paid for the securities by the purchasers exceeds or is less than the gross proceeds paid by the underwriter to the issuer or selling security holder;

(c) that the securities to be distributed under the short form prospectus will be distributed, as applicable, at

(i) prices determined by reference to the prevailing price of a specified security in a specified market,

(ii) market prices prevailing at the time of sale, or

(iii) prices to be negotiated with purchasers;

(d) that prices may vary as between purchasers and during the period of distribution;

(e) if the price of the securities is to be determined by reference to the prevailing price of a specified security in a specified market, the price of the specified security in the specified market at the latest practicable date;

(f) if the price of the securities will be the market price prevailing at the time of sale, the market price at the latest practicable date; and

(g) the net proceeds or, if the distribution is to be made on a best efforts basis, the minimum amount of net proceeds, if any, to be received by the issuer or selling security holder.

1.8 Reduced Price Distributions - If an underwriter wishes to be able to decrease the price at which securities are distributed for cash from the initial offering price disclosed in the short form prospectus, include in bold type a cross-reference to the section in the short form prospectus where disclosure concerning the possible price decrease is provided.

1.9 Market for Securities

(1) Identify the exchange(s) and quotation system(s), if any, on which securities of the issuer of the same class as the securities being distributed are traded or quoted and the market price of those securities as of the latest practicable date.

(2) Disclose any intention to stabilize the market and provide a cross-reference to the section in the short form prospectus where further information about market stabilization is provided.

(3) If no market for the securities being distributed under the short form prospectus exists or is to exist after the distribution, state the following in bold type:

> "There is no market through which these securities may be sold and purchasers may not be able to resell securities purchased under the short form prospectus. This may affect the pricing of the securities in the secondary market, the transparency and availability of trading prices, the liquidity of the securities, and the extent of issuer regulation. See Risk Factors."

1.10 Underwriter(s)

(1) State the name of each underwriter.

(2) If applicable, comply with the requirements of National Instrument 33-105 *Underwriting Conflicts* for cover page prospectus disclosure.

(3) If an underwriter has agreed to purchase all of the securities being distributed at a specified price and the underwriter's obligations are subject to conditions, state the following, with the bracketed information completed:

> "We, as principals, conditionally offer these securities, subject to prior sale, if, as and when issued by [name of issuer] and accepted by us in accordance with the conditions contained in the underwriting agreement referred to under Plan of Distribution."

(4) If an underwriter has agreed to purchase a specified number or principal amount of the securities at a specified price, state that the securities are to be taken up by the underwriter, if at all, on or before a date not later than 42 days after the date of the receipt for the short form prospectus.

(5) If there is no underwriter involved in the distribution, provide a statement in bold type to the effect that no underwriter has been involved in the preparation of the short form prospectus or performed any review of the contents of the short form prospectus.

(6) Provide the following tabular information:

Underwriters' Position	Maximum size or number of securities held	Exercise period/ Acquisition date	Exercise price or average acquisition price
Over-allotment option			
Compensation option			
Any other option granted by issuer or insider of issuer			
Total securities under option			
Other compensation securities			

INSTRUCTIONS

(1) Estimate amounts, if necessary. For non-fixed price distributions that are being made on a best efforts basis, disclosure of the information called for by the table may be set forth as a percentage or a range of percentages and need not be set forth in tabular form.

(2) If debt securities are being distributed, express the information as a percentage.

1.11 International Issuers - If the issuer, a selling security holder, a credit supporter of the securities being distributed under the short form prospectus or a promoter of the issuer is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada state the following on the cover page or under a separate heading elsewhere in the short form prospectus, with the bracketed information completed:

"The [issuer, selling security holder, credit supporter and/or promoter] is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada. Although [the issuer, selling security holder, credit supporter and/or promoter] has appointed [name(s) and address(es) of agent(s) for service] as its agent(s) for service of process in [list jurisdictions] it may not be possible for investors to collect from [the issuer, selling security holder, credit supporter or promoter] judgments obtained in Canadian courts predicated on the civil liability provisions of securities legislation."

1.12 Restricted Securities – If the securities being distributed are restricted securities and the holders of the securities do not have the right to participate in a takeover bid made for other equity securities of the issuer, disclose that fact.

1.13 Earnings Coverage Ratios – If any of the earnings coverage ratios required to be disclosed under section 6.1 is less than one-to-one, disclose this fact in bold type.

Item 2 Summary Description of Business

2.1 Summary of Description of Business - Provide a brief summary on a consolidated basis of the business carried on and intended to be carried on by the issuer.

Item 3 Consolidated Capitalization

3.1 Consolidated Capitalization - Describe any material change in, and the effect of the material change on, the share and loan capital of the issuer, on a consolidated basis, since the date of the issuer's financial statements most recently filed in accordance with the applicable CD rule, including any material change that will result from the issuance of the securities being distributed under the short form prospectus.

Item 4 Use of Proceeds

4.1 Proceeds - State the estimated net proceeds to be received by the issuer or selling security holder or, in the case of a non-fixed price distribution or a distribution to be made on a best efforts basis, the minimum amount, if any, of net proceeds to be received by the issuer or selling security holder from the sale of the securities distributed. If the short form prospectus is used for a special warrant or similar transaction, state the amount that has been received by the issuer of the special warrants or similar securities on the sale of the special warrants or similar securities.

4.2 Principal Purposes

(1) Describe in reasonable detail and, if appropriate, using tabular form, each of the principal purposes, with approximate amounts, for which the net proceeds will be used by the issuer. If the closing of the distribution is subject to a minimum subscription, provide disclosure of the use of proceeds for the minimum and maximum subscriptions.

(2) If more than 10 percent of the net proceeds will be used to reduce or retire indebtedness and the indebtedness was incurred within the two preceding years, describe the principal purposes for which the proceeds of the indebtedness were used and, if the creditor is an insider, associate or affiliate of the issuer, identify the creditor and the nature of the relationship to the issuer and the outstanding amount owed.

Item 5 Plan of Distribution

5.1 **Disclosure of Market Out** - If securities are distributed by an underwriter that has agreed to purchase all of the securities at a specified price and the underwriter's obligations are subject to conditions, include a statement in substantially the following form, with the bracketed information completed and with modifications necessary to reflect the terms of the distribution:

> "Under an agreement dated [insert date of agreement] between [insert name of issuer or selling security holder] and [insert name(s) of underwriter(s)], as underwriter[s], [insert name of issuer or selling security holder] has agreed to sell and the underwriter[s] [has/have] agreed to purchase on [insert closing date] the securities at a price of [insert offering price], payable in cash to [insert name of issuer or selling security holder] against delivery. The obligations of the underwriter[s] under the agreement may be terminated at [its/their] discretion on the basis of [its/their] assessment of the state of the financial markets and may also be terminated upon the occurrence of certain stated events. The underwriter[s] [is/are], however, obligated to take up and pay for all of the securities if any of the securities are purchased under the agreement."

5.2 **Best Efforts Offering** - Outline briefly the plan of distribution of any securities being distributed other than on the basis described in section 5.1.

5.3 **Determination of Price** - Disclose the method by which the distribution price has been or will be determined and, if estimates have been provided, explain the process for determining the estimates.

5.4 **Over-Allotments** - If the issuer, a selling security holder or an underwriter knows or has reason to believe that there is an intention to over-allot or that the price of any security may be stabilized to facilitate the distribution of the securities, disclose this information.

5.5 **Minimum Distribution** - If a minimum amount of funds is required under the issue and the securities are to be distributed on a best efforts basis, state the minimum amount required to be raised and the maximum that could be raised. Also indicate that the distribution will not continue for a period of more than 90 days after the date of the receipt for the short form prospectus if subscriptions representing the minimum amount of funds are not obtained within that period, unless each of the persons and companies who subscribed within that period has consented to the continuation. State that during that period funds received from subscriptions will be held by a depository who is a registrant, bank or trust company and if the minimum amount of funds is not raised, the funds will be returned to the subscribers unless the subscribers have otherwise instructed the depository.

5.6 **Reduced Price Distributions** - If an underwriter wishes to be able to decrease the price at which securities are distributed for cash from the initial offering price disclosed in the short form prospectus and thereafter change, from time to time, the price at which securities are distributed under the short form prospectus in accordance with the procedures permitted by the Instrument, disclose that, after the underwriter has made a reasonable effort to sell all of the securities at the initial offering price disclosed in the short form prospectus, the offering price may be decreased, and further changed from time to time, to an amount not greater than the initial offering price disclosed in the short form prospectus and that the compensation realized by the underwriter will be decreased by the amount that the aggregate price paid by purchasers for the securities is less than the gross proceeds paid by the underwriter to the issuer or selling security holder.

5.7 **Listing Application** - If application has been made to list or quote the securities being distributed, include a statement in substantially the following form with the bracketed information completed:

> "The issuer has applied to [list/quote] the securities distributed under this short form prospectus on [name of exchange or other market]. [Listing/Quotation] will be subject to the issuer fulfilling all the listing requirements of [name of exchange or other market]."

5.8 Conditional Listing Approval - If application has been made to list or quote the securities being distributed and conditional listing approval has been received, include a statement in substantially the following form, with the bracketed information completed:

"[name of exchange or other market] has conditionally approved the [listing/quotation] of these securities. [Listing/Quotation] is subject to the [name of the issuer] fulfilling all of the requirements of the [name of exchange or market] on or before [date], [including distribution of these securities to a minimum number of public security holders.]"

5.9 Constraints - If there are constraints imposed on the ownership of securities of the issuer to ensure that the issuer has a required level of Canadian ownership, describe the mechanism, if any, by which the level of Canadian ownership of the securities of the issuer will be monitored and maintained.

Item 6 Earnings Coverage Ratios

6.1 Earnings Coverage Ratios

(1) If the securities being distributed are debt securities having a term to maturity in excess of one year or are preferred shares, disclose the following earnings coverage ratios adjusted in accordance with subsection (2):

1. The earnings coverage ratio based on the most recent 12 month period included in the issuer's current annual financial statements. If there has been a change in year end and the issuer's most recent financial year is less than nine months in length, also disclose the earnings coverage calculation for its old financial year. If the issuer's financial year is less than 12 months in length, the earnings coverage should be calculated on an annualized basis.

2. The earnings coverage ratio based on the 12 month period ended on the last day of the most recently completed period for which interim financial statements of the issuer have been, or are required to have been, incorporated by reference into the short form prospectus.

(2) Adjust the ratios referred to in subsection (1) to reflect

(a) the issuance of the securities being distributed under the short form prospectus, based on the price at which these securities are expected to be distributed;

(b) in the case of a distribution of preferred shares,

(i) the issuance of all preferred shares issued since the date of the annual or interim financial statements, and

(ii) the repurchase, redemption or other retirement of all preferred shares repurchased, redeemed, or otherwise retired since the date of the annual or interim financial statements and of all preferred shares to be repurchased, redeemed, or otherwise retired from the proceeds to be realized from the sale of securities under the short form prospectus;

(c) the issuance of all long-term financial liabilities, as defined in accordance with the issuer's GAAP;

(d) the repayment, redemption or other retirement of all long-term financial liabilities, as defined in accordance with the issuer's GAAP, since the date of the annual or interim financial statements and all long-term financial liabilities to be repaid or redeemed from the proceeds to be realized from the sale of securities distributed under the short form prospectus; and

(e) the servicing costs that were incurred, or are expected to be incurred, in relation to the adjustments.

(3) If the issuer is distributing, or has outstanding, debt securities that are accounted for, in whole or in part, as equity, disclose in notes to the ratios required under subsection (1)

(a) that the ratios have been calculated excluding the carrying charges for those securities that have been reflected in equity in the calculation of the issuer's interest and dividend obligations;

(b) that if those securities had been accounted for in their entirety as debt for the purpose of calculating the ratios required under subsection (1), the entire amount of the annual carrying charges for those

securities would have been reflected in the calculation of the issuer's interest and dividend obligations; and

(c) the earnings coverage ratios for the periods referred to in subsection (1), calculated as though those securities had been accounted for as debt.

(4) If the earnings coverage ratio is less than one-to-one, disclose in the prospectus the dollar amount of the earnings required to achieve a ratio of one-to-one.

(5) If the short form prospectus includes a pro forma income statement, calculate the pro forma earnings coverage ratio and disclose it in the prospectus.

INSTRUCTIONS

(1) Cash flow coverage may be disclosed but only as a supplement to earnings coverage and only if the method of calculation is fully disclosed.

(2) Earnings coverage is calculated by dividing an entity's earnings (the numerator) by its interest and dividend obligations (the denominator).

(3) For the earnings coverage calculation

(a) the numerator should be calculated using consolidated net income before interest and income taxes;

(b) imputed interest income from the proceeds of a distribution should not be added to the numerator;

(c) an issuer may also present, as supplementary disclosure, a coverage calculation based on earnings before discontinued operations and extraordinary items;

(d) for distributions of debt securities, the appropriate denominator is interest expense determined in accordance with the issuer's GAAP, after giving effect to the new debt issue and any retirement of obligations, plus the amount of interest that has been capitalized during the period;

(e) for distributions of preferred shares

(i) the appropriate denominator is dividends declared during the period, together with undeclared dividends on cumulative preferred shares, after giving effect to the new preferred share issue, plus the issuer's annual interest requirements, including the amount of interest that has been capitalized during the period, less any retirement of obligations, and

(ii) dividends should be grossed-up to a before-tax equivalent using the issuer's effective income tax rate; and

(f) for distributions of both debt securities and preferred shares, the appropriate denominator is the same as for a preferred share issue, except that the denominator should also reflect the effect of the debt being offered pursuant to the short form prospectus.

(4) The denominator represents a pro forma calculation of the aggregate of an issuer's interest obligations on all long-term debt and dividend obligations (including both dividends declared and undeclared dividends on cumulative preferred shares) with respect to all outstanding preferred shares, as adjusted to reflect

(a) the issuance of all long-term debt and, in addition in the case of an issuance of preferred shares, all preferred shares issued, since the date of the annual or interim financial statements;

(b) the issuance of the securities that are to be distributed under the short form prospectus, based on a reasonable estimate of the price at which these securities will be distributed;

(c) the repayment or redemption of all long-term debt since the date of the annual or interim financial statements, all long-term debt to be repaid or redeemed from the proceeds to be realized from the sale of securities under the short form prospectus and, in addition, in the case of an issuance of preferred shares, all preferred shares repaid or redeemed since the date of the annual or interim

financial statements and all preferred shares to be repaid or redeemed from the proceeds to be realized from the sale of securities under the short form prospectus; and

(d) the servicing costs that were incurred, or will be incurred, in relation to the above adjustments.

(5) In certain circumstances, debt obligations may be classified as current liabilities because such obligations, by their terms, are due on demand, are due within one year, or are callable by the creditor. If the issuer is distributing, or has outstanding, debt securities that are classified as current liabilities, disclose

(a) in the notes to the ratios required under subsection 6.1(1) that the ratios have been calculated excluding the carrying charges for those debt securities reflected as current liabilities;

(b) that if those debt securities had been classified in their entirety as long term debt for the purposes of calculating the ratios under subsection 6.1(1), the entire amount of the annual carrying charges for such debt securities would have been reflected in the calculation of the issuer's interest and dividend obligations; and

(c) the earnings coverage ratios for the periods referred to in subsection 6.1(1), calculated as though those debt securities had been classified as long term debt.

(6) For debt securities, disclosure of earnings coverage shall include language similar to the following:

"[Name of the issuer]'s interest requirements, after giving effect to the issue of [the debt securities to be distributed under the short form prospectus], amounted to $• for the 12 months ended •. [Name of the issuer]'s earnings before interest and income tax for the 12 months then ended was $•, which is • times [name of the issuer]'s interest requirements for this period."

(7) For preferred share issues, disclosure of earnings coverage shall include language similar to the following:

"[Name of the issuer]'s dividend requirements on all of its preferred shares, after giving effect to the issue of [the preferred shares to be distributed under the short form prospectus], and adjusted to a before-tax equivalent using an effective income tax rate of •%, amounted to $• for the 12 months ended •. [Name of the issuer]'s interest requirements for the 12 months then ended amounted to $•. [Name of the issuer]'s earnings before interest and income tax for the 12 months ended • was $•, which is • times [name of the issuer]'s aggregate dividend and interest requirements for this period."

(8) If the earnings coverage ratio is less than one-to-one, disclose the dollar amount of the coverage deficiency (i.e. the dollar amount of earnings required to attain a ratio of one-to-one).

(9) Other earnings coverage calculations may be included as supplementary disclosure to the required earnings coverage calculations outlined above as long as their derivation is disclosed and they are not given greater prominence than the required earnings coverage calculations.

Item 7 Description of Securities Being Distributed

7.1 Equity Securities - If equity securities are being distributed, state the description or the designation of the class of the equity securities and describe all material attributes and characteristics that are not described elsewhere in a document incorporated by reference in the short form prospectus including, as applicable,

(a) dividend rights;

(b) voting rights;

(c) rights upon dissolution or winding up;

(d) pre-emptive rights;

(e) conversion or exchange rights;

(f) redemption, retraction, purchase for cancellation or surrender provisions;

(g) sinking or purchase fund provisions;

(h) provisions permitting or restricting the issuance of additional securities and any other material restrictions; and

(i) provisions requiring a securityholder to contribute additional capital.

7.2 Debt Securities - If debt securities are being distributed, describe all material attributes and characteristics of the indebtedness and the security, if any, for the debt that are not described elsewhere in a document incorporated by reference in the short form prospectus, including

(a) provisions for interest rate, maturity and premium, if any;

(b) conversion or exchange rights;

(c) redemption, retraction, purchase for cancellation or surrender provisions;

(d) sinking or purchase fund provisions;

(e) the nature and priority of any security for the debt securities, briefly identifying the principal properties subject to lien or charge;

(f) provisions permitting or restricting the issuance of additional securities, the incurring of additional indebtedness and other material negative covenants including restrictions against payment of dividends and restrictions against giving security on the assets of the issuer or its subsidiaries and provisions as to the release or substitution of assets securing the debt securities;

(g) the name of the trustee under any indenture relating to the debt securities and the nature of any material relationship between the trustee or any of its affiliates and the issuer or any of its affiliates; and

(h) any financial arrangements between the issuer and any of its affiliates or among its affiliates that could affect the security for the indebtedness.

7.3 Asset-backed Securities - If asset-backed securities are being distributed, describe

(a) the material attributes and characteristics of the asset-backed securities, including

(i) the rate of interest or stipulated yield and any premium,

(ii) the date for repayment of principal or return of capital and any circumstances in which payments of principal or capital may be made before such date, including any redemption or pre-payment obligations or privileges of the issuer and any events that may trigger early liquidation or amortization of the underlying pool of financial assets,

(iii) provisions for the accumulation of cash flows to provide for the repayment of principal or return of capital,

(iv) provisions permitting or restricting the issuance of additional securities and any other material negative covenants applicable to the issuer,

(v) the nature, order and priority of the entitlements of holders of asset-backed securities and any other entitled persons or companies to receive cash flows generated from the underlying pool of financial assets, and

(vi) any events, covenants, standards or preconditions that may reasonably be expected to affect the timing or amount of payments or distributions to be made under the asset-backed securities, including those that are dependent or based on the economic performance of the underlying pool of financial assets;

(b) information on the underlying pool of financial assets, for the period from the date as at which the following information was presented in the issuer's current AIF to a date not more than 90 days before the date of the issuance of a receipt for the preliminary short form prospectus, of

(i) the composition of the pool as of the end of the period,

(ii) income and losses from the pool for the period, presented on at least an annual basis or such shorter period as is reasonable given the nature of the underlying pool of assets, and

(iii) the payment, prepayment and collection experience of the pool for the period on at least an annual basis or such shorter period as is reasonable given the nature of the underlying pool of assets;

(c) the type or types of the financial assets, the manner in which the financial assets originated or will originate and, if applicable, the mechanism and terms of the agreement governing the transfer of the financial assets comprising the underlying pool to or through the issuer, including the consideration paid for the financial assets;

(d) any person or company who

(i) originated, sold or deposited a material portion of the financial assets comprising the pool, or has agreed to do so,

(ii) acts, or has agreed to act, as a trustee, custodian, bailee or agent of the issuer or any holder of the asset-backed securities, or in a similar capacity,

(iii) administers or services a material portion of the financial assets comprising the pool or provides administrative or managerial services to the issuer, or has agreed to do so, on a conditional basis or otherwise, if

(A) finding a replacement provider of the services at a cost comparable to the cost of the current provider is not reasonably likely,

(B) a replacement provider of the services is likely to achieve materially worse results than the current provider,

(C) the current provider of the services is likely to default in its service obligations because of its current financial condition, or

(D) the disclosure is otherwise material,

(iv) provides a guarantee, alternative credit support or other credit enhancement to support the obligations of the issuer under the asset-backed securities or the performance of some or all of the financial assets in the pool, or has agreed to do so, or

(v) lends to the issuer in order to facilitate the timely payment or repayment of amounts payable under the asset-backed securities, or has agreed to do so;

(e) the general business activities and material responsibilities under the asset-backed securities of a person or company referred to in paragraph (d);

(f) the terms of any material relationships between

(i) any of the persons or companies referred to in paragraph (d) or any of their respective affiliates, and

(ii) the issuer;

(g) any provisions relating to termination of services or responsibilities of any of the persons or companies referred to in paragraph (d) and the terms on which a replacement may be appointed; and

(h) any risk factors associated with the asset-backed securities, including disclosure of material risks associated with changes in interest rates or prepayment levels, and any circumstances where payments on the asset-backed securities could be impaired or disrupted as a result of any reasonably foreseeable event that may delay, divert or disrupt the cash flows dedicated to service the asset-backed securities.

INSTRUCTIONS

(1) Present the information required under paragraph (b) in a manner that will enable a reader to easily determine whether, and the extent to which, the events, covenants, standards and preconditions referred to in clause (a)(vi) have occurred, are being satisfied or may be satisfied.

(2) If the information required under paragraph (b) is not compiled specifically from the underlying pool of financial assets, but is compiled from a larger pool of the same assets from which the securitized assets are randomly selected such that the performance of the larger pool is representative of the performance of the pool of securitized assets, then an issuer may comply with paragraph (b) by providing the information required based on the larger pool and disclosing that it has done so.

(3) Issuers are required to summarize contractual arrangements in plain language and may not merely restate the text of the contracts referred to. The use of diagrams to illustrate the roles of, and the relationship among, the persons and companies referred to in paragraph (d) and the contractual arrangements underlying the asset-backed securities is encouraged.

7.4 **Derivatives** - If derivatives are being distributed, describe fully the material attributes and characteristics of the derivatives, including

(a) the calculation of the value or payment obligations under the derivatives;

(b) the exercise of the derivatives;

(c) the settlement of exercises of the derivatives;

(d) the underlying interest of the derivatives;

(e) the role of a calculation expert in connection with the derivatives;

(f) the role of any credit supporter of the derivatives; and

(g) the risk factors associated with the derivatives.

7.5 **Other Securities** - If securities other than equity securities, debt securities, asset-backed securities or derivatives are being distributed, describe fully the material attributes and characteristics of those securities.

7.6 **Special Warrants, etc.** – If the short form prospectus is used to qualify the distribution of securities issued upon the exercise of Special Warrants or other securities acquired on a prospectus-exempt basis, disclose that holders of such securities have been provided with a contractual right of rescission and provide the following disclosure in the prospectus:

"In the event that a holder of a Special Warrant, who acquires a [*identify underlying security*] of the issuer upon the exercise of the Special Warrant as provided for in this short form prospectus, is or becomes entitled under applicable securities legislation to the remedy of rescission by reason of this short form prospectus or any amendment thereto containing a misrepresentation, such holder shall be entitled to rescission not only of the holder's exercise of its Special Warrant(s) but also of the private placement transaction pursuant to which the Special Warrant was initially acquired, and shall be entitled in connection with such rescission to a full refund of all consideration paid to the [*underwriter or issuer, as the case may be*] on the acquisition of the Special Warrant. In the event such holder is a permitted assignee of the interest of the original Special Warrant subscriber, such permitted assignee shall be entitled to exercise the rights of rescission and refund granted hereunder as if such permitted assignee was such original subscriber. The foregoing is in addition to any other right or remedy available to a holder of the Special Warrant under applicable securities legislation or otherwise at law."

INSTRUCTION

If the short form prospectus is qualifying the distribution of securities issued upon the exercise of securities other than Special Warrants, replace the term "Special Warrant" with the type of the security being distributed.

7.7 Restricted Securities

(1) If the issuer has outstanding, or proposes to distribute under the short form prospectus, restricted securities, or securities that are directly or indirectly convertible into or exercisable or exchangeable for restricted securities or subject securities, provide a detailed description of:

(a) the voting rights attached to the restricted securities and the voting rights, if any, attached to the securities of any other class of securities of the issuer that are the same or greater on a per security basis than those attached to the restricted securities;

(b) any significant provisions under applicable corporate and securities law that do not apply to the holders of the restricted securities but do apply to the holders of another class of equity securities, and the extent of any rights provided in the constating documents or otherwise for the protection of holders of restricted securities; and

(c) any rights under applicable corporate law, in the constating documents or otherwise, of holders of restricted securities to attend, in person or by proxy, meetings of holders of equity securities of the issuer and to speak at the meetings to the same extent that holders of equity securities are entitled.

(2) If holders of restricted securities do not have all of the rights referred to in subsection (1) the detailed description referred to in that subsection shall include, in bold type, a statement of the rights the holders do not have.

(3) If the issuer is required to include the disclosure referred to in subsection (1), state the percentage of the aggregate voting rights attached to the issuer's securities that will be represented by restricted securities after giving effect to the issuance of the securities being offered.

7.8 **Modification of Terms** - Describe provisions as to modification, amendment or variation of any rights or other terms attached to the securities being distributed. If the rights of holders of securities may be modified otherwise than in accordance with the provisions attached to the securities or the provisions of the governing statute relating to the securities, explain briefly.

7.9 **Ratings** - If one or more ratings, including provisional ratings or stability ratings, have been received from one or more approved rating organizations for the securities being distributed and the rating or ratings continue in effect, disclose

(a) each security rating, including a provisional rating or stability rating, received from an approved rating organization;

(b) the name of each approved rating organization that has assigned a rating for the securities to be distributed;

(c) a definition or description of the category in which each approved rating organization rated the securities to be distributed and the relative rank of each rating within the organization's classification system;

(d) an explanation of what the rating addresses and what attributes, if any, of the securities to be distributed are not addressed by the rating;

(e) any factors or considerations identified by the approved rating organization as giving rise to unusual risks associated with the securities to be distributed;

(f) a statement that a security rating or a stability rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the rating organization; and

(g) any announcement made by, or any proposed announcement known to the issuer to be made by, an approved rating organization that the organization is reviewing or intends to revise or withdraw a rating previously assigned and required to be disclosed under this paragraph.

7.10 Other Attributes

(1) If the rights attaching to the securities being distributed are materially limited or qualified by the rights of any other class of securities, or if any other class of securities ranks ahead of or equally with the securities being

distributed, include information about the other securities that will enable investors to understand the rights attaching to the securities being distributed.

(2) If securities of the class being distributed may be partially redeemed or repurchased, state the manner of selecting the securities to be redeemed or repurchased.

INSTRUCTION

This Item requires only a brief summary of the provisions that are material from an investment standpoint. The provisions attaching to the securities being distributed or any other class of securities do not need to be set out in full. They may, in the issuer's discretion, be attached as a schedule to the prospectus.

Item 8 Selling Security Holder

8.1 Selling Security Holder - If any of the securities being distributed are to be distributed for the account of a security holder, state the following:

1. The name of the security holder.

2. The number or amount of securities owned by the security holder of the class being distributed.

3. The number or amount of securities of the class being distributed for the account of the security holder.

4. The number or amount of securities of the issuer of any class to be owned by the security holder after the distribution, and the percentage that number or amount represents of the total outstanding.

5. Whether the securities referred to in paragraph 2, 3 or 4 are owned both of record and beneficially, of record only, or beneficially only.

Item 9 Mineral Property

9.1 Mineral Property – If a material part of the proceeds of the distribution is to be expended on a particular mineral property and if the current AIF does not contain the disclosure required under section 5.4 of Form 51-102F2 for the property or that disclosure is inadequate or incorrect due to changes, disclose the information required under section 5.4 of Form 51-102F2.

Item 10 Significant Acquisitions

10.1 Significant Acquisitions

(1) Describe any acquisition

(a) that the issuer has completed within 75 days prior to the date of the short form prospectus;

(b) that is a significant acquisition for the purposes of Part 8 of NI 51-102; and

(c) for which the issuer has not yet filed a business acquisition report under NI 51-102.

(2) Describe any proposed acquisition that

(a) has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high; and

(b) would be a significant acquisition for the purposes of Part 8 of NI 51-102 if completed as of the date of the short form prospectus.

(3) If disclosure about an acquisition or proposed acquisition is required under subsection (1) or (2), include financial statements or other information of the acquisition or proposed acquisition if

(a) the acquisition or proposed acquisition is a reverse takeover; or

(b) the acquisition or proposed acquisition is not a reverse takeover but the inclusion of the financial statements is necessary for the short form prospectus to contain full, true and plain disclosure of all

material facts relating to, and in Québec disclosure of all material facts likely to affect the value or the market price of, the securities being distributed.

INSTRUCTIONS

(1) For the description of the acquisition or proposed acquisition, include the information required by sections 2.1 through 2.6 of Form 51-102F4. For a proposed acquisition, modify this information as necessary to convey that the acquisition is not yet completed.

(2) The requirement of subsection (3) must be satisfied by including either (i) the financial statements or other information required by Part 8 of NI 51-102, or (ii) satisfactory alternative financial statements or other information.

Item 11 Documents Incorporated by Reference

11.1 Mandatory Incorporation by Reference

(1) In addition to any other document that an issuer may choose to incorporate by reference, specifically incorporate by reference in the short form prospectus, by means of a statement in the short form prospectus to that effect, the documents set forth below:

1. The issuer's current AIF, if it has one.

2. The issuer's current annual financial statements, if any, and related MD&A.

3. The issuer's interim financial statements most recently filed or required to have been filed under the applicable CD rule in respect of an interim period, if any, subsequent to the financial year in respect of which the issuer has filed its current annual financial statements or has included annual financial statements in the short form prospectus, and the related interim MD&A.

4. If, before the prospectus is filed, financial information about the issuer for a financial period more recent than the period for which financial statements are required under paragraphs 2 and 3 is publicly disseminated by, or on behalf of, the issuer through news release or otherwise, the content of the news release or public communication.

5. Any material change report, except a confidential material change report, filed under Part 7 of NI 51-102 or Part 11 of NI 81-106 since the end of the financial year in respect of which the issuer's current AIF is filed.

6. Any business acquisition report filed by the issuer under Part 8 of NI 51-102 for acquisitions completed since the end of the financial year in respect of which the issuer's current AIF is filed.

7. Any information circular filed by the issuer under Part 9 of NI 51-102 or Part 12 of NI 81-106 since the end of the financial year in respect of which the issuer's current AIF is filed.

8. Any other disclosure document which the issuer has filed pursuant to an undertaking to a provincial or territorial securities regulatory authority since the beginning of the financial year in respect of which the issuer's current AIF is filed.

9. Any other disclosure document of the type listed in paragraphs 1 through 7 which the issuer has filed pursuant to an exemption from any requirement under the applicable CD rule since the beginning of the financial year in respect of which the issuer's current AIF is filed.

(2) In the statement incorporating the documents listed in subsection (1) by reference in a short form prospectus, clarify that the documents are not incorporated by reference to the extent their contents are modified or superseded by a statement contained in the short form prospectus or in any other subsequently filed document that is also incorporated by reference in the short form prospectus.

INSTRUCTIONS

(1) Paragraph 4 of subsection (1) requires issuers to incorporate only the news release or other public communication through which more recent financial information is released to the public. However, if the financial statements from which the information in the news release has been derived have been filed, then the financial statements must be incorporated by reference.

(2) Issuers must provide a list of the material change reports and business acquisition reports required under paragraphs 5 and 6 of subsection (1), giving the date of filing and briefly describing the material change or acquisition, as the case may be, in respect of which the report was filed.

(3) Any material incorporated by reference in a short form prospectus is required under sections 4.1 and 4.2 of the Instrument to be filed with the short form prospectus unless it has been previously filed.

11.2 Mandatory Incorporation by Reference of Future Documents - State that any documents, of the type described in section 11.1, if filed by the issuer after the date of the short form prospectus and before the termination of the distribution, are deemed to be incorporated by reference in the short form prospectus.

11.3 Issuers without a Current AIF or Current Annual Financial Statements

(1) If the issuer does not have a current AIF or current annual financial statements and is relying on the exemption in subsection 2.7(1) of the Instrument, include the disclosure, including financial statements, that would otherwise have been required to have been included in a current AIF and current annual financial statements under section 11.1.

(2) If the issuer does not have a current AIF or current annual financial statements and is relying on the exemption in subsection 2.7(2) of the Instrument, include the disclosure, including financial statements, provided in accordance with Item 14.2 or 14.5 of Form 51-102F5 in the information circular referred to in paragraph 2.7(2)(b) of the Instrument.

INSTRUCTION

If an issuer is required to include disclosure under subsection (2), it must include the historical financial statements of any issuer that was a party to the reorganization and any other information contained in the information circular that was used to construct financial statements for the issuer.

11.4 Significant Acquisition for Which No Business Acquisition Report is Filed

(1) If the issuer has,

(a) since the beginning of the most recently completed financial year in respect of which annual financial statements are included in the short form prospectus; and

(b) more than 75 days prior to the date of filing the preliminary short form prospectus;

completed a transaction that would have been a significant acquisition for the purposes of Part 8 of NI 51-102 if the issuer had been a reporting issuer at the time of the transaction, and the issuer has not filed a business acquisition report in respect of the transaction, include the financial statements and other information in respect of the transaction that is prescribed by Form 51-102F4.

(2) If the issuer was exempt from the requirement to file a business acquisition report in respect of a transaction because the disclosure that would normally be included in a business acquisition report was included in another document, include that disclosure in the short form prospectus.

INSTRUCTION

Disclosure required by section 11.3 or 11.4 to be included in the short form prospectus may be incorporated by reference from another document or included directly in the short form prospectus.

Item 12 Additional Disclosure for Issues of Guaranteed Securities

12.1 Credit Supporter Disclosure - Provide disclosure about each credit supporter, if any, that has provided a guarantee or alternative credit support for all or substantially all of the payments to be made under the securities to be distributed, by complying with the following:

1. If the credit supporter is a reporting issuer and has a current AIF, incorporating by reference into the short form prospectus all documents that would be required to be incorporated by reference under Item 11 if the credit supporter were the issuer of the securities.

2. If the credit supporter is not a reporting issuer and has a class of securities registered under section 12(b) or 12(g) of the 1934 Act, or is required to file reports under section 15(d) of the 1934 Act, incorporating by reference into the short form prospectus all 1934 Act filings that would be required to be incorporated by reference in a Form S-3 or Form F-3 registration statement filed under the 1933 Act if the securities distributed under the short form prospectus were being registered on Form S-3 or Form F-3.

3. If neither paragraph 1 nor paragraph 2 applies to the credit supporter, providing directly in the short form prospectus the same disclosure that would be contained in the short form prospectus through the incorporation by reference of the documents referred to in Item 11 if the credit supporter were the issuer of the securities and those documents had been prepared by the credit supporter.

4. Providing such other information about the credit supporter as is necessary to provide full, true and plain disclosure of all material facts concerning, and in Québec, disclosure of all material facts likely to affect the value or the market price, of the securities to be distributed, including the credit supporter's earnings coverage ratios under Item 6 as if the credit supporter were the issuer of the securities.

Item 13 Exemptions for Certain Issues of Guaranteed Securities

13.1 The Issuer is a Wholly Owned Subsidiary of the Credit Supporter - Despite Items 6 and 11, an issuer is not required to incorporate by reference into the short form prospectus any of its documents under paragraphs 1 through 4, 6 and 7 of subsection 11.1(1) or include in the short form prospectus its earnings coverage ratios under section 6.1, if

(a) a credit supporter has provided full and unconditional credit support for the securities being distributed;

(b) the credit supporter satisfies the criterion in paragraph 2.4(1)(b) of the Instrument;

(c) the securities being distributed are non-convertible debt securities, non-convertible preferred shares, or convertible debt securities or convertible preferred shares that are convertible, in each case, into securities of the credit supporter;

(d) the issuer is a direct or indirect wholly owned subsidiary of the credit supporter;

(e) no other subsidiary of the credit supporter has provided a guarantee or alternative credit support for all or substantially all of the payments to be made under the securities being distributed; and

(f) the issuer includes the following information in the short form prospectus:

(i) if

(A) the issuer has no operations or only minimal operations that are independent of the credit supporter, and

(B) the impact of any subsidiaries of the credit supporter on a combined basis, excluding the issuer, on the consolidated financial results of the credit supporter is minor,

a statement that the financial results of the issuer are included in the consolidated financial results of the credit supporter, or

(ii) for the periods covered by the credit supporter's financial statements included in the short form prospectus under section 12.1, consolidating summary financial information for the credit supporter presented with a separate column for each of the following:

(A) the credit supporter,

(B) the issuer,

(C) any other subsidiaries of the credit supporter on a combined basis,

(D) consolidating adjustments, and

(E) the total consolidated amounts.

13.2 The Issuer and One or More Subsidiary Credit Supporters are Wholly Owned Subsidiaries of the Parent Credit Supporter - Despite Items 6, 11 and 12, an issuer is not required to incorporate by reference into the short form prospectus any of its documents under paragraphs 1 through 4, 6 and 7 of subsection 11.1(1), include in the short form prospectus its earnings coverage ratios under section 6.1, or include in the short form prospectus the disclosure of one or more subsidiary credit supporters required by section 12.1, if

(a) a parent credit supporter and one or more subsidiary credit supporters have each provided full and unconditional credit support for the securities being distributed;

(b) the parent credit supporter satisfies the criterion in paragraph 2.4(1)(b) of the Instrument;

(c) the guarantees or alternative credit supports are joint and several;

(d) the securities being distributed are non-convertible debt securities, non-convertible preferred shares, or convertible debt securities or convertible preferred shares that are convertible, in each case, into securities of the parent credit supporter;

(e) the issuer and each subsidiary credit supporter is a direct or indirect wholly owned subsidiary of the parent credit supporter; and

(f) the issuer includes the following information in the short form prospectus:

(i) if

(A) each of the issuer and each subsidiary credit supporter has no operations or only minimal operations that are independent of the parent credit supporter, and

(B) the impact of any subsidiaries of the parent credit supporter on a combined basis, excluding the issuer and all subsidiary credit supporters, on the consolidated financed results of the parent credit supporter is minor,

a statement that the financial results of the issuer and all subsidiary credit supporters are included in the consolidated financial results of the parent credit supporter, or

(ii) for the periods covered by the parent credit supporter's financial statements included in the short form prospectus under section 12.1, consolidating summary financial information for the parent credit supporter presented with a separate column for each of the following:

(A) the parent credit supporter,

(B) the issuer,

(C) each subsidiary credit supporter on a combined basis,

(D) any other subsidiaries of the parent credit supporter on a combined basis,

(E) consolidating adjustments, and

(F) the total consolidated amounts.

13.3 One or More Credit Supporters are Wholly Owned Subsidiaries of the Issuer - Despite Item 12, an issuer is not required to include in the short form prospectus the disclosure required by section 12.1 for one or more credit supporters if

(a) one or more credit supporters have each provided full and unconditional credit support for the securities being distributed;

(b) if there is more than one credit supporter, the guarantee or alternative credit supports are joint and several;

(c) the securities being distributed are non-convertible debt securities or non-convertible preferred shares;

(d) each credit supporter is a direct or indirect wholly owned subsidiary of the issuer; and

(e) the issuer includes the following information in the short form prospectus:

(i) if

(A) the issuer has no operations or only minimal operations that are independent of the credit supporter(s), and

(B) the impact of any subsidiaries of the issuer on a combined basis, excluding the credit supporter(s) but including any subsidiaries of the credit supporter(s) that are not themselves credit supporters, on the consolidated financial results of the issuer is minor,

a statement that the financial results of the credit supporter(s) are included in the consolidated financial results of the issuer, or

(ii) for the periods covered by the issuer's financial statements included in the short form prospectus under Item 11, consolidating summary financial information for the issuer, presented with a separate column for each of the following:

(A) the issuer,

(B) the credit supporters on a combined basis,

(C) any other subsidiaries of the issuer on a combined basis,

(D) consolidating adjustments, and

(E) the total consolidated amounts.

INSTRUCTIONS

(1) Summary Financial Information

(a) Summary financial information includes the following line items:

(i) sales or revenues;

(ii) income from continuing operations before extraordinary items;

(iii) net earnings;

(iv) currents assets;

(v) non-current assets;

(vi) current liabilities; and

(vii) non-current liabilities.

(b) Despite instruction (1)(a), if GAAP permits the preparation of an entity's balance sheet without classifying assets and liabilities between current and non-current then the following items may be omitted from the entity's summary financial information if alternative meaningful financial information is provided which is more appropriate to the industry:

(i) current assets;

(ii) non-current assets;

(iii) current liabilities; and

(iv) non-current liabilities.

(c) *An entity's annual or interim summary financial information must be derived from the entity's financial information underlying the corresponding consolidated financial statements of the issuer or parent credit supporter included in the short form prospectus.*

(d) *The parent entity column should account for investments in all subsidiaries under the equity method.*

(e) *All subsidiary entity columns should account for investments in non-credit supporter subsidiaries under the equity method.*

(2) For the purposes of Item 13, an entity is considered to be a wholly owned subsidiary if the parent entity owns voting securities representing 100 per cent of the votes attached to the outstanding voting securities of the subsidiary.

(3) For the purposes of Item 13, the impact of subsidiaries, on a combined basis, on the financial results of the parent is minor if each item of the summary financial information of the subsidiaries, on a combined basis, represents less than 3% of the total consolidated amounts.

(4) For the purposes of Item 13, "parent credit supporter" means a credit supporter of which the issuer is a subsidiary and "subsidiary credit supporter" means a credit supporter that is a subsidiary of the parent credit supporter.

Item 14 Relationship between Issuer or Selling Securityholder and Underwriter

14.1 Relationship between Issuer or Selling Securityholder and Underwriter - If the issuer or selling security holder is a connected issuer or related issuer of an underwriter of the distribution, or if the issuer or selling security holder is also an underwriter, comply with the requirements of National Instrument 33-105 *Underwriting Conflicts*.

INSTRUCTION

For the purposes of section 14.1, "connected issuer" and "related issuer" have the same meanings as in National Instrument 33-105 Underwriting Conflicts.

Item 15 Interest of Experts

15.1 Names of Experts – Name each person or company

(a) who is named as having prepared or certified a statement, report or valuation in the short form prospectus or an amendment to the short form prospectus, either directly or in a document incorporated by reference; and

(b) whose profession or business gives authority to the statement, report or valuation made by the person or company.

15.2 Interest of Experts – For each person or company referred to in section 15.1, provide the disclosure that would be required under section 16.2 of Form 51-102F2, as of the date of the short form prospectus, as if that person or company were a person or company referred to in section 16.1 of Form 51-102F2.

15.3 Exemption – Sections 15.1 and 15.2 do not apply to a person or company if the disclosure regarding that person or company required under section 15.2 is already disclosed in the issuer's current AIF.

Item 16 Promoters

16.1 Promoters

(1) For a person or company that is, or has been within the three years immediately preceding the date of the preliminary short form prospectus, a promoter of the issuer or of a subsidiary of the issuer state, to the extent not disclosed elsewhere in a document incorporated by reference in the short form prospectus,

(a) the person or company's name;

(b) the number and percentage of each class of voting securities and equity securities of the issuer or any of its subsidiaries beneficially owned, directly or indirectly, or over which control is exercised by the person or company;

(c) the nature and amount of anything of value, including money, property, contracts, options or rights of any kind received or to be received by the promoter, directly or indirectly, from the issuer or from a subsidiary of the issuer, and the nature and amount of any assets, services or other consideration received or to be received by the issuer or a subsidiary of the issuer in return; and

(d) for an asset acquired within the three years before the date of the preliminary short form prospectus, or to be acquired, by the issuer or by a subsidiary of the issuer from a promoter

(i) the consideration paid or to be paid for the asset and the method by which the consideration has been or will be determined,

(ii) the person or company making the determination referred to in subparagraph (i) and the person or company's relationship with the issuer, the promoter, or an affiliate of the issuer or of the promoter, and

(iii) the date that the asset was acquired by the promoter and the cost of the asset to the promoter.

(2) If a promoter of the issuer has been a director, executive officer or promoter of any person or company during the 10 years ending on the date of the preliminary short form prospectus, that while that person was acting in that capacity,

(a) was the subject of a cease trade or similar order, or an order that denied the person or company access to any exemptions under provincial or territorial securities legislation, for a period of more than 30 consecutive days, state the fact and describe the basis on which the order was made and whether the order is still in effect;

(b) was subject to an event that resulted, after the director, executive officer or promoter ceased to be a director, executive officer or promoter, in the company or person being subject to a cease trade or similar order or an order that denied the relevant company or person access to any exemption under securities legislation, for a period of more than 30 consecutive days, state the fact and describe the basis on which the order was made and whether the order is still in effect; or

(c) within a year of that person ceasing to act in that capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or been subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets, state the fact.

(3) Describe the penalties or sanctions imposed and the grounds on which they were imposed or the terms of the settlement agreement and the circumstances that gave rise to the settlement agreement, if a promoter has been subject to

(a) any penalties or sanctions imposed by a court relating to provincial or territorial securities legislation or by a provincial or territorial securities regulatory authority or has entered into a settlement agreement with a provincial or territorial securities regulatory authority; or

(b) any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor in making an investment decision.

(4) Despite subsection (3), no disclosure is required of a settlement agreement entered into before December 31, 2000 unless the disclosure would likely be considered important to a reasonable investor in making an investment decision.

(5) If a promoter of the issuer has, within the 10 years before the date of the preliminary short form prospectus, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or was subject to or instituted any proceedings, arrangement or compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of the promoter, state the fact.

Item 17 Risk Factors

17.1 Risk Factors - Describe the factors material to the issuer that a reasonable investor would consider relevant to an investment in the securities being distributed.

INSTRUCTION

Issuers may cross-reference to specific risk factors relevant to the securities being distributed that are discussed in their current AIF.

