

The Ontario Securities Commission

# OSC Bulletin

March 9, 2001

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

**The Ontario Securities Commission**

Cadillac Fairview Tower  
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M5H 3S8

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(416)597-0681

(416) 362-5211 or 1-(800) 387-2689

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Fax: 8th Floor - 416-593-8252 (Corporate Finance: Admin. & Document Management)  
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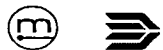
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## Chapter 1

# Notices / News Releases

### 1.1 Notices

### SCHEDULED OSC HEARINGS

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

**March 9, 2001**

#### **CURRENT PROCEEDINGS**

#### **BEFORE**

#### **ONTARIO SECURITIES COMMISSION**

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

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

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#### THE COMMISSIONERS

David A. Brown, Q.C., Chair	—	DAB
Paul M. Moore, Q.C.	—	PMM
Howard Wetston, Q.C. Vice-Chair	—	HW
Kerry D. Adams, FCA	—	KDA
Stephen N. Adams, Q.C.	—	SNA
Derek Brown	—	DB
Robert W. Davis, FCA	—	RWD
John A. Geller, Q.C.	—	JAG
Robert W. Korthals	—	RWK
Mary Theresa McLeod	—	MTM
R. Stephen Paddon, Q.C.	—	RSP

Date to be announced: **Mark Bonham and Bonham & Co. Inc.**  
s. 127

Mr. A. Graburn in attendance for staff.

Panel: TBA

Mar 7/2001 **YBM Magnex**  
2:00 p.m.

s. 127

Mr. M. Code and Ms. K. Daniels in attendance for staff.

Panel: HIW / RWD / MTM

Mar 8/2001 **Michael Bourgon**  
2:00 p.m.

s. 127

Mr. Hugh Corbett in attendance for staff.

Panel: HIW

Mar 19/2001 **Wayne Umetsu**

s. 60 of the Commodity Futures Act

Ms. K. Wootton in attendance for staff.

Panel: TBA

Apr 16/2001-  
Apr 30/2001  
10:00 a.m. **Philip Services Corp., Allen Fracassi,  
Philip Fracassi, Marvin Boughton,  
Graham Hoey, Colin Soule, Robert  
Waxman and John Woodcroft**

s. 127

Ms. K. Manarin & Ms. K. Wootton in attendance for staff.

Panel: TBA

May 7/2001- YBM Magnex International Inc., Harry W.  
May 18/2001 Antes, Jacob G. Bogatin, Kenneth E.  
10:00 a.m. Davies, Igor Fisherman, Daniel E. Gatti,

Frank S. Greenwald, R. Owen Mitchell,  
David R. Peterson, Michael D. Schmidt,  
Lawrence D. Wilder, Griffiths Mcburney  
& Partners, National Bank Financial  
Corp., (formerly known as First  
Marathon Securities Limited)

s. 127

Mr. I. Smith in attendance for staff.

Panel: HIW / DB / MPC

ADJOURNED SINE DIE

Terry G. Dodsley

Offshore Marketing Alliance and Warren  
English

First Federal Capital (Canada)  
Corporation and Monter Morris Friesner

Southwest Securities

Global Privacy Management Trust and  
Robert Cranston

DJL Capital Corp. and Dennis John  
Little

Dual Capital Management Limited,  
Warren Lawrence Wall, Shirley Joan  
Wall, DJL Capital Corp., Dennis John  
Little and Benjamin Emile Poirier

Irvine James Dyck

M.C.J.C. Holdings Inc. and Michael  
Cowpland

Robert Thomislav Adzija, Larry Allen  
Ayres, David Arthur Bending, Marlene  
Berry, Douglas Cross, Allan Joseph  
Dorsey, Allan Eizenga, Guy Fangeat,  
Richard Jules Fangeat, Michael Hersey,  
George Edward Holmes, Todd Michael  
Johnston, Michael Thomas Peter  
Kennelly, John Douglas Kirby, Ernest  
Kiss, Arthur Krick, Frank Alan Latam,  
Brian Lawrence, Luke John Mcgee, Ron  
Masschaele, John Newman, Randall  
Novak, Normand Riopelle, Robert Louis  
Rizzuto, And Michael Vaughan

S. B. McLaughlin

**PROVINCIAL DIVISION PROCEEDINGS**

Date to be announced      **Michael Cowpland and M.C.J.C. Holdings Inc.**  
s. 122  
Ms. M. Sopinka in attendance for staff.  
Ottawa

Jan 29/2001 -      **John Bernard Felderhof**  
Jun 22/2001  
Mssrs. J. Naster and I. Smith for staff.  
Courtroom TBA, Provincial Offences Court.  
Old City Hall, Toronto

Jan 25/2000      **1173219 Ontario Limited c.o.b. as**  
10:00 a.m.      **TAC (The Alternate Choice), TAC**  
Courtroom N      **International Limited, Douglas R. Walker, David C. Drennan, Steven Peck, Don Gutoski, Ray Ricks, Al Johnson and Gerald McLeod**  
s. 122  
Mr. D. Ferris in attendance for staff.  
Provincial Offences Court  
Old City Hall, Toronto

Jan 29/2001 -      **Einar Bellfield**  
Feb 2/2001      s. 122  
Apr 30/2001 -      Ms. K. Manarin in attendance for staff.  
May 7/2001      9:00 a.m.  
Courtroom C, Provincial Offences Court  
Old City Hall, Toronto

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Reference:      **John Stevenson**  
Secretary to the  
Ontario Securities Commission  
(416) 593-8145

**1.1.2 OSC Staff Notice 52-701 Re. Revenue Recognition**

**ONTARIO SECURITIES COMMISSION  
STAFF NOTICE 52-701  
INITIAL REPORT ON STAFF'S REVIEW OF REVENUE  
RECOGNITION, CONTINUOUS DISCLOSURE TEAM,  
CORPORATE FINANCE BRANCH, FEBRUARY 2001**

**1. PURPOSE**

The purpose of this notice is to report the preliminary findings and comments of staff of the Continuous Disclosure Team of the Corporate Finance Branch (the "staff") arising from staff's review of the practices of a sample of Canadian reporting issuers in recognizing, measuring, presenting and disclosing revenue (the "review").

**2. SCOPE OF REVIEW**

The review commenced in August 2000 with the objective of identifying whether the accounting practices of Canadian issuers in recognizing, measuring, presenting and disclosing revenue reflect an appropriate application of the standards set out in the Handbook of The Canadian Institute of Chartered Accountants (the "CICA HB").

In a letter sent to a sample of 75 reporting issuers, staff asked for a detailed explanation of how the issuers apply revenue recognition policies in their financial statements. Staff also asked the issuers to provide the following information:

- for revenue recognition on the sale of goods, an explanation of how the issuers deal with retained risks or obligations; including customer right of return, obligations under maintenance contracts and obligations to provide complimentary upgrades;
- a description of how revenue is accrued for service contracts;
- whether any portion of the issuer's reported revenue represents the "gross" amount of sales transactions in which the issuer acts essentially as an agent or broker rather than as principal and for which it is compensated on a commission or fee basis; and
- whether, and if so how, the issuer compared its revenue recognition accounting practices with those applied generally within the industry in which it operates or by specific issuers within that industry.

Staff's choice of revenue recognition as the subject for its earnings management review was influenced by numerous factors. Clearly, revenue is a highly significant element of financial reporting because of its direct effect on reported earnings. In addition, some users of financial statements are placing increased emphasis on revenue growth as a key indicator of value and performance, particularly for companies in the technology sector.

Canadian accounting standards set out the principles governing recognition of revenue of all types but provide relatively little detailed and specific guidance on how those principles should be applied in specific circumstances. In a business environment in which revenue-generating transactions may involve complex combinations of customized

technology and services, as well as new forms of product delivery and distribution channels, questions arise as to whether revenue recognition practices reflect a rigorous application of the relevant standards.

Staff's objectives for the review are to ensure that the standards are being applied appropriately and to identify any areas in which more specific guidance may be required, for example, in the form of new standards, or interpretations issued by the Emerging Issues Committee ("EIC") of The Canadian Institute of Chartered Accountants.

The issuers chosen for review were primarily in the technology and related industries. Of the sample chosen:

- 38% were software providers;
- 25% were service providers (technology, internet, data processing and e-commerce);
- 24% sold hardware products (which could include software as a component); and
- 13% of the issuers were in some other industry.

91% of the issuers were listed on the Toronto Stock Exchange. 27% of the issuers were listed or quoted on an exchange or market in the United States ("US") and therefore reconciled their financial results to accounting principles generally accepted in the United States ("US GAAP").

### 3. SUMMARY OF FINDINGS AND COMMENTS

5% of the issuers provided sufficient information in response to staff's questions and did not generate any follow-up questions.

35% of the responses generated follow-up questions or comments on disclosure issues only. These are discussed further in Part 4 of this notice.

60% of the responses generated follow-up questions on recognition, measurement or presentation issues. These are discussed further in Part 5 of this notice.

The initial results of the review suggest a need for significant improvement in the nature and extent of disclosure in both the financial statements and Management's Discussion and Analysis ("MD&A"). Staff have also identified certain situations in which they are continuing to investigate whether particular revenue recognition, measurement and presentation practices reflect an appropriate application of the relevant standards.

As a result of the review, a number of issuers will be required to provide significantly more detailed disclosure in their financial statement notes or MD&A. Staff recommend that issuers review the quality of their disclosures with a view to implementing immediate improvements, taking into account the commentary and guidance provided in Part 4 of this notice. Where an issuer has not previously disclosed its accounting policies or other significant information regarding revenue, it should consider providing that information in a press release pending the release of the issuer's next financial statements.

Other issuers may be required, following further investigation and discussion, to revise their accounting policies or to restate previously issued financial statements to address the recognition and measurement issues raised in this report. Staff

continues to correspond with issuers on many of the specific issues identified in this notice, and will issue a final report following the resolution of all matters. Where issues have been identified for follow up and an issuer files a prospectus, staff will require the issuer to address and resolve these matters prior to a final receipt being issued. The major issues identified to date are summarized in Part 5 of this notice. The issues are typical of matters that will be questioned by staff on an ongoing basis as part of the continuous disclosure review program described in Staff Notice 51-703, *Implementation of Reporting Issuer Continuous Disclosure Review Program* and in the context of offering document reviews.

Staff recommend that Boards and Audit Committees evaluate and regularly reassess whether:

- management has established and is following a set of revenue recognition policies that is sufficiently comprehensive to provide sound practices across the issuer's full range of activities; and
- management has sufficient controls in place to monitor, report and respond to the key factors and functions that affect revenue recognition. Such controls would include, for instance, controls to ensure the appropriate coordination between the issuer's sales and accounting departments on major contractual items that impact the amount of revenue recognized and the timing of recognition.

Staff remind issuers that more detailed accounting literature exists in the US and elsewhere, providing a valuable point of reference in considering accounting treatments under Canadian GAAP. Specifically, in the Spring 2000 issue of *OSC Perspectives*, staff made the following statement:

"(The) fundamental accounting concepts pertaining to revenue recognition are similar under both US and Canadian GAAP. Accordingly, Canadian issuers and their auditors should consider carefully the basis in Canadian authoritative literature for all revenue recognition policies that differ from the interpretations set out in SEC Staff Accounting Bulletin ("SAB") No. 101. Where a policy adopted under Canadian GAAP differs from the requirements of SAB No. 101, and the difference cannot be justified with specific reference to underlying authoritative literature, or to clearly established practice that is consistent with fundamental accounting concepts, staff will be likely to take the view that the policy is not in accordance with Canadian GAAP."

Staff believe that analyses built on the criteria outlined in SAB 101 will generally be consistent with the requirements of Canadian GAAP as set out in CICA HB 3400, *Revenue*. As discussed in more detail below, the initial results of this review suggest that in many cases issuers have not looked to all appropriate sources of accounting literature when applying Canadian GAAP.



#### 4. SIGNIFICANT DISCLOSURE ISSUES

##### 4.1 Revenue Recognition Policies

Staff identified some issuers that provided no disclosure of revenue recognition policies in the notes to the financial statements. CICA HB 1505, *Disclosure of Accounting Policies*, requires "a clear and concise description of the significant accounting policies of an enterprise". Staff believe that the degree of judgement involved in determining the appropriate application of revenue recognition principles for the specific circumstances of a particular business is such that revenue recognition policies should always be viewed as significant and therefore disclosed.

When revenue recognition policies were disclosed, they were often limited to vague or boilerplate language that provided little information relevant to the issuer's specific circumstances. For example, the disclosure stated merely that revenue is recognized when earned. It is staff's view that such disclosure provides no useful information and does not meet the requirements of CICA 1505.

For the sale of goods, the disclosure often stated only that revenue is recognized when goods are shipped. Staff view such disclosure as insufficiently specific in cases where the issuer does not always sell its product directly to end users. For issuers that use distribution channels such as resellers, distributors, e-tailers or retailers; a reader of the financial statements would not be able to determine whether revenue was recognized on shipment to the distributor or only on shipment to the end-user.

Through its review of some issuer response letters, staff established that sales to distribution channels were recognized based on more extensive criteria than merely shipment. In such cases, staff questioned the accuracy of the disclosed policy. For example, one issuer's response stated that criteria for revenue recognition included agreement in writing by the customer to all terms and conditions, delivery to and acceptance by the customer, and assessment of collection of the sales proceeds as probable. The disclosed policy stated only that such revenues were "recognized when shipped." Staff emphasize that a full discussion of the key criteria assessed in recognizing revenue is necessary for a user to obtain an adequate understanding of the accounting policy applied.

Staff noted that the policies disclosed by issuers commonly failed to address separately major categories of goods or services provided by the issuer. In some cases, the policies had not been updated for recent shifts in the issuer's products and services. In other cases, the policies disclosed were not consistent with the description of revenue recognition policies submitted in response to the review letter. Issuers should regularly assess their disclosed policies to ensure that they provide a complete and current description of all significant elements of their revenue recognition practices.

##### 4.2 Issuers Reporting in the US

Some issuers prepared and distributed financial statements under both US GAAP and Canadian GAAP. In these cases, staff found that the disclosure of revenue recognition practices provided for US GAAP purposes was generally more detailed than that presented in the Canadian GAAP financial statements. Staff expect a consistent level of disclosure of revenue recognition policies in both sets of statements.

In some cases, issuers that prepared their results solely in accordance with Canadian GAAP nevertheless indicated in their responses to staff's letter that the accounting principles applied were consistent with certain US pronouncements. Staff believe such information provides a useful insight into the basis of preparation of the financial statements and its disclosure is therefore encouraged. Other Canadian issuers reconciled their financial results to US GAAP without reporting any differences relating to recognition of revenue, but did not address in the financial statements or in their responses to staff which US pronouncements were applied.

Staff remind issuers that, when financial statements contain a reconciliation to US GAAP, staff may as part of the continuous disclosure review and offering document review programs consider whether the reconciling items are indicative of a potential misapplication of Canadian accounting standards.

##### 4.3 Software Revenue Recognition

Many Canadian software vendors stated in their responses that they follow US accounting pronouncements, particularly SOP 97-2, *Software Revenue Recognition*, for Canadian accounting purposes. In some cases, staff asked for additional information on certain key aspects of how these pronouncements were applied. These included questions regarding:

- the terms of multiple element arrangements;
- the determination of vendor-specific objective evidence as a basis for allocating revenue to each element;
- how it was determined that fees are fixed and determinable given the existence of extended payment terms; and
- how it was determined that delivery had occurred when goods were sold to resellers.

Staff believe that information on these matters is important to an adequate understanding of the revenue recognition policy followed by an issuer and should be addressed in the notes to the financial statements.

##### 4.4 Segmented Information

In many cases, the responses provided by issuers contained a description of how the issuers are organized for internal reporting and decision-making purposes. Staff's review of this information sometimes raised concerns that the issuers might not be providing segment information in accordance with CICA HB 1701,

*Segment Disclosures.* CICA HB 1701 requires that segment information be provided based on the way that management organizes the enterprise for its own internal monitoring and decision-making purposes. Staff note that the recent release of EIC No. 115, *Segment disclosure - Application of the aggregation criteria in CICA HB 1701*, provides further guidance on the circumstances in which operating segments may be aggregated for external reporting purposes.

Even where the segment information itself appeared to be provided appropriately, many issuers failed to comply with the requirements of CICA HB 1701.39 that revenue from external customers should be disclosed for each product and service or each group of similar products and services, unless it is impracticable to do so, in which case that fact is required to be disclosed.

#### 4.5 Economic Dependence

Staff identified several situations in which particular customers, distributors or suppliers appeared to generate or provide a significant volume of the issuer's business. In such circumstances, staff remind issuers of the disclosure requirements of CICA HB 1701.42 and 1701.43, regarding information about major customers, and CICA HB 3841, *Economic Dependence*.

Staff encourage issuers, when disclosing such relationships, to provide the desirable disclosures set out in CICA HB 3841.06 and 3841.07, including the amount of the transactions and an explanation of whether the volume is normal for the issuer and the industry in which it operates. Such disclosures appear particularly useful when the stage of development of an issuer's business is such that it has only a small number of customers, distributors or major suppliers.

#### 4.6 Management's Discussion and Analysis

Management's Discussion and Analysis ("MD&A") as required by OSC Rule 51-501, *AIF & MD&A*, effective January 1, 2001 (as prescribed in forms 44-101F1 and 44-101F2 contained in National Instrument 44-101, *Short Form Prospectus Distributions*) requires a discussion, analysis and comparison of an issuer's financial condition, cash flows and results of operations.

In particular, form 44-101F2, Item 4(3) requires "a discussion of the extent to which any changes in net sales or revenues are attributable to changes in selling prices, to changes in the volume or quantity of goods or services being sold, or the introduction of new products or services" (this requirement was previously contained in OSC Policy 5.10).

It is staff's view that such discussion increases in usefulness when it specifically identifies, analyses and to the extent possible quantifies the significant underlying factors contributing to changes in selling price or in volumes or quantity of goods or services sold. The discussion should provide a full and balanced historical perspective, addressing both the absolute amount of revenue for the year and the change from previous years. In providing this perspective, issuers

may find it necessary to address a period longer than two years.

The discussion should also provide a forward-looking assessment of the likely ongoing impact of the significant factors that contributed to changes in selling price or in volumes or quantity of goods or services sold. Staff's review identified many issuers that merely listed various factors underlying the change in revenue without providing any meaningful discussion or sensitivity analysis.

Other common deficiencies noted by staff in reviewing the MD&A of the sample issuers included an absence of discussion or analysis of the following areas:

- changes in revenue by operational or geographic segment;
- the impact of new products or services on reported revenues;
- the issuer's relationships with customers or suppliers representing a significant volume of business; and
- the significance of related parties to the issuer's operations.

Factors that might be identified, analysed and explained include, but are not limited to:

- changes in customer buying patterns due to new technologies, changes in demographics, or other factors;
- changes in selling practices, such as new distribution arrangements or a reorganization of a direct sales force;
- changes in competition, including an assessment of the issuer's resources, strengths and weaknesses relative to those of its competitors;
- the impact of exchange rates on foreign revenues;
- changes in pricing of inputs, constraints on supply, order backlog, or other input-related matters affecting sales volume;
- changes in production capacity due to plant closures, work stoppages or other matters;
- changes in the volume of discounts granted to customers, volumes of returns and allowances, excise and other taxes or other amounts reflected on a net basis against revenues;
- changes in the terms and conditions of service contracts;
- the impact of new products or services, or discontinuances of specific products or services or operations; and
- industry-wide changes, including matters that did not impact on the issuer if such impact might reasonably have been expected to occur.

Staff plan to increase their focus on the quality of MD&A disclosure, including carrying out a future targeted review in the context of continuous disclosure.

#### 4.7 Interim Financial Statements

Staff noted that the interim financial statements of issuers that had changed or expanded their revenue recognition accounting policies during a specific quarter due to a change in their business seldom provided information about the revised accounting policies as required by CICA HB 1750.06(d)(i) (or, for interim periods in fiscal years beginning on or after January 1, 2001, by CICA HB 1751.14(b)). In addition, staff noted that few issuers included the segmented disclosure required by CICA HB 1750.06(e) (or, for interim periods in fiscal years beginning on or after January 1, 2001, by CICA HB 1751.14(e)) *Interim Financial Reporting to Shareholders*.

Staff also noted that notes were often not included in the interim financial statements filed by the issuers. Staff remind issuers that for interim periods in fiscal years beginning on or after January 1, 2001, the disclosure requirements for interim financial statements outlined in CICA HB 1751.13 - 1751.15, *Interim Financial Statements*, and OSC Rule 51-501, *AIF & MD&A*, are effective for public enterprises. To comply with these new requirements, issuers will need to provide notes to their interim financial statements.

#### 5. SIGNIFICANT ACCOUNTING ISSUES

The issues are categorized here with reference to the accounting recommendations set out in the CICA HB.

##### 5.1. Transfer of significant risks and rewards of ownership

Revenue should be recognized only when performance of the transaction has been achieved and ultimate collection of the consideration is reasonably assured. CICA HB 3400.07(a) contains the following necessary condition that must be fulfilled if performance is to be regarded as achieved:

*the seller of the goods has transferred to the buyer the significant risks and rewards of ownership, in that all significant acts have been completed and the seller retains no continuing managerial involvement in, or effective control of, the goods transferred to a degree usually associated with ownership*

The following issues raise concerns regarding the appropriate application of this condition:

##### 5.1 (1) Completion of all Significant Acts

In some cases, revenue was recognized even though all activities had not been completed. For example, one issuer recognized revenue when items were shipped, even though these items were subject to a subsequent installation process to be carried out by the issuer. In other cases, revenue from software products which were not standard and required extensive customization specific to each customer was recognized upon shipment.

There may be limited circumstances in which the additional time and risk associated with an installation process is so minimal as to be insignificant. However, when installation and testing of the product at the customer's business site are more than non-substantive, staff believe they should be regarded as significant acts, the completion of which are a necessary condition for the recognition of revenue. Staff note that International Accounting Standard IAS 18, *Revenue*, cites an example of a situation in which the installation process is insignificant, a factory tested television receiver which only requires unpacking and connection of power and antennae. Questions as to whether all significant acts have been completed also arise when issuers have continuing obligations to provide free upgrades.

##### 5.1 (2) Delivery and Customer Acceptance

Canadian accounting standards require all significant risks and rewards of ownership to be transferred to the buyer before revenue is recognized. Many issuers follow a policy of recognizing revenue when goods are shipped. In some cases, staff question whether a sufficiently detailed assessment has been made of whether the significant risks and rewards of ownership are in fact transferred at the point of shipment.

Staff note that even when goods have been shipped to the customer, if contractual customer acceptance provisions exist, and there remains some uncertainty regarding the customer's acceptance of the products, it will often be unlikely that the significant risks and rewards of ownership could be concluded to have been transferred.

##### 5.1 (3) "Bill and Hold" Sales

In some cases, issuers recognized revenue before possession of the goods had been transferred to the customer. Staff questioned in such cases whether all significant risks and rewards of ownership had been transferred and all significant acts completed. In such circumstances, staff will use the following factors as a reference point in assessing whether the risks and rewards of ownership of the goods have passed to the buyer:

- whether the customer has made a fixed commitment to purchase the goods (preferably evidenced in written documentation);
- whether the buyer, rather than the seller, requested that the transaction be on a bill and hold basis, and whether the buyer had a substantial business purpose for ordering the goods on such a basis;
- whether there is a fixed schedule for delivery of the goods that is reasonable and consistent with the buyer's business purpose;

- whether the seller retains any specific performance obligations such that the earning process is not complete;
- whether the ordered goods are segregated from the seller's inventory or are subject to being used to fill other orders; and
- whether the product is complete and ready for shipment.

#### 5.1 (4) Contracts with multiple elements

In some cases, staff noted customer contracts or agreements that had more than one deliverable product or service, each of which was accounted for as a different revenue stream. For example, some contracts for the sale of software also included obligations to provide maintenance, training services or free upgrades. Staff asked issuers to discuss and explain how the revenue allocated to each deliverable was determined. Where the basis of such allocations cannot be supported, staff will question how an issuer concludes that all significant acts pertaining to a particular revenue stream have been completed.

#### 5.1 (5) Issues involving legal title

CICA HB 3400.11 states that, in most cases, revenue is recognized on the passing of possession of goods which, in the case of retail sales, is usually coincident with the passing of legal title. However, it also notes that the passing of legal title may occur at a different time from the passing of possession or of the risks and rewards of ownership. In many cases, staff's review suggested that issuers had not made a detailed assessment of title issues for their various products and how this might impact on their accounting practices.

Traditionally, revenue was considered earned at the point of sale, either when a product was delivered to the customer's delivery site (FOB destination) or when a product was shipped to the customer (FOB shipping point). This practice was based on a traditional business making standardized products with few, if any, obligations to the customer after the sale. A more transaction-specific approach appears to be appropriate when products are more complex and less homogenous, undergo significant customization or involve a greater ongoing collaboration between the seller and the customer. However, as noted previously, such a transaction-specific approach requires adequate controls and established revenue recognition policies that are sufficiently comprehensive to provide sound practices across the issuer's full range of activities.

#### **5.2 Measurement of consideration and assessment of returns**

CICA HB 3400.07(b) contains the following further condition that must be fulfilled if performance is to be regarded as achieved:

*reasonable assurance exists regarding the measurement of the consideration that will be derived from the sale of goods, and the extent to which goods may be returned*

The following issues raise concerns regarding the appropriate application of this condition:

#### 5.2 (1) Right of Return

Staff identified issuers that recognized revenue at the time of product shipment despite being exposed to potentially significant returns which, historically, have large fluctuations. In staff's view, a history of large fluctuations in actual returns raises concerns with regard to the issuer's ability to make reliable estimates of returns and may suggest that the amount of revenue is not measurable with sufficient reliability to be recognized.

CICA HB 3400.18(b) indicates that when the market for a returnable good is untested and when an issuer is subject to significant and unpredictable returns, revenue would not be recognized. When the volume of returns is large relative to the total revenue recognized, staff may also question how the issuer assesses the predictability of returns. Such cases may also call into question whether the significant risks and rewards of ownership have been transferred at the time revenue is recognized.

Issuers should ensure that they have adequate systems in place to support the assumption that returns can be reasonably estimated. Staff note it is particularly difficult to establish a sound basis for predicting the extent of returns in businesses that are characterized by rapid and unpredictable technological change.

CICA HB 3400.18(a) also states that when consideration is not determinable within reasonable limits, for example when payment relating to goods sold depends on the resale of goods by the buyer, revenue would not be recognized. In certain circumstances where an issuer sells its products through resellers rather than directly to end users, staff may question the issuer regarding the terms of its agreements with the resellers, the history of returns or any adjustments that have occurred as a result of these agreements.

### 5.2 (2) Price protection arrangements

Staff noted cases where revenue was recognized even though the issuer continued to offer price protection with regard to the products in question. Under these arrangements, when an issuer reduces its published price list for products, it provides credit to customers (resellers) for products held in their inventories. It appears to staff that the existence of price protection and inventory credit arrangements raise significant concerns as to whether the issuer has reasonable assurance with respect to the measurement of the consideration that will be derived from the sale of the goods. Further, arrangements that leave the seller exposed to price risk with respect to the products sold may raise questions as to whether the significant risks and rewards of ownership have been substantially transferred to the customer. Such concerns are magnified when the price protection arrangements coexist with right of return provisions or other contractual provisions that might also result in an adjustment to revenue.

### 5.2 (3) Valuing of Consideration

Staff identified an issuer that receives equity interests in customers as compensation for providing professional services. However, due to uncertainty in the value of the equity interests, the issuer disclosed that no amount had been attributed to those equity interests. Staff questioned this accounting, noting that CICA HB 3830.05, *Non-Monetary Transactions*, requires that such non-monetary exchanges be recorded at the fair value of the asset or service given up or, if more clearly determinable, the fair value of the asset or service received. Where uncertainties exist regarding the computation of fair value, those uncertainties may, if material, be dealt with by disclosure under CICA HB 1508, *Measurement Uncertainty*.

Staff noted some issuers that issued warrants or equity instruments to arm's length customers as part of a revenue-generating transaction. Staff take the view that where such instruments are issued to a customer in combination with a sale, then the consideration received would be allocated between the goods or services provided and the warrants or equity issued based on their fair value. In such cases, the issuance of the warrants or equity instruments effectively returns to the customer a portion of the contracted or stated amount of revenue.

### **5.3 Rendering of Services and Long-Term Contracts**

CICA HB 3400.08 states that for the rendering of services and long-term contracts, performance should be determined using either the percentage of completion method or the completed contract method, whichever relates the revenue to the work

accomplished. The following issue raises concerns regarding the appropriate application of this principle:

### 5.3 (1) Up-front fees

Staff noted certain arrangements where up-front fees are received at the inception of a licensing or similar agreement and are accounted for as earned as the products are delivered or services are performed over the term of the arrangement. Staff questioned cases in which these fees appeared to be amortized over a period shorter than that of the term of the arrangement. Staff also questioned cases where such up-front fees were recognized in income immediately by the issuer because they were considered to be non-refundable and not dependent on any subsequent activity to be fully earned. Staff also questioned such treatment where it appeared that the fees were potentially refundable. For example, staff questioned a situation in which an up-front fee, recognized in revenue, appeared to be received in consideration of entering into an exclusive nine-month negotiating period, and would have been refundable if the terms of that agreement were breached.

### **5.4 Other issues identified**

#### 5.4 (1) "Gross vs. Net" Presentation

Staff noted an internet retailer which places a purchase order with a supplier for a product only after a customer of the issuer has placed a sales order; the supplier then ships the product directly to the customer. The issuer acquires title to the product and retains such title during shipment. However, in some respects the issuer's assumption of the risks of ownership of the product is relatively minimal; for instance, it never has any of the risks associated with bringing goods into inventory. When an issuer's interest in a transaction is such that it is not exposed to the significant risks and rewards of ownership of the items that are the subject of the transaction, this may be indicative of an agency type of relationship. In such cases, even where the issuer does not legally act as agent or broker, revenue reported by the issuer should be limited to the amount of the commission earned.

"Gross vs net" issues have recently been considered by the Emerging Issues Task Force in the US. Canadian issuers may find the US guidance helpful. Staff believe that detailed guidance on these issues is required in Canada.

#### 5.4 (2) Evidence Of Arrangement

CICA HB 3400.11 states that "assessing when the risks and rewards of ownership are transferred to the buyer with sufficient certainty requires an examination of the circumstances of the transaction." In staff's view, to achieve sufficient certainty it is usually necessary to have

persuasive evidence regarding the existence and major terms of the transaction. The nature of this evidence would depend largely on the issuer's business, customers, organization, practices and processes and could take many forms including a final written agreement that is executed and properly authorized by the customer, binding purchase orders from third parties or on-line authorizations that are binding and include terms of sale.

Very few issuers provided contracts or other supporting documentation as part of their response to staff's letter. Staff expect to request such support as part of its continuing correspondence with certain issuers.

## 6. CONCLUSION

In many cases, staff continue to correspond with issuers to obtain additional information and resolve the issues identified as a result of the review. A final report will be issued following the resolution of all issues. As mentioned, these issues are typical of matters that will be questioned by staff on an ongoing basis as part of the continuous disclosure review program described in Staff Notice 51-703 and in the context of offering document reviews. Staff encourage issuers to discuss questions and issues with staff on a pre-filing basis.

On completion of this review, staff are planning a targeted review of interim financial statements which will commence in April 2001. These reviews are part of staff's increasing shift towards the review of more continuous disclosure documents. In addition to targeted reviews, staff carry out a range of other reviews as described in OSC Staff Notice 51-703.

For more information, please call:

### Continuous Disclosure Team

**John Hughes**

Manager, Continuous Disclosure  
416-593-3695  
jhughes@osc.gov.on.ca

**Irene Tsatsos**

Senior Accountant, Continuous Disclosure  
416-593-8223  
itsatsos@osc.gov.on.ca

## 1.1.3 TSE Policy 2-401 Supervision of Trading

### THE TORONTO STOCK EXCHANGE POLICY 2-401 SUPERVISION OF TRADING NOTICE OF COMMISSION APPROVAL

On February 27, 2001, the Commission approved Policy 2-401 Supervision of Trading ("Policy 2-401"). Policy 2-401 is a new policy of the Toronto Stock Exchange related to trading supervision and compliance standards. A copy and description of Policy 2-401 was published on December 8, 2000 at (2000) 23 OSCB 8293. One comment letter was received which supported Policy 2-401. Some revisions have been made to Policy 2-401 since it was published on December 8, 2000 in the OSC Bulletin. A revised version of Policy 2-401 (with changes blacklined) is being published in Chapter 13 of this Bulletin.

#### 1.1.4 Proposed Policy 12-602

##### NOTICE OF PROPOSED POLICY 12-602 DEEMING AN ISSUER FROM CERTAIN OTHER CANADIAN JURISDICTIONS TO BE A REPORTING ISSUER IN ONTARIO

The Commission is publishing the following documents in today's Bulletin:

- Notice of Proposed Policy 12-602
- Proposed Policy 12-602

The documents are published in Chapter 6 of the Bulletin.

## 1.2 News Releases

### 1.2.1 Paul M. Moore Appointment

FOR IMMEDIATE RELEASE  
March 7, 2001

#### PAUL M. MOORE APPOINTED NEW VICE CHAIR OF OSC

**Toronto** - The Chair of the Ontario Securities Commission (OSC), David Brown, today welcomed the Order-In-Council appointment for five years of Paul M. Moore as one of the OSC's two Vice Chairs.

"This is an excellent appointment for the OSC," Mr. Brown said. "Paul Moore is a well-respected practitioner in the securities industry who brings a great deal of depth to his new position."

Prior to his appointment, Mr. Moore was a partner in the Toronto office of Torys. He practiced with Torys for the past 34 years in the areas of derivatives, securities, banking and trust, corporate/commercial, pension and insurance law and was head of the firm's Derivatives Practice Group.

Mr. Moore has extensive experience in all aspects of the financial institution and financial services industries and has had extensive interaction with stock exchanges and regulatory authorities for securities and banking.

#### Reference:

Frank Switzer  
Director of Communications  
416-593-8120



## Chapter 2

# Decisions, Orders and Rulings

### 2.1 Decisions

#### 2.1.1 Canada Trustco Mortgage Company - MRRS Decision

##### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - as a result of an exchange of securities, issuer has only two security holders - issuer deemed to have ceased being a reporting issuer.

##### Applicable Ontario Statutory Provisions

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

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

**AND**

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

**AND**

**IN THE MATTER OF  
CANADA TRUSTCO MORTGAGE COMPANY  
MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, Saskatchewan, Ontario, Quebec, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application from Canada Trustco Mortgage Company (the "Filer") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the Filer be deemed to have ceased to be a reporting issuer under the Legislation;

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

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

1. The Filer is subject to the *Trust and Loan Companies Act* (Canada), is a reporting issuer in each of the Jurisdictions and is not in default of any of the requirements of the Legislation.

2. The Filer's head office is located in Toronto, Ontario.
3. The Filer's authorized capital consists of 100,000,000 voting common shares, 4,095,448 First Preference Shares, issuable in series, 8,427,566 Second Preference Shares, issuable in series and unlimited number of Third Preference Shares, issuable in series.
4. The Filer currently has 11,142,757 common shares (the "Common Shares") issued and outstanding. The Filer also has \$150 million 10.05% Capital Debentures, Series 2 and \$200 million 9.15% Capital Debenture, Series 3 (collectively, the "Debentures") issued and outstanding.
5. CT Financial Services Inc. ("CTFSI") is the sole holder of the Common Shares.
6. Pursuant to a take-over bid by The Toronto-Dominion Bank (the "Bank"), the Bank acquired all of the outstanding voting securities of CTFSI (the "Take-Over"). Subsequent to the Take-Over the Bank acquired all of outstanding Debentures in exchange for newly issued debentures of the Bank.
7. The Filer's Third Preference Shares, Series 1 were redeemed by the Filer and were delisted from The Toronto Stock Exchange on December 31, 2000 and no securities of the Filer are listed or quoted on any exchange or market.
8. The Filer has only two security holders.
9. Other than the Common Shares and Debentures, the Filer has no securities, including debt securities, outstanding.
10. The Filer does not intend to seek future public financing by way of an offering to the public.

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

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

**THE DECISION** of the Decision Makers under the Legislation is that the Filer be deemed to have ceased to be a reporting issuer under the Legislation.

February 26, 2001.

John Hughes  
Manager, Continuous Disclosure

## 2.1.2 Ceridian Corporation - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from prospectus and registration requirements for spin-off by a publicly traded US company to investors by issuing shares of spun off entity as dividends - reorganization technically not covered by prescribed reorganization exemptions - technical relief - no policy issues.

### Applicable Ontario Statutes

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 25, 35(1)12(ii), 35(1)15, 53, 72(1)(f)(ii), 72(1)(i), 74(1).

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

AND

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

AND

**IN THE MATTER OF  
 CERIDIAN CORPORATION**

**MRRS DECISION DOCUMENT**

**WHEREAS** the securities regulatory authority or regulator (collectively, the "Decision Makers") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Prince Edward Island, Nunavut, Northwest Territories, Yukon, Nova Scotia and Newfoundland (collectively, the "Jurisdictions") has received an application from Ceridian Corporation ("Ceridian") for a decision, pursuant to the securities legislation (the "Legislation") of each of the Jurisdictions that the prospectus and registration requirements (respectively, the "Prospectus Requirements" and the "Registration Requirements") as defined in National Instrument 14-101 *Definitions*, contained in the Legislation shall not apply to the proposed issuance of securities of New Ceridian (defined below) to holders of common stock of Ceridian resident in Canada (the "Canadian Shareholders"), provided that the first trade in such securities will be deemed to be a distribution or primary distribution to the public and that the Prospectus Requirements shall not apply to the first trade in the securities of New Ceridian provided that certain conditions are met;

**AND WHEREAS** pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the Principal Regulator for this Application;

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

1. Ceridian is a publicly traded Delaware corporation that operates: (i) a human resource services division (directly and through subsidiaries, including Canadian subsidiaries); (ii) a transaction processing services (through its Comdata subsidiaries); and (iii) a media information division. Its principal executive offices are located in Minneapolis, Minnesota.
2. Ceridian's Canadian wholly owned subsidiaries include Permicom Permits Services, Inc., Ceridian Performance Partners Ltd. and Ceridian Canada Ltd., which collectively carry on business through offices located in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec and Nova Scotia.
3. Ceridian is a reporting issuer in Ontario but is not a reporting issuer under the securities laws of any other province or territory of Canada and Ceridian has no intention of ever becoming a reporting issuer under the securities laws of any other province or territory of Canada.
4. The shares of Ceridian are listed on the New York Stock Exchange. The shares of Ceridian are not listed on any Canadian stock exchange.
5. As of January 2, 2001, Ceridian had 116 holders of record of Ceridian common stock resident in Canada (69 in Ontario, 15 in Quebec, 11 in Alberta, 8 in British Columbia, 4 in Manitoba, 3 in Nova Scotia, 2 in New Brunswick, 2 in Saskatchewan, 1 in Newfoundland and 1 in Prince Edward Island), which constitute approximately 1.16% of the approximately 10,000 holders of record of common stock of Ceridian worldwide. On that date, persons resident in Canada collectively held 25,414 shares of common stock of Ceridian, constituting approximately 0.02% of the approximately 146,000,000 issued and outstanding common stock of Ceridian. As such, the proportion of common stock of Ceridian held by Canadian residents is *de minimis*.
6. Subject to obtaining necessary approvals, on or about the middle of March 2001, Ceridian will split itself into two independent, publicly-traded companies through a tax neutral spin-off transaction (the "Spin-Off"). The Spin-Off, which is being reviewed by the United States Securities and Exchange Commission, consists of the following steps:
  - a) Ceridian will transfer substantially all of its assets, liabilities and operations of its human resource services division and the capital stock of its human resources services subsidiaries and Comdata subsidiaries, which includes all of its Canadian subsidiaries, to a wholly owned Delaware incorporated subsidiary of Ceridian ("New Ceridian").
  - b) Ceridian will distribute by dividend to each of its shareholders one share of New Ceridian common stock ("New Ceridian Shares") for each

share of Ceridian common stock held by such shareholder.

- c) Immediately following the Spin-Off (i) Ceridian will change its name to "Arbitron Inc." ("Arbitron"), (ii) New Ceridian will change its name to "Ceridian Corporation", (iii) Arbitron will continue to carry on the media information business formerly carried on by Ceridian, and (iv) New Ceridian will carry on the human resource services and Comdata businesses formerly carried on by Ceridian.
  - d) In addition, a reverse stock split of Arbitron common stock ("Arbitron Shares") will take place immediately after the consummation of the Spin-Off thereby decreasing the number of Arbitron Shares held by Arbitron shareholders after the Spin-Off by approximately a factor of five.
7. After the Spin-Off, Arbitron Shares will continue to be listed and traded on The New York Stock Exchange and New Ceridian Shares will be listed and traded on The New York Stock Exchange.
  8. It is not intended that Arbitron or New Ceridian will list its shares on any stock exchange in Canada.
  9. It is not intended that New Ceridian will become a reporting issuer in any province in Canada.
  10. The dividend and Spin-Off will be effected in compliance with Delaware law and the transaction will be reviewed by the United States Securities and Exchange Commission.
  11. Because the Spin-Off of New Ceridian shares will be by way of dividend to the Arbitron shareholders, no shareholder approval of the proposed transaction is required under Delaware law.
  12. All materials relating to the Spin-Off and the dividend sent by or on behalf of Ceridian, New Ceridian or Arbitron in the United States have and will be sent, concurrently to the Canadian Shareholders and a copy thereof will be filed with each of the local securities regulators in each of the provinces and territories of Canada.
  13. Following the Spin-Off, New Ceridian and Arbitron respectively will send, concurrently to the Canadian Shareholders, the same disclosure materials that it sends to holders of New Ceridian and Arbitron shares with addresses, as shown on its books to be, in the United States.
  14. The Canadian Shareholders who receive New Ceridian shares as a dividend pursuant to the Spin-Off will have the benefit of the same rights and remedies in respect of the disclosure documentation received in connection with the dividend and Spin-Off that are available under the laws of the United States to Ceridian, New Ceridian and Arbitron shareholders with addresses in the United States.

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

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

**THE DECISION** of the Decision Makers pursuant to the Legislation is that:

- (a) the Prospectus Requirements and the Registration Requirements shall not apply to the proposed issuance of the New Ceridian Shares pursuant to the Spin-Off to the Canadian Shareholders, provided that the first trade in such securities will be deemed to be a distribution or primary distribution to the public; and
- (b) the Prospectus Requirements shall not apply to the first trade in New Ceridian Shares provided that:
  - (i) such trade is executed through the facilities of a stock exchange or market outside of Canada; and
  - (ii) such trade is made in accordance with the rules of the stock exchange or market upon which the trade is made and in accordance with the laws applicable to such stock exchange or market.

February 28, 2001.

"Howard I. Wetston"

"Robert W. Davis"

### 2.1.3 CT Financial Services Inc. - MRRS Decision

#### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - subsequent a take-over and exchange of shares, issuer has only one security holder - issuer deemed to have ceased being a reporting issuer.

#### Applicable Ontario Statutory Provisions

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

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

**AND**

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

**AND**

**IN THE MATTER OF  
CT FINANCIAL SERVICES INC.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, Saskatchewan, Ontario, Quebec, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application from CT Financial Services Inc. (the "Filer") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the Filer be deemed to have ceased to be a reporting issuer under the Legislation;

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

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

1. The Filer was continued under the *Canada Business Corporations Act*, is a reporting issuer in each of the Jurisdictions and is not in default of any of the requirements of the Legislation.
2. The Filer's head office is located in Toronto, Ontario.
3. The Filer's authorized capital consists of an unlimited number of voting common shares, an unlimited number of Non-Cumulative First Preference Shares, issuable in series and an unlimited number of Non-Cumulative Second Preference Shares, issuable in series, both of which are non-voting. The Filer currently has 138,804,003 common shares (the "Common Shares"), 6,000,000 First Preference Shares, Series4 (the "Series

4 Shares") and 1,898,000 First Preference Shares, Series 5 (the "Series 5 Shares", and, collectively with the Common Shares and the Series 4 Shares, the "Shares") issued and outstanding.

4. Pursuant to a take-over bid by The Toronto-Dominion Bank (the "Bank") and the subsequent exchange of the Series 4 Shares and the Series 5 Shares for newly issued non-cumulative redeemable preference shares of the Bank, the Bank became the sole registered holder of the Shares.
5. Other than the Shares, the Filer has no other securities, including debt securities, outstanding.
6. The Common Shares were delisted from The Toronto Stock Exchange (the "TSE") in February 2000, the Series 4 Shares and the Series 5 Shares were delisted from the TSE in December 2000, and no securities of the Filer are listed or quoted on any exchange or market.
7. The Filer does not intend to seek future public financing by way of an offering to the public.

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

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

**THE DECISION** of the Decision Makers under the Legislation is that the Filer be deemed to have ceased to be a reporting issuer under the Legislation.

February 26, 2001.

John Hughes  
Manager, Continuous Disclosure

**2.1.4 RBC Dominion Securities Inc. & Royal Bank of Canada - MRRS Decision**

**Headnote**

MRRS Application for relief from independent underwriter requirements in respect of offering of derivative securities over two-year period by applicant bank using Shelf procedures – applicant bank a related issuer of underwriter – offerings may be on agency or underwritten basis – independent underwriter to participate in offerings as required by Proposed Multi-jurisdictional Instrument 33-105 - Underwriting Conflicts (1998) 21 OSCB 781 – independent underwriter to participate in due diligence relating to offerings but not pricing or structuring of transaction – clear disclosure of this fact required.

**Applicable Ontario Statutes**

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

**Applicable Ontario Regulations**

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., 219(1), 224(1)(b), 233.

**Rules Cited**

Proposed Multi-jurisdictional Instrument 33-105 - Underwriting Conflicts (1998) 21 OSCB 781.