Item 18 Other Material Facts

18.1 Other Material Facts - Give particulars of any material facts about the securities being distributed that are not disclosed under any other items or in the documents incorporated by reference into the short form prospectus and are necessary in order for the short form prospectus to contain full, true and plain disclosure of all material facts relating to, and in Québec not to make any misrepresentation likely to affect the value or market price of, the securities to be distributed.

Item 19 Exemptions from the Instrument

19.1 Exemptions from the Instrument - List all exemptions from the provisions of the Instrument, including this Form, granted to the issuer applicable to the distribution or the short form prospectus, including all exemptions to be evidenced by the issuance of a receipt for the short form prospectus pursuant to section 8.2 of the Instrument.

Item 20 Statutory Rights of Withdrawal and Rescission

20.1 General - Include a statement in substantially the following form, with the bracketed information completed:

> "Securities legislation in [certain of the provinces [and territories] of Canada/the Province of [insert name of local jurisdiction, if applicable]] provides purchasers with the right to withdraw from an agreement to purchase securities. This right may be exercised within two business days after receipt or deemed receipt of a prospectus and any amendment. [In several of the provinces/provinces and territories,] [T/t]he securities legislation further provides a purchaser with remedies for rescission [or [, in some jurisdictions,] damages] if the prospectus and any amendment contains a misrepresentation or is not delivered to the purchaser, provided that the remedies for rescission [or damages] are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province [or territory]. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province [or territory] for the particulars of these rights or consult with a legal adviser."

20.2 Non-fixed Price Offerings - In the case of a non-fixed price offering, replace, if applicable in the jurisdiction in which the short form prospectus is filed, the second sentence in the legend in section 20.1 with a statement in substantially the following form:

> "This right may only be exercised within two business days after receipt or deemed receipt of a prospectus and any amendment, irrespective of the determination at a later date of the purchase price of the securities distributed."

Item 21 Certificates

21.1 Officers, Directors and Promoters - Include a certificate in the following form signed by

(a) the chief executive officer and the chief financial officer or, if no such officers have been appointed, a person acting on behalf of the issuer in a capacity similar to a chief executive officer and a person acting on behalf of the issuer in a capacity similar to that of a chief financial officer,

(b) on behalf of the board of directors of the issuer, any two directors of the issuer duly authorized to sign, other than the persons referred to in paragraph (a), and

(c) any person or company who is a promoter of the issuer:

> "This short form prospectus, together with the documents incorporated herein by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the securities legislation of [insert name of each jurisdiction in which qualified]. [Insert if offering made in Québec - "For the purpose of the Province of Québec, this simplified prospectus, together with documents incorporated herein by reference and as supplemented by the permanent information record, contains no misrepresentation that is likely to affect the value or the market price of the securities to be distributed."]"

21.2 **Underwriters** - If there is an underwriter, include a certificate in the following form signed by the underwriter or underwriters who, with respect to the securities being distributed, are in a contractual relationship with the issuer or selling security holders:

> "To the best of our knowledge, information and belief, this short form prospectus, together with the documents incorporated herein by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the securities legislation of [insert name of each jurisdiction in which qualified]. [Insert if offering made in Québec - "For the purpose of the Province of Québec, to our knowledge, this simplified prospectus, together with documents incorporated herein by reference and as supplemented by the permanent information record, contains no misrepresentation that is likely to affect the value or the market price of the securities to be distributed."]"

21.3 **Related Credit Supporters** - If disclosure concerning a credit supporter is prescribed by section 12.1, including if a credit supporter is exempt from the requirements of section 12.1 under section 13.2 or 13.3, and the credit supporter is a related credit supporter, an issuer shall include a certificate of the related credit supporter in the form required in section 21.1 signed by

(a) the chief executive officer and the chief financial officer or, if no such officers have been appointed, a person acting on behalf of the related credit supporter in a capacity similar to a chief executive officer and a person acting on behalf of the related credit supporter in a capacity similar to that of a chief financial officer; and

(b) on behalf of the board of directors of the related credit supporter, any two directors of the related credit supporter duly authorized to sign, other than the persons referred to in paragraph (a).

INSTRUCTION

For the purposes of section 21.3, "related credit supporter" means a credit supporter of the issuer that is an affiliate of the issuer.

21.4 **Amendments**

(1) Include in an amendment to a short form prospectus that does not restate the short form prospectus the certificates required under sections 21.1, 21.2 and, if applicable, section 21.3 with the reference in each certificate to "this short form prospectus" omitted and replaced by "the short form prospectus dated [insert date] as amended by this amendment".

(2) Include in an amended and restated short form prospectus the certificates required under sections 21.1, 21.2 and, if applicable, section 21.3 with the reference in each certificate to "this short form prospectus" omitted and replaced by "this amended and restated short form prospectus".

21.5 **Date of Certificates** – The date of certificates in a preliminary short form prospectus, a short form prospectus or an amendment to a preliminary short form prospectus or short form prospectus shall be within three business days before the date of filing the preliminary short form prospectus, short form prospectus or amendment, as applicable.

COMPANION POLICY
TO NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS

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COMPANION POLICY 44-101CP
TO NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS

PART 1 INTRODUCTION AND DEFINITIONS

1.1 **Introduction and Purpose** - National Instrument 44-101 *Short Form Prospectus Distributions* ("NI 44-101") sets out the substantive tests for an issuer to qualify to file a prospectus in the form of a short form prospectus. The purpose of NI 44-101 is to shorten the time period in which, and streamline the procedures by which, qualified issuers and their selling security holders can obtain access to the Canadian capital markets through a prospectus offering.

British Columbia, Alberta, Ontario, Manitoba, Nova Scotia and New Brunswick have adopted NI 44-101 by way of rule. Saskatchewan and Québec have adopted it by way of regulation. All other jurisdictions have adopted NI 44-101 by way of related blanket ruling or order. Each jurisdiction implements NI 44-101 by one or more instruments forming part of the law of that jurisdiction (referred to as the "implementing law of the jurisdiction"). Depending on the jurisdiction, the implementing law of the jurisdiction can take the form of regulation, rule, ruling or order.

This Companion Policy to NI 44-101 (also referred to as "this Companion Policy" or this "Policy") provides information relating to the manner in which the provisions of NI 44-101 are intended to be interpreted or applied by the provincial and territorial securities regulatory authorities, as well as the exercise of discretion under NI 44-101. Terms used and not defined in this Companion Policy that are defined or interpreted in NI 44-101 or a definition instrument in force in the jurisdiction should be read in accordance with NI 44-101 or the definition instrument, unless the context otherwise requires.

To the extent that any provision of this Policy is inconsistent or conflicts with the applicable provisions of NI 44-101 in those jurisdictions that have adopted NI 44-101 by way of related blanket ruling or order, the provisions of NI 44-101 prevail over the provisions of this Policy.

1.2 **Interrelationship with Local Securities Legislation** - NI 44-101, while being the primary instrument regulating short form prospectus distributions, is not exhaustive. Issuers are reminded to refer to the implementing law of the jurisdiction and other securities legislation of the local jurisdiction for additional requirements that may be applicable to the issuer's short form prospectus distribution.

1.3 **Interrelationship with Continuous Disclosure (NI 51-102 and NI 81-106)** - The short form prospectus distribution system established under NI 44-101 is based on the continuous disclosure filings of reporting issuers pursuant to NI 51-102 or, in the case of an investment fund, NI 81-106. Issuers who wish to use the system should be mindful of their ongoing disclosure and filing obligations under the applicable CD rule. Issues raised in the context of a continuous disclosure review may be taken into consideration by the regulator when determining whether it is in the public interest to refuse to issue a receipt for a short form prospectus. Consequently, unresolved issues may delay or prevent the issuance of a receipt.

1.4 **Interrelationship with MRRS** - National Policy 43-201 *Mutual Reliance Review System for Prospectuses* and, in Québec, *Notice 43-201 relating to the Mutual Reliance Review System for Prospectuses* ("NP 43-201") describes the practical application of the mutual reliance review system relating to the filing and review of prospectuses, including investment fund and shelf prospectuses, amendments to prospectuses and related materials. While use of NP 43-201 is optional, NP 43-201 represents the only means by which an issuer can enjoy the benefits of co-ordinated review by the securities regulatory authorities in the various jurisdictions in which the issuer has filed a short form prospectus. Under NP 43-201, one securities regulatory authority or regulator as defined in NI 14-101 *Definitions* ("NI 14-101"), as applicable, acts as the principal regulator for all materials relating to a filer.

1.5 **Interrelationship with Selective Review** - The securities regulatory authorities in some jurisdictions have, formally or informally, adopted a system of selective review of certain documents, including short form prospectuses and amendments to short form prospectuses. Under the selective review system, these documents may be subject to an initial screening to determine whether they will be reviewed and, if reviewed, whether they will be subject to a full review, an issue-oriented review or an issuer review. Application of the selective review system, taken together with MRRS, may result in certain short form prospectuses and amendments to short form prospectuses not being reviewed beyond the initial screening.

1.6 **Interrelationship with Shelf Distributions (NI 44-102)** - Issuers qualified under NI 44-101 to file a prospectus in the form of a short form prospectus and their security holders can distribute securities under a short form prospectus using the shelf distribution procedures under NI 44-102. The Companion Policy to NI 44-102 explains that the distribution of securities under the shelf system is governed by the requirements and procedures of NI 44-101 and securities

legislation, except as supplemented or varied by NI 44-102. Therefore, issuers qualified to file a prospectus in the form of a short form prospectus and selling security holders of those issuers that wish to distribute securities under the shelf system should have regard to NI 44-101 and this Policy first, and then refer to NI 44-102 and the accompanying policy for any additional requirements.

1.7 Interrelationship with PREP Procedures (NI 44-103) - NI 44-103 *Post-Receipt Pricing* ("NI 44-103") contains the post-receipt pricing procedures (the "PREP procedures"). All issuers and selling security holders can use the PREP procedures of NI 44-103 to distribute securities. Issuers and selling security holders that wish to distribute securities under a prospectus in the form of a short form prospectus using the PREP procedures should have regard to NI 44-101 and this Policy first, and then refer to NI 44-103 and the accompanying policy for any additional requirements.

1.8 Definitions

(1) **Approved rating** - Cash settled derivatives are covenant-based instruments that may be rated on a similar basis to debt securities. In addition to the creditworthiness of the issuer, other factors such as the continued subsistence of the underlying interest or the volatility of the price, value or level of the underlying interest may be reflected in the rating analysis for cash settled derivatives. These additional factors may be described by a rating agency by way of a superscript or other notation to a rating. The inclusion of such notations for covenant-based instruments that otherwise fall within one of the categories of an approved rating does not detract from the rating being considered to be an approved rating for the purposes of NI 44-101.

A rating agency may also restrict its rating to securities of an issuer that are denominated in local currency. This restriction may be denoted, for example, by the designation "LC". The inclusion of such a designation in a rating that would otherwise fall within one of the categories of an approved rating does not detract from the rating being considered to be an approved rating for the purposes of NI 44-101.

(2) **Asset-backed security** - The definition of "asset-backed security" is the same definition used in NI 51-102.

The definition is designed to be flexible to accommodate future developments in asset-backed securities. For example, it does not include a list of "eligible" assets that can be securitized. Instead, the definition is broad, referring to "receivables or other financial assets" that by their terms convert into cash within a finite time period. These would include, among other things, notes, leases, instalment contracts and interest rate swaps, as well as other financial assets, such as loans, credit card receivables, accounts receivable and franchise or servicing arrangements. The reference to "and any rights or other assets..." in the definition is sufficiently broad to include "ancillary" or "incidental" assets, such as guarantees, letters of credit, financial insurance or other instruments provided as a credit enhancement for the securities of the issuer or which support the underlying assets in the pool, as well as cash arising upon collection of the underlying assets that may be reinvested in short-term debt obligations.

The term, a "discrete pool" of assets, can refer to a single group of assets as a "pool" or to multiple groups of assets as a "pool". For example, a group or pool of credit card receivables and a pool of mortgage receivables can, together, constitute a "discrete pool" of assets. The reference to a "discrete pool" of assets is qualified by the phrase "fixed or revolving" to clarify that the definition covers "revolving" credit arrangements, such as credit card and short-term trade receivables, where balances owing revolve due to periodic payments and write-offs.

While typically a pool of securitized assets will consist of financial assets owed by more than one obligor, the definition does not currently include a limit on the percentage of the pool of securitized assets that can be represented by one or more financial assets owing by the same or related obligors (sometimes referred to as an "asset concentration test").

(3) **Current AIF** - An issuer's AIF filed under the applicable CD rule is a "current AIF" until the issuer files an AIF for the next financial year, or is required by the applicable CD rule to have filed its annual financial statements for the next financial year. If an issuer fails to file a new AIF by the filing deadline under the applicable CD rule for its annual financial statements, it will not have a current AIF and will not qualify under NI 44-101 to file a prospectus in the form of a short form prospectus. If an issuer files a revised or amended AIF for the same financial year as an AIF that has previously been filed, the most recently filed AIF will be the issuer's current AIF.

An issuer that is a venture issuer for the purpose of NI 51-102, and certain investment funds, may have no obligation under the applicable CD rule to file an AIF. However, to qualify under NI 44-101 to file a prospectus in the form of a short form prospectus, that issuer will be required to file an AIF in accordance with the applicable CD rule so as to have a "current AIF". A current AIF filed by an issuer that is a venture issuer for

the purposes of NI 51-102 can be expected to expire later than a non-venture issuer's AIF, due to the fact that the deadlines for filing annual financial statements under NI 51-102 are later for venture issuers than for other issuers.

(4) **Current annual financial statements** - An issuer's comparative annual financial statements filed under the applicable CD rule, together with the accompanying auditor's report, are "current annual financial statements" until the issuer files, or is required under the applicable CD rule to have filed, its comparative annual financial statements for the next financial year. If an issuer fails to file its comparative annual financial statements by the filing deadline under the applicable CD rule, it will not have current annual financial statements and will not be qualified under NI 44-101 to file a prospectus in the form of a short form prospectus.

Where there has been a change of auditor and the new auditor has not audited the comparative period, the report of the former auditor on the comparative period must be included in the prospectus. The issuer may file the report of the former auditor on the comparative period with the annual financial statements that are being incorporated by reference into the short form prospectus, and clearly incorporate by reference the former auditor's report in addition to the new auditor's report. Alternatively, the issuer can incorporate by reference into the short form prospectus its comparative financial statements filed for the previous year, including the audit reports thereon.

(5) **Regulator** - The regulator for each jurisdiction is listed in Appendix D to NI 14-101. In practice, that person has often delegated his or her powers to act under NI 44-101 to another staff member of the same securities regulatory authority or, under the relevant statutory framework, another person is permitted to exercise those powers. Generally, the person exercising the powers of the regulator for the purposes of NI 44-101 holds, as of the date of this Policy, the following position in each jurisdiction:

Jurisdiction	**Position**
Alberta	Director, Capital Markets
British Columbia	Director, Corporate Finance
Manitoba	Director, Corporate Finance
New Brunswick	Executive Director
Newfoundland and Labrador	Director of Securities
Northwest Territories	Deputy Registrar of Securities
Nova Scotia	Director of Securities
Nunavut	Registrar of Securities
Ontario	Manager, Corporate Finance or, in the case of an investment fund, Manager, Investment Funds
Prince Edward Island	Registrar of Securities
Québec	Manager, Corporate Finance
Saskatchewan	Deputy Director, Corporate Finance (except for applications for exemptions from Part 2 of NI 44-101, for which the regulator is the Saskatchewan Financial Services Commission)
Yukon Territory	Registrar of Securities

Further delegation may take place among staff or under securities legislation.

(6) **Successor Issuer** - The definition of "successor issuer" requires that the issuer exist "as a result of a reorganization". In the case of an amalgamation, the amalgamated corporation is regarded by the securities regulatory authorities as existing "as a result of a reorganization". Also, if a corporation is incorporated for the sole purpose of facilitating a reorganization, the securities regulatory authorities regard the new corporation as "existing as a result of a reorganization" despite the fact that the corporation may have been incorporated before the reorganization. The definition of "successor issuer" also contains an exclusion applicable to divestitures. For example, an issuer may carry out a reorganization that results in the distribution to security holders of a portion of its business or the transfer of a portion of its business to another issuer. In that case, the entity that carries on the portion of the business that was "spun-off" is not a successor issuer within the meaning of the definition.

PART 2 QUALIFICATION TO FILE A PROSPECTUS IN THE FORM OF A SHORT FORM PROSPECTUS

2.1 Basic Qualification Criteria - Reporting Issuers with Equity Securities Listed on a Short Form Eligible Exchange (Section 2.2 of NI 44-101)

(1) Section 2.2 of NI 44-101 provides that an issuer with equity securities listed and posted for trading on a short form eligible exchange and that is up-to-date in its periodic and timely disclosure filings in all jurisdictions in which it is a reporting issuer satisfies the criteria for being qualified to file a prospectus in the form of a short form prospectus if it meets the other general qualification criteria. In addition to the listing requirement, the issuer may not be an issuer whose operations have ceased or whose principal asset is its exchange listing. The purpose of this requirement is to ensure that eligible issuers have an operating business in respect of which the issuer must provide current disclosure through application of the applicable CD rule.

The basic qualification criteria are structured to allow most Canadian listed issuers to participate in the expedited offering system created by this Instrument, provided their public disclosure record provides investors with satisfactory and sufficient information about the issuer and its business, operations or capital. The securities regulatory authorities believe that it is in the public interest to allow an issuer's public disclosure to be incorporated into a short form prospectus, provided that the resulting prospectus provides prospective investors with full, true and plain disclosure about the issuer and the securities being distributed. The securities regulatory authority may not be prepared to issue a receipt for a short form prospectus if the prospectus, together with the documents incorporated by reference, fails to provide such full, true and plain disclosure and, in Québec, disclosure of material facts likely to affect the value or the market price of the securities to be distributed. In such circumstances, the securities regulatory authority may require, in the public interest, that the issuer utilize the long form prospectus regime. In addition, the securities regulatory authorities may also require that the issuer utilize the long form prospectus regime if the offering is, in essence, an initial public offering by a business or if:

(a) the offering is for the purpose of financing a dormant or inactive issuer whether or not the issuer intends to use the proceeds to reactivate the issuer or to acquire an active business; or

(b) the offering is for the purpose of financing a material undertaking that would constitute a material departure from the business or operations of the issuer as at the date of its current annual financial statements and current AIF.

(2) A new reporting issuer or a successor issuer may satisfy the criteria to have current annual financial statements or a current AIF by filing its comparative annual financial statements or an AIF, respectively, in accordance with NI 51-102 or NI 81-106, as applicable, for its most recently completed financial year. It is not necessary that the issuer be required by the applicable CD rule to have filed such documents. An issuer may voluntarily choose to file either of these documents in accordance with the applicable CD rule for the purposes of satisfying the eligibility criteria under NI 44-101.

Alternatively, an issuer may rely on the exemption from the requirement to file such documents in section 2.7 of NI 44-101. That section provides an exemption from the current AIF and current annual financial statement requirements for new reporting issuers and successor issuers who have not yet been required to file such documents and who have filed a prospectus or information circular containing disclosure which would have been included in such documents had they been filed under the applicable CD rule.

(3) An issuer need not have filed all of its continuous disclosure filings in the local jurisdiction in order to be qualified to file a short form prospectus, but under sections 4.1 and 4.2 of NI 44-101 it will be required to file in the local jurisdiction all documents incorporated by reference into the short form prospectus no later than the date of filing the preliminary short form prospectus.

2.2 Alternative Qualification Criteria - Issuers that are Not Listed (Sections 2.3, 2.4, 2.5 and 2.6 of NI 44-101) - Issuers that do not have equity securities listed and posted for trading on a short form eligible exchange in Canada may nonetheless be qualified to file a prospectus in the form of a short form prospectus under the following alternative qualification criteria of NI 44-101:

1. Section 2.3, which applies to issuers which are reporting issuers in at least one jurisdiction, and who are intending to issue non-convertible securities with a provisional approved rating.

2. Section 2.4, which applies to issuers of non-convertible debt securities, non-convertible preferred shares or non-convertible cash settled derivatives, if another person or company that satisfies prescribed criteria provides full and unconditional credit support for the payments to be made by the issuer of the securities.

3. Section 2.5, which applies to issuers of convertible debt securities or convertible preferred shares, if the securities are convertible into securities of a credit supporter that satisfies prescribed criteria and provides full and unconditional credit support for the payments to be made by the issuer of the securities.

4. Section 2.6, which applies to issuers of asset-backed securities.

Under sections 2.4, 2.5 and 2.6 of NI 44-101, an issuer is not required to be a reporting issuer in any jurisdiction in order to qualify to file a prospectus in the form of a short form prospectus. Section 2.3 requires the issuer to be a reporting issuer in at least one jurisdiction of Canada.

2.3 Alternative Qualification Criteria - Issuers of Guaranteed Debt Securities, Preferred Shares and Cash Settled Derivatives (Sections 2.4 and 2.5 of NI 44-101) - Sections 2.4 and 2.5 of NI 44-101 allow an issuer to qualify to file a prospectus in the form of a short form prospectus based on full and unconditional credit support, which may take the form of a guarantee or alternative credit support. The securities regulatory authorities are of the view that a person or company that provides the full and unconditional guarantee or alternative credit support is not, simply by providing that guarantee or alternative credit support, issuing a security.

2.4 Alternative Qualification Criteria - Issuers of Asset-Backed Securities (Section 2.6 of NI 44-101)

(1) In order to be qualified to file a prospectus in the form of a short form prospectus under section 2.6 of NI 44-101, an issuer must have been established in connection with a distribution of asset-backed securities. Ordinarily, asset-backed securities are issued by special purpose issuers established for the sole purpose of purchasing financial assets with the proceeds of one or more distributions of these securities. This ensures that the credit and performance attributes of the asset-backed securities are dependent on the underlying financial assets, rather than upon concerns relating to ancillary business activities and their attendant risks. Qualification to file a prospectus in the form of a short form prospectus under section 2.6 of NI 44-101 has been limited to special purpose issuers to avoid the possibility that an otherwise ineligible issuer would structure securities falling within the definition of “asset-backed security”.

(2) The qualification criteria for a distribution of asset-backed securities under a prospectus in the form of a short form prospectus are intended to provide sufficient flexibility to accommodate future developments. To qualify under section 2.6 of NI 44-101, the securities to be distributed must satisfy the following two criteria:

1. First, the payment obligations on the securities must be serviced primarily by the cash flows of a pool of discrete liquidating assets such as accounts receivable, instalment sales contracts, leases or other assets that by their terms convert into cash within a specified or determinable period of time.

2. Second, the securities must (i) receive an approved rating on a provisional basis, (ii) not have been the subject of an announcement regarding a downgrade to a rating that is not an approved rating, and (iii) not have received a provisional or final rating lower than an approved rating from any approved rating organization.

The qualification criteria do not distinguish between pass-through (i.e., equity) and pay-through (i.e., debt) asset-backed securities. Consequently, both pay-through and pass-through securities, as well as residual or subordinate interests, may be distributed under a prospectus in the form of a short form prospectus if all other applicable requirements are met.

2.5 Timely and Periodic Disclosure Documents - To be qualified to file a short form prospectus under sections 2.2 and 2.3 of NI 44-101, an issuer must file with the securities regulatory authority in each jurisdiction in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction under applicable securities legislation, pursuant to an order issued by the securities regulatory authority, or pursuant to an undertaking to the securities regulatory authority. Similarly, a credit supporter must satisfy this qualification criterion for an issuer to be qualified to file a short form prospectus under sections 2.4 and 2.5 of NI 44-101.

This qualification criterion applies to all disclosure documents including, if applicable, a disclosure document the issuer or credit supporter (i) has undertaken to file with a provincial or territorial securities regulatory authority, (ii) must file pursuant to a condition in a written order or decision granting exemptive relief to the issuer or credit supporter from a requirement to file periodic and timely disclosure documents, (iii) must file pursuant to a condition in securities legislation exempting the issuer or credit supporter from a requirement to file periodic and timely disclosure documents, and (iv) has represented that it will file pursuant to a representation in a written order or decision granting exemptive relief to the issuer or credit supporter from a requirement to file periodic and timely disclosure documents. These disclosure documents must be incorporated by reference into a short form prospectus pursuant to paragraph 8 or 9 of subsection 11.1(1) of Form 44-101F1.

2.6 **Notice Declaring Intention** – Subsection 2.8(1) of NI 44-101 provides that an issuer is not qualified to file a short form prospectus under Part 2 of NI 44-101 unless it has filed, with its notice regulator, a notice declaring its intention to be qualified to file a short form prospectus under NI 44-101. This notice must be filed in substantially the form of Appendix A of NI 44-101 at least 10 business days prior to the issuer filing its first preliminary short form prospectus. This is a new requirement that came into effect on December 30, 2005. The securities regulatory authorities expect that this notice will be a one-time filing for issuers that intend to be participants in the short form prospectus distribution system established under NI 44-101. Subsection 2.8(2) provides that this notice is operative until withdrawn. Though the notice must be filed with the notice regulator, an issuer may voluntarily file the notice with any other securities regulatory authority or regulator of a jurisdiction of Canada.

Subsection 2.8(4) of NI 44-101 is a transitional provision that has the effect of deeming issuers that, as of December 29, 2005, have a current AIF under the pre-December 30, 2005 short form prospectus distribution system to have filed this notice and no additional filing is required to satisfy the notice requirements set out in subsection 2.8(1) of NI 44-101.

PART 3 FILING AND RECEIPTING OF SHORT FORM PROSPECTUS

3.1 **Confidential Material Change Reports** - Confidential material change reports cannot be incorporated by reference into a short form prospectus. It is the view of the securities regulatory authorities that an issuer cannot meet the standard of "full, true and plain" disclosure and, in Québec, disclosure of all material facts likely to affect the value or the market price of the securities to be distributed, while a material change report has been filed but remains undisclosed publicly. Accordingly, an issuer who has filed a confidential material change report may not file a short form prospectus until the material change that is the subject of the report is generally disclosed, and an issuer may not file a confidential material change report during a distribution and continue with the distribution. If circumstances arise that cause an issuer to file a confidential material change report during the distribution period of securities under a short form prospectus, the issuer should cease all activities related to the distribution until

1. the material change is generally disclosed and an amendment to the short form prospectus is filed, if required; or

2. the decision to implement the material change has been rejected and the issuer has so notified the regulator of each jurisdiction where the confidential material change report was filed.

3.2 **Supporting Documents**

(1) Material that is filed in a jurisdiction will be made available for public inspection in that jurisdiction, subject to the provisions of securities legislation in the local jurisdiction regarding confidentiality of filed material. Material that is delivered to a regulator, but not filed, is not required under securities legislation to be made available for public inspection. However, the regulator may choose to make such material available for inspection by the public.

(2) Any material incorporated by reference in a preliminary short form prospectus or a short form prospectus is required under sections 4.1 and 4.2 of NI 44-101 to be filed with the preliminary short form prospectus or short form prospectus unless previously filed. When an issuer files a previously unfiled document with its short form prospectus, the issuer should ensure that the document is filed under the SEDAR category of filing and filing subtype specifically applicable to the document, rather than the generic type "Other". For example, an issuer that has incorporated by reference an interim financial statement in its short form prospectus and has not previously filed the statement should file that statement under the "Continuous Disclosure" category of filing, and the "Interim Financial Statements" filing subtype.

3.3 **Experts' Consent** - Issuers are reminded that under section 4.4 of NI 44-101 an auditor's consent is required to be filed for audited financial statements that are included as part of other continuous disclosure filings that are incorporated by reference into a short form prospectus. For example, a separate auditor's consent is required for each set of audited financial statements that are included as part of a business acquisition report or an information circular incorporated by reference into a short form prospectus.

3.4 **Undertaking in Respect of Credit Supporter Disclosure** - If disclosure about a credit supporter is required to be included in the short form prospectus under section 12.1 of Form 44-101F1, the issuer must undertake to file the credit supporter's periodic and timely disclosure. This undertaking will likely be to file documents similar to the credit supporter's disclosure required under section 12.1 of Form 44-101F1. For credit supporters that are reporting issuers with a current AIF, the undertaking will likely be to file the types of documents listed in subsection 11.1(1) of Form 44-

101F1. For credit supporters registered under the 1934 Act, the undertaking will likely be to file the types of documents that would be required to be incorporated by reference into a Form S-3 or Form F-3 registration statement. For other credit supporters, the types of documents to be filed pursuant to the undertaking will be determined through discussions with the regulators on a case-by-case basis.

3.5 **Amendments and Incorporation by Reference of Subsequently Filed Material Change Reports** - The requirement in securities legislation for the filing of an amendment to a preliminary prospectus and prospectus is not satisfied by the incorporation by reference in a preliminary short form prospectus or a short form prospectus of a subsequently filed material change report.

3.6 **Short Form Prospectus Review** - No target time frame applies to the review of a short form prospectus of an issuer if the issuer has not elected to use MRRS.

3.7 **"Waiting Period"** - If the securities legislation of the local jurisdiction contains the concept of a "waiting period" such that the securities legislation requires that there be a specified period of time between the issuance of a receipt for a preliminary short form prospectus and the issuance of a receipt for a short form prospectus, the implementing law of the jurisdiction removes that requirement as it would otherwise apply to a distribution under NI 44-101.

3.8 **Registration Requirements** - Issuers filing a preliminary short form prospectus or short form prospectus and other market participants are reminded to ensure that members of underwriting syndicates are in compliance with registration requirements under provincial and territorial securities legislation in each jurisdiction in which syndicate members are participating in the distribution of securities under the short form prospectus.

PART 4 CONTENT OF SHORT FORM PROSPECTUS

4.1 **Prospectus Liability** - Nothing in the short form prospectus regime established by NI 44-101 is intended to provide relief from liability arising under the provisions of securities legislation of any jurisdiction in which a short form prospectus is filed if the short form prospectus contains an untrue statement of a material fact or omits to state a material fact that is required to be stated therein or that is necessary to make a statement not misleading in light of the circumstances in which it was made.

4.2 **Style of Prospectus** - Provincial and territorial securities legislation requires that a prospectus contain "full, true and plain" disclosure and, in Québec, disclosure of all material facts likely to affect the value or the market price of the securities to be distributed. To that end, issuers and their advisors are reminded that they should ensure that disclosure documents are easy to read, and we encourage issuers to adopt the following plain language principles in preparing a prospectus in the form of a short form prospectus:

- use short sentences
- use definite, concrete, everyday language
- use the active voice
- avoid superfluous words
- organize the document into clear, concise sections, paragraphs and sentences
- avoid legal or business jargon
- use strong verbs
- use personal pronouns to speak directly to the reader
- avoid reliance on glossaries and defined terms unless it facilitates understanding of the disclosure
- avoid vague boilerplate wording
- avoid abstractions by using more concrete terms or examples
- avoid excessive detail

- avoid multiple negatives.

If technical or business terms are required, clear and concise explanations should be used. The securities regulatory authorities are of the view that question and answer and bullet point formats are consistent with the disclosure requirements of NI 44-101.

4.3 Firm Commitment Underwritings - If an underwriter has agreed to purchase a specified number or principal amount of the securities to be distributed at a specified price, subsection 1.10(4) of Form 44-101F1 requires the short form prospectus to contain a statement that the securities are to be taken up by the underwriter, if at all, on or before a date not later than 42 days after the date of the receipt for the short form prospectus. If the provincial and territorial securities legislation of a jurisdiction requires that a prospectus indicate that the securities must be taken up by the underwriter within a period that is different than the period provided under NI 44-101, the implementing law of a jurisdiction exempts issuers from that requirement if they comply with NI 44-101.

4.4 Minimum Distribution - If a minimum amount of funds is required by an issuer and the securities are proposed to be distributed on a best efforts basis, section 5.5 of Form 44-101F1 requires that the short form prospectus state that the distribution will not continue for a period of more than 90 days after the date of receipt for the short form prospectus if subscriptions representing the minimum amount of funds are not obtained within that period unless each of the persons and companies who subscribed within that period has consented to the continuation. If the provincial and territorial securities legislation of a jurisdiction requires that a distribution may not continue for more than a specified period if subscriptions representing the minimum amount of funds are not obtained within that period and the specified period is different than the period provided under NI 44-101, the implementing law of a jurisdiction exempts issuers from that requirement if they comply with NI 44-101.

4.5 Distribution of Asset-backed Securities

(1) Section 7.3 of Form 44-101F1 specifies additional disclosure applicable for distributions of asset-backed securities. Applicable disclosure for a special purpose issuer of asset-backed securities generally pertains to the nature, performance and servicing of the underlying pool of financial assets, the structure of the securities and dedicated cash flows and any third party or internal support arrangements established to protect holders of the asset-backed securities from losses associated with non-performance of the financial assets or disruptions in payment. The nature and extent of required disclosure may vary depending on the type and attributes of the underlying pool and the contractual arrangements through which holders of the asset-backed securities take their interest in such assets.

(2) The following factors should be considered by an issuer of asset-backed securities in preparing its short form prospectus:

1. The extent of disclosure respecting an issuer will depend on the extent of the issuer's on-going involvement in the conversion of the assets comprising the pool to cash and the distribution of cash to security holders; this involvement may, in turn, vary dramatically depending on the type, quality and attributes of the assets comprising the pool and on the overall structure of the transaction.

2. Requested disclosure respecting the business and affairs of the issuer should be interpreted to apply to the financial assets underlying the asset-backed securities.

3. Disclosure respecting the originator or the seller of the underlying financial assets will be relevant to investors in the asset-backed securities particularly in circumstances where the originator or seller has an on-going relationship with the financial assets comprising the pool. For example, if asset-backed securities are serviced with the cash flows from a revolving pool of receivables, an evaluation of the nature and reliability of the future origination or the future sales of underlying assets by the seller to or through the issuer may be a critical aspect of an investor's investment decision. To address this, the focus of disclosure respecting an originator or seller of the underlying financial assets should deal with whether there are current circumstances that indicate that the originator or seller will not generate adequate assets in the future to avoid an early liquidation of the pool and, correspondingly, an early payment of the asset-backed securities. Summary historical financial information respecting the originator or seller will ordinarily be adequate to satisfy the disclosure requirements applicable to the originator or seller in circumstances where the originator or seller has an ongoing relationship with the assets comprising the pool.

(3) Paragraph 7.3(d)(i) of Form 44-101F1 requires issuers of asset-backed securities to describe any person or company who originated, sold or deposited a material portion of the financial assets comprising the pool, irrespective of whether the person or company has an on-going relationship with the assets comprising the

pool. The securities regulatory authorities consider $33^{1/3}$ % of the dollar value of the financial assets comprising the pool to be a material portion in this context.

4.6 Distribution of Derivatives - Section 7.4 of Form 44-101F1 specifies additional disclosure applicable to distributions of derivatives. This prescribed disclosure is formulated in general terms for issuers to customize appropriately in particular circumstances.

4.7 Underlying Securities - Issuers are reminded that if securities being distributed are convertible into or exchangeable for other securities, or are a derivative of, or otherwise linked to, other securities, a description of the material attributes of the underlying securities would generally be necessary to meet the requirement of securities legislation that a prospectus contain full, true and plain disclosure of all material facts relating to, and, in Québec disclosure of all material facts likely to affect the value or the market price of, the securities.

4.8 Offerings of Convertible or Exchangeable Securities - Investor protection concerns may arise where the distribution of a convertible or exchangeable security is qualified under a prospectus and the subsequent exercise of the convertible or exchangeable security is made on a prospectus-exempt basis. Examples of such offerings include the issuance of instalment receipts, subscription receipts and stand-alone warrants or long-term warrants. Reference to stand-alone warrants or long-term warrants is intended to refer to warrants and other forms of exchangeable or convertible securities that are offered under a prospectus as a separate and independent form of investment. This would not apply to an offering of warrants where the warrants may reasonably be regarded as incidental to the offering as a whole.

The investor protection concern arises because the conversion or exchange feature of the security may operate to limit the remedies available to an investor for incomplete or inaccurate disclosure in a prospectus. For example, an investor may pay part of the purchase price at the time of the purchase of the convertible security and part of the purchase price at the time of the conversion. To the extent that an investor makes a further “investment decision” at the time of conversion, the investor should continue to enjoy the benefits of statutory rights or comparable contractual rights in relation to this further investment. In such circumstances, issuers should ensure that either:

(a) the distribution of both the convertible or exchangeable securities and the underlying securities will be qualified by the prospectus; or

(b) the statutory rights that an investor would have if he or she purchased the underlying security offered under a prospectus are otherwise provided to the investor by way of a contractual right of action.

4.9 Restricted Securities - Section 7.7 of Form 44-101F1 specifies additional disclosure applicable to restricted securities, including a detailed description of any significant provisions under applicable corporate and securities law that do not apply to the holders of the restricted securities but do apply to the holders of another class of equity securities. An example of such provisions would be rights under takeover bids.

4.10 Recent and Proposed Acquisitions

(1) Subsection 10.1(2) of Form 44-101F1 requires prescribed disclosure of a proposed acquisition that has progressed to a state “where a reasonable person would believe that the likelihood of the acquisition being completed is high” and that would, if completed on the date of the short form prospectus, be a significant acquisition for the purposes of Part 8 of NI 51-102. The securities regulatory authorities interpret the phrase “where a reasonable person would believe that the likelihood of the acquisition being completed is high” having regard to section 3290 of the Handbook “Contingencies”. It is the view of the securities regulatory authorities that the following factors may be relevant in determining whether the likelihood of an acquisition being completed is high:

1. whether the acquisition has been publicly announced;

2. whether the acquisition is the subject of an executed agreement; and

3. the nature of conditions to the completion of the acquisition including any material third party consents required.

The test of whether a proposed acquisition “has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high” is an objective, rather than subjective, test in that the question turns on what a “reasonable person” would believe. It is not sufficient for an officer of

an issuer to determine that he or she personally believes that the likelihood of the acquisition being completed is or is not high. The officer must form an opinion as to what a reasonable person would believe in the circumstances. In the event of a dispute, an objective test requires an adjudicator to decide whether a reasonable person would believe in the circumstances that the likelihood of an acquisition being completed was high. By contrast, if the disclosure requirement involved a subjective test, the adjudicator would assess an individual's credibility and decide whether the personal opinion of the individual as to whether the likelihood of the acquisition being completed was high was an honestly held opinion. Formulating the disclosure requirement using an objective test rather than a subjective test strengthens the basis upon which the regulator may object to an issuer's application of the test in particular circumstances.

(2) Subsection 10.1(3) of Form 44-101F1 requires inclusion of the financial statements or other information relating to certain acquisitions or proposed acquisitions if the acquisition or proposed acquisition is a reverse takeover or if the inclusion of the financial statements or other information is necessary in order for the short form prospectus to contain full, true and plain disclosure of all material facts relating to, and in Québec, disclosure of all material facts likely to affect the value or the market price of, the securities being distributed. The securities regulatory authorities generally presume that the inclusion of financial statements or other information is required for all acquisitions that are, or would be, significant under Part 8 of NI 51-102. Issuers can rebut this presumption if they can provide evidence that the financial statements or other information are not required for full, true and plain disclosure.

Instruction (2) of section 10.1 of Form 44-101F1 provides that issuers must satisfy the requirements of subsection 10.1(3) of Form 44-101F1 by including either: (i) the financial statements or other information that would be required by Part 8 of NI 51-102; or (ii) satisfactory alternative financial statements or other information. The securities regulatory authorities believe that satisfactory alternative financial statements or other information may be provided to satisfy the requirements of subsection 10.1(3) when the financial statements or other information that would be required by Part 8 of NI 51-102 relate to a financial year ended within 90 days before the date of the short form prospectus or an interim period ended within 60 days before the date of the short form prospectus. In these circumstances, the securities regulatory authorities believe that satisfactory alternative financial statements or other information would not have to include any financial statements or other information for the acquisition or proposed acquisition related to:

(a) a financial year ended within 90 days before the date of the short form prospectus; or

(b) an interim period ended within 60 days before the date of the short form prospectus.

The securities regulatory authorities believe that satisfactory alternative financial statements or other information would instead have to include, for the acquisition or proposed acquisition:

(c) comparative annual financial statements or other information for at least the number of financial years as would be required under Part 8 of NI 51-102;

(d) comparative interim financial statements or other information for any interim period ended subsequent to the latest annual financial statements included in the short form prospectus and more than 60 days before the date of the short form prospectus; and

(e) pro forma financial statements or other information required under Part 8 of NI 51-102.

The securities regulatory authorities encourage issuers to utilize the pre-filing procedures in NP 43-201 if the issuer intends to omit from its short form prospectus, the financial statements or other information required under subsection 10.1(3) of Form 44-101F1 or intends to file satisfactory alternative financial statements or other information in lieu of the financial statements or other information required by Part 8 of NI 51-102.

4.11 General Financial Statement Requirements - A reporting issuer is required under the applicable CD rule to file its annual financial statements and related MD&A 90 days after year end (or 120 days if the issuer is a venture issuer as defined in NI 51-102). Interim financial statements and related MD&A must be filed 45 days after the last day of an interim period (or 60 days for a venture issuer). The financial statement requirements in NI 44-101 are based on these continuous disclosure reporting time frames and do not impose accelerated filing deadlines for a reporting issuer's financial statements. However, to the extent an issuer has filed financial statements in advance of the deadline for doing so, those financial statements must be incorporated by reference in the short form prospectus. The securities regulatory authorities are of the view that directors of issuers should endeavor to review and approve financial statements in a timely manner and should not delay the approval and release of the financial statements in order to avoid their inclusion in a short form prospectus.

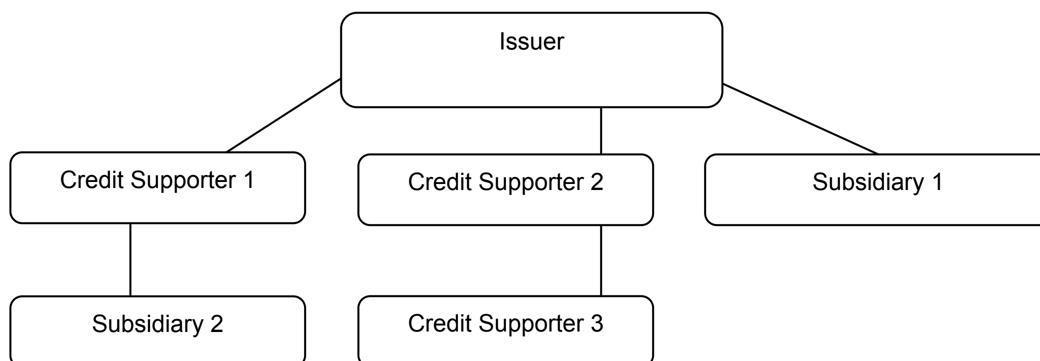
4.12 Credit Supporter Disclosure - In addition to the issuer's documents required to be incorporated by reference under sections 11.1 and 11.2 of Form 44-101F1 and the issuer's earnings coverage ratios required to be included under Item 6 of Form 44-101F1, a short form prospectus must include, under section 12.1 of Form 44-101F1, disclosure about any credit supporters that have provided a guarantee or alternative credit support for all or substantially all of the payments to be made under the securities being distributed. This type of guarantee or alternative credit support is not necessarily full and unconditional credit support as contemplated in sections 2.4 and 2.5 of NI 44-101. Accordingly, disclosure about a credit supporter may be required even if the credit supporter has not provided full and unconditional credit support.

Disclosure relating to all applicable credit supporters is generally required to ensure that the short form prospectus includes full, true and plain disclosure of all material facts concerning, and in Québec, disclosure of all material facts likely to affect the value or the market price of, the securities to be distributed. This is based on the principle that investors need both issuer and credit supporter disclosure to make an informed investment decision because both the issuer and the credit supporter are liable for payments to be made under the securities being distributed.

4.13 Exemptions for Certain Issues of Guaranteed Securities - Requiring disclosure about the issuer and any applicable credit supporters in a short form prospectus may result in unnecessary disclosure in some instances. Item 13 of Form 44-101F1 provides exemptions from the requirement to include both issuer and credit supporter disclosure where such disclosure is not necessary to ensure that the short form prospectus includes full, true and plain disclosure of all material facts concerning, and in Québec, disclosure of all material facts likely to affect the value or the market price of, the securities to be distributed.

The exemptions in Item 13 of Form 44-101F1 are based on the principle that, in these instances, investors will generally require either issuer disclosure or credit supporter disclosure to make an informed investment decision. The exemptions set out in Item 13 of Form 44-101F1 are not intended to be comprehensive and issuers may apply for exemptive relief from the requirement to provide both issuer and credit supporter disclosure, as appropriate.

The following example illustrates the application of the exemption in section 13.3 of Form 44-101F1.



Facts:

- Credit Supporter 1, Credit Supporter 2, and Credit Supporter 3 are credit supporters.
- Credit Supporter 1, Credit Supporter 2, and Credit Supporter 3 have each provided full and unconditional credit support for the securities being distributed.
- The guarantees or alternative credit supports of Credit Supporter 1, Credit Supporter 2, and Credit Supporter 3, are joint and several.
- The securities being distributed are non-convertible debt securities or non-convertible preferred shares.
- Credit Supporter 1, Credit Supporter 2, and Credit Supporter 3 are wholly owned subsidiaries of Issuer.
- Subsidiary 1 and Subsidiary 2 are not credit supporters.

Disclosure required in short form prospectus

- Issuer must incorporate by reference into the short form prospectus the documents required by Item 11 of Form 44-101F1.

- Under the exemption in section 13.3 of Form 44-101F1, Issuer is not required to include the disclosure of Credit Supporter 1, Credit Supporter 2, or Credit Supporter 3, as otherwise required by section 12.1 of Form 44-101F1.

- If Issuer has no operations or only minimal operations that are independent of Credit Supporter 1, Credit Supporter 2, and Credit Supporter 3, and each item of the summary financial information (as set out in Instruction (1) to Item 13 of Form 44-101F1) of Subsidiary 1 plus Subsidiary 2 is less than 3% of corresponding consolidated amounts of Issuer, the short form prospectus must state that the financial results of Credit Supporter 1 (less Subsidiary 2), Credit Supporter 2, and Credit Supporter 3 are included in the consolidated financial results of Issuer.

- If paragraph (e)(i) of section 13.3 of Form 44-101F1 does not apply, the short form prospectus must include consolidating summary financial information for Issuer with a separate column for each of:

    - Issuer (Issuer's investment in Credit Supporter 1, Credit Supporter 2, and Subsidiary 1 should be accounted for under the equity method);

    - Credit Supporter 1 plus Credit Supporter 2 (Credit Supporter 1's investment in Subsidiary 2 should be accounted for under the equity method but Credit Supporter 2 should consolidate Credit Supporter 3);

    - Subsidiary 1 plus Subsidiary 2;

    - consolidating adjustments; and

    - total consolidated amounts.