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

**AND**

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

**AND**

**IN THE MATTER OF  
RBC DOMINION SECURITIES INC. AND  
ROYAL BANK OF CANADA**

**MRRS DECISION DOCUMENT**

**WHEREAS** the securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Ontario, Quebec and Newfoundland (the "Jurisdictions") has received an application from Royal Bank of Canada (the "Bank") and RBC Dominion Securities Inc. ("RBC DS") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the requirement (the "Independent Underwriter Requirement") contained in the Legislation which restricts a registrant from acting as an underwriter in connection with a distribution of securities by an issuer made by means of a prospectus, where the issuer is a related issuer (or the equivalent) or a connected issuer (or the equivalent) of the registrant, unless a portion of the distribution at least equal to that portion underwritten by non-independent

underwriters is underwritten by independent underwriters shall not apply to RBC DS in respect of each proposed distribution (an "Offering") of cash-settled derivative warrants and principal at risk term securities (together, the "Offered Securities") of the Bank, pursuant to a short form shelf prospectus (the "Shelf Prospectus");

**AND WHEREAS** pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Quebec Securities Commission is the principal regulator for this application;

**AND WHEREAS** RBC DS has represented to the Decision Makers that:

1. The Bank is a reporting issuer under the Legislation of each Jurisdiction and is not in default of any requirements of the Legislation of any Jurisdiction.
2. The Bank is a Schedule I chartered bank under the *Bank Act* (Canada), which constitutes its charter. The Bank's head office is located at 1 Place Ville Marie, Montreal, Quebec, H3C 3A9.
3. The common shares and certain series of preferred shares of the Bank are listed on the Toronto Stock Exchange, among other exchanges. The Offered Securities may be listed on a Canadian stock exchange.
4. RBC DS is a registrant under the Legislation. The executive and registered office of RBC DS is located at 200 Bay Street, Royal Bank Plaza, P.O. Box 50, Toronto, Ontario, M5J 2W7.
5. The Bank has filed a Shelf Prospectus relating to the Offered Securities under SEDAR Project No. 321245. A Decision Document evidencing the receipt for the Shelf Prospectus was issued on December 28, 2000. The Shelf Prospectus will be supplemented by a prospectus supplement (the "Prospectus Supplement") describing the specific terms of a particular offering of Offered Securities.
6. The Offered Securities will be offered by RBC DS and one or more underwriters unrelated (each an "Independent Underwriter") to the Bank (collectively, the "Underwriters"). The Offered Securities may be offered by the Underwriters on either a best efforts agency basis or an underwritten basis. The identity of the Underwriters will be determined at the time of the Prospectus Supplements.
7. The Independent Underwriter will be an independent underwriter as defined in Multi-Jurisdictional Instrument 33-105 Underwriting Conflicts (the «Proposed Instrument»).
8. The Bank will not be a "related issuer" or "connected issuer" (as those terms are defined in the Proposed Instrument) of any Independent Underwriter.
9. By virtue of the Bank indirectly owning all of the issued and outstanding shares of RBC DS, the Bank may be considered a related issuer (or the equivalent) of RBC DS. The decision to offer a tranche of Offered

Securities and the determination of the terms of the tranche and of the Offering will be based on the direction and advice of one or more officers of RBC DS and, accordingly, RBC DS may be considered a connected issuer (or the equivalent) of the Bank.

10. The Underwriters will receive no benefit under the Offering other than such fees or commissions as may be disclosed in a Prospectus Supplement. Notwithstanding the foregoing, RBC DS, as agent of the Bank, may enter into arrangements to hedge the Bank's risks associated with the Offered Securities. The Bank may agree with RBC DS that RBC DS may retain all or an agreed-upon portion of any profits, and may be required to compensate the Bank for all or an agreed-upon portion of any losses resulting from such hedging arrangements. Full disclosure of all such hedging arrangements applicable to a tranche of Offered Securities will appear in the Prospectus Supplement for such tranche.
11. The nature and details of the relationship between the Bank and RBC DS is described in the Shelf Prospectus and the Shelf Prospectus contains the information specified in Appendix "C" of the Proposed Instrument. If additional disclosure is required in respect of a particular offering in order to comply with such Appendix, the necessary disclosure will be set forth in the relevant Prospectus Supplement.
12. The decision to issue the Offered Securities, including the determination of the terms of such distribution has been made through negotiations between the Bank and RBC DS. It is anticipated that the Independent Underwriter will have no role in the structuring or pricing of an offering of a tranche of Offered Securities, which fact will be disclosed in the Prospectus Supplement.
13. The Independent Underwriter(s) will be identified in the Prospectus Supplement. An Independent Underwriter will have participated in the due diligence relating to such Offering and will participate in the preparation of each Prospectus Supplement.
14. The certificate in the Prospectus has been signed by RBC DS and the certificate in each Prospectus Supplement will be signed by the Underwriters, including each Independent Underwriter.

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

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

**THE DECISION** of the Decision Makers, under the Legislation, is that the Independent Underwriter Requirement shall not apply to RBC DS in connection with an offering of a tranche of Offered Securities provided that:

- (1) in respect of an offering of Offered Securities made on an underwritten basis, an Independent Underwriter underwrites not less than the lesser of
  - (a) 20 percent of the dollar value of the offering, and
  - (b) the largest portion of the offering underwritten by RBC DS or any other non-independent Underwriter.
- (2) in respect of an offering of Offered Securities made on a best efforts agency basis, an Independent Underwriter receives a portion of the total management fees equal to an amount not less than the lesser of
  - (a) 20 percent of the total management fees for the offering, and
  - (b) the largest portion of the management fees paid or payable to RBC DS or any other registrant that is not an Independent Underwriter; and
- (3) the name of the Independent Underwriter and the extent of the participation of such Independent Underwriter in the due diligence and pricing of the Offered Securities is described in the Prospectus Supplement relating to each Offering.

DATED at Montréal, this 28th day of February, 2001.

"Guy Lemoine"

"Viateur Gagnon"

**2.1.5 Aim Funds Management Inc. - MRRS Decision**

**Headnote**

Relief to permit RSP clone fund structure.

**Statutes Cited**

Securities Act, R.S.O. 1990, c. S.5, as amended, ss. 111, 117, 118.

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

**AND**

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

**AND**

**IN THE MATTER OF  
AIM FUNDS MANAGEMENT INC.  
AIM RSP GLOBAL FINANCIAL SERVICES FUND  
AIM RSP GLOBAL SECTOR MANAGERS FUND**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application (the "Application") from AIM Funds Management Inc. ("AIM" or the "Manager") on behalf of AIM RSP Global Financial Services Fund, AIM RSP Global Sector Managers Fund and other mutual funds managed by AIM after the date of this Decision (defined herein) (collectively referred to as the "Top Funds") having an investment objective or strategy that is linked to the returns or portfolio of another specified mutual fund, for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the following provisions in the Legislation (the "Applicable Requirements") shall not apply in connection with certain investments to be made by the Top Funds in applicable corresponding mutual funds from time to time (the funds in which such investments are to be made being collectively referred to as the "Underlying Funds"):

1. the restrictions contained in the Legislation prohibiting a mutual fund from knowingly making or holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder;
2. the requirements contained in the Legislation requiring a management company, or in British Columbia, a mutual fund manager, to file a report relating to a purchase or sale of securities between the mutual fund and any related person or company, or any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the

mutual fund is a joint participant with one or more of its related persons or companies.

**AND WHEREAS** pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

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

1. Each of the Top Funds is, or will be, an open-ended mutual fund trust established under the laws of the Province of Ontario.
2. AIM is a corporation amalgamated under the laws of the Province of Ontario and is, or will be, the manager of each of the Top Funds.
3. The securities of the Top Funds and the Underlying Funds are, or will be, qualified for sale under a simplified prospectus and annual information form filed in all provinces and territories in which they are distributed. A preliminary simplified prospectus for the AIM RSP Global Financial Services Fund and AIM RSP Global Sector Managers Fund has been filed under SEDAR project number 308017.
4. The simplified prospectus for each Top Fund will disclose the investment objectives, investment strategies, risks and restrictions of the Top Fund and the investment objectives and strategies of the Underlying Fund. The investment objectives and strategies of each of the Top Funds will disclose the name of the corresponding Underlying Fund and the Top Fund's total aggregate derivative exposure to, and direct investment in the Underlying Fund.
5. The investment objectives of the Underlying Funds are, or will be, achieved through investment primarily in foreign securities.
6. Each Top Fund seeks, or will seek, to achieve its investment objective while ensuring that its units do not constitute "foreign property" under the *Income Tax Act* (Canada) (the "Tax Act") for registered retirement savings plans, registered retirement income plans, and deferred profit sharing plans ("Registered Plans").
7. To achieve its investment objective each Top Fund invests or will invest its assets such that the securities of the Top Fund will, in the opinion of tax counsel to the Top Fund, be "qualified investments" for Registered Plans and will not constitute foreign property in a Registered Plan. This will primarily be achieved by the Top Funds entering into derivative contracts with one or more financial institutions that link the returns to those of the Underlying Funds. However, each Top Fund also intends to invest a portion of its assets directly in securities of a corresponding Underlying Fund. This investment by a Top Fund will at all times be below the maximum foreign property limit prescribed under the Tax Act for Registered Plans (the "Permitted Limit").

8. The amount of direct investment by each Top Fund in its applicable Underlying Fund will be adjusted from time to time so that, except for transitional cash, the aggregate of derivative exposure to, and direct investment in, the Underlying Fund will equal 100% of the assets of the Top Fund.
9. Except to the extent evidenced by this Decision and specific approvals granted by the Canadian securities administrators pursuant to National Instrument 81-102 Mutual Funds ("NI 81-102"), the investments by the Top Funds in the Underlying Funds have been, or will be, structured to comply with the investment restrictions of the Legislation and NI 81-102.
10. In the absence of this Decision, pursuant to the Legislation, the Top Funds are prohibited from (a) knowingly making an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial securityholder; and (b) knowingly holding an investment referred to in clause (a) hereof. As a result, in the absence of this Decision the Top Funds would be required to divest themselves of any such investments.
11. In the absence of this Decision, the Legislation requires AIM to file a report on every purchase or sale of securities of the Underlying Funds by the Top Funds.
12. The investment by the Top Funds in securities of the Underlying Funds will represent the business judgment of responsible persons, uninfluenced by considerations other than the best interest of the Top Funds.

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

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

**THE DECISION** of the Decision Makers under the Legislation is that the Applicable Requirements do not apply to the Top Funds or the Manager, as the case may be, in respect of investments to be made by the Top Funds in securities of the Underlying Funds.

**PROVIDED IN EACH CASE THAT:**

1. the Decision, as it relates to the jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation or rule of that Decision Maker dealing with the matters in section 2.5 of NI 81-102; and
2. the Decision shall only apply if, at the time a Top Fund makes or holds an investment in an Underlying Fund, the following conditions are satisfied:
  - a. the securities of both the Top Fund and the Underlying Fund are being offered for sale in the jurisdiction of the Decision Maker pursuant to a simplified prospectus and annual information

form which has been filed with and accepted by the Decision Maker;

- b. the investment by the Top Fund in the Underlying Fund is compatible with the fundamental investment objectives of the Top Fund;
- c. the investment objective of the Top Fund discloses that the Top Fund invests directly and indirectly (through derivative exposure) in the Underlying Fund and the name of the Underlying Fund;
- d. the Underlying Fund is not a mutual fund whose investment objective includes investing directly or indirectly in other mutual funds;
- e. the Top Fund restricts its direct investment in the Underlying Fund to a percentage of its assets that is within the Permitted Limit;
- f. there are compatible dates for the calculation of the net asset value of the Top Fund and the Underlying Fund for the purpose of the issue and redemption of securities of such mutual funds;
- g. no sales charges are payable by the Top Fund in relation to its purchases of securities of the Underlying Fund;
- h. no redemption fees or other charges are charged by the Underlying Fund in respect of the redemption by the Top Fund of securities of the Underlying Fund owned by the Top Fund;
- i. no fees and charges of any sort are paid by the Top Fund and the Underlying Fund, by their respective managers or principal distributors, or by any affiliate or associate of any of the foregoing entities to anyone in respect of the Top Fund's purchase, holding or redemption of the securities of the Underlying Fund;
- j. the arrangements between or in respect of the Top Fund and the Underlying Fund are such as to avoid the duplication of management fees;
- k. any notice provided to securityholders of the Underlying Fund, as required by applicable laws or the constating documents of the Underlying Fund, has been delivered by the Top Fund to its securityholders along with all voting rights attached to the securities of the Underlying Fund which are directly owned by the Top Fund.
- l. all of the disclosure and notice material prepared in connection with a meeting of securityholders of the Underlying Fund and received by the Top Fund has been provided to its securityholders, the securityholders have been permitted to direct a representative of the Top Fund to vote its holdings in the Underlying Fund in accordance with their direction, and the representative of the



Top Fund has not voted its holdings in the Underlying Fund except to the extent the securityholders of the Top Fund have directed;

- m. in addition to receiving the annual and, upon request, the semi-annual financial statements of the Top Fund, securityholders of the Top Fund have received the annual and, upon request, the semi-annual financial statements, of the Underlying Fund in either a combined report, containing financial statements of the Top Fund and the Underlying Fund, or in a separate report containing the financial statements of the Underlying Fund; and
- n. to the extent that the Top Fund and the Underlying Fund do not use a combined simplified prospectus and annual information form containing disclosure about the Top Fund and the Underlying Fund, copies of the simplified prospectus and annual information form of the Underlying Fund have been provided upon request to securityholders of the Top Fund and this right is disclosed in the simplified prospectus of the Top Fund.

January 15, 2001.

"J.A. Geller"

"Stephen N. Adams"

## 2.1.6 Fraser Milner Casgrain & FM Services Limited Partnership - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Relief under subsection 116(1) of the Act from the registration and prospectus requirements under sections 54 and 81 of the Act with respect to the distribution of limited partnership units and notes to individuals, professional corporations and family trusts connected to the issuer.

### Applicable Alberta Statutory Provisions

Securities Act, S.A., 1981, c.S-6.1, as amended - ss. 54, 81, 116(1) and 116(1.1).

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

AND

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

AND

**IN THE MATTER OF  
FRASER MILNER CASGRAIN AND  
FM SERVICES LIMITED PARTNERSHIP**

**MRRS DECISION DOCUMENT**

1. **WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Ontario and Québec (the "Jurisdictions") has received an application from Fraser Milner Casgrain ("FMC") and FM Services Limited Partnership ("FM Services") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirements under the Legislation to be registered to trade in a security (the "Registration Requirement") and to file and obtain a receipt for a preliminary prospectus and a prospectus (the "Prospectus Requirement") shall not apply to distributions by FM Services of certain securities;
2. **AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Alberta Securities Commission is the principal regulator for this application;
3. **AND WHEREAS** FMC and FM Services have represented to the Decision Makers that:
  - 3.1. FMC is a general partnership with offices in the Jurisdictions;
  - 3.2. the partners of FMC are individual lawyers or professional corporations (together with the

- individual lawyers who control partners which are professional corporations, the "FMC Partners");
- 3.3 FM Services is a limited partnership established under the laws of the Province of Ontario;
- 3.4 FM Services is governed by a limited partnership agreement dated December 18, 1995 and subsequently amended and restated on various dates (the "Limited Partnership Agreement");
- 3.5 FM Services provides secretarial, accounting, administrative and financial services to FMC for fees;
- 3.6 FM Services is not a reporting issuer or the equivalent in any of the Jurisdictions;
- 3.7 the general partner of FM Services is FM Services Business Trust (the "General Partner");
- 3.8 the authorized capital of FM Services includes an unlimited number of limited partnership units ("Units");
- 3.9 under the Limited Partnership Agreement, FM Services may only issue Units to FMC Partners and trusts established for the benefit of FMC Partners and their family members ("Family Trusts");
- 3.10 the beneficiaries of Family Trusts are restricted to the following (the "Eligible Beneficiaries"):
- 3.10.1 an FMC Partner;
- 3.10.2 the spouse of an FMC Partner;
- 3.10.3 the issue of an FMC Partner or spouse of an FMC Partner;
- 3.10.4 the parents of an FMC Partner or spouse of an FMC Partner;
- 3.10.5 the grandparents of an FMC Partner or spouse of an FMC Partner; and
- 3.10.6 a family trust whose beneficiaries are any one or a combination of the above;
- 3.11 a Family Trust shall cease to hold Units in the event that:
- 3.11.1 the beneficiaries of the Family Trust are not Eligible Beneficiaries;
- 3.11.2 the Family Trust purports to transfer the Units held by it; or
- 3.11.3 the General Partner, in its sole discretion, so determines and such determination has not been revoked by a resolution of the Unit holders within 30 days;
- 3.12 except for an FMC Partner who is a trustee of a particular Family Trust, no beneficiary of a Family Trust will contribute any monies into the Family Trust, be liable for any amount in respect of the Family Trust or be involved in the making of any investment decision by the Family Trust;
- 3.13 an FMC Partner shall cease to hold Units in the event that they cease to be a partner of FMC;
- 3.14 holders of Units may not transfer them, except to FM Services for cancellation;
- 3.15 FM Services provides holders of Units with its annual audited financial statements within 120 days of its financial year end;
- 3.16 under the Limited Partnership Agreement, FM Services may issue secured promissory notes (the "Notes") to FMC Partners and Family Trusts from time to time;
- 3.17 holders of Notes may not transfer them, except with the consent of FM Services;
- 3.18 FM Services will only consent to the transfer of a Note where the transfer is to FM Services for cancellation, to another FMC Partner or Family Trust or consists of a pledge of the Note to a lending institution as security for indebtedness incurred for the purpose of financing the acquisition or continued ownership of the Note;
- 3.19 FM Services and FMC provide holders of Notes with their annual audited financial statements within 120 days of their financial year end;
- 3.20 as of February 1, 2000, there will be FMC Partners or Family Trusts resident in each of the Jurisdictions;
- 3.21 all of the outstanding Units are currently held by Family Trusts, such Units having been issued in reliance on exemptions from the Registration Requirement and Prospectus Requirement granted under various local orders of certain of the Decision Makers;
- 3.22 all of the outstanding Notes are currently held by individual FMC Partners and Family Trusts, such Notes having been issued in reliance on exemptions from the Registration Requirement and Prospectus Requirement granted under various local orders of certain of the Decision Makers;
- 3.23 FM Services wishes to be able to issue Units and Notes to Family Trusts and FMC Partners in the future;
4. **AND WHEREAS** under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

5. **AND WHEREAS** each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;
6. **THE DECISION** of the Decision Makers is that the distribution of Units and Notes by FM Services to FMC Partners or Family Trusts shall not be subject to the Registration Requirement or the Prospectus Requirement, provided that any further trade of Units or Notes acquired in reliance on this Decision shall be deemed to be a distribution under the Legislation of the Jurisdiction where the trade occurs unless made to a financial institution for the purpose of giving collateral for a bona fide debt or to FM Services, a FMC Partner or a Family Trust.

DATED at Calgary, Alberta this 22<sup>nd</sup> day of December, 2000.

Glenda A. Campbell  
Vice-Chair

Wendy E. Best  
Q.C., Member

## 2.1.7 Sixty Split Corp. & Scotia Capital Inc. - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - subdivided offering - the prohibitions contained in the Legislation prohibiting trading in portfolio shares by persons or companies having information concerning the trading programs of mutual funds shall not apply to the promoter/agent with respect to certain principal trades with the issuer in securities comprising the issuer's portfolio in connection with an offering where the underlying interest consists of a portfolio of common shares of the companies that comprise a target index.

Market making trades by promoter/agent shall not be subject to requirements to file and obtain a receipt for a preliminary and final prospectus provided that the promoter/agent and its affiliates do not beneficially own or have the power to exercise control of a sufficient number of voting securities of an issuer of the securities comprising the issuer's portfolio to permit the promoter/agent to affect materially the control of such issuer.

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

### Applicable Ontario Statutes

Securities Act, R.S.O. 1990, c.S.5, as amended, ss. 1(1), 53, 59, 74(1), 111(2)(a), 119, 121(2)(a)(ii).

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

AND

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

AND

IN THE MATTER OF  
SIXTY SPLIT CORP.

AND

IN THE MATTER OF  
SCOTIA CAPITAL INC.

### MRRS DECISION DOCUMENT

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Nova

Scotia, Newfoundland, New Brunswick and Prince Edward Island (the "Jurisdictions") has received an application from Sixty Split Corp. (the "Issuer") and Scotia Capital Inc. ("Scotia Capital") for decisions under the securities legislation (the "Legislation") of the Jurisdictions that the following requirements contained in the applicable Legislation shall not apply to the Issuer and/or Scotia Capital, as applicable, in connection with the initial public offering (the "Offering") of class A capital shares (the "Capital Shares") and class A preferred shares (the "Preferred Shares") of the Issuer:

- (a) the requirements contained in the Legislation of each of the Jurisdictions other than Quebec, to file and obtain a receipt for a preliminary prospectus and final prospectus (the "Prospectus Requirements") shall not apply to Market Making Trades (as hereinafter defined) by Scotia Capital in Capital Shares and Preferred Shares of the Issuer;
- (b) in the case of the Legislation of each of the Jurisdictions other than Manitoba and Quebec, the prohibitions contained therein prohibiting trading in portfolio shares by persons or companies having information concerning the trading programs of mutual funds (the "Principal Trading Prohibitions") shall not apply to Scotia Capital in connection with the Principal Sales and Principal Purchases (both as hereinafter defined); and
- (c) in the case of the Legislation of each of the Jurisdictions other than Manitoba, the restrictions contained therein prohibiting the Issuer from making investments in The Bank of Nova Scotia, which bank is a substantial security holder of a distribution company of the Issuer (the "Investment Restrictions") shall not apply to the Issuer in connection with the Offering;

subject to certain restrictions;

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

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

1. Scotia Capital was incorporated under the laws of Ontario and is a direct, wholly-owned subsidiary of The Bank of Nova Scotia ("BNS") and is registered under the Legislation as a dealer in the categories of "broker" and "investment dealer" and is a member of the Investment Dealers Association of Canada and The Toronto Stock Exchange.
2. Scotia Capital is the promoter of the Issuer and will be establishing a credit facility in favour of the Issuer in order to facilitate the acquisition of the Portfolio Shares (as defined below) by the Issuer.
3. The Issuer was incorporated on January 30, 2001 under the laws of the Province of Ontario and is authorized to issue an unlimited number of Class J Shares.

4. The Issuer has filed with the securities regulatory authorities of the Jurisdictions a preliminary prospectus dated January 30, 2001 (the "Preliminary Prospectus") in respect of the proposed offering (the "Offering") of Capital Shares and Preferred Shares to the public.
5. The Issuer intends to become a reporting issuer under the Legislation by filing a final prospectus (the "Final Prospectus") relating to the Offering. Prior to the filing of the Final Prospectus relating to the Offering, the Articles of the Issuer will be amended so that the authorized capital of the Issuer will consist of an unlimited number of Capital Shares, an unlimited number of Preferred Shares, an unlimited number of Class B, Class C, Class D and Class E Capital Shares, issuable in series, and an unlimited number of Class J Shares, having the attributes set forth under the headings "Description of Share Capital" and "Details of the Offerings" commencing on page 20 of the Preliminary Prospectus.
6. The Capital Shares and Preferred Shares may be surrendered for retraction at any time in the manner described in the Preliminary Prospectus.
7. Application will be made to list the Capital Shares and Preferred Shares on The Toronto Stock Exchange (the "TSE").
8. The Class J Shares will be the only voting shares in the capital of the Issuer. There are currently, and will be at the time of filing the Final Prospectus, 100 Class J Shares issued and outstanding. Scotia Capital owns 50 of the issued and outstanding Class J Shares of the Issuer and Sixty Split Holdings Corp. owns the remaining 50 issued and outstanding Class J Shares of the Issuer. Two employees of Scotia Capital each own 50% of the issued and outstanding common shares of Sixty Split Holdings Corp.
9. The Issuer has a board of directors which currently consists of three directors. All of the directors are employees of Scotia Capital. Also, the offices of President/Chief Executive Officer and Chief Financial Officer/Secretary of the Issuer are held by employees of Scotia Capital. Prior to filing the Final Prospectus, it is contemplated that at least two additional directors, independent of Scotia Capital, will be appointed to the board of directors of the Issuer.
10. Pursuant to an agreement (the "Agency Agreement") to be made between the Issuer and Scotia Capital and such other agents as may be appointed after the date of this application (collectively, the "Agents" and individually, an "Agent"), the Issuer will appoint the Agents, as its agents, to offer the Capital Shares and Preferred Shares of the Issuer on a best efforts basis and the Final Prospectus qualifying the Offering will contain a certificate signed by each of the Agents in accordance with the Legislation.
11. The Issuer is considered to be a mutual fund as defined in the Legislation, except in Quebec. Since the Issuer does not operate as a conventional mutual fund, it has made application for a waiver from certain requirements

- of National Instrument 81-102 in the applicable Jurisdictions.
12. The Issuer is a passive investment company whose principal undertaking will be to invest the net proceeds of the Offering in a portfolio (the "Portfolio") of publicly listed common shares (the "Portfolio Shares") of the companies that make up the S&P/TSE 60 Index in order to generate dividend income for the holders of Preferred Shares and to enable holders of Capital Shares to participate in capital appreciation in the Portfolio Shares after payment of administrative and operating expenses and a portion of the fixed distribution on the Preferred Shares.
  13. BNS is included in the companies which make up the S&P/TSE 60 Index and, subject to the receipt of all necessary regulatory approvals, the Issuer will purchase BNS Shares.
  14. The Final Prospectus will disclose the acquisition cost of the Portfolio Shares and selected information with respect to the dividend and trading history of the Portfolio Shares.
  15. The Portfolio Shares are listed and traded on the TSE.
  16. The Issuer is not, and will not upon the completion of the Offering, be an insider of the issuers of the Portfolio Shares within the meaning of the Legislation.
  17. Scotia Capital's economic interest in the Issuer and in the material transactions involving the Issuer are disclosed in the Preliminary Prospectus and will be disclosed in the Final Prospectus under the heading "Interest of Management and Others in Material Transactions" and include the following:
    - (a) agency fees with respect to the Offering;
    - (b) an administration fee under the Administration Agreement;
    - (c) commissions in respect of the disposition of Portfolio Shares to fund a redemption or retraction, or the purchase for cancellation, of the Capital Shares and Preferred Shares or to fund a portion of the fixed distribution on the Preferred Shares;
    - (d) interest and reimbursement of expenses, in connection with the acquisition of Portfolio Shares; and
    - (e) amounts in connection with Principal Sales and Principal Purchases (as described in paragraphs 21 and 28 below).
  18. The net proceeds from the sale of the Capital Shares and Preferred Shares under the Final Prospectus, after payment of commissions to the Agents, expenses of issue and carrying costs relating to the acquisition of the Portfolio Shares, will be used by the Issuer to:
    - (a) pay the acquisition cost (including any related costs or expenses) of the Portfolio Shares; and
    - (b) pay the initial fee payable to Scotia Capital for its services under the Administration Agreement (as defined below).
  19. All Capital Shares and Preferred Shares outstanding on a date approximately 10 years from the closing of the Offering will be redeemed by the Issuer on such date and Preferred Shares will be redeemable at the option of the Issuer on any Annual Retraction Payment Date (as described in the Preliminary Prospectus).
  20. Pursuant to an agreement (the "Securities Purchase Agreement") to be entered into between the Issuer and Scotia Capital, Scotia Capital will purchase, as agent for the benefit of the Issuer, Portfolio Shares in the market on commercial terms or from non-related parties with whom Scotia Capital and the Issuer deal at arm's length. Subject to receipt of all necessary regulatory approvals, Scotia Capital may, as principal, sell Portfolio Shares to the Issuer (the "Principal Sales"). The aggregate purchase price to be paid by the Issuer for the Portfolio Shares (together with carrying costs and other expenses incurred in connection with the purchase of Portfolio shares) will not exceed the net proceeds from the Offering.
  21. Under the Securities Purchase Agreement, Scotia Capital may receive commissions at normal market rates in respect of its purchase of Portfolio Shares, as agent on behalf of the Issuer, and the Issuer will pay any carrying costs or other expenses incurred by Scotia Capital, on behalf of the Issuer, in connection with its purchase of Portfolio Shares as agent on behalf of the Issuer. In respect of the Principal Sales made to the Issuer by Scotia Capital as principal, Scotia Capital may realize a financial benefit to the extent that the proceeds received from the Issuer exceed the aggregate cost to Scotia Capital of such Portfolio Shares. Similarly, the proceeds received from the Issuer may be less than the aggregate cost to Scotia Capital of the Portfolio Shares and Scotia Capital may realize a financial loss, all of which is described in the Preliminary Prospectus and will be described in the Final Prospectus.
  22. The Preliminary Prospectus discloses and the Final Prospectus will disclose that any Principal Sale will be made in accordance with the rules of the applicable stock exchange and the price paid to Scotia Capital (inclusive of all transaction costs, if any) will not be greater than the price which would have been paid (inclusive of all transaction costs, if any) if the acquisition had been made through the facilities of the principal stock exchange on which the Portfolio Shares are listed and posted for trading at the time of the purchase from Scotia Capital.
  23. Scotia Capital will not receive any commissions from the Issuer in connection with the Principal Sales and all Principal Sales will be approved by at least two independent directors of the Issuer.

24. For the reasons set forth in paragraphs 22 and 23 above, and the fact that no commissions are payable to Scotia Capital in connection with the Principal Sales, in the case of the Principal Sales, the interests of the Issuer and the shareholders of the Issuer may be enhanced by insulating the Issuer from price increases in respect of the Portfolio Shares.
25. None of the Portfolio Shares to be sold by Scotia Capital as principal to the Issuer have been acquired, nor has Scotia Capital agreed to acquire, any Portfolio Shares while Scotia Capital had access to information concerning the investment program of the Issuer, although certain of the Portfolio Shares to be held by the Issuer may be acquired or Scotia Capital may agree to acquire such Portfolio Shares on or after the date of this Decision Document.
26. It will be the policy of the Issuer to hold the Portfolio Shares and to not engage in any trading of the Portfolio Shares, except:
  - (a) to fund retractions or redemptions of Capital Shares and Preferred Shares;
  - (b) to fund a portion of the fixed distribution on the Preferred Shares; or
  - (c) in certain other limited circumstances as described in the Preliminary Prospectus, including to track changes to the constituent companies in the S&P/TSE 60 Index.
27. Pursuant to an administration agreement (the "Administration Agreement") to be entered into, the Issuer will retain Scotia Capital to administer the ongoing operations of the Issuer and will pay Scotia Capital a fee equal to:
  - (a) monthly fee determined with reference to the market value of the Portfolio Shares held in the Portfolio; and
  - (b) any interest income earned by the Issuer during the term of the Administration Agreement excluding interest earned on any investment of surplus dividends received on the Portfolio Shares.
28. In connection with the services to be provided by Scotia Capital to the Issuer pursuant to the Administration Agreement, Scotia Capital may sell Portfolio Shares to fund retractions of Capital Shares and Preferred Shares prior to the Redemption Date, to fund a portion of the fixed distribution on the Preferred Shares and upon liquidation of the Portfolio Shares prior to the Redemption Date. These sales will be made by Scotia Capital as agent on behalf of the Issuer, but in certain circumstances, such as where a small number of Capital Shares and Preferred Shares have been surrendered for retraction, Scotia Capital may purchase Portfolio Shares as principal (the "Principal Purchases") subject to receipt of all regulatory approvals.
29. In connection with any Principal Purchases, Scotia Capital will comply with the rules, procedures and policies of the applicable stock exchange of which it is a member and in accordance with orders obtained from all applicable securities regulatory authorities. The Preliminary Prospectus discloses and the Final Prospectus will disclose that Scotia Capital may realize a gain or loss on the resale of such securities.
30. The Administration Agreement will provide that Scotia Capital must take reasonable steps, such as soliciting bids from other market participants or such other steps as Scotia Capital, in its discretion, considers appropriate after taking into account prevailing market conditions and other relevant factors, to enable the Issuer to obtain the best price reasonably available for the Portfolio Shares so long as the price obtained (net of all transaction costs, if any) by the Issuer from Scotia Capital is at least as advantageous to the Issuer as the price which is available (net of all transaction costs, if any) through the facilities of the applicable stock exchange at the time of the trade.
31. Scotia Capital will not receive any commissions from the Issuer in connection with Principal Purchases and, in carrying out the Principal Purchases, Scotia Capital shall deal fairly, honestly and in good faith with the Issuer.
32. Scotia Capital will be a significant maker of markets for the Capital Shares and Preferred Shares, although it is not anticipated that Scotia Capital will be appointed the registered pro-trader by the TSE with respect to the Issuer. As a result, as discussed above Scotia Capital will, from time to time, purchase and sell Capital Shares and Preferred Shares as principal and trade in such securities as agent on behalf of its clients, the primary purpose of such trades (the "Market Making Trades") being to provide liquidity to the holders of Capital Shares and Preferred Shares. All trades made by Scotia Capital as principal will be recorded daily by the TSE.
33. BNS is a substantial security holder of Scotia Capital, which is a distribution company of the Issuer.
34. As Scotia Capital owns 50% of the Class J Shares of the Issuer, Scotia Capital will be deemed to be in a position to effect materially the control of the Issuer and consequently, each Market Making Trade will be a "distribution" or "a primary distribution to the public" within the meaning of the Legislation.
35. By virtue of Scotia Capital's relationship with the Issuer, including the fact that three of the directors of the Issuer and all of the officers of the Issuer are employees of Scotia Capital and Scotia Capital is the promoter of the Issuer, the Issuer is a connected issuer (or its equivalent) and/or related issuer (or its equivalent) of Scotia Capital under the Legislation.
36. Although Scotia Capital will be lead underwriters of the Offering, respectively, it is not known at this time what proportions of the Offering will be sold by agents other than Scotia Capital.

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

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

**THE DECISION** of the Decision Makers pursuant to the Legislation is that:

- A. The Prospectus Requirements shall not apply to the Market Making Trades by Scotia Capital in the Capital Shares and Preferred Shares provided that at the time of each Market Making Trade, Scotia Capital and its affiliates do not beneficially own or have the power to exercise control or direction over a sufficient number of voting securities of the issuers of the Portfolio Shares, securities convertible into voting securities of the issuers of the Portfolio Shares, options to acquire voting securities of the issuers of the Portfolio Shares, or any other securities which provide the holder with the right to exercise control or direction over voting securities of the issuers of the Portfolio Shares which in the aggregate, permit Scotia Capital to affect materially the control of the issuers of the Portfolio Shares and without limiting the generality of the foregoing, the beneficial ownership of or the power to exercise control or direction over securities representing in the aggregate, 20% or more of the votes attaching to all the then issued and outstanding voting securities of the issuers of the Portfolio Shares shall, in the absence of evidence to the contrary, be deemed to affect materially the control of the issuers of the Portfolio Shares.
- B. The Principal Trading Prohibitions shall not apply to Scotia Capital in connection with the Principal Sales and Principal Purchases.
- C. The Investment Restrictions shall not apply to the Issuer in connection with investments in BNS shares for the purposes of the Offering as described in the Preliminary Prospectus.

March 6, 2001.

"J.A. Geller"

"Howard I. Wetston"

## 2.1.8 Place Resources Corp. - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Decision deeming a corporation to be no longer a reporting issuer following the acquisition of all of its securities by another issuer.

### Applicable Ontario Statutory Provisions

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

**IN THE MATTER OF  
THE SECURITIES LEGISLATION  
OF ALBERTA, ONTARIO AND QUÉBEC**

**AND**

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

**AND**

**IN THE MATTER OF  
PLACE RESOURCES CORPORATION**

**MRRS DECISION DOCUMENT**

1. **WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, Ontario and Québec (the "Jurisdictions") has received an application from Place Resources Corporation ("Place") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that Place be deemed to have ceased to be a reporting issuer or the equivalent under the Legislation;
2. **AND WHEREAS** pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Alberta Securities Commission is the principal regulator for this application;
3. **AND WHEREAS** Place has represented to the Decision Makers that:
  - 3.1 Place is a corporation amalgamated under the *Business Corporations Act* (Ontario);
  - 3.2 the principal office of Place is in Calgary, Alberta;
  - 3.3 Star Oil & Gas Ltd. ("Star") is a corporation incorporated under the *Business Corporations Act* (Alberta);
  - 3.4 the principal office of Star is in Calgary, Alberta;
  - 3.5 Place was formed by the amalgamation (the "Amalgamation") of the former Place Resources Corporation ("Old Place") and Star Oil & Gas

- Acquisition Ltd. ("SAL"), a wholly owned subsidiary of Star, on January 16, 2001;
- 3.6 as Old Place was a reporting issuer or the equivalent in each of the Jurisdictions at the time of the Amalgamation, Place became a reporting issuer or the equivalent in each of the Jurisdictions as a result of the Amalgamation;
- 3.7 under an offer to purchase dated October 16, 2000 and subsequently extended, SAL had acquired 14,736,515 of the 16,560,090 outstanding common shares of Old Place ("Old Place Shares");
- 3.8 under the Amalgamation:
- 3.8.1 each Old Place Share held by SAL was cancelled;
- 3.8.2 all other outstanding Old Place Shares were converted into redeemable preferred shares of Place ("Place Preferred Shares");
- 3.8.3 the Place Preferred Shares were redeemed for cash; and
- 3.8.4 the common shares of SAL were converted into common shares of Place ("Place Shares");
- 3.9 Star owns all of the Place Shares;
- 3.10 there are no securities of Place, including debt securities, outstanding other than the Place Shares;
- 3.11 prior to the Amalgamation, the Old Place shares were listed on The Toronto Stock Exchange (the "TSE");
- 3.12 the Old Place Shares have been delisted from the TSE;
- 3.13 no securities of Place are listed on any stock exchange or traded on any market;
- 3.14 Place is not in default of any of its obligations as a reporting issuer or the equivalent under the Legislation;
- 3.15 Place does not intend to seek public financing by way of an offering of securities;
4. **AND WHEREAS** under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");
5. **AND WHEREAS** each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;
6. **THE DECISION** of the Decision Makers under the Legislation is that Place is deemed to have ceased to be a reporting issuer or the equivalent under the Legislation.

March 1, 2001.

"Patricia Johnston"



2.2 Orders

2.2.1 Domtar Inc. - s. 147 & 80(b)(iii)

Headnote

Section 15.1 of Rule 41-501 - relief from certain requirements of Rule 41-501 where preliminary prospectus and prospectus filed in accordance with National Instrument 44-102.

Subsection 5.1(1) of National Instrument 41-101 – relief from requirements of 41-101 where preliminary prospectus and prospectus filed in accordance with National Instrument 44-102.

Section 147 – relief from the requirement that a period of ten days elapse between the issuance of a receipt for a preliminary prospectus and the issuance of a receipt for (final) prospectus.

Paragraph 80(b)(iii) – relief from the requirement to mail annual comparative financial statements concurrently with the filing of such financial statements, subject to conditions.

Subsection 59(2) of Schedule I – waiver of fees.

Statutes Cited

Securities Act, R.S.O. 1990, c.S.5. as am, ss. 65(1), 78, 79, 80(b)(iii), 147.

Regulation Cited

Schedule I to General Regulation, Ont. Reg. 1015 R.R.O 1990, as am., s.59(2).

Rules Cited

National Instrument 41-101 Prospectus Disclosure Requirements (2000) 23 OSCB (Supp) 759.

Commission Rule 41-501 General Prospectus Requirements (2000) 23 OSCB (Supp) 765.

National Instrument 44-101 Short Form Prospectus Distributions (2000) 23 OSCB (Supp) 867.

National Instrument 44-102 Shelf Distributions (2000) 23 OSCB (Supp) 565.

IN THE MATTER OF  
THE SECURITIES ACT  
R.S.O. 1990, C.S.5, AS AMENDED (the "Act"),  
ONTARIO REGULATION 1015, R.R.O. 1990, AS  
AMENDED (the "Regulation"),  
NI 44-102 SHELF DISTRIBUTIONS (the "Shelf  
Distributions Rule"),  
NI 44-101 SHORT FORM PROSPECTUS DISTRIBUTIONS  
(the "Short Form Rule"),  
NI 41-101 PROSPECTUS DISCLOSURE REQUIREMENTS  
(the "Disclosure Rule")

and  
COMMISSION RULE 41-501  
GENERAL PROSPECTUS REQUIREMENTS  
(the "General Prospectus Rule")

AND

IN THE MATTER OF  
DOMTAR INC.

ORDER AND DECISION  
(Section 147 and Paragraph 80(b)(iii) of the Act,  
Section 15.1 of the General Prospectus Rule,  
Subsection 5.1(1) of the Disclosure Rule and  
Subsection 59(2) of Schedule I to the Regulation)

WHEREAS Domtar Inc. (the "Applicant") filed a preliminary prospectus dated February 21, 2001 (the "Preliminary Prospectus") in accordance with the Short Form Rule as varied by the Shelf Distributions Rule relating to the qualification of medium term notes (the "Offering") and received a receipt therefor dated February 22, 2001;

AND WHEREAS the Applicant intends to file a (final) prospectus (the "Prospectus") in accordance with the Short Form Rule as varied by the Shelf Distributions Rule and is desirous of receiving a receipt therefor forthwith;

AND WHEREAS the Applicant has applied for certain relief from the provisions of the Act, the Disclosure Rule and the General Prospectus Rule and for relief from the requirement to pay fees in connection with such application;

AND WHEREAS pursuant to an assignment dated April 12, 1999, as amended on September 7, 1999, February 15, 2000 and January 23, 2001, the Commission assigned certain of its powers and duties under the Act to each "Director", as that term is defined in subsection 1(1) of the Act;

AND WHEREAS on April 12, 1999 the Executive Director issued a determination and designation which designated, *inter alia*, each Manager in the Corporate Finance Branch of the Commission as a "Director" for the purposes of subsection 1(1) of the Act;

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

IT IS HEREBY DECIDED pursuant to section 15.1 of the General Prospectus Rule that the General Prospectus Rule, other than section 13.9 thereof, does not apply to the Preliminary Prospectus and the Prospectus;

AND IT IS FURTHER DECIDED pursuant to subsection 5.1(1) of the Disclosure Rule that the Disclosure Rule does not apply to the Preliminary Prospectus and the Prospectus;

AND IT IS HEREBY ORDERED pursuant to section 147 of the Act that the Offering is exempt from the requirement contained in subsection 65(1) of the Act that a period of ten days elapse between the issuance by the Director of a receipt for the Preliminary Prospectus and the issuance of a receipt for the Prospectus;

**AND IT IS FURTHER ORDERED** pursuant to paragraph 80(b)(iii) of the Act that section 79 of the Act does not apply to the Applicant insofar as it requires the Applicant to send financial statements filed under section 78 of the Act to each holder of its securities concurrently with their filing, if:

- (a) the Applicant files those financial statements earlier than 140 days from the end of its last financial year because it is required to do so, in connection with the Offering, by the Short Form Rule; and
- (b) the financial statements are sent within the time period specified in the Act for filing;

**AND IT IS HEREBY DECIDED** pursuant to subsection 59(2) of Schedule I to the Regulation that the Applicant be exempt from the requirement under the Act to pay fees in connection with the making of this application.

February 27, 2001.

"Iva Vranic"

## 2.2.2 Emera Inc. - s. 147 & 80(b)(iii)

### Headnote

Section 15.1 of Rule 41-501 - relief from certain requirements of Rule 41-501 where preliminary prospectus and prospectus filed in accordance with National Instrument 44-101.

Subsection 5.1(1) of National Instrument 41-101 - relief from requirements of 41-101 where preliminary prospectus and prospectus filed in accordance with National Instrument 44-101.

Section 147 - relief from the requirement that a period of ten days elapse between the issuance of a receipt for a preliminary prospectus and the issuance of a receipt for (final) prospectus.

Paragraph 80(b)(iii) - relief from the requirement to mail annual comparative financial statements concurrently with the filing of such financial statements, subject to conditions.

Subsection 59(2) of Schedule I - waiver of fees.

### Statutes Cited

Securities Act, R.S.O. 1990, c.S.5. as am, ss. 65(1), 78, 79, 80(b)(iii), 147.

### Regulation Cited

Schedule I to General Regulation, Ont. Reg. 1015 R.R.O 1990, as am., s.59(2).

### Rules Cited

National Instrument 41-101 Prospectus Disclosure Requirements (2000) 23 OSCB (Supp) 759.

Commission Rule 41-501 General Prospectus Requirements (2000) 23 OSCB (Supp) 765.

National Instrument 44-101 Short Form Prospectus Distributions (2000) 23 OSCB (Supp) 867

**IN THE MATTER OF  
THE SECURITIES ACT  
R.S.O. 1990, C. S.5, AS AMENDED (the "Act"),  
ONTARIO REGULATION 1015, R.R.O. 1990, AS  
AMENDED (the "Regulation")  
NI 44-101 SHORT FORM PROSPECTUS DISTRIBUTIONS  
(the "Short Form Rule"),  
NI 41-101 PROSPECTUS DISCLOSURE REQUIREMENTS  
(the "Disclosure Rule")  
and COMMISSION RULE 41-501 GENERAL  
PROSPECTUS REQUIREMENTS  
(the "General Prospectus Rule")**

AND

**IN THE MATTER OF  
THE SHORT FORM PROSPECTUS  
OF EMERA INC. RELATING TO THE QUALIFICATION OF**

UP TO 10,350,000 COMMON SHARES

ORDER AND DECISION

(Section 147 and Paragraph 80(b)(iii) of the Act,  
Section 15.1 of the General Prospectus Rule,  
Subsection 5.1(1) of the Disclosure Rule and  
Subsection 59(2) of Schedule I to the Regulation)

WHEREAS Emera Inc. (the "Applicant") filed a preliminary prospectus dated February 21, 2001 (the "Preliminary Prospectus") in accordance with the Short Form Rule relating to the qualification of up to 10,350,000 common shares (the "Offering") and received a receipt therefor dated February 23, 2001;

AND WHEREAS the Applicant intends to file a (final) prospectus (the "Prospectus") in accordance with the Short Form Rule and is desirous of receiving a receipt therefor forthwith;

AND WHEREAS the Applicant has applied for certain relief from the provisions of the Act, the Disclosure Rule and the General Prospectus Rule and for relief from the requirement to pay fees in connection with such application;

AND WHEREAS pursuant to an assignment dated April 12, 1999, as amended on September 7, 1999, February 15, 2000 and January 23, 2001, the Commission assigned certain of its powers and duties under the Act to each "Director", as that term is defined in subsection 1(1) of the Act;

AND WHEREAS on April 12, 1999 the Executive Director issued a determination and designation which designated, *inter alia*, each Manager in the Corporate Finance Branch of the Commission as a "Director" for the purposes of subsection 1(1) of the Act;

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

IT IS HEREBY DECIDED pursuant to section 15.1 of the General Prospectus Rule that the General Prospectus Rule, other than section 13.9 thereof, does not apply to the Preliminary Prospectus and the Prospectus;

AND IT IS FURTHER DECIDED pursuant to subsection 5.1(1) of the Disclosure Rule that the Disclosure Rule does not apply to the Preliminary Prospectus and the Prospectus;

AND IT IS HEREBY ORDERED pursuant to section 147 of the Act that the Offering is exempt from the requirement contained in subsection 65(1) of the Act that a period of ten days elapse between the issuance by the Director of a receipt for the Preliminary Prospectus and the issuance of a receipt for the Prospectus;

AND IT IS FURTHER ORDERED pursuant to paragraph 80(b)(iii) of the Act that section 79 of the Act does not apply to the Applicant insofar as it requires the Applicant to send financial statements filed under section 78 of the Act to each holder of its securities concurrently with their filing, if:

(a) the Applicant files those financial statements earlier than 140 days from the end of its last

financial year because it is required to do so, in connection with the Offering, by the Short Form Rule; and

(b) the financial statements are sent within the time period specified in the Act for filing;

AND IT IS HEREBY DECIDED pursuant to subsection 59(2) of Schedule I to the Regulation that the Applicant be exempt from the requirement under the Act to pay fees in connection with the making of this application.