PART 5 CERTIFICATES

5.1 Non-corporate Issuers

(1) Paragraph 21.1(a) of Form 44-101F1 requires an issuer to include a certificate in the prescribed form signed by the chief executive officer and the chief financial officer or, if no such officers have been appointed, a person acting on behalf of the issuer in a capacity similar to a chief executive officer and a person acting on behalf of the issuer in a capacity similar to a chief financial officer. For a non-corporate issuer that is a trust and has a trust company acting as its trustee, this officers' certificate is frequently signed by authorized signing officers of the trust company that perform functions on behalf of the trust similar to those of a chief executive officer and a chief financial officer. In some cases, these functions are delegated to and performed by other persons (e.g. employees of a management company). If the declaration of trust governing the issuer delegated the trustee's signing authority, the officers' certificate may be signed by the persons to whom authority is delegated under the declaration of trust to sign documents on behalf of the trustee or on behalf of the trust, provided that those persons are acting in a capacity similar to a chief executive officer or chief financial officer of the issuer.

(2) Paragraph 21.1(b) of Form 44-101F1 requires an issuer to include a certificate in the prescribed form signed on behalf of the board of directors, by two directors of the issuer, other than the persons referred to in paragraph 21.1(a), duly authorized to sign. Issuers that are not companies are directed to the definition of "director" and, in Québec, the definition of "senior executive" in securities legislation to determine the appropriate signatories to the certificate. The definition of "director" or, in Québec, "senior executive" in securities legislation typically includes a person acting in a capacity similar to that of a director of a company.

5.2 Promoters of Issuers of Asset-backed Securities

(1) Securities legislation in some jurisdictions in Canada contains definitions of "promoter" and requires, in certain circumstances, a promoter of an issuer to assume statutory liability for prospectus disclosure. Asset-backed securities are commonly issued by a "special purpose" entity, established for the sole purpose of facilitating one or more asset-backed offerings. The securities regulatory authorities are of the opinion that special

purpose issuers of asset-backed securities will have a promoter because someone will typically have taken the initiative in founding, organizing or substantially reorganizing the business of the issuer. The securities regulatory authorities interpret the business of such issuers to include the business of issuing asset-backed securities and entering into the supporting contractual arrangements.

(2) For example, in the context of a securitization program under which assets of one or more related entities are financed by issuing asset-backed securities (sometimes called a "single seller program"), an entity transferring or originating a significant portion of such assets, an entity initially agreeing to provide on-going collection, administrative or similar services to the issuer, and the entity for whose primary economic benefit the asset-backed program is established, will each be a promoter of the issuer if it took the initiative in founding, organizing or substantially reorganizing the business of the issuer. Persons or companies contracting with the issuer to provide credit enhancements, liquidity facilities or hedging arrangements or to be a replacement servicer of assets, and investors who acquire subordinated investments issued by the issuer, will not typically be promoters of the issuer solely by virtue of such involvement.

(3) In the context of a securitization program established to finance assets acquired from numerous unrelated entities (sometimes called a "multi-seller program"), the person or company (frequently a bank or an investment bank) establishing and administering the program in consideration for the payment of an on-going fee, for example, will be a promoter of the issuer if it took the initiative in founding, organizing or substantially reorganizing the business of the issuer. Individual sellers of the assets into a multi-seller program are not ordinarily considered to be promoters of the issuer, despite the economic benefits accruing to such persons or companies from utilizing the program. As with single-seller programs, other persons or companies contracting with the issuer to provide services or other benefits to the issuer of the asset-backed securities will not typically be promoters of the issuer solely by virtue of such involvement.

(4) While the securities regulatory authorities have included this discussion of promoters as guidance to issuers of asset-backed securities, the question of whether a particular person or company is a "promoter" of an issuer is ultimately a question of fact to be determined in light of the particular circumstances.

5.1.2 CSA Notice - Consequential Amendments Arising from the Replacement of NI 44-101 Short Form Prospectus Distributions

NOTICE

CONSEQUENTIAL AMENDMENTS
ARISING FROM THE REPLACEMENT OF
NATIONAL INSTRUMENT 44-101 *SHORT FORM PROSPECTUS DISTRIBUTIONS*

AMENDMENTS TO NATIONAL INSTRUMENT 44-102 *SHELF DISTRIBUTIONS,*
NATIONAL INSTRUMENT 44-103 *POST-RECEIPT PRICING,*
NATIONAL INSTRUMENT 51-101 *STANDARDS OF DISCLOSURE FOR OIL AND GAS ACTIVITIES,*
AND FORM 51-102F2 *ANNUAL INFORMATION FORM*
OF NATIONAL INSTRUMENT 51-102 *CONTINUOUS DISCLOSURE OBLIGATIONS*

October 21, 2005

Overview

We, the Canadian Securities Administrators (CSA), are replacing National Instrument 44-101 *Short Form Prospectus Distributions*, Form 44-101F3 *Short Form Prospectus* and Companion Policy 44-101CP (collectively, the Former Short Form Instruments), which came into effect December 31, 2000, with new instruments (collectively, the New Short Form Instruments) (see CSA Notice of Replacement of National Instrument 44-101 *Short Form Prospectus Distributions* dated October 21, 2005).

The New Short Form Instruments permit more reporting issuers to use the short form prospectus system, eliminates duplication and inconsistencies between the short form system and the continuous disclosure regimes, further streamlines the short form prospectus system, and addresses deficiencies or ambiguities in the Former Short Form Instruments that we have identified over the past four years.

A number of other national instruments build on the foundation of the Former Short Form Instruments, or make reference to some of their requirements. As a consequence of the replacement of the Former Short Form Instruments with the New Short Form Instruments, we are also amending:

- National Instrument 44-102 *Shelf Distributions* (NI 44-102) and the related Companion Policy 44-102CP (44-102CP);
- National Instrument 44-103 *Post-Receipt Pricing* (NI 44-103) and the related Companion Policy 44-103CP (44-103CP);
- National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101) and the related Companion Policy 51-101CP (51-101CP); and
- Form 51-102F2 *Annual Information Form* (Form 51-102F2) of National Instrument 51-102 *Continuous Disclosure Obligations*.

In this Notice, the amendment instruments for NI 44-102, NI 44-103, and NI 51-101 are collectively referred to as the Instrument Amendments. The amendment instrument for Form 51-102F2 is referred to as the AIF Amendment. The amendments to 44-102CP, 44-103CP, and 51-101CP are collectively referred to as the Policy Amendments.

Members of the CSA in the following jurisdictions have made, or expect to make, the Instrument Amendments and the AIF Amendment

- a rule in each of British Columbia, Alberta, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador;
- a commission regulation in Saskatchewan and a regulation in Québec; and
- a policy in the Northwest Territories, Yukon and Nunavut.

The Policy Amendments have been, or are expected to be, adopted in all jurisdictions.

In British Columbia and Ontario, the implementation of the Instrument Amendments and the AIF Amendment is subject to ministerial approval.

In Ontario, the Instrument and the other materials required to be delivered to the minister responsible for the oversight of the Ontario Securities Commission were delivered on **October 14, 2005**.

In Québec, the Instrument Amendments and the AIF Amendment are regulations made under section 331.1 of *The Securities Act* (Québec) and must be approved, with or without amendment, by the Minister of Finance. The Instrument Amendments and the AIF Amendment will come into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation.

Provided all necessary ministerial approvals are obtained, the Instrument Amendments and the AIF Amendment will come into force on **December 30, 2005**.

Summary of Written Comments

On January 7, 2005, we published the Instrument Amendments and Policy Amendments for comment. The comment period ended in April 2005. During the comment period we received a submission from one commenter, KPMG LLP. Appendix A summarizes their comments and our responses.

Summary of Changes to the Instrument Amendments and Policy Amendments

After considering the comments, we made some changes to the Instrument Amendments and the Policy Amendments. We do not believe these changes are material and so are not republishing the Instrument Amendments or the Policy Amendments for a further comment period. The changes are summarized in Appendix B.

The AIF Amendment

We are making the AIF Amendment as a consequence of comments we received regarding the proposed changes to Item 15 of Form 44-101F1 *Short Form Prospectus* (Form 44-101F1) that we published for comment on January 7, 2005. The AIF Amendment conforms the requirement for disclosure about interests of experts in section 16.2 of Form 51-102F2 so that it is the same as what we published for comment in section 15.2 of Form 44-101F1. The AIF Amendment is not being published for comment because it does not materially change Form 51-102F2.

Questions

Please refer your questions to any of:

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APPENDIX A

SUMMARY OF COMMENTS
ON NI 44-102 *SHELF DISTRIBUTIONS*

Item	Reference	Comments	Draft CSA Responses
1.	Auditor involvement with interim financial statements	The commenter expressed concerns about removing the auditor's comfort letter requirement under section 7.3 of NI 44-102. The commenter suggested mandating an auditor review of interim financial statements included or incorporated by reference in the short form prospectus or supplements that establishes a continuous distribution.	We acknowledge the concern raised by the commenter. We have included a requirement in subsection 6.2(3) of NI 44-102 that an auditor must review any unaudited financial statements of an issuer or an acquired business incorporated by reference into a base shelf prospectus but filed after the date of the filing of the base shelf prospectus. We have also included a requirement in subsection 6.2(5) of NI 44-102 that the review must have been completed, if the base shelf prospectus established an MTN program or other continuous offering, no later than the filing of the unaudited financial statement, or, in all other circumstances, no later than the next filing of a shelf supplement.
2.	Auditor involvement with other documents subse-quently filed and incorporated by reference	The commenter expressed concerns about auditor involvement with other documents subsequently filed and incorporated by reference. It is impossible for an auditor to be continuously updating his or her reasonable investigation throughout the period of a continuous distribution. It is also impracticable and contrary to the objectives of a continuous distribution system to require an issuer to obtain an updated auditor's consent every time additional inforamtion is deemed to be incorporated by reference into the base shelf prospectus. The commenter suggested two alternatives: • align the consent requirements of auditors and other experts associated with the continuous offering with the related certificate requirements of the issuer and underwriter (and promoter and credit supporter, where applicable) or • clearly indicate in NI 44-102 that the auditor's prospectus liability is not extended past the date of their last consent.	We have not made any changes to the consent requirements in either NI 44-101 or NI 44-102. Experts' liability stems from the applicable provisions in the respective Provincial Securities Acts and/or the common law. Consideration of this issue is beyond the scope of this initiative. We note that there are also professional standards related to auditor's consents as set out in the CICA Handbook – Assurance.
3.	Updating prospectus certificates and experts' consents	The commenter also suggested that the filing of the AIF be regarded as the filing of an amended prospectus and that an issuer be required to file updated prospectus certificates and experts' consents when the AIF is incorporated into a base shelf prospectus underlying a continuous distribution of securities.	We have not made the suggested change. A new certificate is required under NI 44-102 only if an amended prospectus is filed. We do not believe the filing of an AIF should be regarded as the filing of an amended prospectus. An AIF would be incorporated by reference

Item	Reference	Comments	Draft CSA Responses
			into the base shelf prospectus and would be certified by either a forward-looking certificate at the time of the base or a new certificate at the time of the supplement. We believe that this requirement under NI 44-102 is appropriate.
4.	Form of auditor's consent associated with a continuous offering	The commenter also suggested that the form of auditor's consent in CICA Handbook Section 7110 should satisfy the consent requirement in section 7.2 of NI 44-102.	We believe that a CICA Handbook Section 7110 auditor's consent is not sufficient for purposes of the short form prospectus. The CICA Section 7110 auditor's consent does not include the statement that the auditor has read the short form prospectus and has no reason to believe that there are any misrepresentations in information derived from the following: the report, financial statements on which the auditor reported, knowledge of the auditor as a result of the services performed, or knowledge as a result of the audit of the financial statements. We believe these statements are an integral part of the auditor's consent.
5.	Auditor's consents associated with a continuous offering – Example in section 2.6.1 of CP	The commenter stated that the guidance in proposed section 2.6.1 of the Companion Policy was found to be of limited help in clarifying the requirements in section 7.2 and suggested alternative wording.	We acknowledge the comment. We have changed the table in section 2.6.1 of the Companion Policy by incorporating some of the commenter's suggestions.

APPENDIX B

SUMMARY OF CHANGES

The following summarizes the changes to the Instruments and the Policies from the version that was published for comment on January 7, 2005.

NI 44-102

Qualification to File a Short Form Prospectus – We have made appropriate changes to NI 44-102 to reflect the decision to proceed with Alternative B in the New Short Form Instruments.

List of Exemptions – We have added a requirement to list all exemptions from the provisions of NI 44-102 granted to the issuer applicable to the base shelf prospectus, including all exemptions to be evidenced by the issuance of a receipt for the base shelf prospectus pursuant to section 11.2 of NI 44-102. We have added this requirement to ensure issuers to provide greater transparency with respect to such exemptions.

Review of Unaudited Financial Statements – We have added subsection 6.2(3) to require any unaudited financial statements incorporated by reference into a base shelf prospectus but filed after the date of filing the base shelf prospectus to be reviewed in accordance with the relevant standards set out in the CICA Handbook for a review of financial statements by an entity's auditor or a public accountant's review of financial statements. This review requirement is consistent with the comfort letter requirement that was in section 7.3, which is being repealed. In effect, NI 44-102 retains the review requirement, but no longer requires the comfort letter addressed to the regulator evidencing that review.

Because National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* permits certain issuers to include in a base shelf prospectus audited financial statements that have been audited in accordance with certain foreign auditing standards, subsection 6.2(4) permits those same issuers to include in a base shelf prospectus unaudited financial statements that have been reviewed in accordance with certain foreign review standards.

We have also added subsection 6.2(5), which specifies when the review must be completed.

NI 44-103

List of Exemptions – We have added a requirement to list all exemptions from the provisions of NI 44-103 granted to the issuer applicable to the base PREP prospectus, including all exemptions to be evidenced by the issuance of a receipt for the base PREP prospectus pursuant to section 6.2 of NI 44-103. We have added this requirement to ensure issuers to provide greater transparency with respect to such exemptions.

AMENDMENT INSTRUMENT
FOR
NATIONAL INSTRUMENT 44-102 *SHELF DISTRIBUTIONS*

1. This Instrument amends National Instrument 44-102 *Shelf Distributions*.

2. "National Instrument 44-101 Short Form Prospectus Distributions" and "National Instrument 44-101" are struck out wherever they occur and "NI 44-101" is substituted.

3. Subsection 1.1(1) is amended,

   (a) by adding the following definition after the definition of "MTN program":

   " "NI 44-101" means National Instrument 44-101 *Short Form Prospectus Distributions*";

   (b) in the definition of "novel", by adding "," after "means"; and

   (c) by repealing the definition of "special warrant".

4. Section 1.3 is repealed.

5. Part 2 is repealed and the following is substituted:

"**Part 2 SHELF QUALIFICATION AND PERIOD OF RECEIPT EFFECTIVENESS**

2.1 General - An issuer shall not file a short form prospectus that is a base shelf prospectus, unless the issuer is qualified to do so under this Instrument.

2.2 Shelf Qualification for Distributions Qualified under Section 2.2 of NI 44-101 (Basic Qualification)

(1) An issuer is qualified to file a preliminary short form prospectus that is a preliminary base shelf prospectus if, at the time of filing, the issuer is qualified under section 2.2 of NI 44-101 to file a prospectus in the form of a short form prospectus.

(2) An issuer that has filed a preliminary base shelf prospectus in reliance on the qualification criteria in subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus.

(3) A receipt issued for a base shelf prospectus of an issuer qualified under subsection (2) is effective until the earliest of

(a) the date 25 months from the date of its issue;

(b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time

(i) the issuer does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

(ii) the issuer does not have a current AIF and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

(iii) the issuer's equity securities are not listed or posted for trading on a short form eligible exchange,

(iv) the issuer is an issuer

(A) whose operations have ceased, or

(B) whose principal asset is cash, cash equivalents, or its exchange listing, or

(v) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under NI 44-101; and

(c) the lapse date, if any, prescribed by securities legislation.

2.3 Shelf Qualification for Distributions Qualified under Section 2.3 of NI 44-101 (Approved Rating Non-Convertible Securities)

(1) An issuer is qualified to file a preliminary short form prospectus that is a preliminary base shelf prospectus for approved rating non-convertible securities if, at the time of filing, the issuer

(a) is qualified under section 2.3 of NI 44-101 to file a prospectus in the form of a short form prospectus; and

(b) has reasonable grounds for believing that, if it were to distribute securities under the base shelf prospectus, the securities distributed would receive an approved rating and would not receive a rating lower than an approved rating from any approved rating organization.

(2) An issuer that has filed a preliminary base shelf prospectus in reliance on the qualification criteria in subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus if, at the time of the filing of the base shelf prospectus, the issuer has reasonable grounds for believing that, if it were to distribute non-convertible securities under the base shelf prospectus, the securities distributed would receive an approved rating and would not receive a rating lower than an approved rating from any approved rating organization.

(3) A receipt issued for a base shelf prospectus of an issuer filed under subsection (2) is effective until the earliest of

(a) the date 25 months from the date of its issue;

(b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time

(i) the issuer does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

(ii) the issuer does not have a current AIF and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

(iii) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under NI 44-101, or

(iv) the securities to which the agreement relates

(A) have not received a final approved rating,

(B) are the subject of an announcement by an approved rating organization, of which the issuer is or ought reasonably to be aware, that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, or

(C) have received a provisional or final rating lower than an approved rating from any approved rating organization; and

(c) the lapse date, if any, prescribed by securities legislation.

2.4 Shelf Qualification for Distributions under Section 2.4 of NI 44-101 (Guaranteed Non-Convertible Debt Securities, Preferred Shares and Cash Settled Derivatives)

(1) An issuer is qualified to file a short form prospectus that is a preliminary base shelf prospectus for non-convertible debt securities, non-convertible preferred shares or non-convertible cash settled derivatives if, at the time of filing, the issuer is qualified under section 2.4 of NI 44-101 to file a prospectus in the form of a short form prospectus.

(2) An issuer that has filed a preliminary base shelf prospectus in reliance on subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus.

(3) A receipt issued for a base shelf prospectus of an issuer qualified under subsection (2) is effective until the earliest of

(a) the date 25 months from the date of its issue;

(b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time

(i) a credit supporter has not provided full and unconditional credit support for the securities to which the shelf prospectus supplement relates,

(ii) unless the requirements of subparagraph 2.4(1)(b)(ii) of NI 44-101, but not the requirements of subparagraph 2.4(1)(b)(i) of NI 44-101, were satisfied at the time the issuer filed its base shelf prospectus, the credit supporter does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

(iii) unless the requirements of subparagraph 2.4(1)(b)(ii) of NI 44-101, but not the requirements of subparagraph 2.4(1)(b)(i) of NI 44-101, were satisfied at the time the issuer filed its base shelf prospectus, the credit supporter does not have a current AIF and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

(iv) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under NI 44-101, or

(v) either of the following is true

(A) the credit supporter's equity securities are not listed or posted for trading on a short form eligible exchange, or

(B) the credit supporter is a credit supporter

(I) whose operations have ceased, or

(II) whose principal asset is cash, cash equivalents, or its exchange listing, and

either of the following is true:

(C) the credit supporter does not have issued and outstanding non-convertible securities that

(I) have received an approved rating,

(II) have not been the subject of an announcement by an approved rating organization, of which the issuer is or ought reasonably to be aware, that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, and

(III) have not received a rating lower than an approved rating from any approved rating organization, or

(D) the securities to which the agreement relates

(I) have not received a final approved rating,

(II) have been the subject of an announcement by an approved rating organization, of which the issuer is or ought reasonably to

be aware, that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, and

(III) have received a provisional or final rating lower than an approved rating from any approved rating organization; and

(c) the lapse date, if any, prescribed by securities legislation.

2.5 Shelf Qualification for Distributions under Section 2.5 of NI 44-101 (Guaranteed Convertible Debt Securities or Preferred Shares)

(1) An issuer is qualified to file a short form prospectus that is a preliminary base shelf prospectus for convertible debt securities and convertible preferred shares if, at the time of filing, the issuer is qualified under section 2.5 of NI 44-101 to file a prospectus in the form of a short form prospectus.

(2) An issuer that has filed a preliminary base shelf prospectus in reliance on subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus.

(3) A receipt issued for a base shelf prospectus qualified under subsection (2) is effective until the earliest of

(a) the date 25 months from the date of its issue;

(b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time

(i) the securities to which the agreement relates are not convertible into securities of a credit supporter that has provided full and unconditional credit support for the securities being distributed,

(ii) the credit supporter does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

(iii) the credit supporter does not have a current AIF and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

(iv) the credit supporter's equity securities are not listed or posted for trading on a short form eligible exchange,

(v) the credit supporter is a credit supporter

(A) whose operations have ceased, or

(B) whose principal asset is cash, cash equivalents, or its exchange listing, or

(vi) the issuer has withdrawn its notice declaring the issuer's intention to be qualified to file a short form prospectus under NI 44-101; and

(c) the lapse date, if any, prescribed by securities legislation.

2.6 Shelf Qualification for Distributions under Section 2.6 of NI 44-101 (Asset-Backed Securities)

(1) An issuer that is qualified under section 2.6 of NI 44-101 to file a prospectus in the form of a short form prospectus may file a preliminary base shelf prospectus for asset-backed securities if, at the time of filing, the issuer has reasonable grounds for believing that

(a) all asset-backed securities that it may distribute under the base shelf prospectus will receive an approved rating; and

(b) no asset-backed securities that it may distribute under the base shelf prospectus will receive a rating lower than an approved rating from any approved rating organization.

(2) An issuer that has filed a preliminary base shelf prospectus in reliance on the qualification criteria in section 2.6 of NI 44-101 may file the corresponding base shelf prospectus if, at the time of the filing of the base shelf prospectus, the issuer has reasonable grounds for believing that

(a) all asset-backed securities that it may distribute under the base shelf prospectus will receive an approved rating; and

(b) no asset-backed securities that it may distribute under the base shelf prospectus will receive a rating lower than an approved rating from any approved rating organization.

(3) A receipt issued for a base shelf prospectus qualified under subsection (2) is effective for a distribution of asset-backed securities until the earliest of

(a) the date 25 months from the date of its issue;

(b) the time immediately before the entering into of an agreement of purchase and sale for an asset-backed security to be sold under the base shelf prospectus, if at that time

(i) the issuer does not have current annual financial statements and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101,

(ii) the issuer does not have a current AIF and does not satisfy the requirements of the exemption in either of subsection 2.7(1) or (2) of NI 44-101, or

(iii) the asset-backed securities to which the agreement relates

(A) have not received a final approved rating,

(B) have been the subject of an announcement by an approved rating organization, of which the issuer is or ought reasonably to be aware, that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, or

(C) have received a provisional or final rating lower than an approved rating from any approved rating organization; and

(c) the lapse date, if any, prescribed by securities legislation.

2.7 Lapse Date - Ontario - In Ontario, the lapse date prescribed by securities legislation for a receipt issued for a base shelf prospectus is extended to the date 25 months from the date of issuance of the receipt.

2.8 Lapse Date - Alberta - In Alberta, the lapse date prescribed by securities legislation for a receipt issued for a base shelf prospectus is the date 25 months from the date of the issuance of the receipt.

2.9 Limitation on Offerings - Despite any provision in this Instrument, the shelf procedures shall not be used for a distribution of rights under a rights offering."

6. Subsections 4.1(1) and (2) are amended by moving "in the local jurisdiction" to after "distribute".

7. Section 5.1 is amended in the preamble by adding "for the distribution" after "a short form prospectus".

8. Sections 5.3 and 5.6 are amended by striking out "44-101F3" wherever it occurs and substituting "44-101F1".

9. Section 5.4 is amended by striking out "person or company" and substituting "issuer or selling securityholder".

10. Section 5.5 is amended by adding the following after paragraph 8:

"9. List all exemptions from the provisions of this Instrument granted to the issuer applicable to the base shelf prospectus, including all exemptions to be evidenced by the issuance of a receipt for the base shelf prospectus pursuant to section 11.2."

11. Section 6.1 is amended by adding "and, in Québec, to contain no misrepresentation that is likely to affect the value or the market price of the securities to be distributed" after "distributed under the prospectus".

12. Section 6.2(1) is amended by adding "," after "base shelf prospectus" wherever it occurs.

13. Section 6.2 is amended by adding the following after subsection (2):

"(3) Any unaudited financial statements of an issuer or an acquired business incorporated by reference into the base shelf prospectus but filed after the date of filing the base shelf prospectus must have been reviewed in accordance with the relevant standards set out in the Handbook for a review of financial statements by an entity's auditor or a public accountant's review of financial statements.

(4) Despite subsection (3)

(a) if the financial statements of the issuer or acquired business have been audited in accordance with U.S. GAAS, the unaudited financial statements may be reviewed in accordance with U.S. review standards;

(b) if the financial statements of the issuer or acquired business have been audited in accordance with International Standards on Auditing, the unaudited financial statements may be reviewed in accordance with international review standards; or

(c) if the financial statements of the issuer or acquired business have been audited in accordance with auditing standards that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer is subject, the unaudited financial statements may be reviewed in accordance with review standards that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer is subject.

(5) The review specified in subsection (3) must have been completed

(a) if the base shelf prospectus established an MTN program or other continuous offering, no later than filing of the unaudited financial statements; or

(b) in all other circumstances, no later than the next filing of a shelf supplement."

14. Section 6.5 is amended by striking out "securities legislation that regulate conflicts of interest in connection with a distribution of securities of a registrant, a connected issuer of a registrant or a related issuer of a registrant" and substituting "National Instrument 33-105 *Underwriting Conflicts*".

15. Section 6.7 is amended by adding "and, in Québec, contain no misrepresentation that is likely to affect the value or the market price of the securities to be distributed," after "distributed".

16. Section 7.1 is amended by striking out "do not".

17. Subsection 7.2(1) is amended by striking out "that use of the" and substituting "the use of that".

18. Section 7.3 is repealed.

19. Subsection 8.2(1) is amended by striking out "5.5" and substituting "5.6".

20. Subsection 9.1(1) is amended

(a) by striking out "11.1" and substituting "6.1"; and

(b) by striking out "2.9 of National Instrument 44-101" and substituting "9.2".

21. Part 9 is amended by adding the following after section 9.1:

"**9.2 Market Value Calculation**

(1) For the purposes of this Part,

(a) the aggregate market value of the equity securities of an issuer on a date is the aggregate of the market value of each class of its equity securities on the date, calculated by multiplying

(i) the total number of equity securities of the class outstanding on the date, by

(ii) the closing price on the date of the equity securities of the class on the exchange in Canada on which that class of equity securities is principally traded; and

(b) instalment receipts may, at the option of the issuer, be deemed to be equity securities if

(i) the instalment receipts are listed and posted for trading on an exchange in Canada, and

(ii) the outstanding equity securities, the beneficial ownership of which is evidenced by the instalment receipts, are not listed and posted for trading on an exchange in Canada.

(2) For the purposes of subsection (1), in calculating the total number of equity securities of a class outstanding, an issuer shall exclude those equity securities of the class that are beneficially owned, or over which control or direction is exercised, by persons or companies that, alone or together with their respective affiliates and associated parties, beneficially own or exercise control or direction over more than 10 per cent of the outstanding equity securities of the issuer.

(3) Despite subsection (2), if a portfolio manager of a pension fund or investment fund, alone or together with its affiliates and associated parties, exercises control or direction in the aggregate over more than 10 per cent of the outstanding equity securities of an issuer, and the fund beneficially owns or exercises control or direction over 10 per cent or less of the issued and outstanding equity securities of the issuer, the securities that the fund beneficially owns or exercises control or direction over are not excluded unless the portfolio manager is an affiliate of the issuer."

22. Part 10 is repealed.

23. Subsection 11.1(2) is amended by striking out "and Alberta".

24. Appendix A is amended by striking out "and will not contain any misrepresentation" wherever it occurs and substituting ". For the purpose of the Province of Québec, this simplified prospectus, together with documents incorporated herein by reference and as supplemented by the permanent information record, will contain no misrepresentation that is".

25. Appendix B is amended by striking out "and does not contain any misrepresentation" wherever it occurs and substituting ". For the purpose of the Province of Québec, this simplified prospectus, together with documents incorporated herein by reference and as supplemented by the permanent information record, contains no misrepresentation that is".

26. This Instrument comes into force on December 30, 2005.

**AMENDMENTS TO
COMPANION POLICY 44-102CP
TO NATIONAL INSTRUMENT 44-102 *SHELF DISTRIBUTIONS***

Companion Policy 44-102CP to National Instrument 44-102 *Shelf Distributions* is amended as follows:

1. "National Instrument" is struck out wherever it occurs and substituted with "NI" other than in subsection 1.1(1) and in subsection 1.1(2) in the phrase "National Instrument 44-101 *Short Form Prospectus Distributions*".

2. Subsection 1.1(2) is amended by striking out "5" and substituting "6".

3. Section 2.2 is amended

   (a) in subsection (1) by adding ", the time" after "(ii)";

   (b) in subsection (2) by striking out "At the time of the coming into force of this Policy New Brunswick has a lapse date provision in its securities legislation and has not provided blanket relief for shelf distributions."; and

   (c) by rescinding subsection (3).

4. Subsection 2.3(1) is amended by striking out "POP" and substituting "short form prospectus distributions".

5. Section 2.4 is amended

   (a) in the title, by adding "Novel" after "of";

   (b) in subsection (2), by adding the following after "The securities regulatory authorities":

   "also want to ensure that prospectus investors of such products are entitled to the appropriate rights at the time of their investment as contemplated by applicable securities laws. Reference is made to section 4.8 of Companion Policy NI 44-101CP for a discussion of these issues. The securities regulatory authorities";

   (c) in subsection (3)

      (i) by striking out "issues" and substituting "distributions"; and

      (ii) by adding the following after "prospectus.":

      "This includes any circumstances where a base shelf prospectus, including, if applicable, an unallocated shelf prospectus, may be used together with a prospectus supplement to qualify novel products.";

   (d) in subsection (4), by adding the following to the end:

   "However, in circumstances where an issuer or its advisor is uncertain if a product is novel, the securities regulatory authorities encourage the issuer to either treat products as novel or to seek input from staff prior to filing a base shelf prospectus or prospectus supplement, as the case may be."; and

   (e) in subsection (5), by adding the following to the end:

   "The securities regulatory authorities also believe that the rights provided to investors in such products should be no less comprehensive than the rights provided in offerings previously reviewed by a securities regulatory authority in a jurisdiction."

6. Subsection 2.5(3) is amended by striking out "These terms" and substituting "This information".

7. The following section is added after section 2.6:

   "**2.6.1 Expert's Consent** – Section 7.2 of NI 44-102 provides that if a document (the "Document") containing an expert's opinion, report or valuation is incorporated by reference into a base shelf prospectus and filed after the filing of the base shelf prospectus, the issuer must file the written consent of the expert in

accordance with deadlines that vary with the circumstances. For example, issuers are reminded that separate auditor's consents are required at the filing of the base shelf prospectus and in each subsequent shelf prospectus supplement for each set of audited financial statements incorporated by reference. The following is intended to illustrate the required timing for the filing of the expert's consents:

Type of Prospectus Filed	**Timing of inclusion of expert's report**	**Timing of filing of expert's consent**
MTN or non-MTN base shelf prospectus	Expert's report included in the base shelf prospectus at the date the base shelf prospectus is filed.	Expert's consent is filed at the date the prospectus is filed.
MTN base shelf prospectus	Expert's report included in a Document, filed after the base shelf prospectus is filed, that is incorporated by reference into the prospectus.	Expert's consent is filed at the date the Document is filed.
Non-MTN base shelf prospectus	Expert's report included in a Document, filed after the base shelf prospectus is filed, that is incorporated by reference into the prospectus.	Expert's consent is filed no later than the date of filing of the next prospectus supplement corresponding to the base shelf prospectus or the date the Document is filed.

8. Section 3.1 is amended

(a) in subsection (2)

(i) by striking out "subsection 5.8(1)" wherever it occurs and substituting "section 5.8";

(ii) by striking out "6.5" and substituting "3.5"; and

(iii) by striking out "the National Instrument" and substituting "NI 44-102"; and

(b) by adding the following as subsection (4):

"If an issuer wishes to add securities to its base shelf prospectus it may do so prior to issuing all of the securities qualified by the base shelf prospectus by filing an amendment to the base shelf prospectus. This will not extend the life of the base shelf prospectus."

AMENDMENT INSTRUMENT
FOR
NATIONAL INSTRUMENT 44-103
POST-RECEIPT PRICING

1. This Instrument amends National Instrument 44-103 *Post-Receipt Pricing*.

2. Subsection 3.2(1) is amended

   (a) in clause 5(a)(ii) by striking out “and” and substituting “or”;

   (b) in subparagraph 5(b) by striking out “otherwise,”;

   (c) in subparagraph 7(c) by adding “together with the documents and information incorporated herein by reference and” after “simplified prospectus,”;

   (d) in paragraph 8 by adding “together with the documents and information incorporated herein by reference and” after “simplified prospectus,”; and

   (e) by adding the following after paragraph 9:

      “10. List all exemptions from the provisions of this Instrument granted to the issuer applicable to the base PREP prospectus, including all exemptions to be evidenced by the issuance of a receipt for the base PREP prospectus pursuant to section 6.2.”

3. Section 3.3 is amended in paragraph 8 by striking out “44-101F3” and substituting “44-101F1”.

4. Section 3.6 is amended in paragraph 2 by moving “to the document” to after “reference”.

5. Section 4.1 is amended by adding “and, in Québec, to contain no misrepresentation that is likely to affect the value or the market price of the securities to be distributed” after “under the prospectus”.

6. Subsection 4.5(2) is amended

   (a) by repealing subparagraph 3(c) and substituting the following:

      “(c) any person or company who is a promoter of the issuer:

      “This [insert, if applicable, “short form”] prospectus, [insert in the case of a short form prospectus distribution – “together with the documents incorporated herein by reference,”] constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required under securities legislation of [insert name of each jurisdiction in which qualified]. [Insert if distribution made in Québec - “For the purpose of the Province of Québec, this [insert, if applicable, “simplified”] prospectus, [insert in the case of a short form prospectus distribution - “together with documents incorporated herein by reference and as supplemented by the permanent information record,”] contains no misrepresentation likely to affect the value or the market price of the securities to be distributed.”]”

   (b) by repealing paragraph 4 and substituting the following:

      “4. Instead of the prospectus certificate required under paragraph 8 of subsection 3.2(1), a certificate in the following form signed by each underwriter, if any, who for the securities to be distributed under the prospectus, is in a contractual relationship with the issuer or selling security holder:

      “To the best of our knowledge, information and belief, this [insert, if applicable, “short form”] prospectus [insert in the case of a short form prospectus distribution - “, together with the documents incorporated herein by reference,”] constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required under the securities legislation of [insert name of each jurisdiction in which qualified]. [Insert if distribution made in Québec - “For the purpose of the Province of Québec, this [insert, if applicable, “simplified”] prospectus, [insert in the case of a short form prospectus distribution - “together with documents incorporated herein by reference and as supplemented by the permanent information record,”] contains no misrepresentation likely to affect the value or the market price of the securities to be distributed.”]”

7. Part 5 is repealed.

8. Subsection 6.1(2) is amended by striking out “and Alberta”.

9. This Instrument comes into force on December 30, 2005.

AMENDMENT TO
COMPANION POLICY 44-103CP
TO NATIONAL INSTRUMENT 44-103 *POST-RECEIPT PRICING*

Companion Policy 44-103CP to National Instrument 44-103 *Post-Receipt Pricing* is amended as follows:

1. Subsection 1.3(2) is amended by striking out “National Instrument” wherever it occurs and substituting “NI” other than in the phrase “National Instrument 44-101 *Short Form Prospectus Distributions*”.

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

1. This Instrument amends National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities.*

2. Section 1.1 is amended by:

   (a) repealing paragraph (a) and substituting the following:

   "(a) "annual information form" has the same meaning as "AIF" in National Instrument 51-102 *Continuous Disclosure Obligations*;" ; and

   (b) repealing paragraph (r).

3. This Instrument comes into force on December 30, 2005.

AMENDMENTS
TO
COMPANION POLICY 51-101CP
TO NATIONAL INSTRUMENT 51-101
STANDARDS OF DISCLOSURE FOR OIL AND GAS ACTIVITIES

Companion Policy 51-101CP to National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* is amended as follows:

1. Section 2.4 is amended by:

   (a) rescinding paragraph (a) and substituting the following:

   "(a) Meaning of "Annual Information Form" - *Annual information form* has the same meaning as "AIF" in National Instrument 51-102 *Continuous Disclosure Obligations*. Therefore, as set out in that definition, an *annual information form* can be a completed Form 51-102F2 *Annual Information Form* or, in the case of an SEC issuer (as defined in NI 51-102), a completed Form 51-102F2 or an annual report or transition report under the 1934 Act on Form 10-K, Form 10-KSB or Form 20-F."

   (b) in paragraph (b) by striking out the first sentence and substituting the following:

   "Form 51-102F2 *Annual Information Form* requires the information required by section 2.1 of NI 51-101 to be included in the *annual information form*. That information may be included either by setting out the text of the information in the *annual information form* or by incorporating it by reference from separately filed documents."

2. Appendix 1 is amended by:

   (a) rescinding the definition of "Annual information form" and substituting the following:

" Annual information form	A completed Form 51-102F2 *Annual Information Form*, or in the case of an SEC issuer (as defined in National Instrument 51-102 *Continuous Disclosure Obligations*) a completed Form 51-102F2 or an annual report or transition report under the 1934 Act on Form 10-K, Form 10-KSB or Form 20-F. [NI 51-102]"

   (b) rescinding the definition of NI 44-101.

AMENDMENT INSTRUMENT FOR
FORM 51-102F2 *ANNUAL INFORMATION FORM* OF
NATIONAL INSTRUMENT 51-102 *CONTINUOUS DISCLOSURE OBLIGATIONS*

1. This Instrument amends Form 51-102F2 *Annual Information Form*.

2. Subsection 16.2(1) is amended

   (a) in paragraphs (a) and (b), by adding “and, if the expert is not an individual, by the designated professionals of that expert,” immediately after “named in section 16.1”; and

   (b) in paragraph (c), by adding “and, if the expert is not an individual, by the designated professionals of that expert” immediately after “named in section 16.1”.

3. The following subsection is added after subsection 16.2(1):

   “(1.1) For the purposes of subsection (1), a "designated professional" means, in relation to an expert named in section 16.1,

   (a) each partner, employee or consultant of the expert who participated in and who was in a position to directly influence the preparation of the statement, report or valuation referred to in paragraph 16.1(a); and

   (b) each partner, employee or consultant of the expert who was, at any time during the preparation of the statement, report or valuation referred to in paragraph 16.1(a), in a position to directly influence the outcome of the preparation of the statement, report or valuation, including, without limitation

   (i) any person who recommends the compensation of, or who provides direct supervisory, management or other oversight of, the partner, employee or consultant in the performance of the preparation of the statement, report or valuation referred to in paragraph 16.1(a), including those at all successively senior levels through to the expert's chief executive officer;

   (ii) any person who provides consultation regarding technical or industry-specific issues, transactions or events for the preparation of the statement, report or valuation referred to in paragraph 16.1(a); and

   (iii) any person who provides quality control for the preparation of the statement, report or valuation referred to in paragraph 16.1(a).”

4. The following subsection is added after subsection 16.2(2):

   “(2.1) Despite subsection (1), an auditor who is independent in accordance with the auditor's rules of professional conduct in a jurisdiction of Canada or who has performed an audit in accordance with US GAAS is not required to provide the disclosure in subsection (1) if there is disclosure that the auditor is independent in accordance with the auditor's rules of professional conduct in a jurisdiction of Canada or that the auditor has complied with the SEC's rules on auditor independence.”

5. This Instrument comes into force on December 30, 2005.

5.1.3 Notice of Rule 62-503 - Financing of Take-Over Bids and Issuer Bids

NOTICE OF RULE 62-503 - FINANCING OF TAKE-OVER BIDS AND ISSUER BIDS

Introduction

On October 18, 2005, the Commission made Rule 62-503 – *Financing of Take-over Bids and Issuer Bids* (the "Rule") under section 143 of the *Securities Act* (the "Act").

The Rule and the other material required by the Act to be delivered to the Minister of Government Services (the "Minister") were delivered on October 20, 2005. If the Minister approves the Rule, the Rule will come into force 15 days after it is approved. If the Minister does not approve or reject the Rule, or return it to the Commission for further consideration, the Rule will come into force on January 3, 2006.

Substance and Purpose of the Rule

Section 96 of the Act provides as follows:

> **96. Financing of bid –** Where a take-over bid or issuer bid provides that the consideration for the securities deposited pursuant to the bid is to be paid in cash or partly in cash, the offeror shall make adequate arrangements prior to the bid to ensure that the required funds are available to effect payment in full for all securities that the offeror has offered to acquire.

The Rule provides that financing arrangements under section 96 may be subject to conditions if, at the time the bid is commenced, the offeror reasonably believes the possibility to be remote that, if the conditions of the bid are satisfied or waived, the offeror will be unable to pay for securities deposited under the bid due to a financing condition not being satisfied.

The Rule enables the policy objectives of section 96 to be met in a flexible manner, as bidders and lenders will be able to tailor their conditions to the specific circumstances of the transaction. The Rule also addresses the uncertainty regarding the scope of section 96 that resulted from the judgment of the Ontario Superior Court of Justice in *BNY Capital Corp. v. Katotakis*, reported at [2005] O.J. No. 813.

The Rule was published for a 90-day comment period on July 1, 2005 at (2005), 28 OSCB 5689. The names of the commenters, a summary of those comments and the Commission's responses are contained in Appendix A of this Notice. Following review of the comments, the Commission has made minor changes to the Rule for purposes of clarification, as described in Appendix A. The Commission does not consider the changes to be material.

Authority for the Rule

Paragraph 143(1)28 of the Act provides the Commission with the authority to make rules regulating take-over bids and issuer bids. Subparagraph 143(1)28(iii) explicitly authorizes the making of rules to vary the requirements set out in section 96 of the Act, although the Commission considers the Rule to be primarily a clarification of an existing requirement.

Anticipated Costs and Benefits

The Commission believes that market participants, including bidders, lenders and target security holders, will benefit from the removal of the current uncertainty in the area of bid financing. Greater efficiencies will be achieved through reduced transaction costs, including potential costs associated with applications for exemptive relief and legal challenges to bids.

Text of the Rule

The text of the Rule follows after Appendix A.

October 21, 2005.

APPENDIX A

SUMMARY OF WRITTEN COMMENTS RECEIVED AND RESPONSES OF THE COMMISSION

The Commission received submissions from Osler, Hoskin & Harcourt LLP and Paul G. Findlay. The Commission thanks the commenters for taking the time to express their views.

Comment: One commenter agreed that the *BNY Capital Corp.* decision has created some uncertainty regarding the scope of the financing requirement under section 96 of the Act, and that it is helpful for the Commission to provide clarification that some conditionality in bid financing arrangements is acceptable.

Response: This comment reflects the informal feedback Commission staff has received generally from the legal community.

Comment: Both commenters were concerned that the remoteness test would prohibit certain bid conditions that were also financing conditions, such as a condition that a minimum number of securities be tendered to the bid. To address this concern, one commenter recommended that the remoteness test apply only to financing conditions that do not mirror bid conditions. The other commenter suggested inserting the words "if the conditions to the bid are satisfied" after "remote that".

Response: To provide clarification that the Rule is only concerned with the circumstance where a bid could fail because of the existence of a financing condition that is not satisfied, the Commission has substantially adopted the second commenter's suggestion and inserted the words "if the conditions of the bid are satisfied or waived" after "remote that". In light of this change, the word "solely" has been removed as not being necessary. The Commission is reluctant to confine the application of the Rule in the manner suggested by the first commenter. Where a financing condition mirrors a bid condition, the possibility exists that the condition could be waived as a bid condition but not as a financing condition. Although this scenario can be prevented in the financing agreement, it should not escape the ambit of the Rule.

Comment: One commenter said that financing arrangements that are in place when a bid is made are typically based on a commitment letter from the lender which contemplates the entering into of a more formal, binding credit agreement that will not be finalized until after the bid is launched. The commenter suggested that the Rule include a statement to the effect that such a commitment letter constitutes "adequate arrangements" for the purposes of section 96 of the Act.

Response: The Commission would not consider a commitment letter to constitute "adequate arrangements" unless, when the bid is launched, the bidder is reasonably confident that the bid will not fail for lack of financing. This is the case presently and would continue to be the case after the Rule comes into effect. The Commission does not believe that the Rule as proposed would interfere with the current practice regarding commitment letters.

Comment: One commenter was concerned that the Rule as drafted seemed to suggest that there could be conditions in the financing arrangements that are not reflected as conditions of the bid, "so long as they are remote". It was not clear to the commenter why that should be allowed, unless the conditions were entirely within the control of the bidder.

Response: The Commission does not wish to place restrictions on financing conditions, as long as there is compliance with the Rule. Financing conditions that are not bid conditions may include, for example, finalization of financing documentation.

ONTARIO SECURITIES COMMISSION RULE 62-503
FINANCING OF TAKE-OVER BIDS AND ISSUER BIDS

1.1 Financing of Bid - For the purposes of section 96 of the Act, the financing arrangements required to be made by the offeror prior to a bid may be subject to conditions if, at the time the bid is commenced, the offeror reasonably believes the possibility to be remote that, if the conditions of the bid are satisfied or waived, the offeror will be unable to pay for securities deposited under the bid due to a financing condition not being satisfied.

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Chapter 6

Request for Comments

6.1.1 CSA Request for Comment for Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* and Adoption of Local Prospectus and Registration Exemptions for Certain Capital Accumulation Plans

Introduction and Background

We, the members of the Canadian Securities Administrators (CSA or we), are each adopting in the manner described in this notice, a registration and prospectus exemption for certain capital accumulation plans (the CAP exemption). This CAP exemption implements certain parts of the Guidelines for Capital Accumulation Plans (the Guidelines), which were developed by the Joint Forum of Financial Market Regulators. The Guidelines and the CAP exemption apply to certain tax assisted capital accumulation plans such as defined contribution pension plans and group registered retirement savings plans where plan members make investment choices.