March 1, 2001.

"John Hughes"

**2.2.3 Fraser Milner Casgrain & FM Services  
Limited Partnership - ss. 144(1)**

**Headnote**

Order revoking prior order because prior order has been replaced by a MRRS Decision Document having substantially the same effect.

**Applicable Ontario Statutory Provisions**

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

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

**AND**

**IN THE MATTER OF  
FRASER MILNER CASGRAIN AND  
FM SERVICES LIMITED PARTNERSHIP**

**ORDER  
(Subsection 144(1))**

**WHEREAS** Fraser Milner Casgrain ("FMC") and FM Services Limited Partnership ("FM Services") have applied to the Ontario Securities Commission (the "Commission") for an order pursuant to subsection 144(1) of the Act to revoke the order of the Commission dated December 12, 1995 made under subsection 74(1) of the Act entitled *In the Matter of F&B Services Limited Partnership*, as amended by an order of the Commission dated November 15, 1996 (collectively, the "Orders");

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

**AND UPON** FMC and FM Services having represented to the Commission that:

1. FMC is a general partnership with offices in Alberta, British Columbia, Quebec and Ontario;
2. FM Services is a limited partnership established under the laws of Ontario;
3. FM Services provides secretarial, accounting, administrative and financial services to FMC for fees;
4. FMC is the successor of Fraser Milner;
5. FM Services is the successor of Fraser Milner Management Services Limited Partnership;
6. The Orders provided certain relief under sections 25 and 53 of the Act;
7. FMC and FM Services have applied to the Alberta Securities Commission as principal regulator under the Mutual Reliance Review System for Exemptive Relief Applications, for an decision under the securities

legislation in each of Alberta, British Columbia, Ontario and Quebec (the "Legislation") that the requirements under the Legislation to be registered to trade in a security and to file and obtain a receipt for a preliminary prospectus and a prospectus shall not apply to distributions by FM Services of certain securities, thereby necessitating this application.

**AND UPON** the Commission being satisfied that to grant this Order would not be prejudicial to the public interest;

**IT IS ORDERED** pursuant to subsection 144(1) of the Act that the Orders be and are hereby revoked.

December 22, 2000.

"J.A. Geller"

"R. Stephen Paddon"

**2.2.4 RBC Dominion Securities Inc. - s. 233**

**Headnote**

Section 233 of Regulation - Bank issuer is a related issuer of one of the underwriters in respect of certain proposed offerings pursuant to an amended and restated shelf prospectus - Related underwriter exempted from clause 224(1)(b) of Regulation where there is participation by an independent underwriter corresponding to that required by section 2.1 of proposed *Multi-Jurisdictional Instrument 33-105, Underwriting Conflicts*.

**Statutes Cited**

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

**Regulations Cited**

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., ss. 224(1)(b), 233.

**IN THE MATTER OF  
REGULATION 1015, R.R.O. 1990,  
AS AMENDED, MADE UNDER THE SECURITIES ACT,  
R.S.O. 1990, C.S.5, AS AMENDED (the "Act")**

**AND**

**IN THE MATTER OF  
RBC DOMINION SECURITIES INC.**

**ORDER  
(Section 233 of the Regulation)**

**UPON** the application of RBC Dominion Securities Inc. ("RBC DS") to the Ontario Securities Commission (the "Commission") for an order pursuant to section 233 of the Regulation, exempting RBC DS from the requirements of clause 224(1)(b) of the Regulation, in respect of proposed offerings of debt securities of Royal Bank of Canada (the "Bank") pursuant to an amended and restated shelf prospectus to be filed in all of the provinces and territories of Canada (the "Jurisdictions") in accordance with the procedures (the "Shelf Procedures") set out in National Instrument No. 44-102 "NI 44-102");

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

**AND UPON** RBC DS having represented to the Commission as follows.

1. The Bank is a chartered bank subject to the provisions of the Bank Act (Canada).
2. The Bank is a reporting issuer under the Act, and is not in default of any requirement of the Act or the Regulation.
3. There is currently in effect a short form shelf prospectus of the Bank dated May 14, 1999 (the "Prospectus") under then National Policy Statement No. 44 ("NP 44"). The Prospectus in preliminary form dated April 21,

1999 was filed in all of the provinces and territories of Canada (the "Jurisdictions"), and the Quebec Securities Commission, as the Designated Jurisdiction under the Memorandum of Understanding for Expedited Review of Short Form Prospectuses and Renewal AIFs, issued a preliminary expedited review receipt document dated April 21, 1999 in respect thereof.

4. The Bank intends to file an amended and restated shelf prospectus (the "Amended Prospectus") under section 11.6(1) of National Instrument No. 44-101 ("NI 44-101") in order to maintain the uninterrupted ability of the Bank to offer securities under the Shelf Procedures.
5. The Amended Prospectus will qualify under NI 44-102 the distribution of debt securities consisting of subordinated medium term notes and/or other unsecured subordinated evidences of indebtedness of the Bank (the "Debt Securities"). The Amended Prospectus will provide that the Debt Securities may be offered from time to time (the "Offerings"), under prospectus supplements, in one or more series, in an aggregate principal amount of up to \$3,000,000,000 (the "Amended Shelf Amount") during the period that the Amended Prospectus, including any further amendments thereto, is valid.
6. The Amended Prospectus will provide that the Bank may sell the Debt Securities to or through underwriters or dealers, and also may sell the Debt Securities to one or more other purchasers, directly or through agents.
7. The Bank also proposes to file in the Jurisdictions in accordance with the procedures set out in NI 44-102, (i) on or about the date on which the Amended Prospectus in final form is received, a supplement to the Amended Prospectus (as amended or as amended and restated from time to time, the "MTN Prospectus Supplement"), which will be deemed to be incorporated by reference in the Amended Prospectus, for the purposes of establishing an MTN program (the "MTN Program") as defined in NI 44-102 in an aggregate principal amount of up to the Amended Shelf Amount, and (ii) from time to time thereafter, pricing supplements (the "Pricing Supplements") thereto.
8. The Bank may also file from time to time in all of the Jurisdictions in accordance with the procedures set out in NI 44-102, prospectus supplements, which will be deemed to be incorporated by reference in the Amended Prospectus, in respect of Offerings under the Amended Prospectus other than Offerings under the MTN Program (such supplements, together with the MTN Prospectus Supplement, the "Amended Prospectus Supplements").
9. The Bank has entered into an agency agreement in connection with the MTN Program to, among other things, appoint RBC DS and certain other named registrants, and such other registrant or registrants as the Bank may from time to time appoint, as its non-exclusive agents to from time to time solicit offers to purchase Debt Securities of the Bank.

10. Any underwriter or agent, as the case may be, in respect of an Offering shall be identified in the respective Amended Prospectus Supplement, and shall in all cases include RBC DS and such other registrants as the Bank may from time to time determine in accordance with applicable laws. A prospectus certificate signed by each of such registrants shall be included in the respective Amended Prospectus Supplement.
11. By virtue of RBC DS being a wholly-owned indirect subsidiary of the Bank, the Bank is a "related issuer" of RBC DS for the purposes of Part XIII of the Regulation.
12. RBC DS proposes to comply, in connection with the Offerings, with section 2.1 of proposed Multi-Jurisdictional Instrument Number 33-105 (the "Proposed Instrument ") and the provisions of NI 44-102.

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

**IT IS ORDERED** pursuant to section 233 of the Regulation, that RBC DS is exempt from the requirements of clause 224(1)(b) of the Regulation in respect of any Offering, provided that:

- (A) the portion of each Offering that is underwritten by at least one independent underwriter as defined in the Proposed Instrument is not less than the lesser of:
  - (i) 20% of the dollar value of such Offering; and
  - (ii) the largest portion of such Offering that is underwritten by RBC DS or any other registrant that is not an independent underwriter;
- (B) the independent underwriter participates in the pricing of the Debt Securities issued in such Offering; and
- (C) the information specified in Appendix C of the Proposed Instrument, the name of the independent underwriter and the extent of its participation in the due diligence, the drafting of the Amended Prospectus and the Amended Prospectus Supplement, as the case may be, and the pricing of the Debt Securities, is disclosed in the applicable Amended Prospectus Supplement and Pricing Supplement as the case may be.

March 6, 2001.

"J.A. Geller"

"Stephen N. Adams"

## **2.2.5 Rogers Wireless Communication Inc. - s. 147 & 80(b)(iii)**

### **Headnote**

Section 15.1 of Rule 41-501 - relief from certain requirements of Rule 41-501 where preliminary prospectus and prospectus filed in accordance with National Instrument 44-101.

Subsection 5.1(1) of National Instrument 41-101 – relief from requirements of 41-101 where preliminary prospectus and prospectus filed in accordance with National Instrument 44-101.

Section 147 – relief from the requirement that a period of ten days elapse between the issuance of a receipt for a preliminary prospectus and the issuance of a receipt for (final) prospectus.

Paragraph 80(b)(iii) – relief from the requirement to mail annual comparative financial statements concurrently with the filing of such financial statements, subject to conditions.

Subsection 59(2) of Schedule I – waiver of fees.

### **Statutes Cited**

Securities Act, R.S.O. 1990, c.S.5. as am, ss. 65(1), 78, 79, 80(b)(iii), 147.

### **Regulation Cited**

Schedule I to General Regulation, Ont. Reg. 1015 R.R.O 1990, as am., s.59(2).

### **Rules Cited**

National Instrument 41-101 Prospectus Disclosure Requirements (2000) 23 OSCB (Supp) 759.

Commission Rule 41-501 General Prospectus Requirements (2000) 23 OSCB (Supp) 765.

National Instrument 44-101 Short Form Prospectus Distributions (2000) 23 OSCB (Supp) 867.

**IN THE MATTER OF  
THE SECURITIES ACT  
R.S.O. 1990, C.S.5, AS AMENDED (the "Act"),  
ONTARIO REGULATION 1015, R.R.O. 1990, AS  
AMENDED (the "Regulation")  
NI 44-101 SHORT FORM PROSPECTUS DISTRIBUTIONS  
(the "Short Form Rule"),  
NI 41-101 PROSPECTUS DISCLOSURE REQUIREMENTS  
(the "Disclosure Rule")  
and COMMISSION RULE 41-501 GENERAL  
PROSPECTUS REQUIREMENTS  
(the "General Prospectus Rule")**

**AND**

**IN THE MATTER OF  
ROGERS WIRELESS COMMUNICATION INC.**

**ORDER AND DECISION**  
**(Section 147 and Paragraph 80(b)(iii) of the Act,**  
**Section 15.1 of the General Prospectus Rule,**  
**Subsection 5.1(1) of the Disclosure Rule and**  
**Subsection 59(2) of Schedule I to the Regulation)**

**WHEREAS** Rogers Wireless Communications Inc. (the "Applicant") filed a preliminary short form prospectus dated March 1, 2001 (the "Preliminary Prospectus") in accordance with the Short Form Rule relating to the qualification of rights to purchase additional Class B Restricted Voting Shares of the Applicant and the qualification of the Class B Restricted Voting Shares issuable upon the exercise of the rights (the "Offering") and received a receipt therefor dated March 1, 2001;

**AND WHEREAS** the Applicant intends to file a (final) short form prospectus (the "Prospectus") in accordance with the Short Form Rule and is desirous of receiving a receipt therefor forthwith;

**AND WHEREAS** the Applicant has applied for certain relief from the provisions of the Act, the Disclosure Rule and the General Prospectus Rule and for relief from the requirement to pay fees in connection with such application;

**AND WHEREAS** pursuant to an assignment dated April 12, 1999, as amended on September 7, 1999, February 15, 2000 and January 23, 2001, the Commission assigned certain of its powers and duties under the Act to each "Director", as that term is defined in subsection 1(1) of the Act;

**AND WHEREAS** on April 12, 1999 the Executive Director issued a determination and designation which designated, *inter alia*, each Manager in the Corporate Finance Branch of the Commission as a "Director" for the purposes of subsection 1(1) of the Act;

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

**IT IS HEREBY DECIDED** pursuant to section 15.1 of the General Prospectus Rule that the General Prospectus Rule, other than section 13.9 thereof, does not apply to the Preliminary Prospectus and the Prospectus;

**AND IT IS FURTHER DECIDED** pursuant to subsection 5.1(1) of the Disclosure Rule that the Disclosure Rule does not apply to the Preliminary Prospectus and the Prospectus;

**AND IT IS HEREBY ORDERED** pursuant to section 147 of the Act that the Offering is exempt from the requirement contained in subsection 65(1) of the Act that a period of ten days elapse between the issuance by the Director of a receipt for the Preliminary Prospectus and the issuance of a receipt for the Prospectus;

**AND IT IS FURTHER ORDERED** pursuant to paragraph 80(b)(iii) of the Act that section 79 of the Act does not apply to the Applicant insofar as it requires the Applicant to send financial statements filed under section 78 of the Act to each holder of its securities concurrently with their filing, if:

- (a) the Applicant files those financial statements earlier than 140 days from the end of its last financial year because it is required to do so, in connection with the Offering, by the Short Form Rule; and
- (b) the financial statements are sent within the time period specified in the Act for filing;

**AND IT IS HEREBY DECIDED** pursuant to subsection 59(2) of Schedule I to the Regulation that the Applicant be exempt from the requirement under the Act to pay fees in connection with the making of this application.

March 7, 2001.

"Iva Vranic"

## 2.3 Rulings

### 2.3.1 Farelogix Inc. et al. - ss. 74(1)

#### Headnote

Subsection 74(1) - registration and prospectus relief granted in respect of trades in shares of non-reporting issuers in connection with corporate reorganization and adoption of exchangeable share structure - first trade relief granted in respect of trades in shares of U.S. non-reporting issuer provided a *de minimus* Ontario market and trades executed on a foreign exchange.

#### Statutes Cited

Securities Act, R.S.O. 1990, c.S.5. as am, ss. 53, 72(5), 74(1).

#### Rules Cited

Ontario Securities Commission Rule 45-50 -- Exempt Distributions, s. 3.18(3).

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

**AND**

**IN THE MATTER OF  
FARELOGIX INC., FARELOGIX HOLDINGS INC.,  
FARELOGIX HOLDINGS (NOVA SCOTIA) COMPANY  
& FARELOGIX.COM INC.**

**RULING  
(Subsection 74(1))**

**WHEREAS** the Ontario Securities Commission (the "Commission") has received an application from Farelogix Inc. ("Farelogix"), Farelogix.com Inc. ("Farelogix Canada"), Farelogix Holdings (Nova Scotia) Company ("Farelogix Holdings") and Farelogix Holdings Inc. ("Mirrorco") (collectively, the "Applicants") for a decision pursuant to the Act that certain trades in securities made in connection with or resulting from a reorganization of Farelogix Canada (the "Reorganization") pursuant to letters of transmittal and election forms (the "Letters of Transmittal") are exempt from the registration and prospectus requirements of the Act;

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

**AND WHEREAS** it has been represented by the Applicants to the Commission that:

1. Farelogix is a corporation existing under the laws of the State of Delaware. Its authorized capital consists of 10,100,000 shares consisting of 7,500,000 shares of common stock par value \$0.00001 per share, 100,000 shares of non-participating convertible preferred stock, par value \$0.00001 per share (the "Non-Participating Preferred Stock") and 2,500,000 shares of participating

convertible Series A convertible preferred stock, par value \$0.00001 per share (the "Series A Convertible Preferred Shares"). Upon completion of the Reorganization and related financing, there will be 1,004,318 Series A Convertible Preferred Shares outstanding, one common share of Farelogix outstanding and no shares of undesignated preferred stock issued and outstanding other than one Farelogix Special Voting Share (as hereinafter defined). Upon completion of the Reorganization, none of the shares of Farelogix will be listed or posted for trading on any exchange, nor will Farelogix be a reporting issuer or the equivalent thereof in any jurisdiction. Following the Reorganization, Farelogix will indirectly own all of the issued and outstanding common shares of Farelogix Canada.

2. Farelogix Holdings is an unlimited liability company organized under the laws of the Province of Nova Scotia and will be a direct subsidiary of Farelogix following the completion of the Reorganization. The authorized capital of Farelogix Holdings consists of a 1,000,000 common shares. Farelogix owns all of the issued and outstanding shares of Farelogix Holdings. Farelogix Holdings is a private company and is not a reporting issuer in Ontario.
3. Mirrorco is a corporation organized under the laws of the Province of Ontario. The authorized capital of Mirrorco consists of an unlimited number of common shares and an unlimited number of Exchangeable Shares (as hereinafter defined). Farelogix Holdings owns all of the issued and outstanding common shares of Mirrorco. Following the Reorganization, all of the Exchangeable Shares will be owned by existing common shareholders of Farelogix Canada (the "Farelogix Canada Shareholders"). Mirrorco is not a reporting issuer in Ontario.
4. Farelogix Canada, a corporation organized under the laws of the Province of Ontario, is not a reporting issuer in Ontario and none of its securities are listed or posted for trading on any exchange. Farelogix Canada is in the business of developing software for the travel industry.
5. The authorized capital of Farelogix Canada consists of an unlimited number of common shares ("Farelogix Canada Common Shares"), an unlimited number of preferential non-cumulative voting class A shares, an unlimited number of preferential non-voting class B shares and an unlimited number of non-voting class C shares. Farelogix Canada currently has 36 shareholders. As at the date hereof, there were issued and outstanding (i) 1,540,561 Farelogix Canada Common Shares, (ii) options to purchase 209,172 Farelogix Canada Common Shares ("Farelogix Canada Options") held by consultants to Farelogix Canada pursuant to consulting agreements, and (iii) outstanding warrants (the "Farelogix Canada Warrants") to purchase 9,887 Farelogix Canada Common Shares.
6. The Reorganization will be effected pursuant to the terms of the Letters of Transmittal. The Letters of Transmittal provide that Mirrorco and/or Farelogix will



- acquire all of the issued and outstanding Farelogix Canada Common Shares held by the Farelogix Canada Shareholders. The consideration paid by Mirrorco and/or Farelogix for the Farelogix Canada Common Shares shall be the issuance by Mirrorco to the Farelogix Canada Shareholders, at the shareholder's option, of either (i) non-voting exchangeable shares in the capital of Mirrorco (the "Exchangeable Shares") which, when combined with the voting rights granted to the Farelogix Canada Shareholders through the voting and exchange trust agreement and the exchangeable share support agreement described below, will have substantially the rights, privileges, restrictions and conditions of common shares of Farelogix, or (ii) common shares of Farelogix.
7. Upon the Reorganization becoming effective and a resolution of the board of directors of Farelogix Canada authorizing the following exchanges pursuant to the Farelogix Canada employee stock option plan and various warrant agreements, each Farelogix Canada Option will be exchanged for an option (a "Replacement Option") to purchase that number of common shares of Farelogix and each Farelogix Canada Warrant will be exchanged for a replacement warrant (a "Replacement Warrant") to purchase that number of common shares of Farelogix.
  8. The Exchangeable Shares, together with an exchangeable share support agreement to be entered into at the closing of the Reorganization among Farelogix, Farelogix Holdings and Mirrorco (the "Support Agreement") and a voting and exchange trust agreement to be entered into at the closing of the Reorganization among Farelogix, Farelogix Holdings, Mirrorco and a trustee (the "Voting Trust and Exchange Agreement"), will provide holders thereof with a security of Mirrorco having voting and economic rights which are, as nearly as practicable, equivalent to those of the common shares of Farelogix.
  9. The Exchangeable Shares will rank prior to the common shares of Mirrorco with respect to the payment of dividends and the distribution of assets in the event of a liquidation, dissolution or winding-up of Mirrorco to the extent described below.
  10. The rights, privileges, restrictions and conditions attaching to the Exchangeable Shares (the "Exchangeable Share Provisions") will provide that each Exchangeable Share will entitle the holder to dividends from Mirrorco payable at the same time as, and equivalent to, each dividend paid by Farelogix on the common shares of Farelogix. Subject to the overriding call right of Farelogix Holdings (or Farelogix) referred to below, on the liquidation, dissolution or winding-up of Mirrorco, a holder of Exchangeable Shares will be entitled to receive from Mirrorco for each Exchangeable Share held an amount equal to the current market price of a common share of Farelogix, to be satisfied by delivery of one common share of Farelogix, together with all declared and unpaid dividends on each such Exchangeable Share held by the holder on any dividend record date prior to the date of liquidation, dissolution or winding-up (such aggregate amount, the "Liquidation Price"). Upon a proposed liquidation, dissolution or winding-up of Mirrorco, Farelogix Holdings (or Farelogix) will have an overriding call right (the "Liquidation Call Right") to purchase all of the outstanding Exchangeable Shares from the holders thereof (other than Farelogix or its affiliates) for a price per share equal to the Liquidation Price.
  11. The Exchangeable Shares will be non-voting (except as required by the Exchangeable Share Provisions or by applicable law) and will be retractable at the option of the holder at any time. Subject to the overriding call right of Farelogix Holdings (or Farelogix) referred to below, upon retraction the holder will be entitled to receive from Mirrorco for each Exchangeable Share retracted an amount equal to the current market price of a common share of Farelogix, to be satisfied by delivery of one common share of Farelogix, together with, on the designated payment date therefor, all declared and unpaid dividends on each such retracted Exchangeable Share held by the holder on any dividend record date prior to the date of retraction (such aggregate amount, the "Retraction Price"). Upon being notified by Mirrorco of a proposed retraction of Exchangeable Shares, Farelogix Holdings (or Farelogix) will have an overriding call right (the "Retraction Call Right") to purchase from the holder all of the Exchangeable Shares that are the subject of the retraction notice for a price per share equal to the Retraction Price.
  12. Subject to the overriding call right of Farelogix Holdings (or Farelogix) described below, Mirrorco may redeem all the Exchangeable Shares then outstanding at any time on or after the date which is ten years from the Effective Date (the "Redemption Date"). The board of directors may accelerate the Redemption Date in certain circumstances which are set out in the Exchangeable Share Provisions. Upon such redemption, a holder will be entitled to receive from Mirrorco for each Exchangeable Share redeemed an amount equal to the current market price of a common share of Farelogix, to be satisfied by the delivery of one common share of Farelogix, together with all declared and unpaid dividends on each such redeemed Exchangeable Share held by the holder on any dividend record date prior to the date of redemption (such aggregate amount, the "Redemption Price"). Upon being notified by Mirrorco of a proposed redemption of Exchangeable Shares, Farelogix Holdings (or Farelogix) will have an overriding call right (the "Redemption Call Right") to purchase from the holders all of the outstanding Exchangeable Shares (other than Farelogix or its affiliates) for a price per share equal to the Redemption Price.
  13. Under the Voting Trust and Exchange Agreement, Farelogix will grant to the trustee under the Voting Trust and Exchange Agreement (the "Trustee") for the benefit of the holders of the Exchangeable Shares a put right (the "Optional Exchange Right"), exercisable upon the insolvency of Mirrorco, to require Farelogix Holdings (or Farelogix) to purchase from a holder of Exchangeable Shares all or any part of his or her Exchangeable Shares. The purchase price for each Exchangeable