We published the CAP exemption for comment on May 28, 2004 and received 9 comment letters. The CSA thanks each of the commenters for those comments, which are summarized in Appendix A together with our responses.

To provide industry, plan sponsors and members with the benefit of the CAP exemption more quickly, each CSA member is adopting the CAP exemption locally. In most provinces, the CAP exemption is being adopted in the form of a blanket exemption from the dealer registration and the prospectus requirements for certain trades in mutual fund securities.

In Ontario and Quebec, the CAP exemption will not be adopted in the form of a blanket exemption, but will be used as a template of standard conditions and terms of relief for applicants who apply for an exemption from the registration or prospectus requirements in the *Securities Act* (Ontario) and in Quebec under the *Loi sur les valeurs mobilières* (Québec) and the *Loi sur la distribution des produits et services financiers* (Québec) in connection with trades in mutual fund securities to a CAP.

Appendix B includes the text of the blanket exemption or policy each jurisdiction, except Ontario and Quebec, is adopting effective October 21, 2005. Ontario and Quebec will use this text as a standard template for future applications for exemptive relief in Ontario and Quebec.

Publication for comment of proposed amendment to National Instrument 45-106 *Prospectus and Registration Exemptions*

In this Notice, we are also seeking public comment on the CAP exemption as part of a national instrument. You will find the version of the CAP exemption we are publishing as an amendment to National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) in Appendix C. We will not have a separate national instrument for the CAP exemption and instead will incorporate the CAP exemption into NI 45-106, which came into force on September 14, 2005.

Following this 90 day comment period, if all required government approvals are received, the CAP exemption will be implemented as a

- rule in British Columbia, Alberta, Manitoba, Ontario, Prince Edward Island, Nova Scotia, New Brunswick and Newfoundland and Labrador,
- regulation in Quebec,
- commission regulation in Saskatchewan, and
- a policy or code in the Northwest Territories, Nunavut and Yukon.

Summary of the CAP exemption

The CAP exemption:

- applies only to mutual fund securities

- harmonizes the regulatory treatment of mutual funds and segregated funds as investments within a capital accumulation plan

- enables plan members to receive information that is appropriate for them, about the mutual funds they can acquire through the plan

- requires plan sponsors (or someone they have contracted with to provide this service) to provide certain information, tools and documents to plan members to enable informed decision making

- exempts mutual funds from the prospectus requirements for mutual funds sold to members of certain capital accumulation plans, provided that the funds comply with certain investment restrictions and other conditions.

Summary of Responses to CSA Notice 81-405 Request for Comment on Proposed Exemptions for Certain Capital Accumulation Plans

A complete summary of comments we received from our publication of the CAP exemption in May 2004 and our responses to those comments are in Appendix A. The key comments, and the changes we are making to respond to them, are:

- Commenters told us that to be truly harmonized, adopting the CAP exemption locally through blanket exemption orders, was not truly effective because the Ontario Securities Commission is unable to adopt the exemption in the same manner.

  In response to this comment, we are publishing the CAP exemption for comment as an amendment to NI 45-106.

- Commenters asked us to expand the exemption to include all capital accumulation plans and not just tax-assisted capital accumulation plans and to broaden the investment restrictions to include investments permitted by pension and insurance regulation.

  The CSA believe it is appropriate to limit the applicability of the CAP exemption to the types of capital accumulation plans the Guidelines address. There are some other existing securities exemptions that issuers, service providers and sponsors may be able to rely on for other types of plans or for certain securities in those plans.

- Commenters asked us to incorporate the Guidelines into the CAP exemption.

  The CSA developed the CAP exemption so that it incorporates only the elements of the Guidelines that address similar investor protection and market efficiency issues as those addressed by securities regulation and that would provide an adequate substitute for the benefits a plan member would receive from dealing with a registrant, and obtaining the disclosure in a prospectus. While we support the Guidelines in their entirety, many elements of those guidelines do not directly relate to these elements of securities regulation. To impose conditions that are not necessary would, we believe, make compliance more difficult, and reduce the effectiveness of the exemption.

- Commenters asked us not to impose the annual distribution report we had proposed, because it would be difficult to obtain the information in the format we had proposed, and the disclosure wasn't necessary to ensure compliance with the exemption.

  We adopted these comments, and instead of the proposed distribution report, we will require mutual fund companies to provide a one-time only notice in which the mutual fund company will advise each securities regulator where the mutual fund company expects to use the CAP exemption, that they intend to rely on the CAP exemption.

- Commenters said the CSA needed to clarify what types of securities the CAP exemption applied to, and questioned whether it was sufficiently broad to exempt products that are currently found in CAPs.

  The exemption is available for mutual funds and not for other securities generally. Securities laws in most provinces currently provide exemptions for distributions of securities in a number of other circumstances. Nothing in this CAP exemption, or the Guidelines, preclude a plan sponsor or service provider from using any of the other exemptions if they meet the requirements of that exemption.

  Some commenters also asked whether pooled funds that do not currently comply with NI 81-102 *Mutual Funds* must start to do so. The CAP exemption does not impose any mandatory requirements on any issuer, sponsor, or service provider. Compliance with an exemption is always optional. An issuer could comply with the prospectus requirements or use another exemption. If another exemption is not available, and the issuer does not want to incur the expense of an offering under a prospectus, the CAP exemption provides another option for them. No service provider need change their behaviour if they can otherwise comply with securities laws and offer their products to or within a CAP.

- Some commenters questioned why we would not permit a mutual fund to comply with the investment restrictions in any of insurance, pension, or mutual fund regulation, and told us that they did not know how they could comply with the investment restrictions in the exemption which require compliance with the investment restrictions in NI 81-102 *Mutual Funds.*

  We have established a Joint Forum working group to consider the differences in the investment restrictions between the pension, insurance and mutual fund regulatory requirements. Because this exemption is targeted at mutual funds, and there are established, well-understood investment restrictions for mutual funds, we believe it is appropriate to require mutual funds that want an exemption from the prospectus and registration requirement, to comply with these established investment restrictions. Depending on the findings of the Joint Forum working group, we may consider expanding the permissible investments in the future.

Summary of Changes to the CAP Exemption

The key changes we've made to the CAP exemption since the May 28, 2004 publication are that we:

- eliminated the distribution report, as proposed, and replaced it with a notice that a mutual fund must file advising us that it intends to rely on the CAP exemption

- clarified that for the purposes of the CAP exemption, a plan sponsor includes a person that provides services to a plan sponsor (a service provider)

- more closely aligned the requirements for plan sponsors to provide members with information about fees, with the requirements in the Guidelines for fee disclosure

- set out the timing requirements for the plan sponsor to provide certain information to plan members

Related Amendments

In response to specific questions raised by the Quebec securities regulator, and the discussion raised by the Nova Scotia and Saskatchewan securities regulators in the Notice we published on May 28, 2004, we considered whether we needed to make any changes to the exemption to impose any of the requirements normally associated with an offering memorandum, including considering whether we needed to provide any additional rights of rescission.

We concluded that the Guidelines and the CAP exemption as we are publishing it, provide adequate safeguards to plan members. In addition, the CSA believes that should a mutual fund company that has a prospectus for a particular mutual fund, use that prospectus as part of its sales process for that fund, plan members would be acquiring those mutual fund securities under that prospectus and would have the remedies provided under securities legislation for investors who acquire securities under a prospectus.

The Alberta Securities Commission will be eliminating certain capital accumulation plan exemptions found in s.68 and 123 of the ASC Rules (General) and ASC Policy 5.5 *Capital Accumulation Plans.* For further discussion about these exemptions please see the Summary of Comments and Responses.

The Ontario Securities Commission will retain the substance of OSC Rule 32-503 *Registration and Prospectus Exemption for Trades by Financial Intermediaries in Mutual Fund Securities to Corporate Sponsored Plans* (Rule 32-503) because the exemption in that Rule is directed at a different target audience. That Rule applies to trades by financial intermediaries (for example banks and trust companies) of mutual fund securities to CAPs under narrower conditions. The Ontario Securities Commission has revoked Rule 32-503 and incorporated its substance into revised OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions,* which came into effect on September 14, 2005.

Local Amendments

Appendix D to this Notice includes the proposed related amendments to local securities legislation in the jurisdictions that are making local amendments or additional information required in certain jurisdictions. Not all CSA jurisdictions will publish this appendix.

Request for Comments

We request your comments on the proposed amendments to NI 45-106 to include the CAP exemption.

How to Provide your Comments

Please provide your comments by **January 19, 2006**, by addressing your submission to the securities regulatory authorities listed below:

Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Office of the attorney general, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

Deliver your comments **only** to the address that follows. Your comments will be forwarded to the remaining CSA member jurisdictions.

Noreen Bent
Manager and Senior Legal Counsel, Legal and Market Initiatives
British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, BC Canada V7Y 1L2
e-mail: nbent@bcsc.bc.ca

and to

Anne-Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
800, square Victoria, 22nd floor
P.O. Box 246, Tour de la Bourse
Montreal, Quebec
H4Z 1G3
e-mail: consultation-en-cours@lautorité.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

Questions

Please refer your questions to any of:

Noreen Bent
Manager and Senior Legal Counsel, Corporate Finance – Legal Services
British Columbia Securities Commission
(604) 899-6741 or (800) 373-6393 (in B.C. and Alberta)
e-mail: nbent@bcsc.bc.ca

Pierre Martin
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Autorité des marches financiers
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Susan Powell
Legal Counsel
New Brunswick Securities Commission
(506) 643-7697
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Shirley Lee
Securities Analyst
Nova Scotia Securities Commission
(902) 424-5441
e-mail: leesp@gov.ns.ca

The text of the local exemption and the proposed amendments to NI 45-106 documents either follows or can be found elsewhere on a CSA member website.

October 21, 2005

APPENDIX A

SUMMARY OF COMMENTS AND RESPONSES
CSA REQUEST FOR COMMENT 81-405 – PROPOSED PROSPECTUS AND REGISTRATION EXEMPTION FOR TRADES IN CERTAIN CAPITAL ACCUMULATION PLANS

List of Commenters

The University of British Columbia Faculty Pension Plan
Desjardins Financial Security
Phillips, Hager & North
University of Western Ontario
Canadian Association of Retired Persons
Morneau Sobeco
GRS Securities Inc
The Investment Funds Institute of Canada
Association of Canadian Pension Management/Pension Investment Association of Canada

In this summary of comments and responses, we grouped similar comments together and have provided a single response. We categorized these comments into broad themes and described these themes in the headings to the comments. Following our discussion of these themes, we set out the comments we received on our specific questions, together with our responses.

Overall support for the proposed exemption

Commenters supported the CSA in our efforts to harmonize the regulatory regimes between mutual funds and segregated funds.

Preference for a national rule

A number of commenters said that while they supported the proposed *Registration and Prospectus Exemption for Trades in Certain Capital Accumulation Plans* (the proposed exemption), they wanted it to take the form of a national rule, adopted by all members of the CSA. They were concerned that implementing the proposed exemption separately in each jurisdiction might result in different treatment of CAPs in different provinces, and would not be a cost-effective response to participants in the CAP marketplace. Implementing the proposed exemption separately might also mean that members in different provinces in the same CAP are treated differently.

One commenter suggested that the OSC implement the proposed exemption in Ontario as a local rule either by making appropriate amendments to the existing corporate-sponsored plan rule (OSC Rule 32-503) or by incorporating the CAP exemptions into the exempt distribution rule (OSC Rule 45-501). This commenter is of the view that this would be a more efficient and cost-effective solution for both CAP industry participants and the OSC than implementation through *ad hoc* discretionary relief. This commenter also suggested the OSC have only one rule (the proposed exemption) rather than retaining Rule 32-503, leaving one rule to provide all necessary exemptions for CAPs. Other commenters asked the OSC to clarify who could or should apply for a registration or a prospectus exemption, whether the applicant could apply only for a particular plan or multiple plans, and how an applicant would determine the application fee.

Another commenter said that requiring CAPs to apply for an exemption in Ontario continues the existence of inequality between the securities and insurance regulatory regimes.

Other commenters encouraged Alberta and Ontario to retain their existing exemptions, because there may be industry participants who are relying on them who may not want to, or be able to, rely on the proposed exemption. They noted that the existing exemption in Alberta provides relief for some additional securities that may be in a CAP.

Response

Making the exemption a rule

Using a variety of methods to introduce the proposed exemption enables CSA members to implement it more quickly then by engaging in the formal rule-making process. While this process can be completed quickly in some provinces (such as Alberta), in others (such as British Columbia) complying with the requirements to make the proposed exemption a rule would significantly delay its implementation. To make the proposed exemption available more quickly, the CSA intend to incorporate the proposed exemption into National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106).

How the Ontario Securities Commission will address the exemption

The Ontario Securities Commission notes that its existing capital accumulation plan rule, OSC Rule 32-503 *Registration and Prospectus Exemption for Trades by Financial Intermediaries in Mutual Fund Securities to Corporate Sponsored Plans* has a number of requirements that do not apply in the proposed exemption. Since the OSC'S existing rule and the proposed exemption address two different situations, the OSC intends to keep its existing rule, and consider discretionary relief applications for CAP plans on the basis outlined in the proposed exemption.

The OSC expects to adopt the proposed exemption as part of NI 45-106 together with the rest of the CSA.

Harmonize other aspects of mutual fund and segregated fund regulation

Some commenters submitted that we could enhance the efficiency of the CAP investment market if there were true harmonization across all distribution channels for investments. They said that the proposed exemption did not harmonize treatment of mutual funds, segregated funds and different types of plans in a number of ways including:

(a) investment restrictions remain different between insurance regulation, pension regulation and securities regulation for mutual funds

(b) limiting relief to tax-assisted plans

(c) not permitting mutual funds to directly use pooled funds that do not comply with the investment restrictions of National Instrument 81-102 *Mutual Funds* (NI 81-102)

(d) rights of rescission and damages that differ between segregated funds and mutual funds

(e) imposing offering memorandum requirements for documents in some provinces

Commenters urged us to harmonize and achieve a more comprehensive information disclosure system regardless of the underlying investment(s) made available under the plan.

Response

The proposed exemption was intended only to address inequalities in regulatory treatment for certain types of investment products. Most members of the CSA have other exemptions that, for example, permit employers to offer stock purchase plans that issuers and plan sponsors rely on. Other issues, such as a lack of harmonization between the investment restrictions between insurance products, pension funds, and mutual funds, are not part of our mandate, but are being considered by the Joint Forum of Financial Market Regulators as a separate project.

Some of these comments are also addressed more specifically in responses elsewhere in this summary.

What securities does the exemption apply to?

One commenter asked us to revise the terms of the proposed exemption to clarify whether it would apply to funds that were redeemable only under restricted circumstances, such as termination of employment or retirement, or alternatively, to publish or provide written guidance as to our interpretation of the definition of "mutual fund" and, in particular, the phrase "on demand or within a specified period after demand." Other commenters questioned whether the proposed exemption would apply to pooled fund.

Response

The proposed exemption is available to all mutual funds. Securities legislation in most provinces provides a definition of mutual fund. Any fund that meets that definition would be eligible to use the proposed exemption. By examining its particular attributes, a fund would need to assess whether or not it meets the definition of mutual fund.

The CSA are not expanding the proposed exemption beyond mutual funds at this time. A fund that did not meet the requirements of the definition, but has similar attributes to a mutual fund should consider whether it might have other exemptions available to it, and if not, could apply for an exemption based on their specific facts.

The proposed exemption does not prohibit using pooled funds as an investment alternative in a CAP, provided that the pooled fund (if it is a mutual fund) either has another exemption available to is, or it meets the conditions set out in the proposed exemption. For example, in order to be eligible to be used as an investment in a CAP, a condition of the exemption is that pooled fund would need to comply with the investment restrictions in NI 81-102. If the pooled fund has another exemption that it

is currently relying on, then the proposed exemption will not mandate that those pooled funds stop using those other exemptions. A mutual fund is not required to use the exemption if it can otherwise distribute its securities in compliance with securities legislation.

Expanding the relief to other plans

Commenters suggested expanding the proposed exemption to apply to non-registered and after-tax, group saving and investment plans, provided that sponsors administer such plans in accordance with the *Guidelines for Capital Accumulation Plans* (the Guidelines). They said that we would not achieve harmonization if the dealer registration exemption were limited to tax-assisted plans because the same service provider would still need to be registered to provide services for an after-tax plan of the same sponsor. They made similar observations about the prospectus exemption.

Response

The Guidelines apply only to tax-assisted capital accumulation plans. We believe it is appropriate to limit the proposed exemption to these types of plans to be consistent with the scope of the Guidelines. There are a number of other existing registration and prospectus exemptions that certain other plans can continue to rely on.

Reporting requirement

Those who commented on the proposed requirement that a mutual fund file an annual report with securities regulators disclosing information about the trades to a CAP, were opposed to completing this report. They explained that they did not understand its purpose, it would be costly, and it was not something that segregated funds were required to do under insurance legislation. They also indicated that this information would be hard to compile, and that existing record-keepers may not have this data available.

Response

Securities regulators require that issuers disclose their trades in securities under a number of other exemptions. The CSA considered imposing this requirement in order to monitor who was using the proposed exemption, and how. Annual reporting would have help us assess the effectiveness of the proposed exemption, the extent to which the exemption is being used in each jurisdiction, and whether its use increases over time.

However, after considering the comments, the CSA have removed the reporting requirement from the proposed exemption and have decided to obtain this information through a notice instead. Under this notice requirement, a mutual fund manager that wishes to use the proposed exemption to distribute securities of funds it manages would have to file a notice in the prescribed form in each jurisdiction where they will offer their funds.

Dealing with former employees and their spouses

One commenter said that the proposed exemption does not adequately address the circumstance where a CAP participant ceases to be an employee of the plan sponsor even though the former employee member's assets are no longer technically held in the CAP. The commenter believes that the proposed exemption should still be available where the former employee member has the same investment options as are offered to the CAP, to allow the former employee to make investments pursuant to pre-authorized purchase plans and to switch among investment options.

Response

The proposed exemption defines "member" to include a former employee, and his or her spouse and is therefore available to these individuals.

Incorporating the Guidelines

Some commenters indicated that instead of imposing separate requirements for the proposed exemption, we should incorporate the Guidelines by reference into the exemption or should refer to the Guidelines without repeating or changing their provisions.

Response

While the CSA supports the practices described in the Guidelines, not all parts of this document are relevant to securities regulation. Since a person or company will not be able to rely on the exemption unless they comply with all of the conditions of the proposed exemption, we should only impose the requirements that are necessary to ensure that plan members receive the information and assistance necessary for them to make an informed investment decision for their plan. This is the purpose of the conditions set out in the proposed exemption.

Increased role for plan members

One commenter suggested that the decision regarding the choice of mutual funds or mutual fund company(ies) be made by a committee consisting of an equal number of representatives from the "sponsoring company" and representatives selected by the investors, so that the interests of both major participants be protected and harmonized.

Response

The CSA agrees that it is desirable to improve informed decision-making. We encourage plan members to discuss this suggestion with their plan sponsor. However, while this may assist in plan governance, we do not believe that imposing such a requirement is necessary for effective securities regulation. We note that nothing in either the Guidelines or the proposed exemption would restrict plan sponsors from involving plan members in a variety of ways.

Plan members should receive information from both the plan sponsor and the mutual fund company

One commenter recommended that investors receive information from both the plan sponsor as the mutual fund company(ies). In this way, investors will be afforded the broadest and deepest information and protection.

Response

We agree that it is important that investors receive useful and relevant information about their investment choices. While mutual fund companies, through a fund's prospectus and other disclosure documents provide comprehensive, and largely well-written information about a mutual fund, research has indicated that many mutual fund investors still find this information difficult to understand. The proposed exemption would enable plan members to receive information that is more directed at helping them make an investment decision.

The CSA also note that the exemption we are adopting specifically permits a service provider (as defined in the exemption) to provide members with most of the information the plan sponsor must provide, on behalf of the plan sponsor.

Impact on other national instruments and policies

One commenter said that there is a conflict between the monthly valuation of investments requirement in the Guidelines and the 10-business days redemption requirement that they note is in 81-102. Another commenter indicated that the proposed rule is silent on the impact on other national instruments and policies that govern the sale of mutual funds.

Response

The CSA note that any requirements to redeem within a certain period of time that are imposed by NI 81-102 apply only to mutual funds that are regulated by that instrument. Pooled funds that are otherwise not required to comply with NI 81-102 need not follow any other requirements of that instrument, except those specifically required by the proposed exemption. The CSA note that that the redemption requirements in NI 81-102 do not impose a 10-day redemption period and refers readers to Part 10 of NI 81-102 for a discussion of the redemption requirements for mutual funds that are subject to NI 81-102.

The CSA note that the proposed exemption is a registration and prospectus exemption only. Any other rules that currently apply to the mutual fund or the person doing the trade would continue to apply.

Drafting comments

Two commenters provide a number of drafting comments on the proposed exemption that addressed technical aspects of the proposed exemption.

Response

We have considered the drafting comments and have incorporated most of the commenters' suggestions.

Comments about Specific Questions

1. Does the proposed replacement by the Alberta Securities Commission with the proposed exemption improve the circumstances for those who trade or distribute mutual fund securities to a CAP when compared to the existing exemption in Alberta, or does it create concerns?

Comment

The only comment received on this question did not support repealing the existing Alberta exemption, since its application is broader than the proposed exemption.

Response

The Alberta Securities Commission will eliminate the capital accumulation plan exemptions found in sections 68 and 123 of the ASC Rules (General) (ASC CAP exemption) and ASC Policy 5.5 – *Capital Accumulation Plans*. Some of the securities described under the ASC CAP exemption are securities that are already exempt under other provisions. Other securities under the ASC CAP exemption are exempt if they are securities for which an insurance company or a trust company may invest in. The legislation that governs what insurance companies and trust companies may invest in has been broadened beyond what was originally intended for capital accumulation plans.

2. The CSA invite comments on whether plan sponsors should be able to aggregate fees when reporting to plan members. If the answer is yes, under what circumstances.

Comments

Most commenters said that we should permit plan sponsors to aggregate fees and expenses when reporting to plan members because it is what most segregated funds and conventional mutual funds do today, and that this approach would enhance comparability of funds for plan members. Another suggested that we should consider the CFA presentation standards.

Some of these commenters indicated that certain fees should not be aggregated. These fees included fees for discretionary transactions such as withdrawal and transfer fees, fees associated with the use of an investment or educational tool, record keeping fees and administration fees. True harmonization would provide the CAP administrator with the ability to report fees on a basis similar to the insurance industry.

One commenter opposed aggregating expenses because other regulatory initiatives, such as proposed National Instrument 81-106 *Investment Fund Continuous Disclosure,* require detailed line item disclosure of mutual fund expenses and complete transparency regarding costs was recommended by the proposed OSC Fair Dealing Model.

Another commenter said that the costs from both the mutual fund companies (such as MERs) and from the “sponsoring companies” should be itemized - and distinguished because the ability of “sponsoring companies” to aggregate their own administrative or other costs along with other fees could lead to abuse. Other commenters indicated that CAP members are most concerned with the cost of participating in the plan, whether it would be an administrative cost or an investment management cost.

Response

We have clarified the terms of the proposed exemption in order to make the fee disclosure that plan sponsors must provide to members more consistent with that required in the Guidelines. We believe that this disclosure is consistent with existing requirements found in NI 81-102 and will provide plan members with a sound base to determine what the direct and indirect fees are for.

3. Staff in Quebec have concerns about the impact of the proposed exemption on the protection generally afforded to investors under securities legislation. For example, the Quebec Securities Act provides for different types of recourse that normally flow from the dealer registration and prospectus requirements under the Act. This includes recourse in damages for misrepresentation in a prospectus. This recourse, in certain cases, may no longer be applicable for members that acquired mutual fund securities through a capital accumulation plan. In these circumstances, members would only be able to rely on the general recourses available under the Civil Code of Quebec.

In addition, members of a capital accumulation plan that acquire securities under the proposed prospectus exemption would not have certain other rights, such as the right of withdrawal from a purchase of securities pursuant to a prospectus.

Finally, other mechanisms that investors may use when there are issues of dealer misconduct such as mediation and investor protection funds, in some instances may also not be available to members of capital accumulation plans. The CSA requested comment on these investor protection issues.

Comments

One commenter said that the additional investor protection measures that Quebec is asking about should not be of material concern in the CAP context as plan sponsors will have specified obligations under the Guidelines with respect to the selection of the funds to be available to the CAP members subject to on-going monitoring. If Quebec insists that certain recourses that would normally flow from the dealer registration and prospectus requirements continue to be available, the same remedies should be expressly imposed on segregated funds to harmonize the treatment of mutual funds and segregated funds.

Two other commenters indicated that the Guidelines provide sufficient provisions for the protection of plan members. One commenter added that that members participating in the group plans are unlikely to require a 48-hour withdrawal right.

Response

We interpret existing securities laws to mean that if a prospectus is delivered to a plan member, the member will be relying on that prospectus when deciding to buy the particular mutual fund. In this circumstance plan members who receive a prospectus, and retail investors who receive that same prospectus, will be treated the same under securities laws and more particularly, will have the same statutory rights. In other cases, the CSA note that commenters are generally of the view that the protection normally afforded to investors through securities legislation is not necessary, given the structure of CAPs and the obligations imposed on CAP sponsors in the Guidelines.

In Saskatchewan and Nova Scotia, where some of the documentation provided under the exemption may constitute an offering memorandum under their legislation, the local exemption they are each adopting in their respective blanket orders, provides specific exemptions from these requirements, and the rights of action that investors would have if the disclosure were an offering memorandum.

It is our understanding that this will harmonize Saskatchewan and Nova Scotia with the rights of action in the other jurisdictions who are adopting this exemption.

In addition, when this exemption is incorporated into NI 45-106 *Prospectus and Registration Exemptions*, in certain provinces there may be additional recourses that investors can use.

APPENDIX B

REGISTRATION AND PROSPECTUS EXEMPTION FOR CERTAIN CAPITAL ACCUMULATION PLANS

PART 1 DEFINITIONS

"**capital accumulation plan**" means a tax assisted investment or savings plan, including a defined contribution registered pension plan, a group registered retirement savings plan, a group registered education savings plan, or a deferred profit sharing plan, established by a plan sponsor that permits a member to make investment decisions among two or more investment options offered within the plan and in Québec and Manitoba, includes a simplified pension plan.

"**member**" means a current or former employee of an employer, or a person who belongs, or did belong to a trade union or association, or

(a) his or her spouse,

(b) a trustee, custodian or administrator who is acting on his or her behalf, or for his or her benefit, or on behalf of, or for the benefit of, his or her spouse, or

(c) his or her holding entity, or a holding entity of his or her spouse,

that has assets in a capital accumulation plan, and includes a person that is eligible to participate in a capital accumulation plan.

"**plan sponsor**" means an employer, trustee, trade union or association or a combination of them that establishes a capital accumulation plan, and includes a service provider to the extent that the plan sponsor has delegated its responsibilities to the service provider.

"**service provider**" means a person or company that provides services to a plan sponsor to design, establish, or operate a capital accumulation plan.

PART 2 EXEMPTIONS

2.1 The dealer registration requirement does not apply to a trade by a person or company in a security of a mutual fund to a capital accumulation plan, or to a member of a capital accumulation plan as part of the member's participation in the capital accumulation plan, if the following conditions are met:

(a) the plan sponsor selects the mutual funds that members will be able to invest in under the capital accumulation plan,

(b) the plan sponsor establishes a policy, and provides members with a copy of the policy and any amendments to it, describing what happens if a member does not make an investment decision,

(c) in addition to any other information that the plan sponsor believes is reasonably necessary for a member to make an investment decision within the capital accumulation plan, and unless that information has previously been provided, the plan sponsor provides the member with the following information about each mutual fund the member may invest in,

(i) the name of the mutual fund,

(ii) the name of the manager of the mutual fund and its portfolio adviser,

(iii) the fundamental investment objective of the mutual fund,

(iv) the investment strategies of the mutual fund or the types of investments the mutual fund may hold,

(v) a description of the risks associated with investing in the mutual fund,

(vi) where a member can obtain more information about each mutual fund's portfolio holdings,

(vii) where a member can obtain more information generally about each mutual fund, including any continuous disclosure, and

(viii) whether the mutual fund is considered foreign property for income tax purposes, and if so, a summary of the implications of that status for a member who invested in that mutual fund,

(d) the plan sponsor provides members with a description and amount of any fees, expenses and penalties relating to the capital accumulation plan that are borne by the members, including:

(i) any costs that must be paid when the mutual fund is bought or sold,

(ii) costs associated with accessing or using any of the investment information, decision-making tools or investment advice provided by the plan sponsor,

(iii) mutual fund management fees,

(iv) mutual fund operating expenses,

(v) record keeping fees,

(vi) any costs for transferring among investment options, including penalties, book and market value adjustments and tax consequences,

(vii) account fees, and

(viii) fees for services provided by service providers

provided that the plan sponsor may disclose the fees, penalties and expenses on an aggregate basis, if the plan sponsor discloses the nature of the fees, expenses and penalties, and the aggregated fees do not include fees that arise because of a choice that is specific to a particular member.

(e) the plan sponsor has within the past year, provided the members with performance information about each mutual fund the members may invest in, including,

(i) the name of the mutual fund for which the performance is being reported,

(ii) the performance of the mutual fund, including historical performance for one, three, five and 10 years if available,

(iii) a performance calculation that is net of investment management fees and mutual fund expenses,

(iv) the method used to calculate the mutual fund's performance return calculation, and information about where a member could obtain a more detailed explanation of that method,

(v) the name and description of a broad-based securities market index, selected in accordance with National Instrument 81-106 *Investment Fund Continuous Disclosure,* for the mutual fund, and corresponding performance information for that index, and

(vi) a statement that past performance of the mutual fund is not necessarily an indication of future performance.

(f) the plan sponsor has, within the past year, informed members if there were any changes in the choice of mutual funds that members could invest in and where there was a change, provided information about what members needed to do to change their investment decision, or make a new investment,

(g) the plan sponsor provides members with investment decision-making tools that the plan sponsor reasonably believes are sufficient to assist them in making an investment decision within the capital accumulation plan,

(h) the plan sponsor must provide the information required by paragraphs 2.1(b), (c), (d) and (g) prior to the member making an investment decision under the capital accumulation plan, and

(i) if the plan sponsor makes investment advice from a registrant available to members, the plan sponsor must provide members with information about how they can contact the registrant.

2.2 The prospectus requirement does not apply to a distribution of a security of a mutual fund in the circumstances set out in section 2.1, if

(a) the conditions in section 2.1 have been complied with, and

(b) the mutual fund complies with Part 2 of National Instrument 81-102 *Mutual Funds*.

PART 3 FILING REQUIREMENTS

3.1 Before the first time a mutual fund relies on the exemption in section 2.2, the mutual fund must file a notice in the form found in Appendix A in each jurisdiction in which the mutual fund expects to distribute its securities.

PART 4 EXEMPTION FROM OFFERING MEMORANDUM REQUIREMENTS IN CERTAIN PROVINCES[1]

4.1 In Nova Scotia, the Nova Scotia Securities Commission specifies pursuant to subclause 2(1)(ab)(iii) of the *Securities Act* (Nova Scotia) that the documents containing the information described in paragraphs 2.1(c) and (e) shall not constitute an offering memorandum within the meaning of the *Securities Act* (Nova Scotia).

4.2 In Saskatchewan:

(1) the provisions of subsections 81(3) and (3.1) of *The Securities Act, 1988* (Saskatchewan) do not apply to any documents containing the information described in paragraphs 2.1(c) and (e); and

(2) the provisions of section 138 of *The Securities Act, 1988* (Saskatchewan) do not apply to any person or company with respect to the content of the documents containing the information described in paragraphs 2.1(c) and (e).

[1] In Ontario, an exemption from the offering memorandum requirements is not necessary because the offering memorandum liability provisions in s. 130.1 of the *Securities Act* (Ontario) are only applicable if a rule specifies that s. 130.1 applies.

Appendix A

Notice of Intention to Rely on Exemption in s. 2.2

Issuer information

1. State the full name, address and telephone number of the mutual fund that distributed or intends to distribute the security.

2. State whether the mutual fund is or is not a reporting issuer and, if reporting, each of the jurisdictions in which it is reporting.

3. List each jurisdiction where the mutual fund is, or intends to distribute mutual fund securities in reliance on the exemption for capital accumulation plans and deliver the notice to the relevant securities regulatory authority listed in the attached Schedule.

Certificate

On behalf of the mutual fund, I certify that the statements made in this report are true.

Date: ____

____
Name of mutual fund (please print)

____
Print name and position of person signing

____
e-mail address of person signing

____
Signature

Schedule to Appendix A

Instruction:

Prior to relying on the exemption, you must file this notice with the securities regulatory authority in each jurisdiction in which the mutual fund is currently providing services to a capital accumulation plan, or where they intend to provide services to a capital accumulation plan. If you subsequently intend to provide services to a capital accumulation plan located in a new province, you must file a notice in that province.

Notice - Collection and use of personal information

The securities regulatory authorities collect the personal information required under this notice for the purposes of the administration and enforcement of the securities legislation. Freedom of information legislation in certain jurisdictions may require the securities regulatory authority to make this information available if requested. As a result, the public may be able to obtain access to the information.

If you have any questions about the collection and use of this information, contact the securities regulatory authorities in the jurisdictions where the mutual fund files this form, at the address(es) set out below.

British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, BC V7Y 1L2
Telephone: (604) 899-6854
Toll free in British Columbia and Alberta 1-800-373-6393
Facsimile: (604) 899-6506
Attention: Exempt Distributions

Alberta Securities Commission
4th Floor, 300 – 5th Avenue SW
Calgary, AB T2P 3C4
Telephone: (403) 297-6454
Facsimile: (403) 297-6156

Saskatchewan Financial Services Commission
6th Floor 1919 Saskatchewan Drive
Regina, SK S4P 3V7
Telephone: (306) 787-5879
Facsimile: (306) 787-5899

The Manitoba Securities Commission
1130 – 405 Broadway Avenue
Winnipeg, MB R3C 3L6
Telephone: (204) 945-2548
Facsimile: (204) 945-0330

Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, ON M5H 3S8
Telephone: (416) 593-3682
Facsimile: (416) 593-8252
Public official contact regarding indirect collection of information:
Administrative Assistant to the Director of Corporate Finance
Telephone: (416) 593-8086

Autorité des marchés financiers
800, Square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal (Québec) H4Z 1G3
Telephone: (514) 395-0337 or 1-877-525-0337
Facsimile: (514) 864-3681

New Brunswick Securities Commission
133 Prince William Street, Suite 606
Saint John, NB E2L 2B5
Telephone: (506) 658-3060
Facsimile: (506) 658-3059

Nova Scotia Securities Commission
2nd Floor, Joseph Howe Building
1690 Hollis Street
Halifax, NS B3J 3J9
Telephone: (902) 424-7768
Facsimile: (902) 424-4625

Prince Edward Island Securities Office
95 Rochford Street, P.O. Box 2000
Charlottetown, PE C1A 7N8
Telephone: (902) 368-4569
Facsimile: (902) 368-5283

Securities Commission of Newfoundland and Labrador
P.O. Box 8700 2nd Floor, West Block Confederation Building
St. John's, Newfoundland and Labrador A1B 4J6
Telephone: (709) 729-4189
Facsimile: (709) 729-6187

Government of Yukon
Department of Community Services
Law Centre, 3rd Floor
2130 Second Avenue
Whitehorse, YT Y1A 5H6
Telephone: (867) 667-5314
Facsimile: (867) 393-6251

Government of the Northwest Territories
Department of Justice
Securities Registry
1st Floor Stuart M. Hodgson Building
5009 – 49th Street
Yellowknife, NT X1A 2L9
Telephone: (867) 920-3318
Facsimile: (867) 873-0243

Government of Nunavut
Department of Justice
Legal Registries Division
P.O. Box 1000 – Station 570
1st Floor, Brown Building
Iqaluit, NU X0A 0H0
Telephone: (867) 975-6190
Facsimile: (867) 975-6194

APPENDIX C

AMENDMENTS TO NATIONAL INSTRUMENT 45-106 PROSPECTUS AND REGISTRATION EXEMPTIONS

1. National Instrument 45-106 *Prospectus and Registration Exemptions* is amended by this Instrument.

2. The following is added after section 2.42:

"**Capital accumulation plan**

2.42.1 (1) In this section,

"**capital accumulation plan**" means a tax assisted investment or savings plan, including a defined contribution registered pension plan, a group RRSP, a group registered education savings plan, or a deferred profit sharing plan, established by a plan sponsor that permits a member to make investment decisions among two or more investment options offered within the plan and in Québec and Manitoba, includes a simplified pension plan.

"**member**" means, for the purposes of the definition of capital accumulation plan, a current or former employee of an employer, or a person who belongs, or did belong to a trade union or association, or

(a) his or her spouse,

(b) a trustee, custodian or administrator who is acting on his or her behalf, or for his or her benefit, or on behalf of, or for the benefit of, his or her spouse, or

(c) his or her holding entity, or a holding entity of his or her spouse,

that has assets in a capital accumulation plan, and includes a person that is eligible to participate in a capital accumulation plan.

"**plan sponsor**" means, for the purposes of the definition of capital accumulation plan, an employer, trustee, trade union or association or a combination of them that establishes a capital accumulation plan, and includes a service provider to the extent that the plan sponsor has delegated its responsibilities to the service provider.

"**service provider**" means, a person that provides services to a plan sponsor to design, establish, or operate a capital accumulation plan."

(2) The dealer registration requirement does not apply to a trade by a person in a security of a mutual fund to a capital accumulation plan, or to a member of a capital accumulation plan as part of the member's participation in the capital accumulation plan, if the following conditions are met:

(a) the plan sponsor selects the mutual funds that members will be able to invest in under the capital accumulation plan,

(b) the plan sponsor establishes a policy, and provides members with a copy of the policy and any amendments to it, describing what happens if a member does not make an investment decision,

(c) in addition to any other information that the plan sponsor believes is reasonably necessary for a member to make an investment decision within the capital accumulation plan, and unless that information has previously been provided, the plan sponsor provides the member with the following information about each mutual fund the member may invest in,

(i) the name of the mutual fund,

(ii) the name of the manager of the mutual fund and its portfolio adviser,

(iii) the fundamental investment objective of the mutual fund,

(iv) the investment strategies of the mutual fund or the types of investments the mutual fund may hold,

(v) a description of the risks associated with investing in the mutual fund,

(vi) where a member can obtain more information about each mutual fund's portfolio holdings,

(vii) where a member can obtain more information generally about each mutual fund, including any continuous disclosure, and

(viii) whether the mutual fund is considered foreign property for income tax purposes, and if so, a summary of the implications of that status for a member who invested in that mutual fund,

(d) the plan sponsor provides members with a description and amount of any fees, expenses and penalties relating to the capital accumulation plan that are borne by the members, including:

(i) any costs that must be paid when the mutual fund is bought or sold,

(ii) costs associated with accessing or using any of the investment information, decision-making tools or investment advice provided by the plan sponsor,

(iii) mutual fund management fees,

(iv) mutual fund operating expenses,

(v) record keeping fees,

(vi) any costs for transferring among investment options, including penalties, book and market value adjustments and tax consequences,

(vii) account fees, and

(viii) fees for services provided by service providers

provided that the plan sponsor may disclose the fees, penalties and expenses on an aggregate basis, if the plan sponsor discloses the nature of the fees, expenses and penalties, and the aggregated fees do not include fees that arise because of a choice that is specific to a particular member.

(e) the plan sponsor has within the past year, provided the members with performance information about each mutual fund the members may invest in, including,

(i) the name of the mutual fund for which the performance is being reported,

(ii) the performance of the mutual fund, including historical performance for one, 3, 5 and 10 years if available,

(iii) a performance calculation that is net of investment management fees and mutual fund expenses,

(iv) the method used to calculate the mutual fund's performance return calculation, and information about where a member could obtain a more detailed explanation of that method,

(v) the name and description of a broad-based securities market index, selected in accordance with National Instrument 81-106 *Investment Fund Continuous Disclosure,* for the mutual fund, and corresponding performance information for that index, and

(vi) a statement that past performance of the mutual fund is not necessarily an indication of future performance.

(f) the plan sponsor has, within the past year, informed members if there were any changes in the choice of mutual funds that members could invest in and where there was a change, provided information about what members needed to do to change their investment decision, or make a new investment,

(g) the plan sponsor provides members with investment decision-making tools that the plan sponsor reasonably believes are sufficient to assist them in making an investment decision within the capital accumulation plan,

(h) the plan sponsor provides the information required by paragraphs (b), (c), (d) and (g) prior to the member making an investment decision under the capital accumulation plan, and

(i) if the plan sponsor makes investment advice from a registrant available to members, the plan sponsor must provide members with information about how they can contact the registrant.

(3) In Nova Scotia, the securities regulatory authority specifies pursuant to subclause 2(1) (ab)(iii) of the *Securities Act* (Nova Scotia) that documents containing the information described in paragraphs (2)(c) and (e) do not constitute an offering memorandum within the meaning of the *Securities Act* (Nova Scotia).

(4) The prospectus requirement does not apply to a distribution of a security of a mutual fund in the circumstances set out in subsection (2), if

(a) the conditions in subsection (2) have been complied with, and

(b) the mutual fund complies with Part 2 of National Instrument 81-102 *Mutual Funds*.".

3. Part 6 is amended by adding the following:

"**Notice required to rely on capital accumulation plan exemption**

6.5.1 Before the first time a mutual fund relies on the exemption in section 2.42.1, the mutual fund must file a notice in the form found in Appendix C in each jurisdiction in which the mutual fund expects to distribute its securities."

4. The following is added after Appendix B

"Appendix C

Notice of Intention to Rely on Exemption in s. 2.42.1

Issuer information

1. State the full name, address and telephone number of the mutual fund that distributed or intends to distribute the security.

2. State whether the mutual fund is or is not a reporting issuer and, if reporting, each of the jurisdictions in which it is reporting.

3. List each jurisdiction where the mutual fund is, or intends to distribute mutual fund securities in reliance on the exemption for capital accumulation plans and deliver the notice to the relevant securities regulatory authority listed in the attached Schedule.

Certificate

On behalf of the mutual fund, I certify that the statements made in this report are true.

Date: ____

____
Name of mutual fund (please print)

____
Print name and position of person signing

____
e-mail address of person signing

____
Signature

Schedule to Appendix C

Instruction:

Prior to relying on the exemption, you must file this notice with the securities regulatory authority in each jurisdiction in which the mutual fund is currently providing services to a capital accumulation plan, or where they intend to provide services to a capital accumulation plan. If you subsequently intend to provide services to a capital accumulation plan located in a new province, you must file a notice in that province.

Notice - Collection and use of personal information

The securities regulatory authorities collect the personal information required under this notice for the purposes of the administration and enforcement of the securities legislation. Freedom of information legislation in certain jurisdictions may require the securities regulatory authority to make this information available if requested. As a result, the public may be able to obtain access to the information.

If you have any questions about the collection and use of this information, contact the securities regulatory authorities in the jurisdictions where the mutual fund files this form, at the address(es) set out below.

British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, BC V7Y 1L2
Telephone: (604) 899-6854
Toll free in British Columbia and Alberta 1-800-373-6393
Facsimile: (604) 899-6506
Attention: Exempt Distributions

Alberta Securities Commission
4th Floor, 300 – 5th Avenue SW
Calgary, AB T2P 3C4
Telephone: (403) 297-6454
Facsimile: (403) 297-6156

Saskatchewan Financial Services Commission
6th Floor 1919 Saskatchewan Drive
Regina, SK S4P 3V7
Telephone: (306) 787-5879
Facsimile: (306) 787-5899

The Manitoba Securities Commission
1130 – 405 Broadway Avenue
Winnipeg, MB R3C 3L6
Telephone: (204) 945-2548
Facsimile: (204) 945-0330

Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, ON M5H 3S8
Telephone: (416) 593-3682
Facsimile: (416) 593-8252
Public official contact regarding indirect collection of information:
Administrative Assistant to the Director of Corporate Finance

Telephone: (416) 593-8086

Autorité des marchés financiers
800, Square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal (Québec) H4Z 1G3
Telephone: (514) 395-0337 or 1-877-525-0337
Facsimile: (514) 864-3681

New Brunswick Securities Commission
133 Prince William Street, Suite 606
Saint John, NB E2L 2B5
Telephone: (506) 658-3060
Facsimile: (506) 658-3059

Nova Scotia Securities Commission
2nd Floor, Joseph Howe Building
1690 Hollis Street
Halifax, NS B3J 3J9
Telephone: (902) 424-7768
Facsimile: (902) 424-4625

Prince Edward Island Securities Office
95 Rochford Street, P.O. Box 2000
Charlottetown, PE C1A 7N8
Telephone: (902) 368-4569
Facsimile: (902) 368-5283

Securities Commission of Newfoundland and Labrador
P.O. Box 8700
2nd Floor, West Block Confederation Building
St. John's, Newfoundland and Labrador A1B 4J6
Telephone: (709) 729-4189
Facsimile: (709) 729-6187

Government of Yukon
Department of Community Services
Law Centre, 3rd Floor
2130 Second Avenue
Whitehorse, YT Y1A 5H6
Telephone: (867) 667-5314
Facsimile: (867)

Government of the Northwest Territories
Department of Justice
Securities Registry
1st Floor Stuart M. Hodgson Building
5009 – 49th Street
Yellowknife, NT X1A 2L9
Telephone: (867) 920-3318
Facsimile: (867) 873-0243

Government of Nunavut
Department of Justice
Legal Registries Division
P.O. Box 1000 – Station 570
1st Floor, Brown Building
Iqaluit, NU X0A 0H0
Telephone: (867) 975-6190
Facsimile: (867) 975-6194

5. These amendments come into force on ●.”

APPENDIX D

ADDITIONAL INFORMATION REQUIRED IN ONTARIO

AUTHORITY FOR THE PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 45-106 *PROSPECTUS AND REGISTRATION EXEMPTIONS* ("NI 45-106")

The following provisions of the Act provide the Commission with authority to adopt the proposed amendments to NI 45-106:

Paragraphs 143(1)8 and 20 authorize the Commission to make rules which provide for exemptions from the registration requirements and prospectus requirements under the Act and for the removal of exemptions for those requirements.

Paragraph 143(1)13 authorizes the Commission to make rules regulating trading or advising in securities to prevent trading or advising that is fraudulent, manipulative, deceptive or unfairly detrimental to investors.