- Share purchased by Farelogix Holdings (or Farelogix) will be an amount equal to the current market price of a common share of Farelogix, to be satisfied by delivery to the Trustee, on behalf of the holder, of one common share of Farelogix, together with an additional amount equivalent to the full amount of all declared and unpaid dividends on such Exchangeable Share held by such holder on any dividend record date prior to the closing of the purchase and sale.
14. Under the Voting Trust and Exchange Agreement, upon the liquidation, dissolution or winding-up of Farelogix, Farelogix Holdings (or Farelogix) will be required to purchase each outstanding Exchangeable Share, and each holder will be required to sell all of his or her Exchangeable Shares, (such purchase and sale obligations are hereafter referred to as the "Automatic Exchange Right") for a purchase price per share equal to the current market price of a common share of Farelogix, to be satisfied by the delivery to the Trustee, on behalf of the holder, of one common share of Farelogix, together with an additional amount equivalent to the full amount of all declared and unpaid dividends on each such Exchangeable Share held by such holder on any dividend record date prior to the closing of the purchase and sale.
15. Under the Voting Trust and Exchange Agreement, Farelogix will issue and deposit with the Trustee one Farelogix special voting share (the "Farelogix Special Voting Share") which entitles the holder to an equivalent number of votes at meetings of the holders of common shares of Farelogix equal to the number of Exchangeable Shares outstanding from time to time. The Trustee shall hold the Farelogix Special Voting Share for and on behalf of the holders of Exchangeable Shares. The Trustee, as holder of record of the Farelogix Special Voting Share, shall be entitled to all of the voting rights including the right to consent to vote in person or by proxy the Farelogix Special Voting Share, on any matter, question, or proposition whatsoever that may properly come before the common shareholders of Farelogix. The Trustee shall exercise the voting rights only on the basis of instructions received from the holders of Exchangeable Shares who shall be entitled to instruct the Trustee as to the voting thereof. The Trustee shall hold the Farelogix Special Voting Share and any other properties that may become the subject of the trust for the exclusive benefit of the holders of Exchangeable Shares. In this manner, the holders of Exchangeable Shares holding the Exchangeable Shares will be entitled to exercise the votes they would have received as shareholders of Farelogix as if they had been issued shares of Farelogix pursuant to the Reorganization.
16. Contemporaneously with the closing of the Reorganization, Farelogix, Farelogix Holdings and Mirrorco will enter into the Support Agreement which will provide that Farelogix will not declare or pay any dividend on the common shares of Farelogix unless Mirrorco simultaneously declares and pays an equivalent dividend on the Exchangeable Shares, and that Farelogix will ensure that Mirrorco and Farelogix Holdings will be able to honour the redemption and retraction rights and dissolution entitlements that are attributes of the Exchangeable Shares under the Exchangeable Share Provisions and the related redemption, retraction and liquidation call rights described above.
17. The Support Agreement will also provide that, without the prior approval of the holders of the Exchangeable Shares, actions such as distributions of stock dividends, options, rights and warrants for the purchase of securities or other assets, subdivisions, reclassifications, reorganizations and other changes cannot be taken in respect of the common shares generally without the same or an economically equivalent action being taken in respect of the Exchangeable Shares.
18. The trades and possible trades in securities to which the Reorganization gives rise include the following:
- (a) the issuance of Exchangeable Shares by Mirrorco and the provision of the ancillary rights pursuant to the Voting Trust and Exchange Agreement and the Support Agreement to holders (other than Farelogix Holdings) of Farelogix Canada Common Shares and the transfer of Farelogix Canada Common Shares by such holders to Mirrorco, as part of the Reorganization;
  - (b) the exchange of Farelogix Canada Options for Replacement Options, the exchange of the Farelogix Canada Warrants for Replacement Warrants and the issuance and delivery of common shares of Farelogix by Farelogix to holders of a Replacement Option or a Farelogix Warrant upon the exercise thereof;
  - (c) the creation of the call rights in favour of Farelogix Holdings (or Farelogix) referred to in paragraphs 10, 11 and 12 above;
  - (d) the creation of the Automatic Exchange Right and the Optional Exchange Right in favour of the trustee, for the benefit of the holders of the Exchangeable Shares;
  - (e) the issuance and intra-group transfers of common shares of Farelogix and related issuances of shares of Farelogix affiliates in consideration therefor, all by and between Farelogix and its affiliates, from time to time to enable common shares of Farelogix to be delivered to a holder of Exchangeable Shares, and the subsequent delivery thereof to such holder, upon: (i) a holder's retraction of Exchangeable Shares; (ii) the exercise of the Retraction Call Right; (iii) the redemption of the Exchangeable Shares by Mirrorco; (iv) the exercise of the Redemption Call Right; (v) the liquidation, dissolution or winding-up of Farelogix Canada; and (vi) the exercise of the Liquidation Call Right;

- (f) the transfer of Exchangeable Shares by the holder to Mirrorco, Farelogix or Farelogix Holdings, as applicable, upon: (i) the holder's retraction of Exchangeable Shares; (ii) the exercise of the Retraction Call Right; (iii) the redemption of the Exchangeable Shares by Mirrorco; (iv) the exercise of the Redemption Call Right; (v) the liquidation, dissolution or winding-up of Farelogix Canada; and (vi) the exercise of the Liquidation Call Right;
- (g) the issuance and delivery of common shares of Farelogix by Farelogix or Farelogix Holdings to each other and to a holder of Exchangeable Shares upon the exercise of the Optional Exchange Right or the Automatic Exchange Right;
- (h) the issuance and delivery of the Farelogix Special Voting Share by Farelogix to the Trustee in connection with the granting of votes to the holders of Exchangeable Shares and the transfer to Farelogix of Farelogix Special Voting Share by the Trustee upon the exchange, by any means, of Exchangeable Shares for common shares of Farelogix; and
- (i) the transfer of Exchangeable Shares by a holder to Farelogix or Farelogix Holdings upon the Trustee's exercise of the Optional Exchange Right or the Automatic Exchange Right

(collectively, the "Trades"); and

19. All disclosure material including, without limitation, copies of annual financial statements and all proxy material which is furnished to holders of securities of Farelogix resident in the United States will be provided to holders of the Exchangeable Shares, and will be provided to all holders of Farelogix securities resident in Ontario.

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

**IT IS RULED**, pursuant to subsection 74(1) of the Act, that the Trades will not be subject to the registration and prospectus requirements of the Act, provided that:

- A. Farelogix shall provide or cause to be provided each recipient or proposed recipient of any securities acquired pursuant to a Trade that is resident in Ontario with an explanation of the limitations imposed upon the distribution of such securities;
- B. the first trade in any securities acquired pursuant to a Trade shall be a distribution, unless:
  - (i) if Farelogix is a reporting issuer in Ontario, and has been a reporting issuer in Ontario for a period of twelve months, such first trade is made in accordance with the provisions of subsection 72(5) of the Act and subsection 2.18(3) of Commission Rule 45-501- *Exempt Distributions* as if the securities had been acquired pursuant

to one of the exemptions referred to in subsection 72(5) of the Act; or

- (ii) if Farelogix is not a reporting issuer in Ontario, such first trade is made through the facilities of a stock exchange outside Ontario or on the Nasdaq Stock Market and at the time of such first trade, holders of common shares of Farelogix (with the holders of Exchangeable Shares considered to be holders of common shares of Farelogix) whose last address as shown on the books of Farelogix or Mirrorco, as the case may be, is in Ontario, do not hold more than 10% of the common shares of Farelogix and represent in number, not more than 10% of the holders of common shares of Farelogix.

March 2, 2001.

"J.A. Geller"

"Robert W. Davis"

**2.3.2 Clearcross Inc. et al. - ss. 74(1)**

**Headnote**

Subsection 74(1) - registration and prospectus relief granted in respect of trades in common shares of non-reporting U.S. issuer upon the exercise of various rights attached to exchangeable securities - exchangeable securities issued by indirectly wholly-owned Canadian subsidiary of U.S. issuer - exchangeable securities provide the holder with a security of a Canadian issuer having economic rights, which are, as nearly as practicable, equivalent to those of a common share of the U.S. issuer - first trade relief granted in respect of the underlying common shares

**Statute Cited**

Securities Act, R.S.O. 1990, c.S.5, as am., 25, 53.

**Rules Cited**

Ontario Securities Commission Rule 72-501: Prospectus Exemption fo First Trade Over a Market Outside Ontario, (1198), 21 O.S.C.B. 3658.

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

**AND**

**IN THE MATTER OF  
CLEARCROSS INC., CLEARCROSS CANADA INC.  
AND CLEARCROSS CANADA HOLDINGS ULC**

**RULING  
(Subsection 74(1))**

**UPON** the application (the "Application") of ClearCross Inc. ("ClearCross"), ClearCross Canada Inc. ("ExchangeCo") and Clearcross Canada Holding ULC ("CallCo") to the Ontario Securities Commission (the "Commission") for a ruling, pursuant to subsection 74(1) of the Act, that certain trades in securities made in connection with the indirect acquisition (the "Transaction") by ClearCross of Atrion International Inc. pursuant to a securities exchange take-over bid (which take-over bid will be exempt from the requirements of Part XX of the Act by virtue of clause 93(1)(d) of the Act), shall not be subject to sections 25 or 53 of the Act;

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

**AND UPON** ClearCross, CallCo and ExchangeCo having represented to the Commission that:

1. ClearCross was incorporated on January 10, 1984 under the laws of New York and on April 16, 1988 was re-incorporated under the laws of Delaware. Its corporate headquarters are located at 505 Eighth Avenue, New York, New York 10018.

2. ClearCross is not subject to the reporting requirements of the United States *Securities Exchange Act of 1934*, as amended, and is not a reporting issuer under the Act or under the securities legislation of any province of Canada. It is anticipated that ClearCross will become a reporting issuer in Québec under the *Québec Securities Act* (the "Québec Act") upon the closing of the Transaction.
3. The authorized capital of ClearCross consists of 25,000,000 Common Shares, of which 2,250,301 shares are outstanding as at February 23, 2001, 15,000,000 Preferred Shares, consisting of 2,000,000 Series A Preferred Shares of which 1,561,789 shares are outstanding as at February 23, 2001, 1,400,000 Series B Preferred Shares of which 1,195,411 shares are outstanding as at February 23, 2001, 5,100,000 Series C Preferred Shares of which 4,932,433 shares are outstanding as at February 23, 2001 and 5,600,000 Series D Preferred Shares of which 5,587,000 shares are outstanding as at February 23, 2001 (collectively the "ClearCross Shares"). As at February 23, 2001, 2,521,429 Common Shares are issuable upon the exercise of outstanding ClearCross Rights (defined below).
4. None of the shares of ClearCross are listed on any exchange or quoted on any automated quotation system.
5. CallCo is an unlimited liability company which was incorporated under the *Companies Act* (Nova Scotia) for the sole purpose of participating in the Transaction.
6. CallCo is a private company within the meaning of the Act and is not a reporting issuer under the Act or under the securities legislation of any province of Canada.
7. The authorized capital of CallCo consists of 1,000,000 common shares, of which 1 common share is issued and outstanding as of the close of business on the date hereof. The one outstanding common share of CallCo is held by ClearCross.
8. ExchangeCo is an indirect subsidiary of ClearCross and was incorporated under the *Companies Act* (Nova Scotia) for the sole purpose of participating in the Transaction.
9. ExchangeCo is not a reporting issuer under the Act or under the securities legislation of any province of Canada.
10. The authorized share capital of ExchangeCo consists of 1,000,000 common shares, of which 1 common share is issued and outstanding as of the close of business on the date hereof. Prior to the closing of the Transaction, ExchangeCo shall file articles of amendment to create an unlimited number of exchangeable shares (the "Exchangeable Shares"). Upon completion of the Transaction, all of the issued and outstanding Exchangeable Shares will be held by former shareholders of Atrion who will receive such

- Exchangeable Shares in exchange for such holders' Atrion shares.
11. Atrion was incorporated on June 4, 1997 under Part IA of the *Companies Act* (Québec). The registered office of Atrion is 4777 Levy Street, Saint Laurent, Québec, H4R 2P9. Atrion is not a reporting issuer under the Act. However, Atrion has been a reporting issuer under the *Québec Act* since September 30, 1997. ClearCross has been advised by Atrion that Atrion became a reporting issuer in Québec due solely to the presence of SPEQ Atrion Inc. (the "SPEQ") as a shareholder of Atrion.
  12. The SPEQ is a single purpose entity incorporated under Part 1A of the *Companies Act* (Québec) solely to facilitate investment in Atrion by Québec residents pursuant to the *Loi sur les sociétés de placements dans l'entreprise québécoise*.
  13. The authorized capital of Atrion consists of an unlimited number of Catégorie A, Catégorie B and Catégorie C Atrion Shares, of which 5,100,000 Catégorie A, 27,423,513 Catégorie B and 8,756,062 Catégorie C Atrion Shares are outstanding as at February 23, 2001. Furthermore, as at February 23, 2001, 26,648,523 Atrion Shares are issuable upon the exercise or conversion of Atrion Rights.
  14. Atrion has a total of 67 shareholders. The SPEQ is the only holder of Catégorie A Atrion Shares; Sofinov Société Financière Inc. is the only holder of Catégorie C Atrion Shares; and the Catégorie B Atrion Shares are held by a total of 65 shareholders, 51 of whom are employees of Atrion.
  15. Only 7 Atrion Shareholders, 5 of whom are employees, are residents of Ontario.
  16. As of December 6, 2000, Atrion and ClearCross entered into a Merger Agreement (the "Merger Agreement") which contemplates, amongst other things, the transfer by the Atrion Shareholders of all of their shares in the capital of Atrion ("Atrion Shares") for shares in the capital of, at their option, either ExchangeCo or ClearCross, so as to ensure the most beneficial tax treatment for each Atrion Shareholder.
  17. Upon completion of the Transaction, Atrion Shares will be exchanged for either Exchangeable Shares or ClearCross Shares on a 4.314 to 1 basis subject to adjustment post-closing in accordance with the terms of the merger Agreement and any amendments thereto. In addition, each outstanding option, warrant or other right to purchase Atrion Shares (the "Atrion Rights") issued by Atrion will be converted into options, warrants or other rights to purchase ClearCross Shares (the "ClearCross Rights").
  18. The Exchangeable Shares will provide the former shareholders of Atrion with the ability to hold securities of a Canadian issuer (ExchangeCo) having economic and voting rights which are, as nearly as practicable, equivalent to those of ClearCross Shares and will be exchangeable at any time by the holder thereof for ClearCross Shares on a one-for-one basis.
  19. The Exchangeable Shares will be entitled to a preference over the common shares of ExchangeCo and any other shares ranking junior to the Exchangeable Shares with respect to the payment of dividends and the distribution of assets in the event of a liquidation, dissolution or winding-up of ExchangeCo.
  20. Dividends will be payable on the Exchangeable Shares from ExchangeCo at the same time as, and equivalent to, dividends payable by ClearCross on the ClearCross Shares.
  21. The Atrion Shareholders who elect to receive Exchangeable Shares will also subscribe for special voting shares ("Special Voting Shares") in the capital of ClearCross which shares will carry voting rights equivalent to the voting rights attributable to the ClearCross Shares into which their Exchangeable Shares are exchangeable.
  22. Subject to the overriding Retraction Call Right of CallCo referred to below in this paragraph, upon retraction, the holder will be entitled to receive from ExchangeCo for each Exchangeable Share retracted an amount equal to the Current Market Price (as defined in the Share Provisions (defined below)) of a ClearCross Share (the "Retraction Price"), to be satisfied by the delivery on behalf of ExchangeCo of one ClearCross Share, plus an additional amount equivalent to the full amount of all declared and unpaid dividends on each such Exchangeable Share retracted and an amount equal to the full amount of all dividends declared on ClearCross Shares which should have been declared on the Exchangeable Shares pursuant to the share provisions of the Exchangeable Shares (the "Share Provisions") or the Support Agreement (defined below), but which have not in fact been so declared on the Exchangeable Shares. Upon being notified by ExchangeCo of a proposed retraction by a holder of Exchangeable Shares, CallCo will have an overriding call right (the "Retraction Call Right") to purchase all, but not less than all, of the Exchangeable Shares that are the subject of the retraction notice for a price per share equal to the Retraction Price plus any declared and unpaid dividends and any dividends that ought to have been declared on the Exchangeable Shares pursuant to the Share Provisions or the Support Agreement (defined below). The holders of the Exchangeable Shares will have a put right exercisable against ClearCross in the event that CallCo does not exercise its Retraction Call Right.
  23. Subject to the overriding Redemption Call Right of CallCo referred to below in this paragraph, ExchangeCo will be entitled to redeem all, but not less than all, of the Exchangeable Shares then outstanding, commencing on the fifteenth anniversary of the date of the completion of the Transaction (the "Automatic Redemption Date"). Upon redemption by ExchangeCo, each holder of Exchangeable Shares will be entitled to receive from ExchangeCo for each Exchangeable Share redeemed, an amount equal to the Current

Market Price (as defined in the Share Provisions) of a ClearCross Share (the "Redemption Price"), to be satisfied by the delivery of one ClearCross Share, plus an amount equal to all declared and unpaid dividends on each such Exchangeable Share held by such holder on any dividend record date which occurred prior to the Automatic Redemption Date and an amount equal to the full amount of all dividends declared on ClearCross Shares which should have been declared on the Exchangeable Shares pursuant to the Share Provisions or the Support Agreement (defined below) but which have not in fact been so declared on the Exchangeable Shares. Upon being notified by ExchangeCo of a proposed redemption of Exchangeable Shares, CallCo will have an overriding call right (the "Redemption Call Right") to purchase all, but not less than all, of such shares for a price per share equal to the Redemption Price, plus any declared and unpaid dividends and any dividends that ought to have been declared on the Exchangeable Shares pursuant to the Share Provisions or the Support Agreement (defined below). The holders of the Exchangeable Shares shall have a put right exercisable against ClearCross in the event that CallCo does not exercise its Redemption Call Right.

24. ExchangeCo may accelerate the Automatic Redemption Date when, *inter alia*:
- (a) there remains outstanding less than 20% of the total Exchangeable Shares originally issued (other than Exchangeable Shares held by ClearCross or its affiliates);
  - (b) a change in control of ClearCross occurs;
  - (c) an event occurs in respect of which holders of Exchangeable Shares are entitled to vote as shareholders of ExchangeCo (the "Exchangeable Share Voting Event"), other than where the approval of the holders of the Exchangeable Shares is required to maintain the equivalence of the Exchangeable Shares and the ClearCross Shares (the "Exempt Exchangeable Share Voting Event"), and provided that such Exchangeable Share Voting Event does not result in an adverse effect on the share attributes of the Exchangeable Shares;
  - (d) an Exempt Exchangeable Share Voting Event occurs and the holders of the Exchangeable Shares fail to take the necessary action to approve or disapprove, as applicable, the Exempt Exchangeable Share Voting Event; or
  - (e) the *Income Tax Act* (Canada) is amended to permit holders of Exchangeable Shares to exchange their Exchangeable Shares for ClearCross Shares on a tax deferred basis; provided however, that if the Automatic Redemption Date occurs as a result of matters identified in subsections (a) or (b) above, the Automatic Redemption Date shall be extended to the date on which the ClearCross Shares issuable upon exchange of the Exchangeable Shares are fully and freely tradeable.

25. Subject to the overriding Liquidation Call Right of CallCo referred to below in this paragraph, on liquidation, dissolution or winding-up of ExchangeCo, a holder of Exchangeable Shares will be entitled to receive from ExchangeCo for each Exchangeable Share an amount equal to the Current Market Price (as defined in the Share Provisions) of a ClearCross Share on the last business day prior to the liquidation date (the "Liquidation Amount"), to be satisfied by the delivery of one ClearCross Share, plus an amount equal to all declared and unpaid dividends on each such Exchangeable Share held by such holder on any dividend record date which occurred prior to the Liquidation Date and any declared and unpaid dividends that should have been declared on the Exchangeable Shares pursuant to the Share Provisions or the Support Agreement (defined below) but which were not in fact so declared on the Exchangeable Shares. Upon a proposed liquidation, dissolution or winding-up of ExchangeCo, CallCo will have an overriding call right (the "Liquidation Call Right") to purchase all of the outstanding Exchangeable Shares from the holders thereof for a price equal to the Liquidation Price plus any declared and unpaid dividends and any dividends that ought to have been declared on the Exchangeable Shares pursuant to the Share Provisions or the Support Agreement (defined below). The holders of the Exchangeable Shares shall have a put right exercisable against ClearCross in the event that CallCo does not exercise its Redemption Call Right.

26. Contemporaneously with the closing of the Transaction, ClearCross, CallCo, ExchangeCo and the holders of the Exchangeable Shares will enter into an agreement (the "Exchange Rights and Voting Agreement") pursuant to which a holder of an Exchangeable Share will have the right (the "Exchange Right") upon the insolvency of ExchangeCo to require ClearCross or CallCo to purchase from the holder all or any part of the Exchangeable Shares held by such holder at a price equal to the then Current Market Price (as defined in the Share Provisions) of a ClearCross Share, to be satisfied by ClearCross issuing or CallCo causing to be issued to such holder one ClearCross Share, plus an additional amount equal to all declared and unpaid dividends on each such Exchangeable Share held by such holder on any dividend record date which occurred prior to the purchase of such Exchangeable Shares by ClearCross or CallCo (as the case may be) and an amount equal to the full amount of all dividends declared on the ClearCross Shares which should have been declared on the Exchangeable Shares pursuant to Share Provisions or the Support Agreement (defined below) but which have not in fact been so declared on the Exchangeable Shares.

27. Upon the liquidation, dissolution or winding-up of ClearCross, pursuant to the Exchange Rights and Voting Agreement, the Exchangeable Shares will be automatically exchanged for ClearCross Shares in order that holders of the Exchangeable Shares may participate in the dissolution of ClearCross on a *pro rata* basis with the holders of ClearCross Shares (the "Automatic Exchange Right").