Paragraph 143(1)(16)(ii) authorizes the Commission to make rules varying this Act to facilitate, expedite or regulate the distribution of securities or issuing of receipts, including by establishing requirements in respect of distributions of securities by means of a simplified or summary prospectus or other form of disclosure document.

Paragraph 143(1)31 of the Act authorizes the Commission to make rules regulating mutual funds or non-redeemable investment funds and the distribution and trading of the securities of the funds.

Paragraph 143(1)31(i) of the Act authorizes the Commission to make rules varying Part XV (Prospectus - Distribution) or XVIII (Continuous Disclosure) by prescribing additional disclosure requirements in respect of the funds and requiring or permitting the use of particular forms or types of additional offering or other documents in connection with the funds.

Paragraph 143(1)39 authorizes the Commission to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Act.

Paragraph 143(1)55 authorizes the Commission to specify exemptions and circumstances that will be subject to section 130.1.

ANTICIPATED COSTS AND BENEFITS

The Commission believes that the proposed amendments to NI 45-106 will, when implemented, yield substantial benefits and reduce costs to market participants for the reasons discussed below.

Harmonized exemptions

The proposed amendments to NI 45-106 harmonize capital accumulation prospectus and registration exemptions currently available across Canada. Upon implementation, market participants wishing to effect an exempt distribution to a CAP will have to look primarily to NI 45-106 for prospectus and registration exemptions. This should result in reduced transaction costs for market participants.

No significant new filing or disclosure requirements

The proposed amendments do not introduce any significant new filing or disclosure requirements.

ALTERNATIVES CONSIDERED

The Commission considered maintaining the status quo with market participants having to specifically make an application in Ontario for an exemption to conduct an exempt distribution to a CAP; however, the Commission, along with the other members of the CSA, determined that a harmonized exemptions regime would better serve issuers, investors and other market participants.

RELIANCE ON UNPUBLISHED STUDIES, ETC.

In developing the proposed amendments, we did not rely upon any significant unpublished study, report or other written materials.

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesScource (see www.carswell.com).

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

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

REPORTS OF TRADES SUBMITTED ON FORM 45-501F1

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
08/30/2005	2	Africo Resources Ltd. - Common Shares	353,946.00	235,964.00
09/29/2005	1	AIM PowerGen Corporation - Common Shares	54,375.00	7,500.00
09/29/2005	1	AIM PowerGen Corporation - Common Shares	54,375.00	7,500.00
09/29/2005	1	AIM PowerGen Corporation - Common Shares	14,500.00	2,000.00
09/29/2005	1	Amalgamated Income Limited Partnership - Limited Partnership Units	5,940.00	6,600.00
05/01/2005	3	Argyle Funds SPC Inc. - Common Shares	369,680.00	36,968.00
11/01/2004	1	Argyle Funds SPC Inc. - Common Shares	115,000.00	9,900.00
12/31/2004	1	Ashmore Emerging Markets Liquid Investment Portfolio - Common Shares	120,012.84	13,379.00
09/30/2004 to 07/29/2005	1	Ashmore Emerging Markets Liquid Investment Portfolio - Common Shares	6,693,190.00	732,193.00
06/30/2005	1	Ashmore Local Currency Debt Cell - Common Shares	61,499,999.99	2,299,168.00
10/03/2005	7	Asian Coast Development Inc. - Common Shares	2,795,000.00	2,795,000.00
09/26/2005	35	Assure Data, Inc. - Common Shares	375,000.00	600,000.00
09/28/2005	3	Augen Capital Corp. - Units	40,000.00	400,000.00
06/30/2005	3	Bear Sterns Companies Inc., The - Notes	125,000,000.00	834.00
10/07/2005	5	Belair Networks Inc. - Preferred Shares	4,699,199.96	4,576,659.00
09/30/2005	1	BMO Capital Trust - Units	180,000,000.00	180,000.00
10/11/2005	39	Cabrerra Resources Ltd. - Common Shares	3,375,000.00	2,700,000.00
10/11/2005	53	Cabrerra Resources Ltd. - Flow-Through Shares	3,450,000.00	2,300,000.00
06/02/2005	13	Caldwell New York Limited Partnership II - Limited Partnership Units	1,302,000.00	130,200.00
06/08/2005	12	Caldwell New York Limited Partnership II - Limited Partnership Units	1,250,000.00	125,000.00
06/02/2005	52	Caldwell New York Limited Partnership II - Limited Partnership Units	6,842,000.00	684,200.00
10/01/2005	3	Canadian Golden Dragon Resources Ltd. - Common Shares	6,500.00	50,000.00

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
10/04/2005	11	CareVest Blended Mortgage Investment Corporation - Preferred Shares	318,614.00	318,614.00
10/04/2005	37	CareVest First Mortgage Investment Corporation - Preferred Shares	2,913,862.00	2,913,862.00
10/04/2005	8	CareVest Second Mortgage Investment Corporation - Preferred Shares	90,614.00	90,614.00
10/03/2005	1	CEMEX, S.A. de C.V. - Common Shares	2,885,602.50	27,000,000.00
09/26/2005	2	Cimatec Environmental Engineering Inc. - Common Shares	304,644.06	2,030,960.00
09/26/2005	2	Cimatec Environmental Engineering Inc. - Debentures	800,953.00	2.00
10/11/2005	1	Cooper Pacific II Mortgage Investment Corporation - Common Shares	40,500.00	40,500.00
09/30/2005	1	Davis-Rea Ltd. - Units	50,000.00	4,556.00
09/29/2005	6	EFT Canada Inc. - Common Shares	130,000.00	433,333.00
09/29/2005	19	Eloro Resources Ltd. - Flow-Through Shares	229,949.55	1,727,330.00
09/30/2005	17	Enterprise Oil Limited - Units	500,000.00	2,000,000.00
09/30/2005	74	Fuel-X International Inc. - Common Shares	3,646,124.25	4,861,499.00
10/06/2005	28	GBS Gold International Inc. - Units	4,834,900.00	3,223,267.00
10/03/2005 to 10/07/2005	27	General Motors Acceptance Corporation - Notes	9,605,724.45	96,057.00
05/18/2005	1	Golden Gate Funds LP - Limited Partnership Units	250,000.00	250,000.00
10/05/2005	107	Green Breeze Wind Park Development Inc. - Common Shares	1,305,000.00	1,305,000.00
09/21/2004	3	Groupe Couseil Omnitech Inc. - Debentures	1,500,000.00	3.00
09/21/2005 to 09/28/2005	3	GSC Holdings Corp. - Notes	923,167.03	7,999.00
09/29/2005	12	Halo Resources Ltd. - Flow-Through Shares	281,400.00	402,000.00
09/29/2005	10	Halo Resources Ltd. - Units	182,800.00	304,666.00
09/28/2005	1	Harte Gold Corp. - Units	300,000.00	1,200,000.00
09/30/2005	2	HSBC Bank Canada - Units	1,000,000.00	1,000,000.00
10/03/2005 to 10/04/2005	1	IC2E Inc. - Common Shares	2,030,820.00	3,058,000.00
10/03/2005 to 10/04/2005	28	IC2E Inc. - Units	654,720.00	1,454,933.00
09/16/2005	2	InSight Health Services Corp. - Notes	7,015,800.00	6,000.00

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
10/03/2005	3	International Metal Enterprises, Inc. - Units	1,516,676.00	216,668.00
10/03/2005	1	Intrinsyc Software International Inc. - Special Warrants	8,000,000.00	3,870,968.00
04/11/2005	2	KCAP Casselman Limited Partnership - Limited Partnership Units	290,000.00	290,000.00
09/26/2005	1	Kirkland Lake Gold Inc. - Common Share Purchase Warrant	4,000,000.00	1,500,000.00
09/30/2005	129	Laramide Resources Ltd. - Units	13,000,000.00	5,200,000.00
10/06/2005	19	Lievre Power Financing Corporation - Bonds	225,000,000.00	225,000,000.00
10/13/2005	1	LoBenn Inc. - Common Shares	10,000.00	10,000.00
10/05/2005	10	Messina Minerals Inc. - Flow-Through Shares	2,887,849.00	1,750,212.00
10/06/2005	91	Midnight Oil & Gas Ltd. - Units	48,000,000.00	12,000,000.00
10/04/2005	1	Miranda Gold Corp. - Units	810,000.00	900,000.00
10/11/2005	11	Natural Data Inc. - Common Shares	715,000.00	1,787,525.00
10/06/2005	34	New Millennium Capital Corp. - Flow-Through Shares	4,000,000.00	8,000,000.00
10/06/2005	17	New Millennium Capital Corp. - Units	1,030,000.00	2,110,000.00
09/30/2005	6	Newport Alternative Income Fund - Units	115,000.00	144.00
10/04/2005	2	North American Oil Sands Corporation - Common Shares	6,000,000.00	2,000,000.00
10/04/2005	1	North American Oil Sands Corporation - Notes	4,000,002.00	4,000,002.00
09/30/2005	75	Northern Plains Capital Growth Fund Limited Partnership - Limited Partnership Units	57,950,000.00	5,795.00
10/03/2005	1	Northern Trust Diversified Hedge Fund, Ltd. - Common Shares	31,321,624.37	21,841.68
09/20/2005	1	Open EC Technologies Inc. - Units	25,000.00	250,000.00
09/29/2005	17	Outlook Resources Inc. - Units	277,125.00	2,771,250.00
09/30/2005	19	Pacrim Dieppe Limited Partnership - Limited Partnership Units	1,325,000.00	1,325.00
09/30/2005	1	Patient Capital Management Inc. - Limited Partnership Units	39,477,400.00	395.00
09/29/2005	5	Pediment Exploration Ltd. - Units	126,250.00	280,555.00
09/30/2005	18	Pele Mountain Resources Inc. - Units	755,595.60	3,327,978.00
09/01/2005	4	Phoenix Matachewan Mines Inc. - Flow-Through Shares	95,000.00	950,000.00
10/11/2005	1	Planet Trust - Bonds	297,419.00	297.00

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
09/28/2005	1	Plazacorp Retail Properties Ltd. - Debentures	250,000.00	250.00
09/28/2005	1	PMI Ventures Ltd. - Units	20,000.00	100,000.00
10/05/2005	134	Riverstone Energy Growth Fund - Units	20,250,000.00	20,250.00
09/23/2005	9	Romarco Minerals Inc. - Common Shares	1,291,044.94	7,594,382.00
09/26/2005	6	Royal Gold, Inc. - Units	520,000.00	20,000.00
10/06/2005	1	SeeGrid Corporation, Inc. - Preferred Shares	66,688.21	172,084.00
09/30/2005	5	Sprott Opportunities RSP Fund - Trust Units	74,005.82	4,700.50
10/01/2005	5	Stacey Investment Limited Partnership - Limited Partnership Units	496,079.00	15,166.00
10/01/2005	3	Standard Diversified Fund - Limited Partnership Units	419,000.00	419,000.00
09/28/2005	1	STarts (Canada) Trust 2005-1 - Notes	220,000,000.00	1.00
10/07/2005	71	Storm Ventures International Inc. - Common Shares	19,712,800.00	4,928,250.00
10/04/2005	56	Sunridge Gold Corp. - Units	3,926,000.00	6,040,000.00
10/05/2005	1	Sunstate Equipment Co., LLC and Sunstate Equipment Co., Inc. - Notes	3,524,400.00	3,000.00
09/08/2005	2	Sustainable Energy Technologies Ltd. - Common Shares	1,000,000.00	1,851,902.00
09/30/2005	2	TD Harbour Capital Balanced Fund - Trust Units	3,541,046.60	31,412.00
09/30/2005	2	TD Harbour Capital Canadian Balanced Fund - Trust Units	1,751,839.35	12,307.00
09/30/2005	2	The McElvaine Investment Trust - Trust Units	105,000.00	4,432.00
10/01/2005	16	Tower Hedge Fund L.P. - Units	113,660.00	8,643.00
10/14/2005	2	Tricon VIII Limited Partnership - Limited Partnership Units	41,560,000.00	823.00
09/30/2005	22	Van Arbor Canadian Advantage Fund - Units	946,592.60	74,665.00
09/23/2005	186	Vista Gold Corp - Warrants	8,228,561.03	216,881.00
09/28/2005	2	WebMD Health Corp. - Common Shares	2,062.00	100.00
09/22/2005 to 09/28/2005	13	Wescan Goldfields Inc. - Flow-Through Shares	216,075.00	502,500.00
09/22/2005 to 09/28/2005	4	Wescan Goldfields Inc. - Units	55,475.00	158,500.00
10/04/2005	1	Williams Creek Explorations Limited - Common Shares	7,500.00	500,000.00

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
09/28/2005	26	Woodruff Capital Management Inc. - Flow-Through Shares	2,347,992.00	4,666,665.00
09/28/2005	4	Woodruff Capital Management Inc. - Units	206,999.00	344,998.00
10/11/2005	3	Zephyr Alternative Power Inc. - Debentures	70,000.00	3.00

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Acuity Dividend Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated October 11, 2005
Mutual Reliance Review System Receipt dated October 14, 2005
Offering Price and Description:
Class A and F Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Acuity Funds Ltd.
Project #840232

Issuer Name:
EnerVest Diversified Income Trust
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated October 13, 2005
Mutual Reliance Review System Receipt dated October 14, 2005
Offering Price and Description:
$25,000,000.00 Minimum (· Units) EXCHANGE OFFER
Underwriter(s) or Distributor(s):
GMP Securities Ltd.
Promoter(s):
-
Project #840676

Issuer Name:
Eveready Income Fund
Principal Regulator - Alberta
Type and Date:
Preliminary Prospectus dated October 12, 2005
Mutual Reliance Review System Receipt dated October 12, 2005
Offering Price and Description:
$50,000,000.00 - * Units Price: $ 8 Per Unit
Underwriter(s) or Distributor(s):
Blackmont Capital Inc.
BMO Nesbitt Burns Inc.
Acumen Capital Finance Partners Limited
Sprott Securities Inc.
Promoter(s):
-
Project #840262

Issuer Name:
High Plains Uranium, Inc.
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Prospectus dated October 14, 2005
Mutual Reliance Review System Receipt dated October 17, 2005
Offering Price and Description:
$ * - * Common Shares Price: $ * per Common Share
Underwriter(s) or Distributor(s):
Research Capital Corporation
Dundee Securities Corporation
Canaccord Capital Corporation
Promoter(s):
John Ryan
Howard Crosby
Project #838222

Issuer Name:
H&R Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 12, 2005
Mutual Reliance Review System Receipt dated October 13, 2005
Offering Price and Description:
$150,046,250.00 - 7,675,000 Units Price: $19.55 per Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
Promoter(s):
-
Project #840283

Issuer Name:
Opmedic Group Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Prospectus dated October 14, 2005
Mutual Reliance Review System Receipt dated October 17, 2005
Offering Price and Description:
$ * - * Common Shares Price: $ * per Common Share
Underwriter(s) or Distributor(s):
Wellington West Capital Markets Inc.
GMP Securities Ltd.
Promoter(s):
-
Project #841426

Issuer Name:
Petrolifera Petroleum Limited
Principal Regulator - Alberta
Type and Date:
Amended and Restated Preliminary Prospectus dated October 11, 2005
Mutual Reliance Review System Receipt dated October 12, 2005
Offering Price and Description:
$ * - * Units Price: $ * per Unit
Underwriter(s) or Distributor(s):
Jennings Capital Inc.
GMP Securities Ltd.
Octagon Capital Corporation
Dominick & Dominick Securities Inc.
Haywood Securities Inc.
Bolder Investment Partners, Ltd.
Salman Partners Inc.
Promoter(s):
Connacher Oil and Gas Limited
Project #829696

Issuer Name:
Select Canadian Equity Managed Corporate Class
Select Income Managed Corporate Class
Select International Equity Managed Corporate Class
Select Staging Fund
Select U.S.Equity Managed Corporate Class
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated October 11, 2005
Mutual Reliance Review System Receipt dated October 12, 2005
Offering Price and Description:
Class A, F, W and I Shares and Units
Underwriter(s) or Distributor(s):
CI Investments Inc.
Promoter(s):
CI Investments Inc.
Project #840000

Issuer Name:
Sobeys Inc.
Principal Regulator - Nova Scotia
Type and Date:
Preliminary Short Form Shelf Prospectus dated October 14, 2005
Mutual Reliance Review System Receipt dated October 14, 2005
Offering Price and Description:
$500,000,000.00 - Medium Term Notes (unsecured)
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
Promoter(s):
-
Project #840926

Issuer Name:
Synenco Energy Inc.
Principal Regulator - Alberta
Type and Date:
Amended and Restated Preliminary Prospectus dated October 12, 2005
Mutual Reliance Review System Receipt dated October 13, 2005
Offering Price and Description:
$ * - * Units Price: $ * per Unit
Underwriter(s) or Distributor(s):
TD Securities Inc.
CIBC World Markets Inc.
Merrill Lynch Canada Inc.
Scotia Capital Inc.
National Bank Financial Inc.
Raymond James Ltd.
J. F. Mackie & Company Ltd.
Octagon Capital Corp.
Promoter(s):
-
Project #834803

Issuer Name:
TD Waterhouse Canadian Quantitative Portfolio
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated October 14, 2005
Mutual Reliance Review System Receipt dated October 17, 2005
Offering Price and Description:
Series A and F Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
First Defined Portfolio Management Co.
TD Waterhouse Canada Inc.
Project #841119

Issuer Name:
Templeton Global Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated October 11, 2005
Mutual Reliance Review System Receipt dated October 12, 2005
Offering Price and Description:
Series A, F and O Units
Underwriter(s) or Distributor(s):
Franklin Templeton Investments Corp.
Franklin Templeton Investments Corp.
Promoter(s):
-
Project #839880

Issuer Name:
Algonquin Credit Card Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated October 12, 2005
Mutual Reliance Review System Receipt dated October 13, 2005
Offering Price and Description:
(1) $397,500,000.00 3.989% Series 2005-1 Class A Fixed Rate Notes, Expected Final Payment Date of October 15, 2010; (2) $50,000,000.00 4.449% Series 2005-1 Class B Fixed Rate Notes, Expected Final Payment Date of October 15, 2010; (3) $52,500,000.00 4.799% Series 2005-1 Class C Fixed Rate Notes, Expected Final Payment Date of October 15, 2010
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
Promoter(s):
Capital One Bank (Canada Branch)
Project #835696

Issuer Name:
Class M Units of:
AMI Balanced Fund
AMI Money Market Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated October 17, 2005
Mutual Reliance Review System Receipt dated October 18, 2005
Offering Price and Description:
Class M Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #831145

Issuer Name:
Ascendant Copper Corporation
Principal Regulator - British Columbia
Type and Date:
Final Prospectus dated October 14, 2005
Mutual Reliance Review System Receipt dated October 18, 2005
Offering Price and Description:
$10,000,000.00 - 5,000,000 Units $2.00 per Unit
Underwriter(s) or Distributor(s):
Haywoood Securities Inc.
Canaccord Capital Corporation
Promoter(s):
Paul Grist
William Jurika
Project #800714

Issuer Name:
Capital International - Global Discovery
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated October 12, 2005 to the Annual Information Form dated June 24, 2005
Mutual Reliance Review System Receipt dated October 18, 2005
Offering Price and Description:
Class A, D, F, H and I Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Capital International Asset Management (Canada), Inc.
Project #787584

Issuer Name:
Dynamic Far East Value Fund
Dynamic Focus+ Real Estate Fund
Dynamic Focus+ Resource Fund
Dynamic International Value Fund
Principal Regulator - Ontario
Type and Date:
Amendment #5 dated October 7, 2005 to the Simplified Prospectuses and Annual Information Forms dated January 28, 2005
Mutual Reliance Review System Receipt dated October 14, 2005
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Goodman & Company, Investment Counsel Ltd.
Goodman & Company, Investment Counsel Ltd.
Promoter(s):
Goodman & Company, Investment Counsel Ltd.
Project #711713

Issuer Name:
Global Educational Trust Plan
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated September 23, 2005
Mutual Reliance Review System Receipt dated October 13, 2005
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #819016

Issuer Name:
Greater Toronto Airports Authority
Principal Regulator - Ontario
Type and Date:
Final Short Form Base Shelf Prospectus dated October 13, 2005
Mutual Reliance Review System Receipt dated October 13, 2005
Offering Price and Description:
$2,500,000,000.00 - Medium-Term Notes (Secured)
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
Promoter(s):
-
Project #837318

Issuer Name:
GrowthWorks Canadian Fund Ltd.
Principal Regulator - Ontario
Type and Date:
Amendment #3 dated October 11, 2005 to the Prospectus dated December 24, 2004
Mutual Reliance Review System Receipt dated October 13, 2005
Offering Price and Description:
Class A Shares in Series
Offering Price: Net Asset Value per Series Share
Underwriter(s) or Distributor(s):
GrowthWorks Capital Ltd.
Promoter(s):
GrowthWorks WV Management Ltd.
Project #701638

Issuer Name:
Series A Units of:
Hathaway Focus+ American Fund
Hathaway Focus+ Canadian Fund
Hathaway Focus+ World Fund
Hathaway Focus+ Wealth Management Fund
Hathaway Focus+ Balanced Canadian Fund
Hathaway Money Market Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated September 29, 2005 to the Simplified Prospectuses and Annual Information Forms dated January 28, 2005
Mutual Reliance Review System Receipt dated October 12, 2005
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Goodman & Company, Investment Counsel Ltd.
Goodman & Company, Investment Counsel Ltd.
Promoter(s):
Goodman & Company, Investment Counsel Ltd.
Project #711582

Issuer Name:
Lawrence Enterprise Fund Inc.
(Class A Shares)
Type and Date:
Amendment #1 dated October 11, 2005 to the Prospectus dated December 20, 2004
Receipted on October 13, 2005
Offering Price and Description:
Class A Shares - Series III & IV
Underwriter(s) or Distributor(s):
-
Promoter(s):
Lawrence Asset Managment Inc.
CATCA Sponsor Corp.
Project #709210

Issuer Name:
Nevsun Resources Ltd.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated October 18, 2005
Mutual Reliance Review System Receipt dated October 18, 2005
Offering Price and Description:
Cdn $30,037,500.00 - 13,350,000 Units Price: Cdn $2.25 per Unit
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Blackmont Capital Inc.
Haywood Securities Inc.
TD Securities Inc.
Promoter(s):
-
Project #839809

Issuer Name:
Class A and Class I Units of:
NSC Canadian Balanced Income Fund
NSC Canadian Equity Fund
NSC Global Balanced Fund
Type and Date:
Amendment #2 dated October 14, 2005 to the Simplified Prospectuses and Annual Information Forms dated November 30, 2004
Receipted on October 17, 2005
Offering Price and Description:
Class A and I Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #699317

Issuer Name:
Petrolifera Petroleum Limited
Principal Regulator - Alberta
Type and Date:
Final Prospectus dated October 17, 2005
Mutual Reliance Review System Receipt dated October 18, 2005
Offering Price and Description:
Up to $30,000,000.00 - Up to 17,142,858 Units Price: $1.75 per Unit
Underwriter(s) or Distributor(s):
Jennings Capital Inc.
GMP Securities Ltd.
Octagon Capital Corporation
Dominick & Dominick Securities Inc.
Haywood Securities Inc.
Bolder Investment Partners, Ltd.
Salman Partners Inc.
Promoter(s):
Connacher Oil and Gas Limited
Project #829696

Issuer Name:
Phoenix Technology Income Fund
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated October 14, 2005
Mutual Reliance Review System Receipt dated October 14, 2005
Offering Price and Description:
$10,800,000.00 - 1,200,000 Trust Units
Underwriter(s) or Distributor(s):
Peters & Co. Limited
Wellington West Capital Markets Inc.
Promoter(s):
John M. Hooks
Project #839398

Issuer Name:
Silver Fern Financial Ltd.
Principal Regulator - Alberta
Type and Date:
Final CPC Prospectus dated October 14, 2005
Mutual Reliance Review System Receipt dated October 17, 2005
Offering Price and Description:
$1,000,000.00 - 5,000,000 Common Shares at a price of $0.20 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Promoter(s):
Gordon D. Anderson
Project #748774

Issuer Name:
THESEUS CAPITAL INC.
Principal Regulator - Quebec
Type and Date:
Final CPC Prospectus dated October 11, 2005
Mutual Reliance Review System Receipt dated October 13, 2005
Offering Price and Description:
Minimum Offering: $750,000.00 or 3,750,000 Common Shares
Maximum Offering: $1,100,000.00 or 5,500,000 Common Shares
Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
Investpro Securities Inc.
Laurentian Bank Securities Inc.
Promoter(s):
Richard Belanger
Jean-Yves Germain
Project #800452

Issuer Name:
Viking Energy Royalty Trust
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated October 12, 2005
Mutual Reliance Review System Receipt dated October 12, 2005
Offering Price and Description:
$175,000,000.00 - 6.40% Convertible Unsecured Subordinated Debentures
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
CIBC World Markets Inc.
FirstEnergy Capital Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
TD Securities Inc.
Promoter(s):
-
Project #838029

Issuer Name:
Willowstar Capital Inc.
Type and Date:
Preliminary CPC Prospectus dated August 30th, 2004 and Amended and Restated Preliminary CPC Prospectus dated March 11th, 2005
Closed on October 12th, 2005
Offering Price and Description:
Minimum Offering: $1,000,000.00 or 6,666,666 Common Shares Maximum Offering: $1,900,000.00 or 12,666,666 Common Shares
Price: $0.15 per Common Share
Underwriter(s) or Distributor(s):
Credifinance Securities Limited
Promoter(s):
-
Project #686287

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Bridgewater Associates, Inc.	International Adviser (Investment Counsel Portfolio Manager) and Non-Resident Commodity Trading Manager	October 19, 2005
New Registration	First Swiss Financial Corp.	Limited Market Dealer	October 18, 2005
New Registration	Magna Partners Ltd.	Limited Market Dealer	October 18, 2005
New Registration	Steve Marshall Securities Inc.	Limited Market Dealer	October 17, 2005
Change of Name	From: Northwood Private Counsel Inc. To: Northwood Stephens Private Counsel Inc.	Limited Market Dealer and Investment Counsel & Portfolio Manager	September 30, 2005
Change in Category	Accilent Capital Management Inc.	From: Limited Market Dealer & Investment Counsel & Portfolio Manager To: Limited Market Dealer & Investment Counsel & Portfolio Manager & Commodity Trading Manager	October 12, 2005
Change in Category	G.I. Capital Corp.	From: Investment Counsel & Portfolio Manager To: Investment Counsel & Portfolio Manager Limited Market Dealer	October 18, 2005

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 Toronto Stock Exchange - Request for Comments on Amendments to the Policy on Normal Course Issuer Bids and Debt Substantial Issuer Bids (Appendix F of the Company Manual)

TORONTO STOCK EXCHANGE

REQUEST FOR COMMENTS

**AMENDMENTS TO TORONTO STOCK EXCHANGE'S POLICY
ON NORMAL COURSE ISSUER BIDS AND
DEBT SUBSTANTIAL ISSUER BIDS
(Appendix F of the Toronto Stock Exchange Company Manual)**

On August 2, 2002 Toronto Stock Exchange ("TSX") originally published for comment amendments to Parts V, VI and VII of TSX Company Manual (the "Manual"), including changes to TSX's policy on normal course issuer bids ("NCIBs"), debt substantial issuer bids ("DSIBs") and other bids through the facilities of TSX. Additional amendments to the Manual were published for comment on January 2, 2004. On November 5, 2004, certain amendments to the Manual were finalized with an effective date of January 1, 2005, other than the NCIB and DSIB policy which was republished for comment at that time. As a result of comments received on the Amendments, further changes have been made to the NCIB and DSIB policy amendments (the "Amendments"), and the Amendments are therefore being republished for a further 30 day comment period.

The Amendments will be effective upon approval by the Ontario Securities Commission (the "OSC") following public notice and comment. Comments should be in writing and delivered by November 21, 2005 to:

Luana N. DiCandia
Policy Counsel
Toronto Stock Exchange
The Exchange Tower
130 King Street West
Toronto, Ontario M5X 1J2
Fax: (416) 947-4461
Email: luana.dicandia@tsx.com

A copy should also be provided to the:

Manager
Market Regulation
Capital Markets
Ontario Securities Commission
20 Queen Street West
Toronto, Ontario M5H 3S8
Fax: (416) 595-8940
Email: cpetlock@osc.gov.on.ca

Comments will be publicly available unless confidentiality is requested.

Overview

TSX is seeking comments on the Amendments. The Amendments are intended to provide listed issuers with a complete and transparent set of TSX standards and practices allowing issuers and investors, and their respective advisors, to have certainty when planning and completing transactions. TSX believes that this will result in more efficient, cost effective access to Canadian capital markets. More specifically however, the fundamental objectives of the NCIB and DSIB policy are to provide issuers with the ability to buy back their own securities in a cost effective way that treats public security holders fairly while not adversely impacting the market. In an attempt to balance these objectives, TSX has considered, among other things, the variances in liquidity, public float, distribution and market capitalization of TSX listed issuers.

TSX received a total of 21 comment letters in response to the November 2004 publication. Comments were received from interlisted and smaller listed issuers, participating organizations, legal advisors, fund managers and other market participants. Attached as Appendix B is a summary of the comment letters together with TSX's responses.

Daily Repurchase Restriction & Monthly Repurchase Restriction

Under the current rules and policies of TSX, all issuers making purchases under an NCIB may not purchase more than 2% of the relevant class of securities outstanding in any 30 day period. TSX proposes to replace the 2% repurchase restriction with a daily repurchase restriction (section 628(a)(xiii)(a)) for all issuers other than investment funds. Under the daily repurchase restriction, issuers may purchase up to 25% of the average daily trading volume ("ADTV") of the listed securities on any trading day. The ADTV will be calculated based on trading on TSX over the most recently completed six months immediately preceding TSX acceptance of the NCIB notice. Issuers will continue to be subject to the aggregate 12 month repurchase restriction of that number of securities equal to the greater of 10% of the public float or 5% of the issued and outstanding securities.

TSX has been concerned about the 2% purchase restriction for issuers with illiquid securities. The 2% purchase restriction was determined as a brightline test for all issuers without regard to the actual impact such purchases would have on the market quality. Following discussions with stakeholders and after reviewing the SEC's safe harbor rule 10b-18, TSX is proposing to replace the 2% repurchase restriction with the daily repurchase restriction. The daily repurchase restriction was designed to prevent an issuer from dominating the market for its securities through substantial purchasing activity. An issuer dominating the market for its security under an NCIB may mislead investors about the integrity of the market as an independent pricing mechanism. TSX believes that the daily repurchase restriction provides sufficient flexibility for issuers to repurchase their securities under an NCIB while ensuring the quality of the market.

Virtually all comment letters received addressed the daily purchase restrictions. Many of the comments indicated that the daily repurchase restriction would be inappropriate for the Canadian marketplace, primarily because Canadian issuers are far less liquid than US listed issuers. The commentors indicated that the daily repurchase restriction would be overly restrictive and limit an issuer's ability to stabilize the market. Other commentors indicated that the daily repurchase restriction should be further aligned with the SEC's rule to permit parallel rules for interlisted issuers, including the use of a rolling four week period preceding any purchase for the calculation of ADTV and the addition of a block exception from the daily repurchase restriction.

As a result of the comments: (i) the 2% repurchase restriction in any 30 day period has been reinstituted only for issuers who meet the definition of investment fund, as defined in National Instrument 51-102 *Continuous Disclosure Obligations*; (ii) the ADTV calculation has been changed from a one month period to a six month period; and (iii) a block exception from the daily repurchase restriction has been added. TSX continues to believe that the daily repurchase restriction is necessary in order to ensure the integrity of the market.

While TSX recognizes that the liquidity of most Canadian issuers is significantly less than US listed issuers, it is important to note that the SEC's safe harbour rule applies to not only those listed on the New York Stock Exchange and NASDAQ National Market, but all US public issuers. A block exception was added in part to permit less liquid issuers with a stabilizing mechanism in the event that a large block became available on the market (section 629(l)(7) and "Block Purchase Exception from the Daily Repurchase Restriction" below).

TSX reinstituted the 2% repurchase restriction for investment funds only since the nature and structure of investment fund securities are significantly different than regular corporate equity securities. Investment funds are generally not as liquid as other securities and the 25% ADTV repurchase restriction may impose limitations for investment funds to utilize an NCIB.

Investment funds typically represent a basket of public funds or securities. The net asset value of these funds is transparent as it is calculated and published on a regular basis. At times, investment funds trade at a discount to net asset value. The 2% repurchase restriction will assist investment funds in minimizing the discount to market, which promotes better valuation and trading of investment funds without affecting the integrity of the market for these securities.

An additional provision has been added to the definition of average daily trading volume for listed securities, other than investment funds, which have been listed on TSX for a period of less than six months. In such circumstances, TSX is proposing to use the period since the date of listing, but that period must consist of at least four weeks of trading of the listed security as the basis for the average daily trading volume. Consequently, securities listed, other than investment funds, pursuant to an initial public offering could not be subject to a normal course issuer bid for the first four week period following the IPO. Without such a provision, an issuer with newly listed securities could not commence a normal course issuer bid for a period of six months following the initial listing. This is consistent with the SEC's safe habour rule for the first four weeks immediately following the creation of a security.

TSX is also proposing to prohibit any NCIB purchases in the opening of the market and the last half hour of the regular trading session, other than with respect to market on close orders (section 629(l)(8)). Purchases at the opening and during the last half

hour of trading are considered to be a significant indicator of the direction of trading, the strength of demand, and the current market value of the security.

Question 1: Is it appropriate to retain the 2% repurchase restriction in any 30 day period for investment funds?

Question 2: Should issuers with newly listed securities, such as in the case of an IPO, be restricted from commencing a normal course issuer bid for the first four weeks of trading?

Question 3: Is it appropriate to prohibit purchases made under an NCIB during the opening of a trading session and the last half hour before the scheduled close of a trading session?

Block Purchase Exception from the Daily Repurchase Restriction

TSX is proposing a block purchase exception from the daily repurchase restriction (section 629(l)(7)). A “block” means a quantity of securities that either: (i) has a purchase price of $200,000 or more; (ii) is at least 5,000 securities and has a purchase price of at least $50,000; or (iii) is at least 20 board lots of the security and total 150% or more of the ADTV for that security. This definition has been derived from the SEC’s safe harbour rule, however all dollar amounts are expressed in Canadian dollars and are therefore not equivalent to US dollar figures.

Issuers, other than investment funds, will be permitted to buy one block per calendar week which exceeds the daily repurchase restrictions. The block purchase exception may only be used on a day during which the issuer has not made any other purchases under its NCIB. Subsequent purchases may be made during the same week provided that they comply with the daily repurchase restriction. Any securities purchased under the block exception will count toward the aggregate maximum number of securities which may be purchased under the NCIB.

Question 4: Should the block purchase exception be permitted and if so: (a) is the frequency of once a calendar week appropriate, and (b) is the definition of a block appropriate?

Question 5: Does the block purchase exception provide low to medium liquidity issuers with sufficient flexibility to conduct market stabilization activities?

Question 6: Does the block purchase exception disadvantage potential purchasers, either in terms of price or availability?

Question 7: Should purchases under the block purchase exception be permitted where previous purchases were made under the NCIB on the same day?

Question 8: Should investment funds be permitted to use the block purchase exception?

Use of Derivatives in Conjunction with Normal Course Issuer Bids

Currently, certain listed issuers enter into forward purchase contracts and put options that may result in the repurchase of their listed securities. TSX had developed internal guidelines for the use of forward purchase contracts, put option agreements and call option agreements (individually or collectively, “derivatives”) in conjunction with NCIBs. The guidelines are proposed to be incorporated into the Amendments (section 629.1) and provide requirements regarding the acceptable terms for derivatives, purchase restrictions and reporting and disclosure requirements.

The definitions of “forward purchase contract”, “put option agreement” and “call option agreement” include reference to an OTC contract. The definitions have been limited to OTC contracts in order to ensure that TSX and the listed issuer are aware of the identity of the counterparty.

The requirements related to derivatives used in conjunction with an NCIB are limited to those derivatives which are settled by physical delivery of the underlying security. Derivatives which provide for exclusive cash settlement have been excluded from these requirements, as the listed issuer does not ultimately repurchase its own securities, but rather settles by cash payment.

Four commentors addressed the derivatives questions posed in the November 5, 2004 publication. Generally, commentors agreed that it was not appropriate for TSX to regulate exclusively cash settled derivatives in the context of an issuer’s NCIB. TSX accordingly has not amended section 629.1 in this regard. Two commentors expressed concerns regarding the daily repurchase restriction and the settlement of a derivative contract. TSX is proposing that settlement of the contract will be exempt from the daily purchase restriction, however the hedging activity associated with the contract will be subject to the restriction (section 629.1(l) and (m)), as well as all other purchase prohibitions.

Use of Accelerated Buy Backs in Conjunction with Normal Course Issuer Bids

TSX is also proposing to introduce rules allowing for accelerated buy backs during a normal course issuer bid. Accelerated buy backs permit an issuer to purchase a block of its securities for cancellation on a short sale from a broker. An accelerated buy back consists of an agreement between the listed issuer and a counterparty, whereby the counterparty agrees to sell a fixed number of listed securities short to the listed issuer on a specified date, and whereby the counterparty subsequently covers its short position in those securities with open-market purchases. TSX is proposing to permit the accelerated buy backs, subject to a number of restrictions related to open market purchases, including restrictions related to pricing and quantity, similar to those proposed for the use of derivatives during normal course issuer bids.

The accelerated buy back has been introduced in response to comments requesting the TSX to be more consistent with the trading strategies currently being used in the U.S. The SEC's rule 10b-18 permits accelerated buy backs on a basis that ensures all investors have an opportunity to benefit from the issuer's repurchase and the consequent hedging activity of the broker.

Debt Substantial Issuer Bids

The definition of "issuer bid" under securities legislation specifically excludes "an offer to acquire or redeem debt securities that are not convertible into securities other than debt securities". TSX is concerned that a listed issuer may be able to repurchase some or all of its listed debt securities through the facilities of TSX without being subject to certain requirements which would normally apply to an issuer bid. These requirements include advance notification of the terms of the bid, identical consideration for the repurchase of securities and pro-rata re-purchases. The amended policy ensures that security holders can participate equally in a debt substantial issuer bid, which TSX believes is important since such a bid may significantly impact the liquidity of the market for the listed securities.

Four commentors addressed the DSIB question posed in the November 5, 2004 publication, two of whom expressed concerns than issuers listing debt on TSX would be significantly disadvantaged. Issuers with debt listed on TSX would be subject to significantly more onerous requirements that issuers with debt trading OTC only. TSX believes that because of the nature of the holders of TSX listed debt, it is important to permit security holders to participate in a repurchase on a pro-rata basis. However, where the instrument governing the debt provides for an alternative repurchase method, the requirements of the DSIB policy will not apply (section 628(a) (viii) and (xii)). Where the governing instrument provides an alternative repurchase method, the security holder has purchased the debt on the understanding that the issuer may repurchase the debt in accordance with the governing instrument.

Public Interest

TSX is publishing the Amendments for a 30 day comment period. Given the substantive nature of the Amendments, TSX believes that it is important for its key stakeholders to have an opportunity to review the amended policies prior to their implementation.

As a result, the Amendments will only become effective following public notice, a comment period and the approval of the OSC.

Text of Amendments

Attached as **Appendix A** are the Amendments, blacklined to reflect changes since the November 5, 2004 publication. In particular, we refer readers as follows:

1. Section 628(a)(xiii)(a) and (b), which contain the daily and monthly repurchase restriction;

2. Section 628(a)(iii) and 628(l)(7) contain the block purchase exceptions;

3. Section 629.1 contains the provisions on derivatives and accelerated buy backs used in connection with NCIBs; and

4. Section 629.2 contains the provisions on debt substantial issuer bids.

Attached as **Appendix B** is a summary of the comment letters together with TSX's responses.

APPENDIX A

NORMAL COURSE ISSUER BIDS AND DEBT SUBSTANTIAL ISSUER BIDS

628. General.

(a) In Sections 628, 629, 629.1 and 629.2:

(i) **"accelerated buy back"** means an agreement between the listed issuer and a counterparty, whereby the counterparty sells a fixed number of listed securities short to the listed issuer on a specified date and the counterparty subsequently covers its short position in those securities pursuant to the open-market purchases;

~~(i)~~(ii) **"average daily trading volume" or "ADTV"** means the trading volume on TSX for the most recently completed ~~calendar month~~six months preceding the date of acceptance of the notice of normal course issuer bid by TSX, excluding any purchases made by the listed issuer under its normal course issuer bid during such six months, ~~calculated as the total volume for the month~~ divided by the number of trading days for the relevant ~~month~~six months. In the case of listed securities which have been listed on TSX for a period of less than six months, ~~for~~ the ADTV for such securities shall be based on the period since the date of listing, but must be at least four weeks preceding the date of acceptance of the notice of normal course issuer bid by TSX;

(iii) **"block"** means a quantity of securities that either:

(a) has a purchase price of $200,000 or more; or

(b) is at least 5,000 securities and has a purchase price of at least $50,000; or

(c) is at least 20 board lots of the security and total 150% or more of the ADTV for that security;

~~(ii)~~(iv) "**broker**" means the participating organization designated by the listed issuer to make all purchases of listed securities for the purposes of the normal course issuer bid;

~~(iii)~~(v) **"call option agreement"** means an OTC agreement between the listed issuer and the counterparty governing the terms of the call option and constituting the call option contract in respect of which the underlying interest is the listed security which is the subject of the normal course issuer bid and pursuant to which the listed issuer will, in consideration of the payment of a premium to the counterparty, have the option to require the counterparty to sell to the listed issuer a number of securities issued by the listed issuer at a date and a price which are specified in the call option;

(vi) **"circular bid"** means a formal take-over bid or a formal issuer bid made in compliance with the requirements of Part XX of the OSA;

~~(iv)~~(vii) **"counterparty"** means the participating organization or financial intermediary, as defined in section 204 of the Regulations to the OSA, at the opposite side of a derivative or an accelerated buy back from the listed issuer;

~~(v)~~(viii) **"debt substantial issuer bid"** means an issuer bid ~~made through the facilities of the TSX~~, other than a normal course issuer bid, for debt securities that are not convertible into securities other than debt securities;

~~(vi)~~(ix) **"derivative"** means a put option agreement, a call option agreement or a forward purchase contract;

~~(vii)~~(x) "**forward purchase contract**" means an OTC agreement between the listed issuer and the counterparty under which the listed issuer agrees to purchase a number of listed securities which are subject to the normal course issuer bid at a date and a price which are specified in the agreement;

(xi) **"investment fund"** has the same definition found in National Instrument 51-102 *Continuous Disclosure Obligations*;

~~(viii)~~(xii) **"issuer bid"** means an offer, made through the facilities of TSX, to acquire listed securities made by or on behalf of a listed issuer for securities issued by that listed issuer, unless:

(a) the securities are purchased or otherwise acquired in accordance with the terms and conditions attaching thereto that permit the purchase or acquisition of the securities by the issuer without the prior agreement of the owners of the securities, or where the securities are purchased to meet sinking fund or purchase fund requirements;

(b) the purchase or other acquisition is required by the instrument creating or governing the class of securities or by the statute under which the issuer was incorporated, organized or continued; or

(c) the securities carry with them or are accompanied by a right of the owner of the securities to require the issuer to repurchase the securities and the securities are acquired pursuant to the exercise of such right;

~~(ix)~~(xiii) **"normal course issuer bid"** means ~~a~~ an issuer bid by a listed issuer to acquire its listed securities where the purchases:

(a) if the issuer is not an investment fund, do not, when aggregated with all other purchases by the listed issuer during the same trading day, aggregate more than the greater of: (i) 25% of the average daily trading volume of the listed securities of that class~~, excluding any purchases made by the listed issuer under its normal course issuer bid~~; and (ii) 1,000 securities; and

~~(a)~~(b) if the issuer is an investment fund, do not, when aggregated with all other purchases by the listed issuer during the preceding 30 days, aggregate more than 2% of the listed securities of that class outstanding on the date of acceptance of the notice of normal course issuer bid by TSX; and

~~(b)~~(c) over a 12-month period, commencing on the date specified in the notice of the normal course issuer bid, do not exceed the greater of

(i) 10% of the public float on the date of acceptance of the notice of normal course issuer bid by TSX, or

(ii) 5% of such class of securities issued and outstanding on the date of acceptance of the notice of normal course issuer bid by TSX, excluding any securities held by or on behalf of the listed issuer on the date of acceptance of the notice of normal course issuer bid by TSX,

whether such purchases are made through the facilities of a stock exchange or otherwise, but excluding purchases made under a circular bid;

~~(x)~~(xiv) **"OTC"** means trading over the counter and not through the facilities of an exchange;

~~(xi)~~(xv) **"principal security holder"** of a listed issuer means a person or company who beneficially owns or exercises control or direction over more than 10% of the issued and outstanding securities of any class of voting securities or equity securities of the listed issuer; and

~~(xii)~~(xvi) **"public float"** means the number, known to the issuer after reasonable inquiry, of securities of the class which are issued and outstanding, less the number of securities of the class beneficially owned, or over which control or direction is exercised by:

(a) the listed issuer;

(b) every senior officer or director of the listed issuer;

(c) every principal security holder of the listed issuer; and

(d) the number of securities that are pooled, escrowed or non-transferable;

~~(xiii)~~(xvii) "**put option agreement**" means an OTC agreement between the listed issuer and the counterparty governing the terms of the put option and constituting the put option contract in respect of which the underlying interest is the listed security which is the subject of the normal course issuer bid and pursuant to which the counterparty will, in consideration of the payment of a premium to the listed issuer, have the option to require the listed issuer to acquire a number of securities issued by the listed issuer at a date and a price which are specified in the put option; and

(b) For the purposes of Sections 628, 629 and 629.1~~,~~:

(i) a purchase shall be deemed to have taken place when the offer to buy or the offer to sell, as the case may be, is accepted~~.~~;

(ii) ~~(c) For the purposes of Sections 628, 629 and 629.1,~~ in calculating the number of securities acquired by the listed issuer, securities purchased by a person or company acting jointly or in concert with the listed issuer, as determined in accordance with Section ~~90~~91 of the OSA, during the period of an outstanding normal course issuer bid will be included~~.~~; and

~~(d) For the purposes of Section 93(3)(e) of the OSA, an issuer bid made through the facilities of TSX may only be completed,~~ (iii) the number of securities that may be acquired by a listed issuer shall be adjusted to account for stock splits, consolidations and stock dividends, or other similar events.

(c) For the purposes of Section 93(3)(e) of the OSA, an issuer bid may only be completed as a normal course issuer bid in accordance with Sections 629 and 629.1. A debt substantial issuer bid ~~made through the facilities of TSX~~ may only be completed in accordance with Section 629.2.

629. Special Rules Applicable to Normal Course Issuer Bids.

(a) The provisions of this section shall apply to all normal course issuer bids.

(b) The filing of a notice is a declaration by the listed issuer that it has a present intention to acquire securities. The notice must set out the number of securities that the listed issuer's board of directors has determined may be acquired rather than simply reciting the maximum number of securities that may be purchased pursuant to Section 628(a)(~~ix)(b~~xii)(c). A notice is not to be filed if the listed issuer does not have a present intention to purchase securities.

(c) TSX will not accept a notice if the listed issuer would not meet the criteria for continued listing on TSX, assuming all of the purchases contemplated by the notice were made.

(d) TSX requires that the listed issuer prepare and submit to TSX a draft of the notice containing the information prescribed by Form 12, Notice of Intention to Make a Normal Course Issuer Bid, found in Appendix H. When the notice is in a form acceptable to TSX, the listed issuer shall file the notice in final form, duly executed by a senior officer or director of the listed issuer, for acceptance by TSX. The final form of the notice must be filed at least two clear trading days prior to the commencement of any purchases under the bid.

(e) A normal course issuer bid shall not extend for a period of more than one year from the date on which purchases may begin.

(f) The listed issuer will issue a press release indicating its intention to make a normal course issuer bid, subject to TSX acceptance, prior to acceptance of the executed notice by TSX. The press release shall summarize the material aspects of the contents of the notice, including the number of securities sought, the method of disposition of the securities, if applicable, the reason for the bid and details of any previous purchases in the preceding 12 month period, including the number of securities purchased and the average price paid. If a press release has not already been issued, a draft press release must be provided to TSX and the listed issuer shall issue a press release as soon as the notice is accepted by TSX. A copy of the final press release shall be filed with TSX.

(g) The listed issuer shall include a summary of the material information contained in the notice in the next annual report, information circular, quarterly report or other document mailed to security holders. The document should indicate that security holders may obtain a copy of the notice, without charge, by contacting the listed issuer.

(h) A normal course issuer bid may commence on the date that is two trading days after the later of:

(i) the date of acceptance by TSX of the listed issuer's notice in final executed Form 12; or

(ii) the date of issuance of the press release required by Subsection (f) of this Section 629.

(i) ~~Upon acceptance of the notice, TSX will publish a summary notification of the normal course issuer bid in its Daily Record.~~

~~(j)~~ During a normal course issuer bid, a listed issuer may determine to amend its notice by increasing the number of securities sought while not exceeding: (i) the maximum percentages referred to in the definition of normal course issuer bid or (ii) provided that the issuer has increased its number of issued securities which are subject to the bid by at least 25% from the number of issued securities as at the date of acceptance of the notice of normal course issuer bid by TSX, the maximum percentages referred to in the definition of normal course issuer bid, as at the date of the amended notice. When the amended notice is in a form acceptable to TSX, the listed issuer shall file the amended notice in final form, duly executed by a senior officer or director of the listed issuer, for acceptance by TSX. The final form of the amended notice must be filed at least three clear trading days prior to the commencement of any purchases under the

amended bid. In addition, a draft press release must be provided to TSX and the listed issuer shall issue a press release as soon as the amended notice is accepted by TSX. A copy of the final press release shall be filed with TSX. Upon acceptance of the amended notice, TSX will publish a summary notification of the normal course issuer bid in its Daily Record.

(~~k~~j) A trustee or other purchasing agent (hereinafter referred to as a "trustee") for a pension, stock purchase, stock option, dividend reinvestment or other plan in which employees or security holders of a listed issuer may participate, is deemed to be making an offer to acquire securities on behalf of the listed issuer where the trustee is deemed to be non-independent. Trustees that are deemed to be non-independent are subject only to Subsections 629(k) and (l) and ~~(m) and~~ to the limits on purchases of the listed issuer's securities prescribed by the definition of "normal course issuer bid". Trustees that are non-independent must notify TSX before commencing purchases. A trustee is deemed to be non-independent where:

(i) the trustee (or one of the trustees) is an employee, director associate or affiliate of the listed issuer; or

(ii) the listed issuer, directly or indirectly, has control over the time, price, amount and manner of purchases or the choice of the broker through which the purchases are to be made. The listed issuer is not considered to have control where the purchase is made on the specific instructions of the employee or security holder who will be the beneficial owner of the securities.

TSX should be contacted where there is uncertainty as to the independence of the trustee.

(~~l~~k) Within 10 days of the end of each month in which any purchases are made, whether the securities were purchased through the facilities of TSX or otherwise, the listed issuer shall report its purchases to TSX stating the number of securities purchased during its purchases that month, giving the average price paid and stating whether the securities have been cancelled, reserved for issuance or otherwise dealt with. Nil reports are not required. The listed issuer may delegate the reporting requirement to the broker appointed to make its purchases; however, the listed issuer bears the responsibility of ensuring timely reports are made. TSX periodically publishes a list of securities purchased pursuant to normal course issuer bids.

This paragraph also applies to purchases by non-independent trustees and to purchases by any party acting jointly or in concert with the listed issuer. Purchases by non-independent trustees and other parties acting jointly or in concert with the listed issuer are excluded from TSX's periodic publication of securities purchased pursuant to normal course issuer bids.

~~(m~~ (l) TSX has set the following rules for listed issuers and brokers acting on their own behalf:

1. ***Price Limitations*** – It is inappropriate for a listed issuer making a normal course issuer bid to abnormally influence the market price of its securities. Therefore, purchases made by listed issuers pursuant to a normal course issuer bid shall be made at a price which is not higher than the last independent trade of a board lot of the class of securities which is the subject of the normal course issuer bid. In particular, the following are not "independent trades":

   (a) trades directly or indirectly for the account of (or an account under the direction of) an insider of the listed issuer, or any associate or affiliate of the listed issuer;

   (b) trades for the account of (or an account under the direction of) the broker making purchases for the bid; and

   (c) trades solicited by the broker making purchases for the bid.

2. ***Prearranged Trades*** - It is important to investor confidence that all holders of identical securities be treated in a fair and even-handed manner by the listed issuer. Therefore, ~~a~~an intentional cross or pre-arranged trade is not ~~generally~~ permitted, unless such trade is made in connection with the block purchase exception.

3. ***Private Agreements*** - It is in the interest of security holders that transactions pursuant to an issuer bid should be made in the open market. This philosophy is also reflected in the OSA, which provides very limited exemptions for private agreement purchases. ~~TSX, therefore, will not normally accept a notice which indicates that~~Therefore, purchases ~~will~~must be made ~~other than~~ by means of open market transactions.

4. ***Sales from Control*** - Purchases pursuant to a normal course issuer bid shall not be made from a person or company effecting a sale from control block pursuant to Part 2 of Multilateral Instrument 45-102 *Resale of Securities* and ~~Section~~Sections 630-633 of this Manual. It is the responsibility of the broker acting as agent for the listed issuer to

ensure that it is not bidding in the market for the normal course issuer bid at the same time as a broker is offering the same class of securities of the listed issuer under a sale from control.

5. ***Purchases During a Circular~~Take-Over~~ Bid*** – A listed issuer shall not make any purchases of its securities pursuant to a normal course issuer bid during a circular~~take over~~ bid for those securities. This restriction applies during the period from the first public announcement of the bid until the termination of the period during which securities may be deposited under such bid, including any extension thereof. This restriction does not apply to purchases made solely as a trustee pursuant to a pre-existing obligation under a pension, stock purchase, stock option, dividend reinvestment or other plan.

   In addition, if the listed issuer is making a securities exchange take-over bid, it shall not make any purchases of the security offered in the bid other than those permitted by ~~pursuant to~~ OSC ~~Policy 62-601~~ Rule 48-501 *Trading During Distributions, Formal Bids and Share Exchange Transactions.*.

6. ***Undisclosed Material Information*** – A listed issuer shall not make any purchases of its securities pursuant to a normal course issuer bid while the listed issuer possesses any material information which has not been disseminated. Reference is made to the TSX Timely Disclosure policy in this regard.

7. **Block Purchase Exception** – A listed issuer may make one block purchase per calendar week which exceeds the daily repurchase restriction contained in Subsection 628(xiii)(a), subject to maximum annual aggregate limits. This block purchase exception may not be used on any day during which the issuer makes purchases under its normal course issuer bid.

8. **Purchases at the Opening and Closing** – A listed issuer shall not make any purchases of its securities pursuant to a normal course issuer bid at the opening of a trading session, or during the 30 minutes before the scheduled close of a trading session. However, purchases of securities pursuant to a normal course issue bid may be effected through the market on close facility.

(m) A listed issuer shall appoint only one broker at any one time as its broker to make purchases. The listed issuer shall inform TSX in writing of the name of the responsible broker and registered representative. The broker shall be provided with a copy of the notice and be instructed to make purchases in accordance with the provisions of Sections 628, 629 and 629.1 and the terms of such notice. To assist TSX in its surveillance function, the listed issuer is required to receive prior written consent of TSX where it intends to change its broker.

(~~o~~n) Failure to comply with any requirement herein may result in the suspension of the bid.

629.1 Use of Derivatives and Accelerated Buy Backs in Conjunction with Normal Course Issuer Bids

Application

(a) Unless otherwise specifically modified by the terms of this Section 629.1, all provisions of Section 628 or 629 shall apply to derivatives and accelerated buy backs entered into by the listed issuer.

(b) A listed issuer shall not enter into a derivative or accelerated buy back unless:

   1. the listed issuer has filed a notice which has been accepted by TSX; and

   2. such derivative or accelerated buy back provides that:

      (i) the counterparty will be bound by the provisions of this Section;

      (ii) the interest of the counterparty under the derivative or accelerated buy back may only be assigned with the prior written consent of TSX; and

      (iii) the interest of the counterparty under the derivative or accelerated buy back may only be assigned to another counterparty.

(c) Counterparties must ensure that all hedging activities or other trading associated with derivatives or accelerated buy backs (and other similar securities, whether or not such securities contemplate physical or cash delivery for settlement) comply with Policy 2.1 - Just and Equitable Principles and Policy 2.2 - Manipulative and Deceptive Method of Trading under the Universal Market Integrity Rules for Canadian Marketplaces.

(d) A derivative that provides for exclusive "cash settlement" is not considered by TSX to constitute a transaction which is subject to this Section 629.1.

Terms of Derivatives and Accelerated Buy Backs

~~(d)~~(e) Each derivative used in conjunction with a normal course issuer bid shall be an OTC agreement with a counterparty.

~~(e)~~(f) The exercise price of a put or call option will be as negotiated by the listed issuer and the counterparty provided that the exercise price shall not exceed the aggregate of:

1. the price of the last independent trade of a board lot on TSX of the underlying interest at the time the exercise price has been agreed upon; and

2. the premium per unit of the underlying security which will be received by the issuer or the counterparty on the writing of the put or call option, respectively.

~~(f)~~(g) The purchase price of securities under a forward purchase contract or an accelerated buy back will be as negotiated by the listed issuer and the counterparty provided that the purchase price shall not exceed the price of the last independent trade of a board lot on TSX at the time the purchase price has been agreed upon.

~~(g)~~(h) Each derivative or accelerated buy back must expire on or before the last day on which purchases of securities may be made by the listed issuer under the normal course issuer bid.

~~(h)~~(i) Each derivative shall provide for settlement by the physical delivery of the underlying interest.

~~(i)~~(j) Notwithstanding subsection (~~h~~i), a derivative may provide for a cash settlement where:

1. the purchase of listed securities of the listed issuer by the listed issuer would not be permitted pursuant to the applicable securities legislation; or

2. a take-over bid has been publicly announced for the securities which are the subject of the normal course issuer bid.

Restrictions on the Number of Listed Securities Subject to Derivatives and Accelerated Buy Backs

~~(j)~~(k) At any time during the period of the normal course issuer bid, the aggregate of the number of listed securities which are subject to outstanding derivatives and accelerated buy backs and the number of listed securities acquired by the listed issuer prior to that time under the normal course issuer bid (including any listed securities acquired by the listed issuer on the exercise of any derivative) shall not exceed the greater of:

1. 5% of the number of issued and outstanding securities (excluding any listed securities held by or on behalf of the listed issuer) at the date of acceptance of the notice by TSX; and

2. 10% of the public float of the listed securities at the date of acceptance of the notice by TSX.

~~(k)~~(l) ~~At any~~If the listed issuer is not an investment fund, at no time during the period of the normal course issuer bid~~, a listed issuer~~ may ~~not: (i) enter into or exercise a derivative, or (ii) make a purchase in the open market pursuant to the normal course issuer bid, if~~ the aggregate of:

1. any listed securities purchased on a particular day by a counterparty to a derivative in connection with such derivative;

~~1.~~2. any listed securities purchased on a particular day by ~~the listed issuer on the exercise of a derivative~~counterparty to an accelerated buy back in connection with such accelerated buy back; and

~~2.~~3. any listed securities purchased by the listed issuer in the open market pursuant to the normal course issuer bid on a particular day, excluding any listed securities purchased pursuant to the block purchase exception,

exceeds the greater of: (i) 25% of the average daily trading volume of the listed securities of that class and (ii) 1,000 securities, unless such purchase is made pursuant to a block exception as ~~at the date the derivative is entered into, excluding any purchases made by the listed issuer under its normal course issuer bid and (ii) 1,000 securities~~contained in Subsection 629(l)(7).

(m) ~~**Derivative**~~ If the listed issuer is an investment fund, at no time during the period of the normal course issuer bid may the aggregate of:

1. any listed securities purchased in the preceding 30 days by a counterparty to a derivative in connection with such derivative;

2. any listed securities purchased in the preceding 30 days by a counterparty to an accelerated buy back in connection with such accelerated buy back; and

3. any listed securities purchased by the listed issuer in the open market pursuant to the normal course issuer bid in the preceding 30 days,

exceed 2% of the securities of that class outstanding on the date of acceptance of the notice of normal course issuer bid by TSX.

(n) Purchases by a listed issuer of its listed securities from a counterparty pursuant to a derivative or accelerated buy back are not subject to the restrictions on daily repurchases contained in Subsection 628(xii)(a) and (b), prearranged trades contained in Subsection 629(l)(2), private agreement contained in Subsection 629(l)(3) and the block purchase exception contained in Subsection 629(l)(7), provided that any listed securities purchased by a counterparty in connection with a derivative or accelerated buy back are purchased in accordance with all of the restrictions contained in Subsection 629(l).

Reporting and Disclosure Requirements

~~(l)~~(o) The intention of the listed issuer to enter into a derivative or accelerated buy back as part of a normal course issuer bid must be disclosed in the notice and in the press release required by ~~Subsection 629(~~Subsections 629 (d) and (f).

~~(m)~~(p) A copy of each derivative or accelerated buy back agreement, and any amendment thereto, shall be filed with TSX within 10 days of execution and each derivative ~~and~~ or accelerated buy back amendment shall be subject to the approval of TSX.

~~(n)~~(q) Each derivative or accelerated buy back shall be treated as a confidential document and will not be placed in the public record by TSX.

~~(o)~~(r) The listed issuer shall be responsible for:

1. ensuring compliance with restrictions on the number of listed securities as imposed by Sections 628, 629 and 629.1; and

2. reporting to TSX details of all open market purchases and acquisitions on the exercise of derivatives or pursuant to an accelerated buy back during a calendar month within 10 days following the month end.

~~(p)~~(s) The listed issuer may not delegate to the counterparty the responsibility for compliance and reporting as set forth in Subsection 629.1(~~o~~r).

Counterparties to Derivatives

~~(q)~~(t) Notwithstanding any other provision of Sections 628, 629 and 629.1, the listed issuer shall be entitled to use one participating organization as broker for open market purchases under the normal course issuer bid and another participating organization as a counterparty to the derivative or accelerated buy back or as an agent for the counterparty if such counterparty is not a participating organization.

~~(r)~~(u) The listed issuer may change the counterparty for the purposes of this Section 629.1 if:

1. the counterparty has ceased hedging activities related to any outstanding derivative; or

2. all derivatives or accelerated buy backs with the counterparty have expired or otherwise been settled.

Corporate and Securities Law Compliance

~~(s)~~(v) The listed issuer has the obligation to ensure any derivative or accelerated buy back entered into is in accordance with the corporate law under which the listed issuer is organized and the articles, by-laws or other charter documents of the listed issuer.

~~(t)~~(w) The listed issuer has the obligation to ensure that the writing of any OTC~~over the counter~~ option, as a distribution of securities, is undertaken pursuant to the granting of an exemption order from applicable securities legislation.

~~(u)~~(x) TSX may require, prior to the approval of any normal course issuer bid which will permit the listed issuer to enter into derivatives or accelerated buy backs, the submission of a legal opinion or other evidence satisfactory to TSX that the listed issuer is permitted to enter into such derivative or accelerated buy back (including compliance with any applicable corporate law). The listed issuer has the obligation to ensure that its entering into of a derivative or accelerated buy back is pursuant to an order exempting the issuer from applicable securities legislation regarding issuer bids.

~~**"Cash Settled" Arrangements**~~

~~(v) A derivative that provides for exclusive "cash settlement" is not considered by TSX to constitute a transaction which is subject to this Section 629.1.~~

629.2 Debt Substantial Issuer Bids

(a) The provisions of this section shall apply to a debt substantial issuer bid provided that:

(i) there is no legal or regulatory requirement to provide a valuation of the securities that are the subject of the bid to security holders; or

(ii) exemptions from all applicable requirements have been obtained.

(b) A listed issuer making a debt substantial issuer bid shall file with TSX a notice in the form of Form 13 found in Appendix H, together with a filing fee prescribed by Part VIII and shall not proceed with the bid until the notice has been accepted by TSX.

(c) Immediately after TSX has accepted notice of the debt substantial issuer bid, the listed issuer shall:

(i) disseminate details of the bid to the media in the form of a press release in a form approved by TSX; and

(ii) communicate the terms of the bid by advertising in the manner prescribed by TSX, or by such other means as may be approved by TSX.

(d) A book for receipt of tenders to the debt substantial issuer bid shall be opened on TSX not sooner than the thirty-fifth calendar day after the date on which notice of the bid is accepted by TSX and at such time, and for such length of time, as may be determined by TSX.

(e) Where in a debt substantial issuer bid, more securities are tendered than the number of securities sought, the listed issuer shall take up a proportion of all securities tendered equal to the number of securities sought divided by the number of securities tendered, and participating organizations shall make allocations in respect of securities tendered in accordance with the instructions of TSX.

(f) In respect of a bid:

(i) no participating organization shall knowingly assist or participate in the tendering of more securities than are owned by the tendering party; and

(ii) tendering, trading and settlement by participating organizations shall be in accordance with such rules as TSX shall specify to govern each bid.

(g) If a listed issuer makes or intends to make a debt substantial issuer bid, neither the listed issuer nor any person acting jointly or in concert with the listed issuer shall enter into any collateral agreement, commitment or understanding with any holder or beneficial owner of securities of the listed issuer subject to the bid that has the effect of providing to the holder or owner, a consideration of greater value than that offered to the other holders of the same class of securities.

(h) A notice of amendment shall be filed with the TSX for any proposed amendment to the terms of the bid. The proposed amendment will only be effective upon the acceptance of the TSX.

(i) Where the listed issuer becomes aware of a material change in any of the information contained in the notice in respect of a debt substantial issuer bid, the listed issuer shall file with the TSX forthwith a notice of amendment. The proposed amendment will only be effective upon the acceptance of the TSX.

(j) Immediately upon acceptance of the notice of amendment by the TSX, the listed issuer shall issue a press release containing a summary of the information set forth in such notice of amendment, including reference to any change in the date of the book.

APPENDIX B

From	Comments	TSX Response
A		
Peter W. Kay Senior Vice President Capital Management CIBC	**1) General** Overall, I am supportive of the approach you are taking, particularly with respect to the intention to simplify and harmonize the regulations.	**1) General** Thank you for your comment.
	2) Volume Purchase Restriction Calculating the 25% volume purchase restriction based on the month prior to the date of TSX acceptance of the bid raises the prospect of using an unrepresentative month as a base. It would be more appropriate to recalculate the volume purchase restriction on an ongoing basis and it would also be beneficial to have greater harmonization between the method TSX uses in calculating "average daily trading volume" and that used by the SEC in Rule 10b-18.	**2) Volume Purchase Restriction** TSX appreciates your concerns and agrees that the 25% volume purchase restriction based on the month prior to the date of TSX acceptance of the bid may be unrepresentative of usual trading in the securities of an issuer. Consequently, the definition of average daily trading volume ("ADTV") has been amended as follows: **"average daily trading volume" or "ADTV"** means the trading volume on TSX for the most recently completed ~~calendar month~~six months preceding the date of acceptance of the notice of normal course issuer bid by TSX, excluding any purchases made by the listed issuer under its normal course issuer bid during such six months, ~~calculated as the total volume for the month~~ divided by the number of trading days for the relevant ~~month~~six months. In the case of listed securities which have been listed on TSX for a period of less than six months, the ADTV for such securities shall be based on the period since the date of listing, but must be at least four weeks preceding the date of acceptance of the notice of normal course issuer bid by TSX; The use of a fixed limit rather than a rolling limit makes it easier for buying brokers to comply with the daily purchase restrictions and makes it easier for TSX to monitor and enforce its NCIB policy.
	3) Unusual situations It is not clear that there is a mechanism under the new requirements for applying to TSX for an exemption from the volume purchase restrictions in unusual circumstances. It would be preferable to include such a process.	**3) Unusual situations** Although not included in the request for comments, pursuant to Section 603, TSX has discretion to grant exemptions from any of the requirements contained in Parts V or VI of the Manual. TSX will exercise its discretion having regard to the factors described in Section 603. For instance, the merger transaction completed between Manulife Financial Corporation and John Hancock Financial Services, Inc. was considered unusual by TSX and consequently, we used our discretion to provide certain exemptive relief.

From	Comments	TSX Response
		Pursuant to Section 629(i), a listed issuer may also amend its notice in certain stated circumstances in order to increase the number of securities that may be purchased.
	4) Block purchase exception It would appear that the regulations do not contemplate purchases of large blocks (i.e. blocks in excess of the 25% daily volume limit). We would suggest that consideration be given to allowing some sort of relief for block purchases, perhaps along the line of that provided by SEC regulations in Rule 10b-18.	**4) Block purchase exception** Section 629 has been amended to allow block purchases of securities, other than investment funds, in certain specific circumstances. Section 629 (l)(7) has been added: **Block Purchase Exception** – A listed issuer may make one block purchase per calendar week which exceeds the daily repurchase restriction contained in Subsection 628(xiii)(a), subject to maximum annual aggregate limits. This block purchase exception may not be used on any day during which the issuer makes purchases under its normal course issuer bid. Section 629(a)(iii) has also been included: "block" means a quantity of securities that either: (a) has a purchase price of $200,000 or more; or (b) is at least 5,000 securities and has a purchase price of at least $50,000; or (c) is at least 20 board lots of the security and total 150% or more of the ADTV for security;
	5) Debt Substantial Issuer Bids The proposals are inconsistent with normal practice in the over-the-counter markets for the vast majority of debt instruments, and would suggest that the imposition of these types of rules would provide a considerable disincentive for listing debt securities on the TSX.	**5) Debt Substantial Issuer Bids** TSX is of the opinion that Section 629.2 on Debt Substantial Issuer Bids is necessary in order to maintain a quality market place and ensure that security holders can participate equally and thus be treated fairly. Please also note that the proposed rules provide that "an offer by a listed issuer to acquire securities in accordance with the terms and conditions attaching thereto that permit the purchase or acquisition of the securities by the issuer without the prior agreement of the owners of the securities" is not covered by the definition of "issuer bid" and consequently not subject to the policy on DSIBs.

From	Comments	TSX Response
B		
Ms. Michelle Peacock Equity Division BMO Nesbitt Burns Inc.	**1) Volume Purchase Restriction** The 25% volume restriction should be recalculated each calendar month or on the preceding 4 weeks, to align with US rules.	**1) Volume Purchase Restriction** Please see our response to comment #A2 above.
	2) Average Daily Trading Volume The ADTV used to calculate the volume purchase restriction should be based on volume on all marketplaces, not just TSX volume.	**2) Average Daily Trading Volume** If we were to calculate the ADTV based on volume on all marketplaces, we believe that it would artificially inflate volume and consequently, allow issuers to unduly affect the market price of their securities by purchasing a larger number of securities than would otherwise be permitted. As a result, Section 628(a)(ii) has been amended as follows: "average daily trading volume" or "ADTV" means the trading volume on TSX for the most….
	3) Hedging Activity and Regulations The hedging activity associated with a derivative is appropriately regulated by the Universal Market Integrity Rules ("UMIR"). Reference is made to Policy 2.1 – Just and Equitable Principles and Policy 2.2 – Manipulative and Deceptive Methods of Trading under UMIR.	**3) Hedging Activity and Regulations** Thank you for your comment.
	4) Derivatives and Physical Delivery The hedging activity associated with a physical delivery should be subject to the requirements of proposed sections 628, 629 and 629.1. The hedging activity culminating in delivery associated with the over-the-counter derivatives, although indirect, has the same potential for market impact as a direct NCIB and is the result of a transaction undertaken by the issuer.	**4) Derivatives and Physical Delivery** The requirements related to derivatives used in conjunction with an NCIB are limited to those derivatives which are settled by physical delivery of the underlying security as stated in section 629.1(d).
	5) Derivatives and Cash Settlement We do not believe that sections 628 and 629 should apply to exclusively cash-settled derivatives. Hence, section 629.1 (a) should not apply.	**5) Derivatives and Cash Settlement** Thank you for your comment. Derivatives which provide for exclusive cash settlement have been excluded from the application of the new rules as the listed issuer does not ultimately repurchase its own securities but rather settles by cash payment. TSX does not intend to regulate or monitor cash-settled derivatives.
	6) Debt Substantial Issuer Bids Repurchase conditions are clearly defined in the trust indentures governing the bonds and may	**6) Debt Substantial Issuer Bids** Please see our response to comment #A5 above.

From	Comments	TSX Response
	be in conflict with TSX rules. We recommend that all bonds be treated consistently, whether listed or unlisted.	
C		
Nicolle D. Irving Vice President Trading Administration & Compliance GMP Securities Ltd.	**<u>1) Volume Purchase Restriction</u>** The proposed changes, including amendment to the volume purchase restriction, will significantly and negatively impact small listed companies and stocks that are not highly liquid. Would it be more prudent to establish a “high volume issuer” test and give them the choice to use the “daily average method” while allowing the lower volume issuers to maintain the 2% limit?	**<u>1) Volume Purchase Restriction</u>** We continue to believe that the 25% volume purchase restriction should apply to all issuers listed on TSX. TSX had originally proposed to provide an exemption to the 2% purchase restriction for those issuers with high trading volumes on TSX only. However, following the receipts of comments, we decided to adopt the 25% limit for all issuers other than investment funds. One of the principles of NCIB policies has always been that an issuer should not have a significant impact on the market price of its securities by virtue of purchases made under its NCIB. In order to provide more flexibility to issuers, including those with less liquid stocks, wishing to purchase securities above the 25% threshold on a very specific occasion, TSX now allows an issuer to benefit from a block purchase exception. Please refer to our response provided in #A4 above. We have retained the 2% limit for investment funds, which have the same meaning as that found in National Instrument 51-102 *Continuous Disclosure Obligations*. The valuation of investment funds is generally accessible through the net asset value of the fund, which in turn is a reflection of market value.
	<u>2) Block purchase exception</u> Currently NCIBs can be used to purchase selling interest in the marketplace on blocks thus removing the risk of price declines on volume sales or for discount bids. Block trading can significantly impact thinly traded securities and in most cases not accurately reflect the value of the company.	**<u>2) Block purchase exception</u>** Please see our response to comment #A4 above.
	<u>3) Unrepresentative Limit</u> Another concern we have would be the possibility for manipulation of volumes prior to the acceptance of a bid to ensure highly volume limit and /or the manipulation of timely dissemination of news to manipulate volumes prior to a bid.	**<u>3) Unrepresentative Limit</u>** TSX has amended its definition of ADTV in order to ensure that the 25% volume purchase restriction was representative of usual trading in an issuer’ securities and to avoid any manipulation. The ADTV is now based on a six month period prior to the date of TSX acceptance of the bid. Please also see our response to comment A#2 above.

From	Comments	TSX Response
D		
David M. Power **Vice President** **Market Strategy and Execution** **Corporate Treasury** **RBC Financial Group**	**1) Block purchase exception** The proposed amendment does not provide for a block purchases exemption, and therefore, it might limit Canadian banks in their NCIB execution tactics in the future. As a result, we propose to either keep the current TSX volume limitation or to replicate the block purchases exemption in SEC's safe harbor rule 10b-18.	**1) Block purchase exception** Please refer to our response to comment #A4 above.
	2) Volume Purchase Restriction We think that it would be sufficient for the 25% volume purchase restriction limit to be calculated once for the program in effect, as we do not anticipate great trading volatility and therefore significant month-to-month changes in the 25% purchase restriction.	**2) Volume Purchase Restriction** Please refer to our response to comment #A2 above.
	3) Derivatives and Physical Delivery The key condition set out in the amendment requires that each derivative must provide for physical delivery. As the *Bank Act* prohibits RBC from holding its own securities, this requirement would restrict the ability of RBC to enter into derivative transactions.	**3) Derivatives and Physical Delivery** Securities which are repurchased by an issue under an NCIB must, in most cases, be cancelled by the issuer, so this requirement is not unusual. In addition, please see our response to comments D#4 and #5.
	4) Harmonization with SEC Rule 10b-18 RBC is of the view that TSX should further harmonize the NCIB rules with the US safe harbor 10b-18 rules, so that the banks that are listed on both US and Canadian stock exchanges can comply with both set of rules, and the *Bank Act*, without unnecessary conflicts.	**4) Harmonization with SEC Rule 10b-18** We have reconsidered the safe harbour rule and made changes where we believed appropriate, including an exception for block purchase as noted above.
E		
John F. Kyle **Vice President & Treasurer** **Treasurer's Department** **Imperial Oil Limited**	**1) Exceptional Circumstances** Imperial Oil Limited has been granted an exemption from TSX which allows its principal shareholder to participate in the program by making a block sale at the closing price each day after the close of normal trading hours and during the special trading session. The block amount is calculated based on shares purchases from the minority shareholders such that the principal shareholder's ownership is unchanged at the end of the day. We urge you to specify that open market trading (i.e. during normal trading hours) may not exceed 25% of the designated daily volume but to exclude from the limitation block trades at the closing price after the close of normal trading hours.	**1) Exceptional Circumstances** TSX will deal with unique requests, such as Imperial's, on a case by case basis by using its discretion as stated in section 603. Please also note that issuers will now be able to rely on a block purchases exception. Please refer to our response to comment #A4 above.

From	Comments	TSX Response
F		
Jeff Glass Blake, Cassels & Graydon LLP	**1) Volume Purchase Restriction** I believe that additional analysis is required before the 2% purchase restriction is replaced, particularly given the impact that the amendment will have on NCIB purchases of less liquid securities. In the context of Canadian markets it is not uncommon for the decision of a very few retail investors to move the market in a material way contributing to significant price volatility. Additional liquidity for investors in such circumstances and the resulting price stability are each desirable result. As I understand it, the decision to base the amendment on SEC's rule 10b-18 was made in the context of an effort to accommodate high volume stocks and in my view, more consideration should be given to the potential impact of the amendment on less liquid securities.	**1) Volume Purchase Restriction** We believe that the 25% volume purchase restriction should apply to all listed issuers notwithstanding their size, with the exception of investment funds. Please refer to our response to comment #C1 above.
	2) Average Daily Trading Volume In my view, rather than fixing ADTV as at the date TSX accepts the NCIB notice, ADTV should be recalculated every trading day based on the trading volume in the prior 20 trading days in order that the 25% volume restriction is determined on the basis of influences on the market at the time such purchases are made.	**2) Average Daily Trading Volume** Please see our response to comment #A2 above.
	3) Block purchase exception Given the impact of section 628(a)(ix)(a) on the level of purchases that would be permitted in respect of illiquid securities, TSX should give consideration to adopting a block purchase exemption.	**3) Block purchase exception** Please see our response to comment #A4 above.
G		
Osler, Hoskin & Harcourt	**1) General comment** We are of the view that it would be helpful if TSX would confirm in the new rules that they are intended to apply only in connection with a NCIB made through the facilities of TSX, in order to remove any ambiguity with respect to a NCIB made through another stock exchange.	**1) General comment** We agree with your comment and Section 628(a)(xii) has been amended as follows: **""issuer bid**" means an offer, made through the facilities of TSX, to acquire listed securities…"
	2) Average Daily Trading Volume We are of the view that the 25% volume restriction should not be fixed solely with reference to the calendar month immediately preceding the date of acceptance of the notice of NCIB by TSX, as this creates a static and arbitrary volume restriction that may not reflect	**2) Average Daily Trading Volume** Please see our response to comment #A2 above.

From	Comments	TSX Response
	the changing circumstances of the issuer during the life of the issuer bid. It would be preferable to use a "rolling" 30-day period as the appropriate measure, or, failing that, a 30-day period ended on the most recent month-end.	
	3) Block purchase exception It would be helpful to have the opportunity to exceed the 25% limit where circumstances warrant, presumably on application to TSX – such circumstances might include foreseeable events that will lead to exceptional sources of liquidity, such as a substantial issuance of shares pursuant to a merger or acquisition.	**3) Block purchase exception** TSX will now allow block purchases. Please see our response to comment #A4 above. As stated in Section 603, TSX has also discretion to grant exemptions under special circumstances.
	4) Derivatives and ADTV The integration of the daily repurchase restriction with the derivatives rules in section 629.1(k) strikes us as having been drafted in such a way as will likely create problems for the implementation of derivative programs in the manner usually contemplated. This is created in particular by the inclusion of the first subclause (i) ("enter into or exercise a derivative") with the language and purchase restrictions that follow.	**4) Derivatives and ADTV** We agree with your comment and have amended Section 629.1(l) (formerly Section 629.1(k)) and added new Section 629.1(m) as follows: (l) ~~At any~~If the listed issuer is not an investment fund, at no time during the period of the normal course issuer bid a ~~listed issuer~~ may ~~not: (i) enter into or exercise a derivative, or (ii) make a purchase in the open market pursuant to the normal course issuer bid, if~~ the aggregate of: 1. any listed securities purchased on a particular day by a counterparty to a derivative in connection with such derivative; 2. any listed securities purchased on a particular day by ~~the listed issuer on the exercise of~~a counterparty to an accelerated buy back in connection with such accelerated buy back; and 3. any listed securities purchased by the listed issuer in the open market pursuant to the normal course issuer bid on a particular day, excluding any listed securities purchased pursuant to the block purchase exception, exceed the greater of: (i) 25% of the average daily trading volume of the listed securities of that class and (ii) 1,000 securities, unless such purchase is made pursuant to a block exception as ~~at the date the derivative is entered into, excluding any purchases made~~

From	Comments	TSX Response
		~~by the listed issuer under its normal course issuer bid and (ii) 1,000 securities~~contained in Subsection 629(l)(7). (m) If the listed issuer is an investment fund, at no time during the period of the normal course issuer bid may the aggregate of: 1. any listed securities purchased in the preceding 30 days by a counterparty to a derivative in connection with such derivative; 2. any listed securities purchased in the preceding 30 days by a counterparty to an accelerated buy back in connection with such accelerated buy back; and 3. any listed securities purchased by the listed issuer in the open market pursuant to the normal course issuer bid in the preceding 30 days, exceed 2% of the securities of that class outstanding on the date of acceptance of the notice of normal course issuer bid by TSX.
	5) Accelerated Share Buybacks The US securities laws and stock exchange rules are flexible enough to facilitate accelerated share buybacks on a basis that ensures all investors have an opportunity to benefit from the issuer's repurchase and the consequent hedging activity of the dealer. In our view, TSX should consider amending the proposed amendments to permit accelerated share buybacks to occur in Canada through the facilities of TSX.	**5) Accelerated Share Buybacks** Thank you for your comment. TSX has amended the rules in order to permit accelerated share buybacks. Section 629.1 has been amended accordingly.
	6) Price restrictions Section 629(f) restricts the purchase price under the forward purchase contract to no more than the pricing of the last independent trade of a board lot, meaning that the issuer is consequently not allowed to incorporate a financing charge or spread beyond the market price of the security. In addition, we understand that the relevant pricing of a derivative is generally determined directly as a result of (and following) the counterparty's hedging transactions, which typically occur over the course of several days after the contract is made – meaning that the final price of the contract will reflect an average of purchases made over the course of several days, which may well exceed the spot market price on the date the contract is	**6) Price restrictions** The price is restricted to an amount not higher than the last independent trade of a board lot in order to ensure that the counterparty does not have an incentive to conduct its hedging activity at escalating prices. In addition, it would not generally be in the issuers' economic interest to purchase its securities under a forward contract at a price higher than it could otherwise obtain such securities. Unlike a call option which may be exercised at the issuers' election, the forward purchase contract is a definitive purchase arrangement on a future date.

From	Comments	TSX Response
	entered or on one or more dates during the period when the price is being determined.	
	7) Definition of Normal Course Issuer Bid In our view, the opening words of the definition should read "means an issuer bid by a listed issuer".	**7) Definition of Normal Course Issuer Bid** The definition of normal course issuer bid has been amended as follows: ""**normal course issuer bid**" means an issuer bid by a listed issuer to acquire…"
	8) Definition of Circular The proposed amendments do not contain a definition of "circular bid". We suggest that an adapted version of the definition of "circular" contained in current Section 6-101 of the Appendix F of the Company Manual be inserted.	**8) Definition of Circular** The definition of circular bid has been added and is as follows:: "**circular bid**" means a take-over bid or an issuer bid made in compliance with the requirements of Part XX of the OSA or, if applicable, Part XVII of the *Canada Business Corporations Act*;
	9) Debt Substantial Issuer Bids In our view, this decision turns on the judgment by TSX as to the appropriate measures necessary to ensure a quality marketplace in listed securities, and is accordingly a matter for TSX to consider in its own best interest.	**9) Debt Substantial Issuer Bids** We thank you for your comment.
H		
Ted Larkin **Head of Equity Capital Markets** **UBS Securities Canada Inc.**	**1) Block purchase exception** TSX should permit one block exemption per week.	**1) Block purchase exception** Please see our response to comment #A4 above.
	2) Trading Restrictions No opening trades and no trading in the last 10 minutes should be permitted for NCIB purchases.	**2) Trading Restrictions** We agree with your comment and have added Section 629(l) 8: **Opening and Closing Purchases** – A listed issuer shall not make any purchases of its securities pursuant to a normal course issuer bid at the opening of a trading session, or during the 30 minutes before the scheduled close of a trading session. However, purchases of securities pursuant to a normal course issuer bid may be effected through the market on close facility.
	3) Average Daily Trading Volume ADTV calculation should be based on prior 3 to 6 months on TSX only.	**3) Average Daily Trading Volume** Please see our response to comment #A2 above.

From	Comments	TSX Response
I		
Michael J. Brady **Counsel** **Market Policy and General Counsel's Office** **Market Regulation Services Inc. ("RS")**	**1) General** RS believes that the amendments, as a whole are positive and will result in more effective regulation of NCIBs and DSIBs. RS believes that the proposal to implement a daily repurchase restriction represents a substantial improvement over the existing 2% restriction. By limiting the daily purchase to 25% of daily average trading volume, issuers will have more limited ability to affect the price of a security through NCIB purchases.	**1) General** Thank you for your comment.
	2) Volume Purchase Restriction RS believes that the 25% volume purchase restriction should be recalculated each calendar month rather than be determined as of the date of acceptance of the NCIB by TSX. By calculating the restriction each month, the repurchase amount will more accurately reflect the liquidity of the security at the time of the purchases. By basing a daily repurchase amount on an outdated calculation made at the date of the approval of the NCIB, there is an increased likelihood that purchases under the NCIB may have a considerable impact on trading in a security. If the ADTV is to be determined at the time of acceptance of the NCIB, RS believes that it would be appropriate to calculate this amount based on trading during a larger period than a calendar month preceding the date of acceptance of the NCIB. RS would suggest that the calculation of the ADTV calculated over a three-month period might more accurately reflect historic trading volumes for the security and will be less subject to volatility due to one-time events.	**2) Volume Purchase Restriction** We thank you for your comment. Please see our response to comment #A2 above.
	3) Derivatives and ADTV The proposed move from a monthly restriction on the size of NCIB activity equal to 2% of the issued and outstanding securities to 25% of ADTV may impose practical limitations on the use of derivatives in connection with an NCIB.	**3) Derivatives and ADTV** Please see our response to comment #G4 above.
	4) Derivatives and Cash Settlement Extending the ambit of section 629.1 to include cash settled derivatives would ensure that the issuer does not have an indirect impact on the market for its securities.	**4) Derivatives and Cash Settlement** TSX does not intend to regulate derivatives which provide for exclusive cash settlement as the listed issuer does not repurchase its own securities.

From	Comments	TSX Response
	5) Debt Substantial Issuer Bids RS supports TSX proposal regarding Debt Substantial Issuer Bids. As a listed security, the issuer should treat the holders equally and fairly with respect to repurchases.	**5) Debt Substantial Issuer Bids** Thank you for your comment.
	6) Definition of ADTV The definition of ADTV should ensure that the calculation will be adjusted to account for splits, consolidations, dividends paid through the issuance of securities or similar transactions	**6) Definition of ADTV** We agree with your comment and have added Section 628(b)(ii): "For the purposes of Sections 628,629,629.1:... (iii) the number of securities that may be acquired by a listed issuer shall be adjusted to account for stock splits, consolidations and stock dividends, or other similar events.."
	7) Definition of NCIB In the first line of the definition, the term "bid by a listed issuer" is used. RS believes that the correct reference should be to "issuer bid".	**7) Definition of NCIB** Please see our response to comment #G7 above.
	8) Amendment to the size of NCIB Section 629(j) is acceptable to RS. However, it should be made clear in this section whether the amended notice amounts to a new NCIB providing limits for a further 12 months from the date of the amended notice or whether the new limits apply for the remaining period of the original notice. If the provision is being made for an increase in the size of an NCIB where the issued capital has increased by 25%, should there be a comparable provision governing the reduction of the size of the NCIB if the issued capital has decreased by 25% or more.	**8) Amendment to the size of NCIB** We believe it is clear that the amendment will only apply to the remaining term of the NCIB.
	9) Pre-arranged Trades The final sentence of clause 629(m) Part 2 refers to the fact that "a cross or pre-arranged trade is not generally permitted". RS proposes that the sentence should read "an intentional cross or pre-arranged trade is generally not permitted". Unintentional crosses which are executed by the trading system without knowledge that the order on the other side of the market is a bid pursuant to a NCIB should not be restricted.	**9) Pre-arranged Trades** The final sentence of Section 629(l) 2., (formerly Section 629(m) 2.) has been amended as follows: "…Therefore, an intentional cross or pre-arranged trade is not permitted."
J		
Christopher S.L. Hoffman Executive Vice-President	**1) Volume Purchase Restriction** Brompton Group is concerned with the fact that the maximum daily purchase amount will be calculated based on the ADTV in the month	**1) Volume Purchase Restriction** Please see our response to comment #A2 above.

From	Comments	TSX Response
Brompton Group	immediately preceding TSX acceptance of the NCIB notice. If for some reason, there was very little trading in the month before acceptance of the NCIB notice, an issuer's ability under an NCIB will be substantially limited.	
	2) IPOs Each of Brompton fund implements its NCIB immediately after completion of the initial public offering. It appears that under the revised proposal, this would result in the daily repurchase restriction being zero.	**2) IPOs** We have amended the definition of "normal course issuer bid" to retain the 2% over 30 days buyback restrictions for listed issuers who are investment funds. As a result, the 4 week minimum trading requirement after an IPO will not apply to investment funds.
	3) Exemption to ADTV The revised proposal will significantly limit the ability of issuers whose securities are stable and not highly traded. The effect will be that unitholders in certain issuers will not be able to obtain the benefits which are currently available under an NCIB. We believe this result is inappropriate and unanticipated. We submit that the proposed amendment should retain the current 2% monthly purchase restriction even if other rules are provided for high trading issuers.	**3) Exemption to ADTV** Please see our response to comment #C1 above. One of the principles of NCIB policies has always been that an issuer should not have a significant impact on the market price of its securities by virtue of purchases made under its NCIB.
K		
Heather Crawford **Counsel** **Clairvest Group Inc.**	**1) Exemption to ADTV** Clairvest believes that the proposed changes to the 2% purchase restriction will negatively affect small companies and stocks that may suffer periods of poor liquidity. We believe that while the proposed changes which replace the 2% monthly purchase restriction with a 25% ADTV cap may be appropriate for an issuer with large trading volumes, it is not appropriate for issuers with much lower trading volumes. Shareholders of these companies with small capitalization are adversely affected. While we believe that the current 2% monthly restriction works for all market participants, we would accept a different test for issuers with high trading volumes provided that the 2% monthly restriction was continued for companies with less liquid securities.	**1) Exemption to ADTV** Please see our response to comment #C1 above.
L		
Simon Romano **Stikeman Elliot**	**1) Definition of OTC** How does the definition of OTC cover trading on other marketplaces?	**1) Definition of OTC** The definition contemplates trading through the facilities of any exchange. Therefore a marketplace which is not an exchange would not fall within the definition.