28. Holders of Exchangeable Shares will also be issued Special Voting Shares of ClearCross which will entitle such holders to vote at any meeting at which ClearCross Shareholders are entitled to vote. Each Special Voting Share will carry a number of votes equal to that number of votes which would attach to the ClearCross Shares for which the Exchangeable Shares of the class corresponding to such Special Voting Shares outstanding at such time are exchangeable, and will vote with ClearCross Shareholders as a single class on all matters, except as may be required by law. The Special Voting Shares will not be entitled to dividends and will not participate on dissolution. Upon any sale, transfer or other disposition of Exchangeable Shares, the corresponding number of Special Voting Shares shall also be sold, transferred or disposed of (as the case may be). Special Voting Shares shall not be transferable independently of the Exchangeable Shares.
29. Contemporaneously with the closing of the Transaction, ClearCross, CallCo, ExchangeCo and the holders of Exchangeable Shares will also enter into an exchangeable share support agreement (the "Support Agreement") which will provide that ClearCross, among other things, will (i) not declare or pay dividends on the ClearCross Shares unless ExchangeCo is able to and simultaneously declares and pays an equivalent dividend on the Exchangeable Shares; and (ii) ensure that ExchangeCo and CallCo will be able to honour the retraction and redemption rights and dissolution entitlements that are attributes of the Exchangeable Shares and the related Retraction Call Right, the Redemption Call Right and the Liquidation Call Right of CallCo described above.
30. The Support Agreement will also provide that, without the prior approval of the holders of the Exchangeable Shares, actions such as distributions of stock dividends, options, rights and warrants for the purchase of securities or other assets, reclassifications, reorganizations and other changes cannot be taken in respect of the ClearCross Shares without the same or an economically equivalent action being taken in respect of the Exchangeable Shares.
31. In order to enable ClearCross, ExchangeCo or CallCo, as the case may be, to deliver ClearCross Shares to a holder of Exchangeable Shares upon the exercise of the various exchange and call rights created under the Share Provisions, the Exchange Rights and Voting Agreement and the Support Agreement, ClearCross may issue or transfer, or cause to be issued or transferred, ClearCross Shares to or by its affiliates.
32. If all the holders of the Exchangeable Shares resident in Ontario were to acquire the maximum number of ClearCross Common Shares and the maximum number of ClearCross Preferred Shares to which they are entitled under the Share Provisions, the Exchange Rights and Voting Agreement and the Support Agreement, based on the number of ClearCross Common Shares and the number of ClearCross Preferred Shares outstanding as of December 21, 2000 and those issued pursuant to the Transaction, such

shareholders would beneficially hold approximately 0.3793% of the issued and outstanding ClearCross Common Shares and approximately 0.8431% of the issued and outstanding ClearCross Preferred Shares and would constitute 4.5751% of the total number of holders of ClearCross Common Shares and 2.3809% of the total number of holders of ClearCross Preferred Shares.

33. Certain trades or potential trades in Exchangeable Shares and/or ClearCross Shares will or may take place in connection with the intra-group transfers by and between ClearCross and its affiliates and the various exchange and call rights created under the Share Provisions, the Exchange Rights and Voting Agreement and the Support Agreement. To the extent that there are no exemptions from sections 25 and 53 of the Act available for such trades (the "Non-Exempt Trades"), exemptive relief is required.

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

**IT IS RULED**, pursuant to subsection 74(1) of the Act, that the Non-Exempt Trades are not subject to sections 25 or 53 of the Act, provided that the first trades in the Exchangeable Shares or in the ClearCross Shares acquired in connection with the Transaction shall be a distribution unless:

- (a) such first trade is executed in accordance with the provisions of Commission Rule 72-501 *Prospectus Exemption for First Trade Over a Market Outside of Ontario* as if the security was a restricted security (as defined in Commission Rule 72-501); or
- (b) such first trade is made in accordance with the provisions of subsection 72(5) of the Act and subsection 2.18(3) of Commission Rule 45-501 *Exempt Distributions* as if the security had been issued pursuant to one of the exemptions referenced in subsection 72(5) of the Act.

February 27, 2001.

"John A. Geller"

"R. Stephen Paddon"

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## Chapter 3

# Reasons: Decisions, Orders and Rulings

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## Chapter 4

# Cease Trading Orders

### 4.1.1 Temporary and Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Extending Order	Date of Rescinding Order
Advantagedge International Inc.	16 Feb 01	-	28 Feb 01	-
Re-Con Building Products Inc.	01 Mar 01	13 Mar 01	-	-
Applied Terravision Systems Inc.	02 Mar 01	14 Mar 01	-	-
Applied Terravision Systems Inc.	02 Mar 01	-	-	06 Mar 01
Travelbyus.com Ltd.	02 Mar 01	14 Mar 01	-	

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**Chapter 5**  
**Rules and Policies**

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## Chapter 6

# Request for Comments

### 6.1 Request for Comments

#### 6.1.1 Proposed Policy 12-602

#### NOTICE OF PROPOSED ONTARIO SECURITIES COMMISSION POLICY 12-602

#### DEEMING AN ISSUER FROM CERTAIN OTHER CANADIAN JURISDICTIONS TO BE A REPORTING ISSUER IN ONTARIO

##### Purpose of Proposed Policy

The purpose of the proposed Policy is to provide information about the procedure for making an application under section 83.1(1) of the *Securities Act* (Ontario) (the "Act") and to inform all interested parties of the circumstances in which the Ontario Securities Commission (the "Commission") would generally grant an order under section 83.1(1) of the Act to certain issuers. The proposed Policy is intended to deal primarily with issuers listed on the Canadian Venture Exchange Inc. ("CDNX") and issuers who have been reporting issuers or reporting issuer equivalents in one or more of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec or Nova Scotia for at least 12 months.

The proposed Policy is an initiative of the Commission and will be adopted as a policy in Ontario.

Terms used in the proposed Policy that are defined or interpreted in the definition instruments in force in Ontario should be read in accordance with those definition instruments, unless the context otherwise requires.

##### Background

In December, 1999, section 83.1 was added to the Act under the *More Tax Cuts for Jobs, Growth and Prosperity Act, 1999*. Section 83.1 provides that the Commission may make an order deeming an issuer to be a reporting issuer for purposes of Ontario securities law if the Commission considers that it would not be prejudicial to the public interest.

##### Summary of Proposed Policy

The proposed Policy provides that the Commission will generally grant an order under section 83.1(1) to an issuer, in good standing, who has securities listed and posted for trading on CDNX. Absent Ontario's participation in the Capital Pool Company Program administered by CDNX, the proposed Policy would not apply to any singular issuer who obtained a listing on CDNX through the Capital Pool Company Program until at least 12 months after its Qualifying Transaction (as defined in CDNX Policy 2.4).

The proposed Policy also provides that the Commission will generally grant an order under section 83.1(1) to an issuer who has been a reporting issuer or reporting issuer equivalent, in good standing, for at least 12 months in one or more of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec or Nova Scotia.

The proposed Policy provides that, in reviewing an application under section 83.1(1), Commission staff may review the applicant's continuous disclosure record from another jurisdiction and require any deficiencies to be addressed before recommending the application.

In addition, the proposed Policy informs interested parties about the documentation to be provided by an applicant in connection with an application made under section 83.1(1).

##### Related Instruments

The proposed Policy is related to section 83.1(1) of the Act which provides that the Commission may, upon application, make an order deeming an issuer to be a reporting issuer for purposes of Ontario securities law.

##### Unpublished Materials

In proposing the Policy, the Commission has not relied on any significant unpublished study, report, decision or other written materials.

##### Comments

Interested parties are invited to make written submissions with respect to the proposed Policy. Submissions received by May 9, 2001 will be considered.

Submissions should be made in duplicate and delivered to the attention of:

John Stevenson, Secretary  
Ontario Securities Commission  
20 Queen Street West  
Suite 1903, Box 55  
Toronto, Ontario, M5H 3S8  
Email: [jstevenson@osc.gov.on.ca](mailto:jstevenson@osc.gov.on.ca)

A diskette containing an electronic copy of the submission (in DOS or Windows format -preferably WordPerfect) should also be submitted. As the Act requires that a summary of written comments received during the comment period be published, confidentiality of submissions cannot be maintained. Questions may be referred to:

Marsha Gerhart  
Senior Legal Counsel, Corporate Finance  
Ontario Securities Commission  
Email: mgerhart@osc.gov.on.ca  
(416) 595-8918

### Proposed Policy

The text of the proposed Policy follows.

March 9, 2001.

## ONTARIO SECURITIES COMMISSION POLICY 12-602

### DEEMING AN ISSUER FROM CERTAIN OTHER CANADIAN JURISDICTIONS TO BE A REPORTING ISSUER IN ONTARIO

#### PART 1 - APPLICATION

- 1.1 The procedures set forth in this Policy Statement apply to applications made to the Ontario Securities Commission (the "Commission") under section 83.1(1) of the *Securities Act* (Ontario) (the "Act") for an order deeming an issuer to be a reporting issuer for purposes of Ontario securities law (a "Deeming Order") where the applicant issuer is a reporting issuer in certain other Canadian jurisdictions.
- 1.2 Notwithstanding section 1.1 of this Policy Statement, sections 1.3 and 1.4 of Part 1 and Parts 4 and 5 of this Policy Statement apply to all applications made under section 83.1(1) of the Act.
- 1.3 The procedures set forth in OSC Policy 2.1 - *Applications to the Ontario Securities Commission*, or any successor instrument, apply to all applications made under section 83.1(1) of the Act except to the extent modified by this Policy Statement.
- 1.4 Notwithstanding anything contained in this Policy Statement, the Commission retains its discretion to act in the public interest with respect to its consideration of all applications made under section 83.1(1) of the Act.

#### PART 2 - CDNX-LISTED ISSUERS

- 2.1 Unless it is otherwise prejudicial to the public interest to do so, upon application under section 83.1(1) of the Act, a Deeming Order will generally be granted by the Commission to an issuer whose securities are listed and posted for trading on the Canadian Venture Exchange Inc. ("CDNX")<sup>1</sup> if:
  - (1) the issuer is in good standing in all jurisdictions in which it is a reporting issuer or a reporting issuer equivalent; and
  - (2) the issuer is in good standing under the rules, regulations and policies of CDNX.
- 2.2 In order to independently assess the "good standing" referred to in subsection 2.1(2), staff may review the applicant issuer's continuous disclosure record and request that any deficiencies in that record be addressed prior to any recommendation under section 83.1(1) of the Act being made.

<sup>1</sup> Absent Ontario's participation in the Capital Pool Company Program of CDNX, the Commission will not generally deem a Capital Pool Company Program issuer to be a reporting issuer in Ontario until at least 12 months following such issuer's Qualifying Transaction (as defined in CDNX Policy 2.4).



### PART 3 - NON-CDNX LISTED ISSUERS

3.1 Unless it is otherwise prejudicial to the public interest to do so, upon application under section 83.1(1) of the Act, a Deeming Order will generally be granted by the Commission to an issuer who is a reporting issuer in British Columbia, Alberta, Saskatchewan, Quebec or Nova Scotia or is a reporting issuer equivalent in Manitoba (the "Relevant Jurisdictions") and whose securities are not listed on CDNX if:

- (1) the issuer has been a reporting issuer or a reporting issuer equivalent, as applicable, in one or more Relevant Jurisdictions for at least 12 months prior to the date of the application; and
- (2) the issuer is in good standing in all jurisdictions in which it is a reporting issuer or a reporting issuer equivalent.

3.2 In order to independently assess the "good standing" referred to in subsection 3.1(2), staff may review the applicant issuer's continuous disclosure record and request that any deficiencies in that record be addressed prior to any recommendation under section 83.1(1) of the Act being made.

### PART 4 - APPLICATION PROCEDURE

4.1 An application made under section 83.1(1) of the Act should include:

- (1) if applicable, particulars of the jurisdictions in which the issuer is a reporting issuer or a reporting issuer equivalent and the date the issuer became a reporting issuer in each such jurisdiction;
- (2) if applicable, particulars of the stock exchanges or trading or quotation systems on which the issuer's securities are traded or quoted;
- (3) particulars of any penalties or sanctions imposed against the issuer by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority 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;
- (4) particulars of any 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 director or officer of the issuer, or a shareholder holding sufficient securities of the issuer to affect materially the control of the issuer has (a) been subject to any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority or has entered

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

- (5) a letter confirming that the issuer is in good standing, dated within 30 days of the date of the application, from each of the stock exchanges on which the issuer's securities are listed and posted for trading;
- (6) a certificate of no default, dated within 10 days of the date of the application, from the securities regulatory authority in each jurisdiction in which the issuer is a reporting issuer or a reporting issuer equivalent;
- (7) for security check purposes, a completed *Authorization of Indirect Collection of Personal Information* in the form attached hereto as Appendix A for each director, executive officer and promoter, if any, and each director and executive officer of the promoter, if any, of the issuer; and
- (8) the filing fee prescribed under Schedule I to the Regulation made under the Act.

### PART 5 - SEDAR

5.1 Immediately upon receipt of a Deeming Order, the issuer will be expected to amend its SEDAR Profile to indicate that it is a reporting issuer in Ontario.

## APPENDIX A

## AUTHORIZATION OF INDIRECT COLLECTION OF PERSONAL INFORMATION

The attached Schedule 1 contains information concerning the name, position with or relationship to the applicant, name and address of employer, if other than the applicant, residential address, passport number and date of issuance, date and place of birth and citizenship of each director, executive officer, promoter, if any, and each director and executive officer of the promoter, if any, of the applicant named below (the "Issuer"). The Issuer hereby confirms that each person or company listed on Schedule 1

- (a) has been notified by the Issuer
- (i) of the Issuer's delivery to the Commission of the information pertaining to the person or company as set out in Schedule 1,
  - (ii) that such information is being collected indirectly by the Commission under the authority granted to it under the *Securities Act* (Ontario),
  - (iii) that such information is being collected for the purpose of enabling the Commission to discharge its obligations under the provisions of the *Securities Act* (Ontario) that permits the Commission to refuse to grant an order deeming an issuer to be a reporting issuer for the purposes of Ontario securities law where it would be prejudicial to the public interest, and
  - (iv) that the title, business address and business telephone number of the public official who can answer questions about the Commission's indirect collection of the information is:

Administrative Assistant to the Director of Corporate Finance  
 Ontario Securities Commission  
 20 Queen Street West  
 Suite 1903, Box 55  
 Toronto, Ontario M5H 3S8  
 (416) 597-0681

- (b) has authorized the indirect collection of the information by the Commission.

Date: \_\_\_\_\_

\_\_\_\_\_  
 Name of Issuer

Per: \_\_\_\_\_

\_\_\_\_\_  
 Name

\_\_\_\_\_  
 Official Capacity

(Please print the name of the individual  
 whose signature appears in the official  
 capacity)

**Schedule 1 Personal Information to Appendix A  
 Authorization of Indirect Collection of Personal Information**

[Name of Issuer]

Name and Position with or Relationship to Issuer	Name and Address of Employer, if other than issuer	Residential Address [If Residential Address is outside North America provide Passport No. and Date of Issuance]	Date and Place of Birth	Citizenship

## Chapter 7

# Insider Reporting

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

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

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

## Chapter 8

# Notice of Exempt Financings

### Exempt Financings

The Ontario Securities Commission reminds Issuers of exempt financings that they are responsible for the completeness, accuracy and timely filing of Forms 20 and 21 pursuant to section 72 of the Securities Act and section 14 of the Regulation to the Act. The information provided is not verified by staff of the Commission and is published as received except for confidential reports filed under paragraph E of the Ontario Securities Commission Policy Statement No. 6.1.

### Reports of Trades Submitted on Form 45-501f1

<u>Trans. Date</u>	<u>Security</u>	<u>Price (\$)</u>	<u>Amount</u>
07Feb01	Apex Silver Mines Limited - Ordinary Shares	US\$332,500	35,000
22Feb01	# Arch Coal, Inc. - Common Stock	6,282,730	215,000
01Jan00 to 31Dec00	Barclays Global Investors Canada Limited Income Oriented Balanced Index Fund - Units	3,963,256	362,233
01Jan00 to 31Dec00	Barclays Global Investors N.A. Equity Index Funds B - Units	70,689,028	286,056
01Jan00 to 31Dec00	Barclays Global Investors Canada Limited Universe Bond Index Fund - Units	317,579,206	25,353,229
01Jan00 to 31Dec00	Barclays Global Investors Canada Limited Taxable Synthetic US Equity Index Fund - Units	43,816,351	2,136,109
01Jan00 to 01Jan00	Barclays Global Investors Canada Limited Hedged Synthetic EAFE Index Fund - Units	4,569,136	203,642
01Jan00 to 31Dec00	Barclays Global Canada Hedged Synthetic US Equity Index Fund - Units	3,929,270	121,836
01Jan00 to 31Dec00	Barclays Global Investors Canada Limited Taxable Unhedged Synthetic US Equity Index Fund - Units	1,153,610	27,546
01Jan00 to 31Dec00	Barclays Global Investors Short Term Investment Fund - Units	26,381,003	2,311,726
01Jan00 to 31Dec00	Barclays Global Investors N.A. Extended Equity Market Fund B - Units	12,015,244	82,032
01Jan00 to 31Dec00	Barclays Global Investors Limited Growth Oriented Balanced Index Fund - Units	19,371,704	1,567,601
01Jan00 to 31Dec00	Barclays Global Investors Canada Limited EAFE Equity Index Fund Canada - Units	28,267,108	2,459,399
01Jan00 to 31Dec00	Barclays Global Investors N.A. EAFE Equity Index Funds B - Units	518,739,073	9,164,759
01Jan00 to 31Dec00	Barclays Global Investors Canada Limited Advance Active Canadian Equity Index 300 Fund - Units	74,014,850	4,627,987
01Jan00 to 31Dec00	Barclays Global Investors Canada Limited U.S. Equity Index Fund Canada - Units	19,990,005	1,669,462
01Jan00 to 31Dec00	Barclays Global Investors Canada Limited Unhedged Synthetic EAFE Index Fund - Units	888,614	83,648
01Jan00 to 31Dec00	Barclays Global Investors Canadian TSE 300 Equity Index Fund - Units	233,145,804	7,462,546
01Jan00 to 31Dec00	Barclays Global Investors Canada Limited Aggressive Balanced Index Fund - Units	7,517,135	594,609

**Notice of Exempt Financings**

<u>Trans. Date</u>	<u>Security</u>	<u>Price (\$)</u>	<u>Amount</u>
01Jan00 to 31Dec00	Barclays Global Investors Canada Limited Daily US Equity Index Fund - Units	22,188,902	2,096,188
01Jan00 to 31Dec00	Barclays Global Investors Canada Limited TSE 60 Equity Index Fund - Units	248,480,220	16,066,110
01Jan00 to 31Dec00	Barclays Global Investors Canada Limited Hedged Synthetic US Mid-Cap Equity Index Fund - Units	3,899,220	339,996
01Jan00 to 31Dec00	Barclays Global Investors Canada Limited Daily TSE 300 Equity Index Fund - Units	80,817,563	5,924,335
01Jan00 to 31Dec00	Barclays Global Investors Canada Daily Universe Bond Index Fund - Units	34,952,281	3,276,573
01Jan00 to 31Dec00	Barclays Global Investors N.A. Russell 3000 Index Fund B - Units	154,282,687	9,318,858
01Mar00	BayStar International, Ltd. - Shares of Common Stock	851,865	670
12Feb01	Baytex Energy Ltd. - 10½% Senior Subordinated Debentures	54,750,000	54,750,000
26Jan01	BPI American Opportunities Fund - Units	457,918	3,469
19Jan01	BPI American Opportunities Fund - Units	150,000	114
26Jan01	BPI Global Opportunities III Fund - Units	775,000	7,206
31Jul00	Brookdale International Systems Inc. -	5,000,000	7,054,658
26Jan01	CC&L Balanced Fund - Units	166,397	13,988
31Jan01	CC&L Money Market Fund - Units	205,208	20,502
22Jan01	CC&L Private Client Bond Fund - Units	68,220	6,684
08Feb01	CMN International Inc. - Common Shares	152,485	17,322
05Feb01	CMS Entrepreneurial Real Estate Fund III-Q, L.P. - Limited Partnership Units	450,000	3,750,000
13Feb01	CMS/KRG/Greenbriar Partners, L.P. - Limited Partnership Units	2,062,500	1,500,000
06Feb01	CMS Structured Products Fund III (Cayman) Ltd. - Units	300,000	1,500,000
Nov00 to Jan01	Connor Clark Private Trust - Units	US\$2,576,864	2,576,864
Nov00 to Jan01	Connor Clark Private Trust - Units	25,715,243	25,715,243
23Feb01	Digital Immersion Software Corp. - Special Warrants	150,000	60,000
16Feb01	Dorset Private Equity Limited Partnership - Limited Partnership Units	1,248,638	1,248,638
14Feb01	Dotcom 2000 Inc. - Common Shares	300,000	1,500,000
16Feb01	Electrohome Limited - Non-Voting Class Y Participating Shares	1,999,998	796,812
02Jan01 to 31Jan01	Elliott & Page Value Equity Fund - Class G Units	439,039	40,075
02Jan01 to 31Jan01	Elliott & Page Balanced Fund - Class G Units	1,103,512	86,459
02Jan01 to 31Jan01	Elliott & Page Cabot Emerging Growth Fund - Class G Units	11,707,741	953,291
02Jan01 to 31Jan01	Elliott & Page Money Fund - Class G Units	21,870,314	2,187,031
02Jan01 to 31Jan01	Elliott & Page American Growth Fund - Class G Units	659,219	28,415
02Jan01 to 31Jan01	Elliott & Page Sector Rotation Fund - Class G Units	2,177,542	161,599
02Jan01 to 31Jan01	Elliott & Page Cabot Blue Chip Fund - Class G Units	1,708,522	79,506
02Jan01 to 31Jan01	Elliott & Page Cabot Global Multi-Style Fund - Class G Units	859,273	53,824
02Jan01 to 31Jan01	Elliott & Page U.S. Mid-Cap Fund - Class G Units	534,323	34,837
02Jan01 to 31Jan01	Elliott & Page Monthly High Income Fund - Class G Units	416,741	42,411
14Feb01	Emerging Africa Gold (EAG) Inc. - Units	400,000	400
01Jan01	Epic Limited Partnership - Limited Partnership Units	100,000	100
01Feb01	Flextronics International Ltd. - Ordinary Shares	25,931,798	478,000

**Notice of Exempt Financings**

<u>Trans. Date</u>	<u>Security</u>	<u>Price (\$)</u>	<u>Amount</u>
15Nov00	FRI Corporation - Common Shares	1,800,000	109,090
01Feb01	Gladiator Limited Partnership - Limited Partnership Units	150,000	150
23Feb01	Headline Media Group Inc. - Class A Subordinate Voting Shares	1,000,003	222,223
13Feb01	InfoCast Corporation - Units	US\$100,000	200,000
31Jan01	Kingwest Avenue Portfolio - Units	7,257,776	378,867
16Feb01	Kookaburra Resources Ltd. - Units	238,000	200,000
14Feb01	LymphoSign Inc. - Special Warrants	1,044,576	1,607,040
21Feb01	Maxim Power Corp. - Special Warrants	5,225,499	5,500,526
07Feb01	Musicrypt Inc. - Convertible Promissory Note	\$50,000	\$50,000
16Feb01 to 26Feb01	Networe Health Care Inc. - Preferred Shares	650,120	180,589
22Dec00 & 27Dec00	Norfolk Master Limited Partnership - Limited Partnership Units	21,984,330	1,326
29Mar00	Response Genetics, Inc. - Common Shares and Series A Convertible Preferred Stock	US\$2,914, US\$601,500	291,298, 120,300 Resp.
05May00	Response Genetics, Inc. - Series B Convertible Preferred Stock	US\$3,198,798	355,422
13Feb01	Saddle Creek of Atlanta Limited Partnership - Limited Partnership Units	US\$75,000	3
05Jan01	Sheperd Investments International, Ltd. - Shares of Common Stock	1,662,975	587
01Jan01	Sheperd Investments International, Ltd. - Shares of Common Stock	1,500,000	468
07Jan00	Sheperd Investments International, Ltd. - Shares of Common Stock	1,462,536	494
05Jan01	Softline Limited - Common Shares	4,000,000	3,813,725
12Feb01	SpringBank Tech Ventures, Canadian L.P. - Limited Partnership Units	155,000	155
13Feb01	# Summerchase Apartments Limited Partnership - Limited Partnership Units	\$775,000	31
31Jan01	Twenty-First Century Canadian Equity Fund - Units	1,230,534	182,712
30Nov00	Twenty-First Century Canadian Equity Fund - Units (Amended)	1,050,000	162,944
31Jan01	Twenty-First Century Canadian Bond Fund - Units	997,195	200,043
31Jan01	Twenty-First Century International Equity Fund - Units	571,926	71,794
15Feb01	Yorkton Private Equity Limited Partnership - Limited Partnership Units	4,000,000	4,000