From	Comments	TSX Response
	2) Definition of Public Float Should the definition of "public float" not have a knowledge qualification?	**2) Definition of Public Float** Section 628(xvi) has been amended as follows: "Public float" means the number, known to the issuer after reasonable inquiry, ……"
	3) Crosses or Pre-Arranged Trades The use of the word "generally" in section 629(m)(2) seems worthy of some elaboration. When might this be permitted?	**3) Crosses or Pre-Arranged Trades** The term "generally" has been removed. Please see our response to comment #I9 above.
M		
Stephen A. Weintraub **Executive Vice President & Secretary** **Counsel Corporation**	**1) Volume Purchase Restriction** Counsel Corporation believes that the proposed elimination of the "2% in 30 days" restriction in favour of a "25% of ADTV restriction" will be detrimental to companies with smaller capitalization and low trading volumes. It would only exacerbate the illiquidity of the shares of smaller companies that do not have the benefit of research coverage or an institutional following and further discourage existing and potential shareholders. We believe that the current 2% restriction should remain in place for companies with smaller capitalizations although we make no recommendation as to what the capitalization threshold should be.	**1) Volume Purchase Restriction** Please see our response to comment #C1 above.
N		
Michael D. Shabada, CA **Vice President, Finance and CFO** **Melcor Developments Ltd**.	**1) Volume Purchase Restriction** Melcor Developments Ltd. generally believes that the proposed changes to the 2% purchase restriction will negatively affect small companies and stocks that may suffer periods of poor liquidity. We believe that while the proposed changes which replace the 2% monthly purchase restriction with a 25% ADTV cap may be appropriate for an issuer with large trading volumes, it is not appropriate for issuers with much lower trading volumes. Shareholders of these companies with small capitalization will be adversely affected. While we understand that there may need to be a change required due to some specific situations, we believe that the current 2% monthly restriction works for all market participants including Melcor. We would strongly suggest that you take into consideration the effect of the proposed rules on all companies and not just the large ones.	**1) Volume Purchase Restriction** Please see our response to comment #C1 above.

From	Comments	TSX Response
O		
C. Verner Christensen Vice President, Finance and Secretary Guardian Capital Group Limited	**1) Volume Purchase Restriction** Guardian believes that the proposed changes to the 2% purchase restriction will negatively affect the stocks of smaller companies, which periodically go through periods of poor liquidity. While the proposed changes, which replace the 2% monthly purchase maximum with a 25% ADTV maximum, appear to be appropriate for issuers with large trading volumes, they are not appropriate for issuers, such as Guardian, with lower volumes. The current 2% rules allows issuers such as Guardian to participate in the market when the shares are considered undervalued, but the proposed rule does not do so. We would, therefore, encourage the TSX to continue the current policy for companies with less liquid shares.	**1) Volume Purchase Restriction** Please see our response to comment #C1 above.
P		
Betty B. Horton, CA Vice President, Finance Sceptre Investment Counsel Limited	**1) Volume Purchase Restriction** Sceptre believes that the proposed changes to the 2% purchase restriction will negatively affect small companies and stocks that may suffer periods of poor liquidity. We believe that while the proposed changes which replace the 2% monthly purchase restriction with a 25% ADTV cap may be appropriate for an issuer with large trading volumes, it is not appropriate for issuers with much lower trading volumes. Shareholders of these companies with small capitalization are adversely affected. While we believe that the current 2% monthly restriction works for all market participants, we would accept a different test (like the proposed ADTV) for issuers with high trading volumes provided that the 2% monthly restriction was continued for companies with less liquid securities.	**1) Volume Purchase Restriction** Please see our response to comment #C1 above.
Q		
George Malikotsis Vice President, Finance Senvest Capital Inc.	**1) Volume Purchase Restriction** We are particularly troubled by the proposal in the Amendments that would change the interim period volume restrictions on NCIBs from 2% of the relevant class of securities outstanding in any 30-day period to 25% of the ADTV of the relevant class of securities in any one day This concern stems from the fact that for a company like Senvest whose shares are thinly traded, this will have the effect of greatly reducing our flexibility to purchase shares under our NCIB.	**1) Volume Purchase Restriction** Please see our response to comment #C1 above.

From	Comments	TSX Response
	Perhaps a better approach would be to adopt a hybrid rule which would recognize the different needs and concerns of those listed companies with actively traded shares and those listed companies whose shares are thinly traded. **2) Application of Section 629(m)** In response to the concern that a NCIB should, in the case of an illiquid market, have an undue impact on the market price of the shares, we submit that the restrictions contained at Section 629(m) of the Amendments provide adequate protection in that regard.	**2) Application of Section 629(l) (formerly Section 629(m))** Thank you for your comment. The restrictions in Section 629(l) (formerly Section 629(m)) provide necessary market protections during the operation of an NCIB, but do not address the larger issues affecting liquidity.
R		
Charles A. (Tony) Teare **Executive Vice President** **Diaz Resources Ltd.**	**1) Volume Purchase Restriction** Diaz believes that the proposed changes to the 2% per month purchase restriction will negatively affect small companies and stocks that may suffer periods of poor liquidity. Also, we believe the current system adequately protects the existing shareholders without adversely affecting the trading patterns of smaller companies with poorer liquidity. While Diaz believes that the current 2% monthly restriction works for all market participants, we would accept a different test for issuers with high trading volumes provided that the 2% monthly restriction was continued for companies with less liquid securities.	**1) Volume Purchase Restriction** Please see our response to comment #C1 above.
S		
Andrew Searby, CA **Chief Financial Officer** **Liquidation World**	**1) Volume Purchase Restriction** The proposed change to replace the 2% monthly purchase restriction with a 25% ADTV cap will negatively impact issuers with lower trading volumes. The current 2% rule allows small cap issuers to participate in the market when it believes that the shares are inappropriately undervalued. The proposed change would adversely affect issuers with low trading volume.	**1) Volume Purchase Restriction** Please see our response to comment #C1 above.
T		
John B. Walker **Chief Financial Officer** **Bridges Transitions Inc.**	**1) Volume Purchase Restriction** As our company has a thinly trade float, we support the position addressed in Clairvest Group Inc.'s letter.	**1) Volume Purchase Restriction** Thank you for your comment. Please see our response to comment #C1 above.
U		
Diane St.John **Secretary Treasurer** **Reko International Group Inc.**	**1) Volume Purchase Restriction** Reko believes that the proposed changes to the 2% purchase restriction will negatively affect small companies and stocks that may suffer	**1) Volume Purchase Restriction** Please see our response to comment #C1 above.

From	Comments	TSX Response
	periods of poor liquidity. We believe that while the proposed changes which replace the 2% monthly purchase restriction with a 25% ADTV cap may be appropriate for an issuer with large trading volumes, it is not appropriate for issuers with much lower trading volumes. Shareholders of these companies with small capitalization are adversely affected. While we believe that the current 2% monthly restriction works for all market participants, we would accept a different test (like the proposed ADTV) for issuers with high trading volumes provided that the 2% monthly restriction was continued for companies with less liquid securities.	

13.1.2 CDS Notice of Request for Comments – Material Amendments to CDS Rules Relating to Eligibility Criteria for CAD RCP

THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED ("CDS")

MATERIAL AMENDMENTS TO CDS RULES
ELIGIBILITY CRITERIA FOR CAD RCP

REQUEST FOR COMMENTS

DESCRIPTION OF THE PROPOSED AMENDMENTS

On October 12, 2005, the Board of Directors of The Canadian Depository for Securities Limited ("CDS") approved amendments to the CDS Participant Rules which (A) describe the eligibility requirements for Receivers of Credit which want to become a member of the Canadian Dollar ("CAD") Category Credit Ring (as this term is defined in the CDS Participant Rules) and (B) require a Member of the CAD Category Credit Ring for RCP Receivers to not increase its Systems-Operating Cap and increase the amount of its Collateral Pool Contribution by a special margin collateral Contribution where an early warning event designated by the Investment Dealers Association of Canada ("IDA") has occurred.

NATURE AND PURPOSE OF THE PROPOSED AMENDMENTS

Background

On October 1, 2004 the Ontario Securities Commission ("OSC") non-disapproved CDS's Receivers' Collateral Pool ("RCP") Rules. This non-disapproval was subject to the condition that the CAD RCP must have written objective eligibility standards that are transparent and fair which are to be effective by February 28, 2006. It has been determined, in consultation with the OSC, that an IDA member-only RCP is appropriate.

To be eligible to become a member of the Credit Ring for RCP Receivers making CAD settlements, under the current version of the CDS Participant Rules, the regulatory body that has primary audit jurisdiction over the Participant must be a party to a memorandum of understanding ("MOU") with CDS wherein it agrees to provide CDS with notice of an early warning event occurring in relation to the Participant. The IDA is the only self-regulatory entity which has entered into an MOU with CDS. It has been determined that it is desirable to amend the CDS Participant Rule to clarify the fact that to be a Member of the Credit Ring for RCP Receivers making CAD settlements Participants must be members of the IDA.

In addition, CDS is proposing to move the requirements to provide special margin collateral where an early warning event has occurred from its Participant Procedures to its Participant Rules.

Overview

CDS developed the CAD RCP to provide an alternative to pre-funding or arranging a line-of-credit. The CAD RCP provides a cost-effective alternative to reliance on major financial institutions, which are often the parent organizations of competitors, to provide credit.

- The proposed rule amendment establishes the criteria that a Receiver must meet to be eligible to be a Member in the Credit Ring for RCP Receivers making Canadian dollar settlements.

Furthermore, as mentioned above, the proposed amendments will move the requirements for special margin collateral from the CDS Participant Procedures to Rule 5.12.7 of the CDS Participant Rules. The special margin collateral rules describe the obligations of a Participant where an "early warning event" has been designated by the IDA.

Qualifications for Membership in Canadian dollar Contribution Credit Ring

A member of the CAD RCP pledges collateral to the collateral pool and is given an initial aggregate collateral value ("ACV") and a system-operating cap for CAD settlements. The amount guaranteed by the CAD RCP credit ring includes all amounts used by a defaulting participant under its system-operating cap for settlement payments (but not settlement payments drawn under a line of credit and guaranteed by a surety).

The current rules concerning the CAD RCP provide that a CAD RCP member must be regulated by a self-regulatory organization or government regulator that has entered into a memorandum of understanding with CDS, under which CDS will receive notice of a receiver placed on early warning and/or of changes regarding the status of the receiver so that CDS may take such steps to protect its interests and those of all other Participants.

The proposed amendments to Rule 5.9.1(b)(i) specify that to be eligible to be a member of the CAD RCP a Receiver must fulfil three requirements:

- That the CAD RCP member be a member of the IDA;
- That the IDA has entered into a memorandum of understanding with CDS which defines the term "early warning event" and provides that the IDA will notify CDS when an early warning event has been designated in relation to a Receiver; and
- There has not been an early warning event designated in relation to the CAD RCP within the previous 12 months except where the existing members of contributing credit ring (or a governing subset thereof) have explicitly waived this criterion in relation to the specific CAD RCP.

It should be noted that these requirements only pertain to members of the CAD RCP and do not affect members of the USD credit ring.

This amendment is being made to clarify that, at the present time, only IDA members can be CAD RCP members. In an effort to manage risk, CDS must know that there is an entity effectively monitoring a CAD RCP member to determine whether an "early warning event" has occurred. All of the current CAD RCP Participants are independent broker-dealers who are IDA members. The non-contributing credit ring participants include receivers who are not IDA members, as well as bank-owned broker-dealers and independent broker-dealers who are members of the IDA.

Special Margin Collateral

The proposed amendments to Rule 5.12.7, which is based on the requirements formerly appearing in the CDS Participant Procedures, provides for increased "Collateral Pool Contributions" and restricts the ability to temporarily increase the "System-Operating Cap" when the IDA determines an early warning event has occurred in relation to a CAD RCP Participant.

The term "Collateral Pool Contribution" is defined in Section 1.2 of the CDS Participant Rules as "the contribution made to its Collateral Pool by a Member of a Category Credit Ring. "Systems-Operating Cap" is defined in the same section as "the limit established in accordance with Rule 5.10 on the Transactions that may be effected by an extender, Active Federated Participant, Settlement Agent or RCP Receiver."

The proposed amendment references an early warning event designated by the IDA.[9] The amendments to Rule 5.12.7 refer to the two "early warning levels" established by the IDA early warning designation process. At early warning level 1, the additional contribution is equal to its current collateral requirement. At early warning level 2, the additional contribution is 100% of its system-operating cap, unless the CDS Governing Council has determined that the cap shall be set at zero.

By identifying IDA membership as a requirement of be a member in the Credit Ring for CAD RCP Receivers, CDS will ensure that there are not going to be inconsistent risk standards applied to members of the same credit ring. Each member of a credit ring is placing its capital at risk and requires some comfort that other members of the ring will be subject to some minimum, transparent and objective criteria. If members of a credit ring are not satisfied that all other members of the ring are properly regulated and subject to appropriate criteria, they may choose not to participate which may cause the ring to collapse. CDS believes that members of a single credit ring must be assured that the other members of their ring are subject to the same credit control. If an applicant is unable to meet the criteria for any credit ring, they are entitled to create their own credit ring with other Receivers of Credit who are subject to similar criteria. The proposed amendment references the obligations imposed on a CAD RCP Participant to increase their Collateral Pool Contribution where an early warning event has occurred. Early warning events are categorized as "level 1" events and "level 2" events and the extent of the increase of Collateral Pool Contribution will depend on the level assigned by the IDA. The amendment makes it clear that information concerning a Participant's early warning status and requirements to make special Collateral Pool Contributions is confidential and may not be disclosed to other members of the Category Credit Ring.

In addition, the proposed amendments include a change to Rule 5.12.7(d) which provides direction as to the release of the special Collateral Pool Contribution. It provides that the special contribution will be released, at the CAD RCP Participant's request, where there is no longer an early warning event designation in relation to the CAD RCP Participant.

The proposed provisions are intended to address the issue of increased risk to all members of a Contributing Credit Ring when one of the members of the ring is undergoing an early warning event. Where an organization is undergoing an early warning event there may be an increased likelihood that the organization in question may default on their obligations which will expose all members of that organization's Contributing Credit Ring to potential liability. The proposed amendments to Rule 5.12.7 are meant to manage the risk exposure for all members of a Contributing Credit Ring by increasing the collateral that a member will

[9] Early warning reports are provided for in IDA By-law 30.

be required to provide or reduce the member's cap when an early warning event is ongoing. The additional collateral or cap reduction will reduce the risk exposure for all Credit Ring members.

IMPACT OF PROPOSED AMENDMENTS

As the proposed amendments to Rule 5.12.7 are based on requirements currently existing in the CDS Participant Procedures the proposed amendment will have little impact on CDS, its Participants or other participants in the industry.

It should be noted Participants in the CAD RCP are all currently IDA members and therefore are familiar with IDA standards. Consideration was given to finding a means of establishing an appropriate level of congruency with other regulatory standards, in order to create a CAD RCP which would include Participants who are not IDA members however an analysis of capital requirements and regulatory standards determined that finding equivalency across various regulatory regimes was not possible. In addition, there was a concern whether other organizations would maintain consistent communication with CDS. CDS has ongoing experience of working with the IDA under a memorandum of understanding, and that experience provides assurance that CDS and the IDA can maintain appropriate levels of communication.

The impact on individual receivers of credit will vary depending on their particular risk tolerance and banking and credit arrangements. Membership in the CAD RCP does expose each member to the potential for loss of their collateral contribution as a result of the default of another member. For this reason, a number of potential CAD RCP members have chosen not to be members and rely on lines of credit as their sole source of credit in CDSX. CDS has analyzed the costs of credit provided by the CAD RCP in comparison with equivalent lines of credit. While the costs vary by Participant, the magnitude of the cost difference does not provide a material cost benefit to members of the CAD RCP.

DESCRIPTION OF THE RULE DRAFTING PROCESS

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to Section 21.1 of the Ontario *Securities Act* and as a self-regulatory organization by the Autorité des marchés financiers pursuant to Section 169 of the Québec *Securities Act*. In addition CDS has been deemed to be the clearing house for CDSX, a clearing and settlement system designated by the Bank of Canada pursuant to Section 4 of the *Payment Clearing and Settlement Act*. The Ontario Securities Commission, the Autorité des marchés financiers and the Bank of Canada will hereafter be collectively referred to as the "Recognizing Regulators".

Each amendment to the CDS Participant Rules is reviewed by CDS's Legal Drafting Group ("LDG"). The LDG is a committee which includes members of Participants' legal and business groups. The LDG's mandate is to advise CDS management and its Board of Directors on rule amendments and other legal matters relating to centralized securities depository and clearing services in order to ensure that they meet the needs of CDS, its Participants and the securities industry.

COMMENTS

Comments on the proposed amendments should be in writing and delivered by November 20, 2005 and delivered to:

Jamie Anderson
Senior Legal Counsel
The Canadian Depository for Securities Limited
85 Richmond Street West
Toronto, Ontario M5H 2C9

Fax: 416-365-1984
e-mail: attention@cds.ca

A copy should also be provided to the Ontario Securities Commission by forwarding a copy to:

Cindy Petlock
Manager, Market Regulation
Capital Markets Branch
Ontario Securities Commission
Suite 1903, Box 55,
20 Queen Street West
Toronto, Ontario, M5H 3S8

Fax: 416-595-8940
e-mail: cpetlock@osc.gov.on.ca

CDS will make available to the public, upon request, copies of comments received during the comment period.

COMPARATIVE ANALYSIS

CDS has undertaken a review of the eligibility criteria for access to the CAD RCP Credit Ring to ensure that it meets international standards. International standards require that access criteria be objective and publicly disclosed to permit fair and open access. CDS believes that its criteria for becoming a Participant in CDS not only meet international standards but also are as transparent and fair and are less onerous then similar criteria imposed by The Depository Trust Company.

The National Securities Clearing Corporation ("NSCC") has also recognized the necessity to protect itself against credit risk and have procedures which have a similar purpose as the criteria which will be established as a result of the proposed amendments. While the NSCC and CDS have similar objectives in protecting against credit risk the structural differences between NSCC and CDS have resulted in each organization adopting a different approach.

The NSCC provides credit to its members directly rather than relying on members to provide the credit themselves. It protects itself against credit risk by requiring contributions to a clearing fund based on risk-based margin calculations. To monitor its members the NSCC undertakes extensive credit reviews. Members placed on surveillance may be required to make additional deposits to the clearing fund. The NSCC relies on compliance with domestic regulatory requirements in determining whether a member is to be placed on surveillance. The NSCC approach in relying on the regulatory reports (such as SEC FOCUS) to determine whether a member must make additional deposits is very similar to the approach CDS is proposing to take under the proposed amendment to Rule 5.12.7. CDS and NSCC will both be relying on compliance with other entity's regulatory requirements to determine when additional capital or collateral will have to be provided to reduce the risk burden faced by other members.

PUBLIC INTEREST ASSESSMENT

In analyzing the impact of the proposed amendments to the Participant rules, CDS has determined that the implementation of these amendments would not be contrary to the public interest.

PROPOSED RULE AMENDMENTS

Appendix "A" contains text of the current CDS Participant Rules marked to reflect proposed amendments (moved text is not marked) as well as text of the CDS Participant Rules reflecting the adoption of the proposed amendments.

QUESTIONS

Questions regarding this notice may be directed to:

Michael Brady
Senior Legal Counsel
The Canadian Depository for Securities Limited
85 Richmond Street West
Toronto, Ontario M5H 2C9

Telephone: 416-365-8395
Fax: 416-365-1984
e-mail: attention@cds.ca

TOOMAS MARLEY,
VICE-PRESIDENT, LEGAL AND CORPORATE SECRETARY

APPENDIX "A"
PROPOSED RULE AMENDMENT

5.9.1 Establishment of Category Credit Rings	**5.9.1 Establishment of Category Credit Rings**
(a) Category Credit Rings	(a) Category Credit Rings
Each Participant is, by virtue of its acceptance as a Participant, a Member of the Category Credit Ring for the category of Participant into which it is classified. The Category Credit Rings are:	Each Participant is, by virtue of its acceptance as a Participant, a Member of the Category Credit Ring for the category of Participant into which it is classified. The Category Credit Rings are:
~~(a)~~ (i) all Extenders of Credit,	(i) all Extenders of Credit,
~~(b)~~ (ii) each Active Federated Participant and its Federated Participants,	(ii) each Active Federated Participant and its Federated Participants,
~~(c)~~ (iii) all Settlement Agents,	(iii) all Settlement Agents,
~~(d)~~ (iv) the RCP Receivers making Canadian dollar Settlements,	(iv) the RCP Receivers making Canadian dollar Settlements,
~~(e)~~ (v) the RCP Receivers making US dollar Settlements,	(v) the RCP Receivers making US dollar Settlements,
~~(f)~~ (vi) the Non-Contributing Receivers making Canadian dollar Settlements and	(vi) the Non-Contributing Receivers making Canadian dollar Settlements and
~~(g)~~ (vii) the Non-Contributing Receivers making US dollar Settlements.	(vii) the Non-Contributing Receivers making US dollar Settlements.
The Members of each Category Credit Ring guarantee the payment to CDS in accordance with this Rule 5.9 of the obligation of all Members of that Category Credit Ring described in Rule 5.9.5. Each Participant other than a Receiver is a Member of a single Category Credit Ring.	The Members of each Category Credit Ring guarantee the payment to CDS in accordance with this Rule 5.9 of the obligation of all Members of that Category Credit Ring described in Rule 5.9.5. Each Participant other than a Receiver is a Member of a single Category Credit Ring.
(b) Category Credit Rings for Receivers	(b) Category Credit Rings for Receivers
Each Receiver is a Member of two Category Credit Rings, one for each currency.	Each Receiver is a Member of two Category Credit Rings, one for each currency.
(i) Canadian dollar Settlements	(i) Canadian dollar Settlements
A~~n eligible~~ Receiver must choose~~s~~ to be a Member of either the Credit Ring for RCP Receivers making Canadian dollar Settlements or the Credit Ring for Non-Contributing Receivers making Canadian dollar Settlements.	A Receiver must choose to be a Member of either the Credit Ring for RCP Receivers making Canadian dollar Settlements or the Credit Ring for Non-Contributing Receivers making Canadian dollar Settlements.
A Receiver is eligible to become a Member of the Credit Ring for RCP Receivers making Canadian dollar Settlements only if (A) it is a member of the Investment Dealers Association of Canada, ~~the Regulatory Body that has primary audit jurisdiction over the Receiver~~ (B) the Investment Dealers Association of Canada has entered into a memorandum of understanding with CDS which defines the term "early warning event" and	A Receiver is eligible to become a Member of the Credit Ring for RCP Receivers making Canadian dollar Settlements if (A) it is a member of the Investment Dealers Association of Canada, (B) the Investment Dealers Association of Canada has entered into a memorandum of understanding with CDS which defines the term "early warning event" and provides for notice to CDS when an early

providesing for (i) notice to CDS of material changes in its regulation of member firms and (ii) the exchange of informationwhen a Participant regulated by such Regulatory Body experiences an early warning event has been designated in relation to a Receiver, and (C) there has not been an early warning event designated in relation to the Receiver within the previous 12 months (or during the period since the Receiver has been a member of the Investment Dealers Association of Canada where such period is less than 12 months) except where the existing Members or a governing representative sub-set thereof has explicitly waived this criterion for a specific Receiver of Credit and permits the Receiver of Credit to become a Member of the Credit Ring for RCP Receivers making Canadian dollar Settlements nothwithstanding such an early warning event designation.or is in material operational or financial difficulties that may adversely affect other persons dealing with the Participant. An eligible Receiver who chooses to become a Member of the RCP Receivers Credit Ring making Canadian dollar Settlements becomes an RCP Receiver. An ineligible Receiver, or an eligible Receiver who chooses not to become an RCP Receiver, is a Member of the Credit Ring for Non-Contributing Receivers making Canadian dollar Settlements. (ii) US dollar settlements Each Receiver must choose to be a Member of either the Credit Ring for RCP Receivers making US dollar Settlements or the Credit Ring for Non-Contributing Receivers making US dollar Settlements. A Receiver who chooses to become a Member of the RCP Receivers Credit Ring making US dollar Settlements becomes an RCP Receiver. (c) Collateral Pools A Collateral Pool is established for each Category Credit Ring, except the Category Credit Rings for Non-Contributing Receivers. An RCP Receiver for a currency makes a Contribution to the Receivers Collateral Pool for that currency.; aA Non-Contributing Receiver for a currency does not contribute collateral to a the Receivers Collateral Pool for that currency.	warning event has been designated in relation to a Receiver, and (C) there has not been an early warning event designated in relation to the Receiver within the previous 12 months (or during the period since the Receiver has been a member of the Investment Dealers Association of Canada where such period is less than 12 months) except where the existing Members or a governing representative sub-set thereof has explicitly waived this criterion for a specific Receiver of Credit and permits the Receiver of Credit to become a Member of the Credit Ring for RCP Receivers making Canadian dollar Settlements nothwithstanding such an early warning event designation. An eligible Receiver who chooses to become a Member of the RCP Receivers Credit Ring making Canadian dollar Settlements becomes an RCP Receiver. An ineligible Receiver, or an eligible Receiver who chooses not to become an RCP Receiver, is a Member of the Credit Ring for Non-Contributing Receivers making Canadian dollar Settlements. (ii) US dollar settlements Each Receiver must choose to be a Member of either the Credit Ring for RCP Receivers making US dollar Settlements or the Credit Ring for Non-Contributing Receivers making US dollar Settlements. A Receiver who chooses to become a Member of the RCP Receivers Credit Ring making US dollar Settlements becomes an RCP Receiver. (c) Collateral Pools A Collateral Pool is established for each Category Credit Ring, except the Category Credit Rings for Non-Contributing Receivers. An RCP Receiver for a currency makes a Contribution to the Receivers Collateral Pool for that currency. A Non-Contributing Receiver for a currency does not contribute collateral to the Receivers Collateral Pool for that currency.
5.12.7 Increased Collateral Pool Contribution by RCP Receiver (a) CDS Request Forthwith at the request of CDS, an RCP Receiver shall provide additional Contributions to the Canadian dollar Collateral Pool or to the US dollar Collateral Pool, which Contributions shall be in addition to its Contribution to	**5.12.7 Increased Collateral Pool Contribution by RCP Receiver** (a) CDS Request Forthwith at the request of CDS, an RCP Receiver shall provide additional Contributions to the Canadian dollar Collateral Pool or to the US dollar Collateral Pool, which Contributions shall be in addition to its Contribution to

such Collateral Pool calculated in accordance with Rule 5.12.3. The amount of such additional Contributions shall be the amount that CDS in its absolute discretion determines to be prudent to ensure the due discharge of the Participant's obligations to CDS that are secured by its RCP Collateral Pool Contributions (taking into consideration the financial stability and regulatory status of the Participant, the amount of its obligations to CDS and any other factor that CDS considers relevant). (b) Special Margin Collateral If an early warning event has been designated by the Investment Dealers Association of Canada in relation to a Member of the Credit Ring for RCP Receivers making Canadian dollar Settlements, then the Member may not be permitted to temporarily increase its System-Operating Cap and the required amount of the Collateral Pool Contribution to be made by that Member shall be increased by a special margin collateral Contribution calculated accordingly: (i) if the designation is early warning level 1, an amount equal to its current Collateral Pool Contribution (unless the Member opts to reduce its System-Operating Cap in which the amount shall equal the value of its reduced System-Operating Cap divided by the leverage ratio applicable to the Credit Ring for RCP Receivers making Canadian dollar Settlements), or (ii) if the designation is early warning level 2, an amount equal to the difference between its current Collateral Pool Contribution and its RCP Receiver's System-Operating Cap. Information concerning a Member's early warning status and the requirement to make a special margin collateral Contribution is confidential and shall not be disclosed to the other Members. (c) Effect of Increased Contributions The additional Contributions or special margin collateral Contributions made by the RCP Receiver ~~at the request of CDS~~pursuant to this Rule 5.12.7 shall not affect the calculation of the leverage factor or of the System Operating Cap of (i) the RCP Receiver that made the additional Contributions or special margin collateral Contributions or (ii) ~~of~~ any other RCP Receiver. (d) Release of Additional Contributions At the request of the RCP Receiver that made the additional Contribution~~s~~ pursuant to paragraph (a), and provided that an early warning event has not been designated in relation to the RCP Receiver, CDS shall release any additional Contribution if CDS determines in its discretion that such additional Contribution is not	such Collateral Pool calculated in accordance with Rule 5.12.3. The amount of such additional Contributions shall be the amount that CDS in its absolute discretion determines to be prudent to ensure the due discharge of the Participant's obligations to CDS that are secured by its RCP Collateral Pool Contributions (taking into consideration the financial stability and regulatory status of the Participant, the amount of its obligations to CDS and any other factor that CDS considers relevant). (b) Special Margin Collateral If an early warning event has been designated by the Investment Dealers Association of Canada in relation to a Member of the Credit Ring for RCP Receivers making Canadian dollar Settlements, then the Member may not be permitted to temporarily increase its System-Operating Cap and the required amount of the Collateral Pool Contribution to be made by that Member shall be increased by a special margin collateral Contribution calculated accordingly: (i) if the designation is early warning level 1, an amount equal to its current Collateral Pool Contribution (unless the Member opts to reduce its System-Operating Cap in which the amount shall equal the value of its reduced System-Operating Cap divided by the leverage ratio applicable to the Credit Ring for RCP Receivers making Canadian dollar Settlements), or (ii) if the designation is early warning level 2, an amount equal to the difference between its current Collateral Pool Contribution and its RCP Receiver's System-Operating Cap. Information concerning a Member's early warning status and the requirement to make a special margin collateral Contribution is confidential and shall not be disclosed to the other Members. (c) Effect of Increased Contributions The additional Contributions or special margin collateral Contributions made by the RCP Receiver pursuant to this Rule 5.12.7 shall not affect the calculation of the leverage factor or of the System Operating Cap of (i) the RCP Receiver that made the additional Contributions or special margin collateral Contributions or (ii) any other RCP Receiver. (d) Release of Additional Contributions At the request of the RCP Receiver that made the additional Contribution, and provided that an early warning event has not been designated in relation to the RCP Receiver, CDS shall release any additional Contribution if CDS determines in its discretion that such additional Contribution is not required to ensure

required to ensure the due discharge of the Participant's obligations to CDS. At the request of the RCP Receiver that made the special margin collateral Contribution pursuant to paragraph (b), CDS shall release such special margin collateral Contribution provided there is no longer an early warning event designated in relation to the RCP Receiver.	the due discharge of the Participant's obligations to CDS. At the request of the RCP Receiver that made the special margin collateral Contribution pursuant to paragraph (b), CDS shall release such special margin collateral Contribution provided there is no longer an early warning event designated in relation to the RCP Receiver.

13.1.3 CDS Notice of Request for Comments – Material Amendments to CDS Rules Relating to Entitlement Payments

THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED ("CDS")

MATERIAL AMENDMENTS TO CDS RULES
ENTITLEMENT PAYMENTS

REQUEST FOR COMMENTS

DESCRIPTION OF THE PROPOSED AMENDMENTS

On October 12, 2005, the Board of Directors of The Canadian Depository for Securities Limited ("CDS") approved amendments to the CDS Participant Rules governing the payment of entitlements utilizing CDS systems. The proposed amendments will reflect agreements with financial institutions to process their own "on us" cheques for entitlement payments flowing through CDS.

Amendment of Definition of "Payment Item"

CDS proposes to amend the definition of a "Payment Item" in Rule 1.2.1 to explicitly include both paper-based and electronic items processed through the Automated Clearing Settlement System of the Canadian Payment Association.

Amendment to Rule 5.9.5 – Defaulter's Obligation

Rule 5.9.5 describes the obligations of a "Defaulter" who is a member (or former member) of a Category Credit Ring. Paragraph (a) of Rule 5.9.5 provides an exemption from these obligations where the Participant incurs such liabilities or obligations while acting as an issuer or agent of the issuer in relation to the entitlement payment. The proposed amendment to Paragraph (a) of Rule 5.9.5 clarifies a "Defaulter's" obligation to CDS, evidenced by an entry to the CDS Funds Account, will not be considered to be an obligation which will be exempted from Rule 5.9.5 obligations.

Amendment to Rule 6.6.4 – Distribution of Entitlement Payments

CDS proposes to amend Rule 6.6.4 to delete the specific provisions outlining when the payment of an entitlement obligation is to be credited to the funds account of the CDS entitlement ledger (the "CDS Funds Account"). The amended provision will be subject to Rule 6.6.8 which will be amended to provide specific direction regarding processing different forms of entitlement payments.

Amendment to Rule 6.6.8 – Crediting of Entitlement Payments

CDS is proposing to make a number of changes to Rule 6.6.8 which will establish how CDS will credit entitlement payments. Paragraph (a) will provide that an entitlement payment may be immediately credited to CDS Funds Account, pursuant to Rule 6.6.4, if it is received from the issuer or its agent by means of either an Acceptable Payment (the Large Value Transfer System ("LVTS") tranche 1 or Fedwire) or a funds account debit from the funds account of the Bank of Canada or the fund account of another Participant.

Paragraph (b) of the proposed amendments to Rule 6.6.8 provides accommodation to allow processing of non-final payments. The accommodation for non-final payments will be provided both by CDS's own banker for any item (including items drawn on financial institutions that are not participants or that do not provide accommodation processing) and by other financial institutions for their "on us" cheques and electronic payments.

Paragraph (c) of the amended Rule 6.6.8 (amending 6.6.8(d) of the current Rule) will provide that, if CDS receives a "Payment Item" in a form other than that described in Paragraph (a) or which they can not process in accordance with Paragraph (b), CDS may:

(i) delay distribution of the entitlement to Participants, crediting the entitlement once it has been honoured for final value,

(ii) distribute the entitlement by other means, or

(iii) notify Participants that CDS will not distribute the entitlement and that Participants may take steps to exercise their rights in respect of the security on which the entitlement payment was made.

NATURE AND PURPOSE OF THE PROPOSED AMENDMENTS

General

CDS recognizes that changes in technology provide opportunities to expedite the payment of entitlements while managing the risk exposure of CDS and its Participants. The proposed amendments will distinguish between situations where such payments are final and irrevocable and situations where CDS is the recipient of non-final or revocable form of payments. The proposed amendments will reflect agreements with financial institutions to process their own “on us” cheques for entitlement payments flowing through CDS.

Amendment of Definition of “Payment Item”

CDS is proposing to amend the definition of the term “Payment Item” to specifically include paper-based or electronic payment item acceptable for clearing through the Automated Clearing Settlement System of the Canadian Payments Association (“CPA”) as “Payment Items”. By including CPA settlement systems approved by the CPA as Payment Items, CDS is expanding the types of items which it will accept as a Payment Item to adopt CPA standards.

Amendment to Rule 5.9.5 – Defaulter’s Obligation

Rule 5.9.5 outlines the obligations of members of a Category Credit Ring where one of the members, or former members, of the ring becomes a “Defaulter”. This Rule clarifies the role of the initial defaulting member of the Category Credit Ring as well as the obligations of all Participants who are members of the Defaulter’s ring.

Paragraph (a) of Rule 5.9.5 provides a specific exclusion from the general obligations of a Participant who is a member of a Category Credit Ring where the Participant is acting in their role as an issuer of securities, or the agent for the issuer. During the review of the Rules governing the distribution of entitlements, a lack of clarity in the wording of paragraph (a) to Rule 5.9.5 was discovered. The proposed amendment is intended to clarify that the obligation of a Defaulter to CDS evidenced by an entry to CDS’s Funds Account is **not** considered to be an obligation that is exempt from Category Credit Ring obligations. All members of a Category Credit Ring will be responsible for the obligations of a “Defaulter” to CDS for a failed deposit to CDS’s Funds Account.

The exclusion established in paragraph (a) of rule 5.9.5 is intended to relate to the activities of a Participant where the Participant is acting in their role as an issuer of securities, or the agent for the issuer performing services relating to the issuance of the security rather than as an agent for the issuer for the purpose of payment of the entitlement. If however a Participant is acting as an agent on behalf of the issuer for the purpose of paying the entitlement (as opposed to agent for the purpose of issuing the security) the Category Credit Ring guarantees a Participant’s obligation to CDS which will be evidenced by a negative funds account balance (except for amounts covered by a surety or fund), regardless of the purpose of the underlying transactions.

Amendment to Rule 6.6.4 – Distribution of Entitlement Payments

CDS is proposing to amend Rule 6.6.4 in conjunction with the proposed amendments to Rule 6.6.8. Rule 6.6.4 currently indicates that CDS will not credit the CDS Funds Account until either:

- The amount of the entitlement is debited from the Bank of Canada’s funds account or of the funds account entitlement processor; or
- An Acceptable Payment (as defined in CDS’s Participant Rules) has been received by CDS.

The proposed amendment to Rule 6.6.4 will delete these provisions and make reference to Rule 6.6.8. The amended version of Rule 6.6.4 will clarify that funds received from Participants for the purpose of funding an entitlement payment will be credited to the CDS Funds Account and once such a credit has been made CDS will then distribute the funds as specified.

Amendment to Rule 6.6.8 – Crediting of Entitlement Payments

The proposed amendments will delete much of the current Rule 6.6.8, including Paragraphs (b) and (c) in their entirety.

The proposed amendments to Rule 6.6.8 establish specific procedures for crediting entitlement payments in situations where the payment provided to CDS is in final, irreversible form and other situations where the payment to CDS is not final or may be reversed. The reference to the issuer/agent as the immediate source of the payment is intended to emphasize the distinction between such payments which are final and the accommodation processing of non-final payments.

Paragraph (a) of proposed amended Rule provides that an entitlement payment may be credited to the CDS Fund Account,

without processing where the payment originates directly from the issuer or its agent, without an accommodation payment having to be made to a third party where:

A. The amount of the entitlement has been debited for the credit of the CDS Funds Account, at the instruction of the Bank of Canada or the Participant from the Funds Account of the:

- Bank of Canada; or
- Participant acting in their capacity as;
  1. the issuer of the security;
  2. the agent of the issuer; or
  3. the Entitlements Processor for the security; or

B. An Acceptable Payment is received by CDS from the issuer or its agent, in the amount of the entitlement.

An Acceptable Payment to CDS is defined in CDS Participant Rule 8.2.5 and includes:

- A message payable to CDS received through LVTS by the bank of Canada and credited to CDS's account; or
- Another type of transaction which results in an immediate, final, and irrevocable credit to CDS's account with the Bank of Canada.

Paragraph (b) of Rule 6.6.8 applies to other situations where the funding for an entitlements payment is funded by a bank or other financial institution acting for the issuer. In these situations the bank or other financial institution will provide CDS with either an Acceptable Payment or a funds account debit. This payment (unlike the immediately credited final payment described in paragraph (a)) is not being made directly by the issuer or its agent. The accommodation payment is good funds: it is either an LVTS tranche 1 or Fedwire payment that is final in the payment system or a funds account debit that is guaranteed by the credit ring. Therefore CDS can use these funds to make payment at payment exchange. However, the accommodation payment made by the issuer to the bank or other financial institution is not final. If the payment item is not honoured for final value, then by separate transactions CDS will require the receiving participants to repay the "bad" entitlement, and CDS reverse the corresponding entitlement through a debit to the account of each Participant to whom the entitlement was credited in accordance with Participant Rule 6.6.14.

Paragraph (c) of Rule 6.6.8, which is intended to replace Paragraph (d) of the current Rule, provides direction on how CDS will process an entitlement payment in a form other than the forms described in Paragraph (a) which cannot be processed in accordance with Paragraph (b). CDS will have the option to:

- Delay distribution of the entitlement to participants may be delayed until the payment item has been honoured for final value;
- Distribute the entitlement to Participants by any other means selected by CDS; or
- Inform Participants that CDS will not distribute the entitlement and that Participants may take steps pursuant to CDS Rule 6.9.1 to exercise their rights in respect of the security.

IMPACT OF THE PROPOSED AMENDMENTS

The proposed amendments described above will, in the aggregate, have the effect of providing additional flexibility for issuers and Participants in relation to the distribution of entitlement payments while ensuring CDS will be able to process such payments in an efficient manner while minimizing its risk exposure.

The proposed amendments provide that CDS will be able to promptly credit Acceptable Payments, without processing, while still giving issuer's the option of utilizing payment methods which would result in CDS receiving non-final funds. By utilizing the methods of payment described in Paragraph (a) of 6.6.8 issuers will be able to transfer entitlement payments in a more efficient manner which will reduce the time lag between the time of the delivery of the funds and the time that it will be credited to CDS's Fund Account. By reducing the time lag between delivery and credit the process of entitlement payment can be expedited which will benefit issuers as well as investors.

Issuers will be entitled to process Payment Items as Paragraph (b) describes, however, such payments will not be final and are subject to reversal by CDS where the payment item to the intermediary does not clear.

It is anticipated that the proposed amendments will reduce the risk of payment failure to CDS and Participants by providing Participants with incentives to utilize the more direct methods of payment described in Paragraph (a) of Rule 6.6.8 as the risk of "clearing" the transaction will be eliminated. Paragraph (b) provides for the final processing of payments only after the accommodation payment has been cleared while Paragraph (c) gives CDS with absolute discretion regarding processing payments which do not comply with the requirements of Paragraph (a) or (b).

The proposed amendments will not require technological systems changes on the part of CDS, its Participants or other marketplace participants. Participants will have to consider changing their operational procedures to ensure that they can advise issuers on the options available for the payment of entitlements to allow them to utilize the most expeditious method available. Where a Participant is acting to accommodate an entitlement payment on behalf of an issuer they must ensure that they aware of the requirements established in Rule 6.6.8 so as to provide efficient service.

DESCRIPTION OF THE RULE DRAFTING PROCESS

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to Section 21.1 of the Ontario *Securities Act* and as a self-regulatory organization by the Autorité des marchés financiers pursuant to Section 169 of the Québec *Securities Act*. In addition CDS has deemed to be the clearing house for CDSX, a clearing and settlement system designated by the Bank of Canada pursuant to Section 4 of the *Payment Clearing and Settlement Act*. The Ontario Securities Commission, the Autorité des marchés financiers and the Bank of Canada will hereafter be collectively referred to as the "Recognizing Regulators".

Each amendment to the CDS Participant Rules is reviewed by CDS's Legal Drafting Group ("LDG"). The LDG is a committee which includes members of Participants' legal and business groups. The LDG's mandate is to advise CDS management and its Board of Directors on rule amendments and other legal matters relating to centralized securities depository and clearing services in order to ensure that they meet the needs of CDS, its Participants and the securities industry.

COMMENTS

Comments on the proposed amendments should be in writing and delivered by November 20, 2005 and delivered to:

Jamie Anderson
Senior Legal Counsel
The Canadian Depository for Securities Limited
85 Richmond Street West
Toronto, Ontario M5H 2C9

Fax: 416-365-1984
e-mail: attention@cds.ca

A copy should also be provided to the Ontario Securities Commission by forwarding a copy to:

Cindy Petlock
Manager, Market Regulation
Capital Markets Branch
Ontario Securities Commission
Suite 1903, Box 55,
20 Queen Street West
Toronto, Ontario, M5H 3S8

Fax: 416-595-8940
e-mail: cpetlock@osc.gov.on.ca

CDS will make available to the public, upon request, copies of comments received during the comment period.

COMPARATIVE ANALYSIS

Because of the nature of the proposed amendment no analysis of comparable requirements of other clearing agencies was undertaken.

PUBLIC INTEREST ASSESSMENT

In analyzing the impact of the proposed amendments to the Participant rules, CDS has determined that the implementation of these amendments would not be contrary to the public interest.

PROPOSED RULE AMENDMENTS

Appendix "A" contains text of current CDS Participant Rules marked to reflect proposed amendments as well as text of these rules reflecting the adoption of the proposed amendments.

QUESTIONS

Questions regarding this notice may be directed to:

Michael Brady
Senior Legal Counsel
The Canadian Depository for Securities Limited
85 Richmond Street West
Toronto, Ontario M5H 2C9

Telephone: 416-365-8395
Fax: 416-365-1984
e-mail: attention@cds.ca

TOOMAS MARLEY,
VICE-PRESIDENT, LEGAL AND CORPORATE SECRETARY

APPENDIX "A"
PROPOSED RULE AMENDMENT

1.2.1 Definitions "Payment Item" means a cheque, official cheque, bank draft, central bank draft, agent's cheque, a payment message received through the LVTS, a payment message received through Fedwire, an instruction to a banker, a paper-based or electronic payment item acceptable for clearing through the Automated Clearing Settlement System of the Canadian Payments Association, or any other payment item, and includes an Acceptable Payment.	**1.2.1 Definitions** "Payment Item" means a cheque, official cheque, bank draft, central bank draft, agent's cheque, a payment message received through the LVTS, a payment message received through Fedwire, an instruction to a banker, a paper-based or electronic payment item acceptable for clearing through the Automated Clearing Settlement System of the Canadian Payments Association, or any other payment item, and includes an Acceptable Payment.
5.9.5 Defaulter's Obligation The obligation referred to in Rule 5.9.2 of a Defaulter is the total of all obligations to CDS arising from (i) any indemnity or Cross-Border Claim pursuant to Rule 10.2.10; or (ii) its participation in the Depository Service and the Settlement Service, including holding Securities in a Ledger, effecting Settlements, establishing Lines of Credit and making payment to CDS with respect to the Depository Service and the Settlement Service, except: (a) liabilities or obligations arising from its role as the ISIN Activator, Security Validator, Entitlements Processor or Custodian of a Security (and for greater certainty, an obligation of a Defaulter to CDS evidenced by an entry made to its Funds Account shall not be considered to be a liability or obligation that is excluded pursuant to this paragraph (a)); (b) any obligation in respect of which a Line of Credit under which the Defaulter is a Debtor has been used; or (c) any obligation guaranteed by the other Members of the Credit Ring for a Fund to which the Defaulter belongs. The obligation of a defaulter may be denominated in Canadian dollars or US dollars or in both. For Receivers (both RCP Receivers and Non-Contributing Receivers), the obligations of the Category Credit Ring for Canadian dollar settlements are separate from the obligations of the Category Credit Ring for US dollar settlements. For members of other Category Credit Rings, the aggregate obligation in all currencies is the Debtor's obligation. The Members of a Category Credit Ring acknowledge that the obligation of a Defaulter to CDS may exceed the System-Operating Cap of the Defaulter and the authorized amounts of Lines of Credit established for the Defaulter due to the making of forced entries by CDS pursuant to Rule 8.1.3 or to an indemnity or Cross-Border Claim pursuant to Rule 10.2.10.	**5.9.5 Defaulter's Obligation** The obligation referred to in Rule 5.9.2 of a Defaulter is the total of all obligations to CDS arising from (i) any indemnity or Cross-Border Claim pursuant to Rule 10.2.10; or (ii) its participation in the Depository Service and the Settlement Service, including holding Securities in a Ledger, effecting Settlements, establishing Lines of Credit and making payment to CDS with respect to the Depository Service and the Settlement Service, except: (a) liabilities or obligations arising from its role as the ISIN Activator, Security Validator, Entitlements Processor or Custodian of a Security (and for greater certainty, an obligation of a Defaulter to CDS evidenced by an entry made to its Funds Account shall not be considered to be a liability or obligation that is excluded pursuant to this paragraph (a)); (b) any obligation in respect of which a Line of Credit under which the Defaulter is a Debtor has been used; or (c) any obligation guaranteed by the other Members of the Credit Ring for a Fund to which the Defaulter belongs. The obligation of a defaulter may be denominated in Canadian dollars or US dollars or in both. For Receivers (both RCP Receivers and Non-Contributing Receivers), the obligations of the Category Credit Ring for Canadian dollar settlements are separate from the obligations of the Category Credit Ring for US dollar settlements. For members of other Category Credit Rings, the aggregate obligation in all currencies is the Debtor's obligation. The Members of a Category Credit Ring acknowledge that the obligation of a Defaulter to CDS may exceed the System-Operating Cap of the Defaulter and the authorized amounts of Lines of Credit established for the Defaulter due to the making of forced entries by CDS pursuant to Rule 8.1.3 or to an indemnity or Cross-Border Claim pursuant to Rule 10.2.10.

6.6.4 ~~Processing~~Distribution of Entitlements Payments Subject to Rule 6.6.8, ~~O~~on the distribution of an entitlement on a Security held for a Participant in the form of a payment of money, the amount of the entitlement is credited to the Funds Account of the CDS Entitlements Ledger~~:~~. ~~(a) when the amount of the entitlement is debited from the Funds Account of Bank of Canada or of the Entitlement Processor for the Security; or~~ ~~(b) when an Acceptable Payment with respect to the Security has been received by CDS.~~ Then the proportionate amount of the entitlement due with respect to Securities held in the Participant's Ledger is debited from CDS's Entitlements Funds Account and credited to the Funds Account or Collateral Account for that Ledger (depending on the Account in which the Securities for which the entitlement is distributed are held), or, in the circumstances set out in the Procedures and User Guides, paid to the Participant by means of an Acceptable Payment.	**6.6.4 Distribution of Entitlements Payments** Subject to Rule 6.6.8, on the distribution of an entitlement on a Security held for a Participant in the form of a payment of money, the amount of the entitlement is credited to the Funds Account of the CDS Entitlements Ledger. Then the proportionate amount of the entitlement due with respect to Securities held in the Participant's Ledger is debited from CDS's Entitlements Funds Account and credited to the Funds Account or Collateral Account for that Ledger (depending on the Account in which the Securities for which the entitlement is distributed are held), or, in the circumstances set out in the Procedures and User Guides, paid to the Participant by means of an Acceptable Payment.
6.6.8 Crediting~~Processing~~ of ~~Ineligible~~ Entitlement Payments (a) Final Credits An entitlement payment may be credited to the Funds Account of the CDS Entitlements Ledger pursuant to Rule 6.6.4 if: (i) the amount of the entitlement is debited, at the instruction of Bank of Canada or the Participant respectively, from the Funds Account of Bank of Canada or of another Participant acting in its capacity as the Issuer of the Security, the agent of the Issuer or the Entitlements Processor for the Security, for credit to the Funds Account of the CDS Entitlements Ledger; or (ii) an Acceptable Payment in the amount of the entitlement is received by CDS from the issuer of the Security or its agent. ~~(a) Separate Distribution~~(b) Provisional Credits If CDS receives a Payment Item evidencing ~~that is not an Acceptable Payment as~~ an entitlement payment in a form other than that described in paragraph (a), the entitlement shall not be credited to the Funds Account of the CDS Entitlements Ledger pursuant to Rule 6.6.4 unless CDS has deposited ~~or to the Accounts of Participants. If CDS is able to replace~~ the Payment Item with its banker or with the financial institution on which the ~~an Acceptable~~ Payment Item is drawn and either: ~~, by~~	**6.6.8 Crediting of Entitlement Payments** (a) Final Credits An entitlement payment may be credited to the Funds Account of the CDS Entitlements Ledger pursuant to Rule 6.6.4 if: (i) the amount of the entitlement is debited , at the instruction of Bank of Canada or the Participant respectively, from the Funds Account of Bank of Canada or of another Participant acting in its capacity as the Issuer of the Security, the agent of the Issuer or the Entitlements Processor for the Security, for credit to the Funds Account of the CDS Entitlements Ledger; or (ii) an Acceptable Payment in the amount of the entitlement is received by CDS from the issuer of the Security or its agent. (b) Provisional Credits If CDS receives a Payment Item evidencing an entitlement payment in a form other than that described in paragraph (a), the entitlement shall not be credited to the Funds Account of the CDS Entitlements Ledger pursuant to Rule 6.6.4 unless CDS has deposited the Payment Item with its banker or with the financial institution on which the Payment Item is drawn and either:

~~taking the steps set out below, then such entitlement shall be so credited.~~ (i) the amount of the entitlement is debited from the Funds Account of the banker or financial institution at its instruction for credit to the Funds Account of the CDS Entitlements Ledger; or (ii) the banker or financial institution has made an Acceptable Payment to CDS in the same amount. If following such deposit the Payment Item is not honoured for final value, then the respective rights of CDS and the banker or financial institution shall be determined under the appropriate law, and nothing in these Rules shall limit the rights of the banker or financial institution to make any claim against CDS in respect of the Payment Item. In such circumstances, CDS may take the steps set out in Rule 6.6.14 to reverse the corresponding entitlement with respect to each Participant to whom the entitlement was provisionally credited. In such event, Participants may take steps pursuant to Rule 6.9.1 to exercise their rights in respect of the Security on which the entitlement payment was made. ~~(b) Final Replacement by Acceptable Payment~~ ~~If the ineligible Payment Item is drawn by or on a Participant (including CDS's own banker), then at the request of CDS, upon the delivery of the Payment Item, such Participant shall either replace the Payment Item and make an Acceptable Payment to CDS in the amount of the Payment Item, or inform CDS that it will not replace the Payment Item and return the Payment Item to CDS. An Acceptable Payment made by a Participant in such circumstances is final and irrevocable in any circumstances, including the failure of the customer that drew the original Payment Item or any defect in the original Payment Item, and the Participant shall not make any claim against CDS in respect of the Payment Item.~~ ~~(c) Contingent Replacement by Acceptable Payment~~ ~~If (i) the ineligible Payment Item is not drawn on a Participant, or (ii) the Payment Item is drawn on a Participant but it is not replaced as provided in paragraph (b), then CDS may deposit the Payment Item with its banker and request the banker to make an Acceptable Payment to CDS in the same amount. If the banker is unable to clear the Payment Item for final value, then the respective rights of CDS and the banker shall be determined under the appropriate law, and nothing in these Rules shall limit the rights of the banker to make any claim against CDS in respect of the un-cleared Payment Item. In such circumstances, CDS may take the steps set out in Rule 6.6.14 to reverse the corresponding entitlement credited to any Participant.~~	(i) the amount of the entitlement is debited from the Funds Account of the banker or financial institution at its instruction for credit to the Funds Account of the CDS Entitlements Ledger; or (ii) the banker or financial institution has made an Acceptable Payment to CDS in the same amount. If following such deposit the Payment Item is not honoured for final value, then the respective rights of CDS and the banker or financial institution shall be determined under the appropriate law, and nothing in these Rules shall limit the rights of the banker or financial institution to make any claim against CDS in respect of the Payment Item. In such circumstances, CDS may take the steps set out in Rule 6.6.14 to reverse the corresponding entitlement with respect to each Participant to whom the entitlement was provisionally credited. In such event, Participants may take steps pursuant to Rule 6.9.1 to exercise their rights in respect of the Security on which the entitlement payment was made. (c) Other Payments If CDS receives a Payment Item evidencing an entitlement payment in a form other than that described in paragraph (a) and is unable to process that Payment Item in accordance with paragraph (b), then CDS may: (i) credit the entitlement to the Funds Accounts of Participants at such time as the Payment Item has been honoured for final value, or (ii) distribute the entitlement to the Participants at any time by another means selected by CDS, or (iii) inform Participants that CDS will not distribute the entitlement and that they may take steps pursuant to Rule 6.9.1 to exercise their rights in respect of the Security on which the entitlement payment was made.

(~~d~~)(c) Other ~~No Replacement by Acceptable~~ Payments If CDS receives a ~~ineligible~~ Payment Item evidencing an entitlement payment in a form other than that described in paragraph (a) and is unable to deposit that Payment Item in accordance with ~~is not replaced as provided in~~ paragraph (b) ~~or paragraph (c)~~, then ~~the ineligible entitlement shall not be distributed to Participants on payable date by means of a credit to the Participants' Funds Account.~~CDS may ~~either~~: (i) credit the entitlement to the Funds Accounts of Participants at such time as the ~~ineligible~~ Payment Item has been honoured ~~cleared~~ for final value, or ~~(ii) may~~distribute the ~~ineligible~~ entitlement to the Participants at any time by another means selected by CDS, or (iii) inform Participants that CDS will not distribute the entitlement and that they may take steps pursuant to Rule 6.9.1 to exercise their rights in respect of the Security on which the entitlement payment was made.	
6.6.9 Processing of ~~Other~~ Ineligible Entitlements If CDS receives a Security that is not eligible for the Depository Service as a distribution of an entitlement, that Security shall not be credited to the Entitlements Ledger or to the Accounts of Participants. If CDS receives any property, other than a Security or money, as a distribution of an entitlement, such property cannot be credited to the Entitlements Ledger or to the Accounts of Participants. Such ineligible entitlements may be distributed to the Participant by another means selected by CDS.	**6.6.9 Processing of Ineligible Entitlements** If CDS receives a Security that is not eligible for the Depository Service as a distribution of an entitlement, that Security shall not be credited to the Entitlements Ledger or to the Accounts of Participants. If CDS receives any property, other than a Security or money, as a distribution of an entitlement, such property cannot be credited to the Entitlements Ledger or to the Accounts of Participants. Such ineligible entitlements may be distributed to the Participant by another means selected by CDS.

13.1.4 CDS Notice of Request for Comments – Material Amendments to CDS Rules Relating to Qualifications for Participation – Foreign Institutions

THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED ("CDS")

MATERIAL AMENDMENTS TO CDS RULES
QUALIFICATIONS FOR PARTICIPATION – FOREIGN INSTITUTIONS

REQUEST FOR COMMENT

DESCRIPTION OF THE PROPOSED AMENDMENTS

On October 12, 2005, the Board of Directors of The Canadian Depository for Securities Limited ("CDS") approved amendments to the CDS Participant Rules to remove the requirement that a Participant which is a Foreign Institution provide CDS with a guarantee or irrevocable letter of credit in form, substance and amount satisfactory to CDS from another Participant of CDS which is a Regulated Financial Institution.

NATURE AND PURPOSE OF THE PROPOSED AMENDMENTS

Background

Under the current CDS Participant Rules, there is a requirement that all Foreign Institution Participants provide an irrevocable letter of credit or guarantee of their obligations to CDS. This requirement was considered necessary under the Book Based System and Securities Settlement Service formerly offered by CDS in order to provide CDS with an extra level of protection from default by Foreign Institutions. Foreign Institutions were considered to be higher risks than institutions based in Canada since Foreign Institutions' assets and capital are generally located outside of Canada.

This guarantee (or irrevocable letter of credit) requirement has been effectively rendered obsolete under the current CDSX Risk Model (i.e. all obligations are guaranteed by credit rings and sureties, and supported by security interests in specific collateral). Foreign Institutions have the same capital and collateral obligations as other Participants classified in the same Participant category. Additionally, upon applying for Participant status, a Foreign Institution is required to provide a legal opinion that verifies that the Participant Rules are binding on it, and specifically that the security interest and netting provisions are enforceable against it.

In practice, Foreign Institution Participants are no longer required to provide a guaranty (or irrevocable letter of credit) of their obligations to CDS.

IMPACT OF THE PROPOSED AMENDMENTS

As the proposed amendment will result in the CDS Participant Rules being consistent with current practice, the proposed amendments will have no impact on CDS or its Participants. Foreign Institutions will continue to have the same capital and collateral obligations as all other Participants classified in the same category.

The proposed amendment will not impose additional costs or risks on CDS Participants.

The proposed amendment will not have an impact on CDS's technology systems or the technology systems of CDS Participants.

DESCRIPTION OF THE RULE DRAFTING PROCESS

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to Section 21.1 of the Ontario *Securities Act* and as a self-regulatory organization by the Autorité des marchés financiers pursuant to Section 169 of the Québec *Securities Act*. In addition CDS has been deemed to be the clearing house for CDSX, a clearing and settlement system designated by the Bank of Canada pursuant to Section 4 of the *Payment Clearing and Settlement Act*. The Ontario Securities Commission, the Autorité des marchés financiers and the Bank of Canada will hereafter be collectively referred to as the "Recognizing Regulators".

Each amendment to the CDS Participant Rules is reviewed by CDS's Legal Drafting Group ("LDG"). The LDG is a committee which includes members of Participants' legal and business groups. The LDG's mandate is to advise CDS management and its Board of Directors on rule amendments and other legal matters relating to centralized securities depository and clearing services in order to ensure that they meet the needs of CDS, its Participants and the securities industry.

COMMENTS

Comments on the proposed amendments should be in writing and delivered by November 20, 2005 and delivered to:

Jamie Anderson
Senior Legal Counsel
The Canadian Depository for Securities Limited
85 Richmond Street West
Toronto, Ontario M5H 2C9

Fax: 416-365-1984
e-mail: attention@cds.ca

A copy should also be provided to the Ontario Securities Commission by forwarding a copy to:

Cindy Petlock
Manager, Market Regulation
Capital Markets Branch
Ontario Securities Commission
Suite 1903, Box 55,
20 Queen Street West
Toronto, Ontario, M5H 3S8

Fax: 416-595-8940
e-mail: cpetlock@osc.gov.on.ca

CDS will make available to the public, upon request, copies of comments received during the comment period.

COMPARATIVE ANALYSIS

CDS criteria for the admission of foreign institutions as members is consistent with international standards in that such criteria provide an objective and publicly disclosed standard permitting fair and open access. To be considering for acceptance as a Participant a foreign institution must comply with the same standards as a Canadian entity but must also have at least $1 million in capital and a guarantee of its obligations by a Canadian Participant.

The Depository Trust Company ("DTC") requirements for foreign institutions include:

Maintain a minimum net capital of 1000% of the DTC requirements for a US entity;

Maintain haircutted collateral equal to 50% of its net debit cap at the start of each day such an amount not receiving credit in DTC's Collateral Monitor; and

The institution's home nation regulator must have entered into a memorandum of understanding with the US Securities and Exchange Commission; and

The institution must provide DTC with audited financial information in a form acceptable to DTC.

To qualify as a member of the National Securities Clearing Corporation ("NSCC") broker/dealers must be registered under the US *Securities Exchange Act*. The NSCC requires its members to make contributions to its clearing fund in an amount determined by a risk-based margin calculation.

In completing its comparative analysis of the obligations of foreign institution obligations for access to a clearing agency, CDS believes that its criteria for being granted Participant status is appropriate. The proposed amendments will provide more open access for foreign entities to CDS and will be consistent with international standards.

PUBLIC INTEREST ASSESSMENT

In analyzing the impact of the proposed amendments to the Participant rules, CDS has determined that the implementation of these amendments would not be contrary to the public interest.

PROPOSED RULE AMENDMENTS

Appendix “A” contains text of current CDS Participant Rules marked to reflect proposed amendments as well as text of these rules reflecting the adoption of the proposed amendments.

QUESTIONS

Questions regarding this notice may be directed to:

Michael Brady
Senior Legal Counsel
The Canadian Depository for Securities Limited
85 Richmond Street West
Toronto, Ontario M5H 2C9

Telephone: 416-365-8395
Fax: 416-365-1984
e-mail: attention@cds.ca

TOOMAS MARLEY
VICE-PRESIDENT, LEGAL AND CORPORATE SECRETARY

APPENDIX "A"
PROPOSED RULE AMENDMENT

2.2.5 Qualifications for Participation A Participant must satisfy all of the qualifications set out below for the category to which the Participant belongs. … (b) If the Participant is a Foreign Institution: (i) the Participant must be a subsisting legal entity under the laws of its jurisdiction of incorporation, establishment or formation and must not be in default of filing any notice, report or return under the laws of such jurisdiction or the laws of any other jurisdiction in which the Participant carries on business, the failure to file which could result in the Participant's ceasing to be duly incorporated, established or formed or in the cancellation of its authorization to carry on business; (ii) the Participant must hold, and must have done all things required to hold, every registration, licence, permit, authorization or approval required in connection with its business from each Regulatory Body having jurisdiction over the Participant; (iii) if a Regulatory Body has jurisdiction over the Participant, the Participant and each of its partners, directors and officers must be in compliance with all applicable regulations, rules, orders or directions of that Regulatory Body, including such minimum capital requirements and financial stability standards as are applicable to the Participant; (iv) the Participant must own, manage, control, or have custody of a portfolio of Securities of Canadian Issuers with a minimum fair market value (as determined to the satisfaction of CDS) of such amount as the Board of Directors may from time to time determine; (v) the Participant must either have a minimum Capital equivalent to $1,000,000 or provide other evidence satisfactory to CDS of its financial stability; (vi) ~~the Participant must provide CDS with a guarantee or irrevocable letter of credit of its obligations to CDS, in form, substance and amount satisfactory to CDS, from a Regulated Financial Institution who is a Participant;~~ ~~(vii)~~ the Participant must provide CDS with a legal opinion satisfactory to counsel for CDS with respect to the Participant's participation in CDS including an opinion on the enforceability of any security interests granted	**2.2.5 Qualifications for Participation** A Participant must satisfy all of the qualifications set out below for the category to which the Participant belongs. … (b) If the Participant is a Foreign Institution: (i) the Participant must be a subsisting legal entity under the laws of its jurisdiction of incorporation, establishment or formation and must not be in default of filing any notice, report or return under the laws of such jurisdiction or the laws of any other jurisdiction in which the Participant carries on business, the failure to file which could result in the Participant's ceasing to be duly incorporated, established or formed or in the cancellation of its authorization to carry on business; (ii) the Participant must hold, and must have done all things required to hold, every registration, licence, permit, authorization or approval required in connection with its business from each Regulatory Body having jurisdiction over the Participant; (iii) if a Regulatory Body has jurisdiction over the Participant, the Participant and each of its partners, directors and officers must be in compliance with all applicable regulations, rules, orders or directions of that Regulatory Body, including such minimum capital requirements and financial stability standards as are applicable to the Participant; (iv) the Participant must own, manage, control, or have custody of a portfolio of Securities of Canadian Issuers with a minimum fair market value (as determined to the satisfaction of CDS) of such amount as the Board of Directors may from time to time determine; (v) the Participant must either have a minimum Capital equivalent to $1,000,000 or provide other evidence satisfactory to CDS of its financial stability; (vi) the Participant must provide CDS with a legal opinion satisfactory to counsel for CDS with respect to the Participant's participation in CDS including an opinion on the enforceability of any security interests granted by the Participant pursuant to the Rules and of the netting provisions of the Rules applicable to the Participant; and (vii) the Participant must satisfy such other requirements as the Board of Directors in its

by the Participant pursuant to the Rules and of the netting provisions of the Rules applicable to the Participant; and ~~(viii)~~ (vii) the Participant must satisfy such other requirements as the Board of Directors in its sole discretion deems appropriate for the protection of CDS and other Participants. …	sole discretion deems appropriate for the protection of CDS and other Participants. …

13.1.5 RS Disciplinary Notice - Ricardo Mashnegi

DISCIPLINARY NOTICE

October 14, 2005

Person Disciplined

On October 14, 2005, a Hearing Panel of the Hearing Committee of Market Regulation Services Inc. (“RS”) approved a settlement agreement (the “Settlement Agreement”) concerning Ricardo Mashregi (“Mashregi”).

Requirement Contravened

Under the terms of the Settlement Agreement, Mashregi admits that the following Requirement was contravened:

(a) on 248 days in the period October 2003 to February 2005, Mashregi engaged in a pattern of order entry in the pre-opening of the trading session on the TSX, which was inconsistent with Just and Equitable Principles of Trade, contrary to Section 2.1(1) of the Universal Market Integrity Rules ("UMIR"), for which he is liable pursuant to UMIR 10.4(1)(a).

Sanctions Approved

The following sanctions were approved:

(a) A fine of $50,000.00 payable by Mashregi to RS; and,

(b) Costs of $10,000.00 payable to RS.

Summary of Facts

This matter concerns a pattern of order entry used by Mashregi in the pre-opening session of trading on the TSX on 248 days in the period October 2003 to February 2005 (the “Relevant Period”). On the days in question, prior to 9:28 a.m., Mashregi entered anonymous non-client orders on both sides of the market, in the pre-opening, which had the potential of trading against each other. Most of the orders were overlapping tradeable orders, meaning that the price of the buy side order was higher than or equal to the price of the short sell order.

On 83 days, between 9:28 a.m. and the opening of the market at 9:30 a.m., Mashregi cancelled or “CFO’d” one of the orders and received a fill for the remaining order. On 130 days, Mashregi made the trading decision to cancel both orders between 9:28 a.m. and 9:30 a.m. when the market conditions changed. In such cases, he did not want to be a buyer or a short seller. On 48 days, although the sell orders were never tradeable or tradeable only briefly, there was the potential for these sell orders to become overlapping with buy orders entered by Mashregi and for Mashregi to then engage in his strategy of canceling one or both of the orders (although this never in fact happened).

By entering orders in this manner, Mashregi positioned himself for a guaranteed fill in the opening trading session without having to declare himself as a bona fide buyer, short seller and in some instances, even as a bona fide participant in the opening. Mashregi positioned these orders to allow him to maintain time priority which avoided the application of the TSX trading mechanism that allocates which orders will receive a complete fill at the opening of trading on the TSX. Pursuant to this mechanism, time priority for a complete fill at the opening is assigned in the pre-opening to certain types of orders, including market orders and better-priced limit orders for client accounts, and market orders and better priced limit orders for non-client accounts if entered prior to 9:28 a.m. Market orders and better priced limit orders for non-client accounts entered after 9:28 a.m. are eligible to participate in the opening but are not guaranteed to be filled.

One of the reasons for this allocation mechanism is to ensure the time priority of client orders and prevent market professionals from “scooping” the opening by entering an order just before the start of trading and receiving a disproportionate amount of stock.

The order entry also affected the indicated Calculated Opening Price or “COP” on some of the days.

Mashregi’s entry of overlapping orders in order to guarantee himself a fill at the opening of the marketplace, without declaring himself as a bona fide purchaser, seller or a bona fide participant in some cases, and which avoided the TSX order allocation mechanism at the opening of the marketplace, was contrary to just and equitable principles of trade. This activity is in violation of UMIR 2.1.

Further Information

Participants who require additional information should direct questions to Maureen Jensen, Vice President, Market Regulation, Eastern Region, Market Regulation Services Inc. at 416-646-7216.

About Market Regulation Services Inc.

Market Regulation Services Inc. ("RS") is the regulation services provider for Canadian equity markets including the TSX, TSX Venture Exchange, Canadian Trading and Quotation System, Bloomberg Tradebook Canada Company, Liquidnet Canada Inc. and Markets Inc. RS is recognized by the *Autorité des marchés financiers* in Québec and the securities commissions of Ontario, Manitoba, Alberta and British Columbia to regulate the trading of securities on these marketplaces by participant firms and their trading and sales staff. RS is mandated to conduct its regulatory activities in a neutral, cost-effective, service-oriented and responsive manner.

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Chapter 25

Other Information

25.1 Consents

25.1.1 E2 Venture Fund Inc. - s. 4(b) of the Regulation

Headnote

Consent given to an OBCA Corporation to continue under the laws of Canada.

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 181.
Canada Business Corporations Act, R.S.C. 1985, c. C-44, as am.
Securities Act, R.S.O. 1990, c. S.5, as am.

Regulations Cited

Regulation made under the Business Corporations Act, Ont. Reg. 289/00, ss. 4(b).

October 7, 2005

IN THE MATTER OF
ONT. REG. 289/00 (the Regulation)
MADE UNDER THE BUSINESS CORPORATIONS ACT
R.S.O. 1990 C. B16, AS AMENDED (the OBCA)

AND

IN THE MATTER OF
E2 VENTURE FUND INC. (the Filer)

CONSENT
(Subsection 4(b) of the Regulation)

Background

The Filer has applied to the Ontario Securities Commission (the **Commission**) requesting a consent from the Commission for the Filer to continue in another jurisdiction (the **Continuance**) under subsection 4(b) of the Regulation.

Representations

The Filer has represented to the Commission that:

1. The Filer is proposing to submit an application to the Director under the OBCA pursuant to section 181 of the OBCA (the **Application for Continuance**) for authorization to continue as a corporation under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (the **CBCA**).

2. Pursuant to subsection 4(b) of the Regulation, where a corporation is an offering corporation, the Application for Continuance must be accompanied by a consent from the Commission.

3. The Filer was incorporated under the OBCA by articles of incorporation dated October 31, 2001, which articles were amended on December 28, 2001 and December 19, 2003. The head office of the Filer is located at 70 York Street, Suite 1400, Toronto, Ontario.

4. The authorized share capital of the Filer is comprised of an unlimited number of Class A Shares, in series and Class B Shares, of which 1,480,076.5 Class A Shares, Series I, 84,058.4 Class A Shares, Series II, 165,320.7 Class A Shares, Series III and 100 Class B Shares were issued and outstanding as of September 15, 2005.

5. The Filer is an offering corporation under the OBCA and is a reporting issuer under the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the **Act**). The Filer intends to remain a reporting issuer in Ontario will likely become a reporting issuer in other jurisdictions as a result of the amalgamation in which it intends to participate.

6. The Filer is not in default under any provision of the Act or the regulations of the Act, nor under the securities legislation of any jurisdiction where it is a reporting issuer.

7. The Filer is not a party to any proceeding nor, to the best of its knowledge, information and belief, any pending proceeding under the Act.

8. The Application for Continuance of the Filer is to be approved by the shareholders of the Filer by special resolution at the Annual and Special Meeting of shareholders (the **Meeting**) scheduled to be held on November 18, 2005.

9. Pursuant to the Section 185 of the OBCA, all shareholders of record as of the record date for the Meeting are entitled to dissent rights with respect to the Application for Continuance (the **Dissent Rights**).

10. The management information circular which will be dated on or about October 14, 2005 (the **Circular**) will be provided to all shareholders in connection with the Meeting and will advise the shareholders of the Filer of their Dissent Rights.

11. The principal reason for the Application for Continuance is to allow the Filer to participate in an amalgamation transaction which would provide it and its shareholders with considerable benefits, as more particularly described in the Circular. In brief, the Filer and five other labour sponsored investment funds all managed by affiliated managers are proposing to amalgamate pursuant to section 181 of the CBCA and continue thereafter by operation of law as one labour-sponsored venture capital corporation and as one labour sponsored investment fund that is governed by the CBCA. In order to participate in such an amalgamation transaction, the Filer would have to be granted the consent to continue into the federal jurisdiction

12. The material rights, duties and obligations of a corporation governed by the CBCA are substantially similar to those of a corporation governed by the OBCA.

Consent

The Commission is satisfied that granting this consent would not be prejudicial to the public interest.

The Commission consents to the Continuance of the Filer as a corporation under the CBCA.

"Paul Moore"
Vice-Chair
Ontario Securities Commission

"Robert L. Shirriff"
Commissioner
Ontario Securities Commission

25.1.2 New Generation Biotech (Balanced) Fund Inc. - s. 4(b) of the Regulation

Headnote

Consent given to an OBCA Corporation to continue under the laws of Canada.

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s.181.
Canada Business Corporations Act, R.S.C. 1985, c. C-44, as am.
Securities Act, R.S.O. 1990, c. S.5, as am.

Regulations Cited

Regulation made under the Business Corporations Act, Ont. Reg. 289/00, s. 4(b).

October 7, 2005

IN THE MATTER OF
ONT. REG. 289/00 (the Regulation)
MADE UNDER THE BUSINESS CORPORATIONS ACT
R.S.O. 1990 C. B16, AS AMENDED (the OBCA)

AND

IN THE MATTER OF
NEW GENERATION BIOTECH (BALANCED) FUND INC.
(the Filer)

CONSENT
(Subsection 4(b) of the Regulation)

Consent

The Filer has applied to the Ontario Securities Commission (the **Commission**) requesting a consent from the Commission for the Filer to continue in another jurisdiction (the **Continuance**) under subsection 4(b) of the Regulation.

Representations

The Filer has represented to the Commission that:

1. The Filer is proposing to submit an application to the Director under the OBCA pursuant to section 181 of the OBCA (the **Application for Continuance**) for authorization to continue as a corporation under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (the **CBCA**).

2. Pursuant to subsection 4(b) of the Regulation, where a corporation is an offering corporation, the Application for Continuance must be accompanied by a consent from the Commission.

3. The Filer was incorporated under the OBCA by articles of incorporation dated October 31, 2000, which were amended by articles of amendment dated December 27, 2000 and June 21, 2005. The head office of the Filer is located at 70 York Street, Suite 1400, Toronto, Ontario.

4. The authorized share capital of the Filer is comprised of an unlimited number of Class A Shares, in series and Class B Shares, of which 2,505,421 Class A Shares, Series I and 100 Class B Shares were issued and outstanding as of September 15, 2005.

5. The Filer is an offering corporation under the OBCA and is a reporting issuer under the *Securities Act*, R.S.O. 1990, c. s. 5, as amended (the **Act**). The Filer intends to remain a reporting issuer in Ontario will likely become a reporting issuer in other jurisdictions as a result of the amalgamation in which it intends to participate.

6. The Filer is not in default under any provision of the Act or the regulations of the Act, nor under the securities legislation of any jurisdiction where it is a reporting issuer.

7. The Filer is not a party to any proceeding nor, to the best of its knowledge, information and belief, any pending proceeding under the Act.

8. The Application for Continuance of the Filer is to be approved by the shareholders of the Filer by special resolution at the Annual and Special Meeting of shareholders (the **Meeting**) scheduled to be held on November 18, 2005.

9. Pursuant to the Section 185 of the OBCA, all shareholders of record as of the record date for the Meeting are entitled to dissent rights with respect to the Application for Continuance (the **Dissent Rights**).

10. The management information circular which will be dated on or about October 14, 2005 (the **Circular**) will be provided to all shareholders in connection with the Meeting and will advise the shareholders of the Filer of their Dissent Rights.

11. The principal reason for the Application for Continuance is to allow the Filer to participate in an amalgamation transaction which would provide it and its shareholders with considerable benefits, as more particularly described in the Circular. In brief, the Filer and five other labour sponsored investment funds all managed by affiliated managers are proposing to amalgamate pursuant to section 181 of the CBCA and continue thereafter by operation of law as one labour-sponsored venture capital corporation and as one labour sponsored investment fund that is governed by the CBCA. In order to participate in such an amalgamation transaction, the Filer would have to be granted the consent to continue into the federal jurisdiction

12. The material rights, duties and obligations of a corporation governed by the CBCA are substantially similar to those of a corporation governed by the OBCA.

Consent

The Commission is satisfied that granting this consent would not be prejudicial to the public interest.

The Commission consents to the continuance of the Filer as a corporation under the CBCA.

“Paul Moore”
Vice-Chair
Ontario Securities Commission

“Robert L. Shirriff"
Commissioner
Ontario Securities Commission

25.1.3 HudBay Minerals Inc. - s. 4(b) of the Regulation

Headnote

Consent given to an offering corporation under the Business Corporations Act (Ontario) to continue under the Canada Business Corporations Act.

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 181.
Canada Business Corporations Act, R.S.C. 1985, c. C-44, as am.
Securities Act, R.S.O. 1990, c. S.5, as am.

Regulations Cited

Regulation made under the Business Corporations Act, Ont. Reg. 289/00, as am., s. 4(b).

**IN THE MATTER OF
THE REGULATION MADE UNDER
THE BUSINESS CORPORATIONS ACT, R.S.O. 1990,
c. B. 16, AS AMENDED (THE "OBCA")
ONTARIO REG. 289/00 (THE "REGULATION")**

AND

**IN THE MATTER OF
HUDBAY MINERALS INC. (THE "FILER")**

**CONSENT
(Subsection 4(b) of the Regulation)**

UPON the application of the Filer to the Ontario Securities Commission (the "Commission") requesting a consent from the Commission for the Filer to continue into another jurisdiction pursuant to subsection 4(b) of the Regulation;

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

AND UPON the Filer having represented to the Commission that:

1. The Filer was formed on January 16, 1996 by the amalgamation of Pan American Resources Inc. and Marvas Developments Ltd., pursuant to the OBCA, under the name "Ontzinc Corporation." The Filer changed its name to HudBay Minerals Inc., pursuant to Articles of Amendment dated December 21, 2004.

2. The Filer's registered and head office is located at 6 Adelaide Street East, Suite 300, Toronto, Ontario, M5C 1H6.

3. The Filer has an authorized share capital consisting of an unlimited number of common shares and preference shares, of which 84,003,662 common shares were issued and outstanding as at September 20 2005.

4. The Corporation's outstanding common shares are listed and posted for trading on the Toronto Stock Exchange under the symbol "HBM".

5. Certain of the Corporation's outstanding common share purchase warrants are listed and posted for trading on the Toronto Stock Exchange under the symbol "HBM.WT".

6. The Filer intends to apply (the "Application for Continuance") to the Director under the OBCA for authorization to continue under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended (the "CBCA"), pursuant to section 181 of the OBCA (the "Continuance").

7. Pursuant to subsection 4(b) of the Regulation made under the OBCA, Reg. 289/00, as amended, where a corporation is an offering corporation under the OBCA, an application for authorization to continue in another jurisdiction under section 181 of the OBCA must be accompanied by a consent from the Commission.

8. The Filer is an offering corporation under the OBCA and is a reporting issuer under the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"). The Filer is also a reporting issuer in each of the other provinces of Canada.

9. Following the Continuance, the Filer intends to remain a reporting issuer in Ontario and in the other provinces of Canada.

10. The Filer is not in default of any of the provisions of the Act or the regulations or rules made thereunder and is not in default under the securities legislation of any of the other provinces of Canada.

11. The Filer is not a party to any proceeding or, to the best of its knowledge, information and belief, pending proceeding under the Act.

12. The Filer's shareholders approved the Continuance by special resolution at the Filer's annual and special meeting (the "Meeting") held on June 23, 2005.

13. The management information circular dated May 27, 2005, provided to all shareholders of the Filer in connection with the Meeting, advised registered shareholders of their dissent rights in connection with the Continuance pursuant to section 185 of the OBCA.

14. Notwithstanding that the Filer's shareholders approve the Continuance, the directors of the Filer may abandon the special resolution authorizing the Application for Continuance, without further approval of the Filer's shareholders.

15. The Continuance has been proposed as the Corporation believes it to be in its best interest to conduct its affairs in accordance with the CBCA.

16. The material rights, duties and obligations of a corporation governed by the CBCA are substantially similar to those of a corporation governed by the OBCA with the exception that the OBCA requires that a majority of a corporation's directors be resident Canadians whereas the CBCA requires that, subject to certain exceptions, only one-quarter of a corporation's directors need be resident Canadians.

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

THE COMMISSION HEREBY CONSENTS to the continuance of the Filer as a corporation under the CBCA.

DATED September 30, 2005.

"Paul Moore"

"Robert Shirriff"

25.1.4 Lorus Therapeutics Inc. - s. 4(b) of the Regulation

Headnote

Consent given to an offering corporation under the Business Corporations Act (Ontario) to continue under the Canada Business Corporations Act.

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., ss.181, 185.
Canada Business Corporations Act, R.S.C. 1985, c. C-44, as am.
Securities Act, R.S.O. 1990, c. S.5, as am.

Regulations Cited

Regulation made under the Business Corporations Act, Ont. Reg. 289/00, as am., s. 4(b).

September 30, 2005

**IN THE MATTER OF
THE REGULATION MADE UNDER
THE BUSINESS CORPORATIONS ACT,
R.S.O. 1990, c. B. 16, AS AMENDED
(THE OBCA)
ONTARIO REG. 289/00 (THE REGULATION)**

AND

**IN THE MATTER OF
LORUS THERAPEUTICS INC.**

**CONSENT
(Clause 4(b) of the Regulation)**

UPON the application of Lorus Therapeutics Inc. (Lorus) to the Ontario Securities Commission (the Commission) requesting a consent from the Commission for Lorus to continue into another jurisdiction pursuant to clause 4(b) of the Regulation;

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

AND UPON Lorus having represented to the Commission that:

1. Lorus is governed under the provisions of the OBCA pursuant to articles of amalgamation dated October 28, 1991, as amended pursuant to articles of amendment dated August 25, 1992, November 27, 1996 and November 19, 1998. The registered office of Lorus is located at 2 Meridian Road, Toronto, Ontario, M9W 4Z7.

2. The authorized share capital of Lorus is comprised of an unlimited number of common shares (Common Shares), of which 172,622,386

common shares were issued and outstanding as of September 14, 2005.

3. Lorus is proposing to submit an application to the Director under the OBCA pursuant to section 181 of the OBCA (the Application for Continuance) for authorization to continue (the Continuance) as a corporation under the *Canada Business Corporations Act*, R.S.C. 1985, c.144, as amended (the CBCA).

4. Pursuant to clause 4(b) of the Regulation, where a corporation is an offering corporation (as such term is defined in the OBCA), the Application for Continuance must be accompanied by a consent from the Commission.

5. Lorus is an offering corporation under the OBCA and a reporting issuer under the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the Act). Lorus is also a reporting issuer or the equivalent thereof in each of the other provinces of Canada.

6. Lorus's Common Shares are listed for trading on the Toronto Stock Exchange under the symbol "LOR" and the American Stock Exchange under the symbol "LRP".

7. Following the Continuance, Lorus intends to remain a reporting issuer in Ontario and in the other jurisdictions in which it is currently a reporting issuer or equivalent thereof.

8. Lorus is not in default under any provision of the Act or the rules and regulations made under the Act and is not in default under the securities legislation of any other jurisdiction in which it is a reporting issuer or equivalent thereof.

9. Lorus is not a party to any proceeding or, to the best of its knowledge, information and belief, any pending proceeding under the Act.

10. The Continuance of Lorus under the CBCA was approved by Lorus's shareholders by way of special resolution at an annual and special meeting of shareholders (the Meeting) held on September 13, 2005.

11. The management information circular of Lorus dated July 29, 2005, provided to all shareholders of Lorus in connection with the Meeting, advised the holders of Common Shares of their dissent rights in connection with the Continuance pursuant to section 185 of the OBCA.

12. The principal reason for the Continuance is that the Corporation believes it to be in its best interests to conduct its affairs in accordance with the CBCA.

13. Other than the requirement under the OBCA that a majority of a corporation's directors be resident Canadians, as compared with the requirement under the CBCA that, subject to certain exceptions, only 25% of a corporation's directors need be resident Canadians, the material rights, duties and obligations of a corporation governed by the CBCA are substantially similar to those of a corporation governed by the OBCA.

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

THE COMMISSION HEREBY CONSENTS to the continuance of Lorus as a corporation under the CBCA.

"Paul Moore"

"Robert Shirriff"

25.1.5 Venture Partners Balanced Fund Inc. - s. 4(b) of the Regulation

Headnote

Consent given to an OBCA Corporation to continue under the laws of Canada.

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s.181.
Canada Business Corporations Act, R.S.C. 1985, c. C-44, as am.
Securities Act, R.S.O. 1990, c. S.5, as am.

Regulations Cited

Regulation made under the Business Corporations Act, Ont. Reg. 289/00, s. 4(b).

October 7, 2005

IN THE MATTER OF
ONT. REG. 289/00 (the Regulation)
MADE UNDER THE BUSINESS CORPORATIONS ACT
R.S.O. 1990 C. B16, AS AMENDED (the OBCA)

AND

IN THE MATTER OF
VENTURE PARTNERS BALANCED FUND INC. (the Filer)

CONSENT
(Subsection 4(b) of the Regulation)

Background

The Filer has applied to the Ontario Securities Commission (the **Commission**) requesting a consent from the Commission for the Filer to continue in another jurisdiction (the **Continuance**) under subsection 4(b) of the Regulation.

Representations

The Filer has represented to the Commission that:

1. The Filer is proposing to submit an application to the Director under the OBCA pursuant to section 181 of the OBCA (the **Application for Continuance**) for authorization to continue as a corporation under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (the **CBCA**).

2. Pursuant to subsection 4(b) of the Regulation, where a corporation is an offering corporation, the Application for Continuance must be accompanied by a consent from the Commission.

3. The Filer was incorporated under the OBCA by articles of incorporation dated November 1, 2002. The head office of the Filer is located at 70 York Street, Suite 1400, Toronto, Ontario.

4. The authorized share capital of the Filer is comprised of an unlimited number of Class A Shares and Class B Shares, of which 2,398,394 Class A Shares and 100 Class B Shares were issued and outstanding as of September 15, 2005.

5. The Filer is an offering corporation under the OBCA and is a reporting issuer under the *Securities Act*, R.S.O. 1990, c. s. 5, as amended (the **Act**). The Filer intends to remain a reporting issuer in Ontario will likely become a reporting issuer in other jurisdictions as a result of the amalgamation in which it intends to participate.

6. The Filer is not in default under any provision of the Act or the regulations of the Act, nor under the securities legislation of any jurisdiction where it is a reporting issuer.

7. The Filer is not a party to any proceeding nor, to the best of its knowledge, information and belief, any pending proceeding under the Act.

8. The Application for Continuance of the Filer is to be approved by the shareholders of the Filer by special resolution at the Annual and Special Meeting of shareholders (the **Meeting**) scheduled to be held on November 18, 2005.

9. Pursuant to the Section 185 of the OBCA, all shareholders of record as of the record date for the Meeting are entitled to dissent rights with respect to the Application for Continuance (the **Dissent Rights**).

10. The management information circular which will be dated on or about October 14, 2005 (the **Circular**) will be provided to all shareholders in connection with the Meeting and will advise the shareholders of the Filer of their Dissent Rights.

11. The principal reason for the Application for Continuance is to allow the Filer to participate in an amalgamation transaction which would provide it and its shareholders with considerable benefits, as more particularly described in the Circular. In brief, the Filer and five other labour sponsored investment funds all managed by affiliated managers are proposing to amalgamate pursuant to section 181 of the CBCA and continue thereafter by operation of law as one labour-sponsored venture capital corporation and as one labour sponsored investment fund that is governed by the CBCA. In order to participate in such an amalgamation transaction, the Filer would have to be granted the consent to continue into the federal jurisdiction

12. The material rights, duties and obligations of a corporation governed by the CBCA are substantially similar to those of a corporation governed by the OBCA.

Consent

The Commission is satisfied that granting this consent would not be prejudicial to the public interest.

The Commission consents to the Continuance of the Filer as a corporation under the CBCA.

“Paul Moore”
Vice-Chair
Ontario Securities Commission

“Robert L. Shirriff”
Commissioner
Ontario Securities Commission

25.1.6 Capital First Venture Fund Inc. - s. 4(b) of the Regulation

Headnote

Consent given to an OBCA Corporation to continue under the laws of Canada.

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s.181.
Canada Business Corporations Act, R.S.C. 1985, c. C-44, as am.
Securities Act, R.S.O. 1990, c. S.5, as am.

Regulations Cited

Regulation made under the Business Corporations Act, Ont. Reg. 289/00, s. 4(b).

October 7, 2005

IN THE MATTER OF
ONT. REG. 289/00 (the Regulation)
MADE UNDER THE BUSINESS CORPORATIONS ACT
R.S.O. 1990 C. B16, AS AMENDED (the OBCA)

AND

IN THE MATTER OF
CAPITAL FIRST VENTURE FUND INC. (the Filer)

CONSENT
(Subsection 4(b) of the Regulation)

Background

The Filer has applied to the Ontario Securities Commission (the **Commission**) requesting a consent from the Commission for the Filer to continue in another jurisdiction (the **Continuance**) under subsection 4(b) of the Regulation.

Representations

The Filer has represented to the Commission that:

1. The Filer is proposing to submit an application to the Director under the OBCA pursuant to section 181 of the OBCA (the **Application for Continuance**) for authorization to continue as a corporation under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (the **CBCA**).

2. Pursuant to subsection 4(b) of the Regulation, where a corporation is an offering corporation, the Application for Continuance must be accompanied by a consent from the Commission.

3. The Filer was incorporated under the OBCA by articles of incorporation dated December 2, 2003.

The head office of the Filer is located at 70 York Street, Suite 1400, Toronto, Ontario.

4. The authorized share capital of the Filer is comprised of an unlimited number of Class A Shares and Class B Shares, of which 1,355,364.6 Class A Shares and 100 Class B Shares were issued and outstanding as of September 15, 2005.

5. The Filer is an offering corporation under the OBCA and is a reporting issuer under the *Securities Act*, R.S.O. 1990, c. s. 5, as amended (the **Act**). The Filer intends to remain a reporting issuer in Ontario will likely become a reporting issuer in other jurisdictions as a result of the amalgamation in which it intends to participate.

6. The Filer is not in default under any provision of the Act or the regulations of the Act, nor under the securities legislation of any jurisdiction where it is a reporting issuer.

7. The Filer is not a party to any proceeding nor, to the best of its knowledge, information and belief, any pending proceeding under the Act.

8. The Application for Continuance of the Filer is to be approved by the shareholders of the Filer by special resolution at the Annual and Special Meeting of shareholders (the **Meeting**) scheduled to be held on November 18, 2005.

9. Pursuant to the Section 185 of the OBCA, all shareholders of record as of the record date for the Meeting are entitled to dissent rights with respect to the Application for Continuance (the **Dissent Rights**).

10. The management information circular which will be dated on or about October 14, 2005 (the **Circular**) will be provided to all shareholders in connection with the Meeting and will advise the shareholders of the Filer of their Dissent Rights.

11. The principal reason for the Application for Continuance is to allow the Filer to participate in an amalgamation transaction which would provide it and its shareholders with considerable benefits, as more particularly described in the Circular. In brief, the Filer and five other labour sponsored investment funds all managed by affiliated managers are proposing to amalgamate pursuant to section 181 of the CBCA and continue thereafter by operation of law as one labour-sponsored venture capital corporation and as one labour sponsored investment fund that is governed by the CBCA. In order to participate in such an amalgamation transaction, the Filer would have to be granted the consent to continue into the federal jurisdiction

12. The material rights, duties and obligations of a corporation governed by the CBCA are substantially similar to those of a corporation governed by the OBCA.

Consent

The Commission is satisfied that granting this consent would not be prejudicial to the public interest.

The Commission consents to the Continuance of the Filer as a corporation under the CBCA.

"Paul Moore"
Vice-Chair
Ontario Securities Commission

"Robert L. Shirriff"
Commissioner
Ontario Securities Commission

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