**Reports Made under Subsection 5 of Subsection 72 of the Act with Respect to Outstanding Securities of a Private Company That Has Ceased to Be a Private Company -- (Form 22)**

<u>Name of Company</u>	<u>Date the Company Ceased to be a Private Company</u>
Mindready Solutions Inc.	21Dec00

**Notice of Intention to Distribute Securities Pursuant to Subsection 7 of Section 72 - (Form 23)**

<u>Seller</u>	<u>Security</u>	<u>Amount</u>
Paros Enterprises Limited	Aktion Corporation - Common Shares	2,000,000
Onxe Corporation	Celestica Inc. - Subordinate Voting Shares	11,448
1170819 Ontario Inc.	Celestica Inc. - Subordinate Voting Shares	7,033
1170697 Ontario Inc.	Celestica Inc. - Subordinate Voting Shares	19,714
1170698 Ontario Inc.	Celestica Inc. - Subordinate Voting Shares	12,266
1170819 Ontario Inc.	Celestica Inc. - Subordinate Voting Shares	43,649
1295574 Ontario Inc.	Celestica Inc. - Subordinate Voting Shares	278,752
Eric J. Rosen Family Trust, The	Celestica Inc. - Subordinate Voting Shares	94,208
3359760 Ontario Inc.	Celestica Inc. - Subordinate Voting Shares	164
John Troiano Family Trust, The	Celestica Inc. - Subordinate Voting Shares	8,007
Melnick, Larry	Champion Natural Health.com Inc. - Subordinate Voting Shares	29,900
Edward Karpovits	cs-live.com Inc. - Common Shares	50,000
Golden Rule Resources Ltd.	Hixon Gold Resources Inc. - Common Shares	5,300,000
Magrill, Gordon	Library Information Software Corp. - Class A Shares	2,500,000
ONCAN Canadian Holdings Ltd.	Onex Corporation - Subordinate Voting Shares	998,900

## Chapter 9

# Legislation

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THERE IS NO MATERIAL FOR THIS CHAPTER  
IN THIS ISSUE



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## Chapter 11

# IPOs, New Issues and Secondary Financings

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**Issuer Name:**

Adherex Technologies Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated February 27th, 2001  
Mutual Reliance Review System Receipt dated March 2nd, 2001

**Offering Price and Description:**

\$ \* - \* Common Shares

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

Canaccord Capital Corporation  
Yorkton Securities Inc.  
TD Securities Inc.

Dlouhy Merchant Group Inc.

**Promoter(s):**

-

**Project #335602**

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**Issuer Name:**

BCY LifeSciences Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated March 2nd, 2001  
Mutual Reliance Review System Receipt dated March 2nd, 2001

**Offering Price and Description:**

\$ \* - \* Units and 1,924,242 Common Shares and 1,924,242  
Purchase Warrants issuable upon  
the exercise of 1,924,242 previously issued Special Warrants

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

Canaccord Capital Corporation

**Promoter(s):**

BioCatalyst Yorkton Inc.

**Project #336368**

---

**Issuer Name:**

Brookfield Properties Corporation  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated February 28th, 2001  
Mutual Reliance Review System Receipt dated March 1st, 2001

**Offering Price and Description:**

\$120,110,637 - 4,610,773 Common Shares @ \$26.05 per  
Common Shares

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

CIBC World Markets Inc.  
Merrill Lynch Canada Inc.  
RBC Dominion Securities Inc.

Scotia Capital Inc.

TD Securities Inc.

BMO Nesbitt Burns Inc.

HSBC Securities (Canada) Inc.

Trilon Securities Corporation

**Promoter(s):**

-

**Project #335677**

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**Issuer Name:**

Citadel HYTES Fund  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Prospectus dated March 2nd, 2001  
Mutual Reliance Review System Receipt dated March 5th, 2001

**Offering Price and Description:**

Maximum \$150,000,000 - 6,000,000 Trust Units, (Minimum  
Purchase 100 Trust Units) @ \$25.00 per Trust Unit

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

BOM Nesbitt Burns Inc.  
Merrill Lynch Canada Inc.  
RBC Dominion Securities Inc.  
TD Securities Inc.  
CIBC World Markets Inc.  
National Bank Financial Inc.  
Scotia Capital Inc.

Canaccord Capital Corporation

Desjardins Securities Inc.

Dundee Securities Corporation

HSBC Securities (Canada) Inc.

Raymond James Ltd.

Research Capital Corporation

**Promoter(s):**

Citadel TEF Management Ltd.

**Project #336443**

**Issuer Name:**

McLean Budden Global Equity Fund

Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectus dated February 28th, 2001  
Mutual Reliance Review System Receipt dated March 2nd, 2001

**Offering Price and Description:**

Mutual Fund Securities - Net Asset Value

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

**Promoter(s):**

Project #335581

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**Issuer Name:**

NCE Petrofund

Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated February 27th, 2001  
Mutual Reliance Review System Receipt dated March 1st, 2001

**Offering Price and Description:**

Up to \$ \* - Up to \* Trust Units @ \$ \* per Trust Unit

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

Dundee Securities Corporation  
National Bank Financial Inc.  
Canaccord Capital Corporation  
Raymond James Ltd.  
Yorkton Securities Inc.

**Promoter(s):**

Project #335480

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**Issuer Name:**

Northwest Specialty Aggressive Growth Fund

Northwest Specialty Equity Fund

Northwest Specialty Resource Fund

Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectus dated February 27th, 2001  
Mutual Reliance Review System Receipt dated March 1st, 2001

**Offering Price and Description:**

Mutual Fund Securities - Net Asset Value

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

Northwest Mutual Funds Inc.

**Promoter(s):**

Project #335463

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**Issuer Name:**

Pembina Pipeline Income Fund

Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated March 5th, 2001  
Mutual Reliance Review System Receipt dated March 5th, 2001

**Offering Price and Description:**

\$50,000,000 - 8.25% Convertible Unsecured Subordinated Debentures @ \$1,000.00 per Debenture

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

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

**Promoter(s):**

Project #336751

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**Issuer Name:**

Purcell Energy Ltd.

Principal Regulator - Alberta

**Type and Date:**

Preliminary Prospectus dated February 28th, 2001  
Mutual Reliance Review System Receipt dated March 1st, 2001

**Offering Price and Description:**

\$6,225,000 - 1,500,000 Common Shares issuable upon the exercise of Special Warrants

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

Salman Partners Inc.

**Promoter(s):**

Project #335818

---

**Issuer Name:**

Resin Systems Inc.

Principal Regulator - Alberta

**Type and Date:**

Preliminary Prospectus dated March 2nd, 2001  
Mutual Reliance Review System Receipt dated March 5th, 2001

**Offering Price and Description:**

\$ \* - \* Units at \$ \* per Unit (Each Unit consists of one Common Share and one Warrant)

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

Golden Capital Securities Ltd.

**Promoter(s):**

Project #336524

---

**Issuer Name:**

Retirement Residences Real Estate Investment Trust  
Principal Regulator - Ontario

**Type and Date:**

Amended Preliminary Prospectus dated March 2<sup>nd</sup>, 2001  
Mutual Reliance Review System Receipt dated March 5<sup>th</sup>, 2001

**Offering Price and Description:**

\$ \* - \* Units @ \$ \* per Unit

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

CIBC World Markets Inc.  
HSBC Securities Canada Inc.  
Merrill Lynch Canada Inc.  
RBC Dominion Securities Inc.  
TD Securities Inc.  
National Bank Financial Inc.  
Raymond James Ltd.

**Promoter(s):**

Central Park Lodges Ltd.

Project #331759

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**Issuer Name:**

Rogers Wireless Communications Inc.  
Principal Regulator - Quebec

**Type and Date:**

Preliminary Short Form Prospectus dated March 1<sup>st</sup>, 2001  
Mutual Reliance Review System Receipt dated March 5<sup>th</sup>, 2001

**Offering Price and Description:**

Rights Offering to the holders of Class A Multiple Voting  
Shares and Class B Restricted

Voting Shares

of rights to subscribe for up to \* Class B Restricted Voting  
Shares at a price of \$ \* per Shares

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

-

**Promoter(s):**

-

Project #335877

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**Issuer Name:**

Solium Capital Inc.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Long Form Prospectus dated March 5, 2001  
Mutual Reliance Review System Receipt dated March 7<sup>th</sup>, 2001

**Offering Price and Description:**

\$ \* - \* Common Shares and 3,333,333 Common Shares and  
1,666,667 Purchase Warrants

Issuable upon the Exercise of Special Warrants

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

Canaccord Capital Corporation

**Promoter(s):**

Mark van Hees

John D. Kenny

Project #337113

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**Issuer Name:**

The Hartford U.S. Capital Appreciation Fund  
The Hartford Global Leaders Fund  
The Hartford U.S. Stock Fund  
The Hartford Canadian Stock Fund  
The Hartford Advisors Fund  
The Hartford Bond Fund  
The Hartford Money Market Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectus dated March 2<sup>nd</sup>, 2001  
Mutual Reliance Review System Receipt dated March 2<sup>nd</sup>, 2001

**Offering Price and Description:**

Sales Charge Class Units and Deferred Sales Charge Class  
Units - Net Asset Value

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

-

**Promoter(s):**

-

Project #336386

---

**Issuer Name:**

Bank of Montreal  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated March 5<sup>th</sup>, 2001  
Mutual Reliance Review System Receipt dated 6<sup>th</sup> day of  
March 2001

**Offering Price and Description:**

-

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

BMO Nesbitt Burns

**Promoter(s):**

-

Project #328420

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**Issuer Name:**

BMO Capital Trust  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated March 5<sup>th</sup>, 2001  
Mutual Reliance Review System Receipt dated 6<sup>th</sup> day of  
March, 2001

**Offering Price and Description:**

-

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

BMO Nesbitt Burns

**Promoter(s):**

-

Project #328417

---

**Issuer Name:**

Delta Systems, Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated February 28th, 2001  
Mutual Reliance Review System Receipt dated 1<sup>st</sup> day of March, 2001

**Offering Price and Description:**

-

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

Yorkton Securities Inc.  
First Associates Investments Inc.

**Promoter(s):**

-

**Project #325221**

**Issuer Name:**

Medicure Inc.  
Principal Regulator - Manitoba

**Type and Date:**

Final Prospectus dated February 28th, 2001  
Mutual Reliance Review System Receipt dated 2nd day of March, 2001

**Offering Price and Description:**

-

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

Groome Capital.com Inc.  
Wellington West Capital Inc.

**Promoter(s):**

Albert D. Friesen

**Project #317062**

**Issuer Name:**

Sixty Split Corp.  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated March 5th, 2001  
Mutual Reliance Review System Receipt dated 6<sup>th</sup> day of March, 2001

**Offering Price and Description:**

-

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

Scotia Capital Inc.

**Promoter(s):**

Scotia Capital Inc.

**Project #329108**

**Issuer Name:**

Alliance Pipeline Limited Partnership  
Principal Regulator - Alberta

**Type and Date:**

Final Short Form Shelf Prospectus dated March 1st, 2001  
Mutual Reliance Review System Receipt dated 2<sup>nd</sup> day of March 2001

**Offering Price and Description:**

-

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

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

**Promoter(s):**

-

**Project #333738**

**Issuer Name:**

CPL Long Term Care Real Estate Investment Trust  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Shelf Prospectus dated March 6th, 2001  
Mutual Reliance Review System Receipt dated 6<sup>th</sup>, of March 2001

**Offering Price and Description:**

-

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

CIBC World Markets Inc.  
TD Securities Inc.  
Merrill Lynch Canada Inc.  
National Bank Financial Inc.  
RBC Dominion Securities Inc.  
Scotia Capital Inc.  
HSBC Securities (Canada) Inc.  
Raymond James Ltd.  
Trilon Securities Corporation

**Promoter(s):**

-

**Project #334317**

**Issuer Name:**

Domtar Inc.

**Type and Date:**

Final Short Form Shelf Prospectus dated March 6th, 2001  
Mutual Reliance Review System Receipt dated 7<sup>th</sup> day of March, 2001

**Offering Price and Description:**

-

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

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

**Promoter(s):**

-

**Project #333846**

**Issuer Name:**

Emera Incorporated

**Type and Date:**

Final Short Form Base Shelf Prospectus dated February 27th, 2001

Mutual Reliance Review System Receipt dated 1<sup>st</sup>, day of March, 2001

**Offering Price and Description:**

-

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

-

**Promoter(s):**

-

Project #330956

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**Issuer Name:**

Enbridge Inc.

Principal Regulator - Alberta

**Type and Date:**

Final Short Form Shelf Prospectus dated March 6th, 2001

Mutual Reliance Review System Receipt dated 6<sup>th</sup> day of March, 2001

**Offering Price and Description:**

-

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

RBC Dominion Securities

BMO Nesbitt Burns Inc.

CIBC World Markets Inc.

HSBC Securities (Canada) Inc.

National Bank Financial Inc.

Scotia Capital Inc.

TD Securities Inc.

**Promoter(s):**

-

Project #335078

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**Issuer Name:**

Nexfor Inc.

**Type and Date:**

Final Short Form Shelf Prospectus dated March 2nd, 2001

Received 6<sup>th</sup> day of March, 2001

**Offering Price and Description:**

-

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

-

**Promoter(s):**

-

Project #333339

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**Issuer Name:**

Cartier Money Market Fund

Cartier Bond Fund

Cartier Cdn. Asset Allocation Fund

Cartier Cdn. Equity Fund

Cartier Small Cap Cdn. Equity Fund

Cartier U.S. Equity Fund

Cartier Global Equity Fund

Cartier Global Leaders RSP Fund

Principal Regulator - Quebec

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated February 23rd, 2001

Mutual Reliance Review System Receipt dated 28<sup>th</sup>, day of February, 2001

**Offering Price and Description:**

Mutual Fund Securities - Net Asset Value

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

Great Pacific Management Co. Ltd.

The Investment Centre Financial Corporation

Heritage Financial Services Ltd.

Valeurs Mobilieres Courvie Inc.

F.M.D. Brokerage Inc.

Great Pacific Asset Management Ltd.

Balanced Planning Investments Corporation

Regal Capital Planners Ltd.

Valeurs Mobilieres Dubeau Inc.

**Promoter(s):**

Cartier Mutual Fund Inc.

Project #322572 & 322752

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**Issuer Name:**

Lincluden Balanced Fund

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated March 7th, 2001

Received 7<sup>th</sup> day of March, 2001

**Offering Price and Description:**

Mutual Fund Securities - Net Asset Value

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

Lincluden Management Limited

**Promoter(s):**

-

Project #329707

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**Issuer Name:**

Scudder Life Sciences Fund

Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated February 28th, 2001

Mutual Reliance Review System Receipt dated 1<sup>st</sup> day of March, 2001

**Offering Price and Description:**

Mutual Fund Securities - Net Asset Value

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

Scudder Maxxum Co.

**Promoter(s):**

-

Project #323230

**Issuer Name:**

Vision Europe Fund

Principal Regulator - Quebec

**Type and Date:**

Final Simplified Prospectus and Annual Information Form  
dated February 28th, 2001

Mutual Reliance Review System Receipt dated 5<sup>th</sup> day of  
March, 2001

**Offering Price and Description:**

Mutual Fund Securities - Net Asset Value

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

N/A

**Promoter(s):**

-

Project #324457

## Chapter 12

# Registrations

### 12.1.1 Securities

Type	Company	Category of Registration	Effective Date
New Registration	J. F. Mackie & Company Attention: James Frederick Mackie 355 8 <sup>th</sup> Avenue South West Suite 1550 Calgary AB T2P 1C9	Investment Dealer Equities	Mar 02/01
New Registration	Grant Thornton Corporate Finance Inc. Attention: Raymond Dawson Wheeler Royal Bank Plaza, 19 <sup>th</sup> Floor South Tower 200 Bay Street, Box 55 Toronto ON M5J 2P9	Limited Market Dealer (Conditional)	Mar 05/01
New Registration	Viking Capital Corp. Attention: John Sartz 312 Oriole Parkway Toronto ON M5P 2H5	Limited Market Dealer (Conditional) Investment Counsel & Portfolio Manager	Mar 06/01
New Recognition	Jarmain Group Inc. 121 King Street West Suite 2525 Toronto ON M5H 3T9	Exempt Purchaser	Mar 05/01
New Recognition	Jarmain Group Management Corporation 121 King Street West Suite 2525 Toronto ON M5H 3T9	Exempt Purchaser	Mar 05/01
Change of Name	DLJ Canada Inc. Attention: Yves Ruest 1010 Sherbrooke Street West Suite 1100 Montreal QC H3A 2R7	From: Whalen, Beliveau & Associates Inc.  To: DLJ Canada Inc.	Mar 07/01



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## SRO Notices and Disciplinary Proceedings

### 13.1 SRO Notices and Disciplinary Proceedings

#### 13.1.1 TSE Policy 2-401 Supervision of Trading

##### POLICY 2-401 SUPERVISION OF TRADING

###### (1) Responsibility for Supervision and Compliance

For the purposes of Rule 2-401, a Participating Organization ("PO") shall supervise its employees, directors and officers and, if applicable, partners to ensure that trading in Exchange listed securities is carried out in compliance with Exchange Requirements. An effective supervision system requires a strong overall commitment on the part of the PO, through its board of directors, to develop and implement a clearly defined set of policies and procedures that are reasonably designed to prevent and detect violations of Exchange Requirements.

The board of directors of a PO is responsible for the overall stewardship of the firm with a specific responsibility to supervise the management of the firm. On an on-going basis, the board of directors must ensure that the principal risks for non-compliance with Exchange Requirements have been identified and that appropriate supervision and compliance procedures to manage those risks have been implemented.

Management of the PO is responsible for ensuring that the supervision system adopted by the PO is effectively carried out. The Head of Trading and any other person to whom supervisory responsibility has been delegated must fully and properly supervise all employees under their supervision to ensure their compliance with Exchange Requirements. If a supervisor has not followed the supervision procedures adopted by the PO, the supervisor will have failed to comply with their supervisory obligations under Rule 2-401(4).

When the Exchange reviews the supervision system of a PO (for example, when a violation occurs of Exchange Requirements), the Exchange will consider whether the supervision system is reasonably designed to prevent and detect violations of Exchange Requirements and whether the system was followed.

The compliance department is responsible for monitoring and reporting adherence to rules, regulations, requirements, policies and procedures. In doing so, the compliance department must have a compliance monitoring system in place that is reasonably designed to prevent and detect violations. The compliance department must report the results from its monitoring to the Participating Organization's management and, where appropriate, the board of directors, or its equivalent. Management and the board of directors must ensure that the compliance department is adequately funded, staffed and empowered to fulfil these responsibilities.

###### (2) Minimum Elements of a Supervision System

For the purposes of Rule 2-401, a supervision system consists of both policies and procedures aimed at preventing violations from occurring and compliance procedures aimed at detecting whether violations have occurred.

The Exchange recognizes that there is no one supervision system that will be appropriate for all POs. Given the differences among firms in terms of their size, the nature of their business, whether they are engaged in business in more than one location or jurisdiction, the experience and training of its employees and the fact that effective supervision can be achieved in a variety of ways, this Policy does not mandate any particular type or method of supervision of trading activity. Furthermore, compliance with this Policy does not relieve POs from complying with specific Exchange Requirements that may apply in certain circumstances (for example, see the requirements of Policy 2-501 and 2-502). POs must develop and implement supervision and compliance procedures that exceed the elements identified in this Policy where the circumstances warrant. For example, previous disciplinary proceedings, warning and caution letters from the Exchange or the identification of problems with the supervision system or procedures by the PO or the Exchange may warrant the implementation of more detailed or more frequent supervision and compliance procedures.

Regardless of the circumstances of the PO, however, every PO must:

1. Identify the relevant Exchange Requirements, securities laws and other regulatory requirements that apply to the lines of business in which the PO is engaged (the "Trading Requirements").
2. Document the supervision system by preparing a written policies and procedures manual. The manual must be accessible to all relevant employees. The manual must be kept current and POs are advised to maintain a historical copy.
3. Ensure that employees responsible for trading in Exchange listed securities are appropriately registered and trained and that they are knowledgeable about the Trading Requirements that apply to their responsibilities. Persons with supervisory responsibility must ensure that employees under their supervision are appropriately registered and trained. The PO should provide a continuing training and education program to ensure that its employees remain informed of and knowledgeable about changes to the rules and regulations that apply to their responsibilities.

4. Designate individuals responsible for supervision and compliance. The compliance function must be conducted by persons other than those who have supervised the trading activity.
5. Develop and implement supervision and compliance procedures that are appropriate for the PO's size, lines of business in which it is engaged and whether the PO carries on business in more than one location or jurisdiction.
6. Identify the steps a firm will take when violations of Exchange Requirements, securities laws or other regulatory requirements have been identified. This may include cancellation of the trade, increased supervision of the employee or the business activity, internal disciplinary measures and/or reporting the violation to the Exchange or other regulatory organization.
7. Review the supervision system at least once per year to ensure it continues to be reasonably designed to prevent and detect violations of Exchange Requirements. More frequent reviews may be required if past reviews have detected problems with supervision and compliance. Results of these reviews must be maintained for at least five years.
8. Maintain the results of all compliance reviews for at least five years.
9. Report to the Board of Directors or, if applicable, the partners, a summary of the compliance reviews and the results of the supervision system review. These reports must be made at least annually. If the Exchange or the PO has identified significant issues concerning the supervision system or compliance procedures, the Board of Directors or, if applicable, the partners, must be advised immediately.

compliance procedures in relation to all the Rules that apply to their business activities.

The Exchange recognizes that the requirements identified in the following table may be capable of being performed in different ways. For example, one PO may develop an automated exception report and another may rely upon a physical review of the relevant documents. The Exchange recognizes that either approach may comply with this Policy provided the procedure used is reasonably designed to detect violations of the relevant Rule. The information sources identified in the following table are therefore merely indicative of the types of information sources that may be used.

**(3) Minimum Compliance Procedures for Trading on the Exchange**

A PO must develop and implement compliance procedures for trading in listed securities on the Exchange that are appropriate for its size, the nature of its business and whether it carries on business in more than one location or jurisdiction. Such procedures should be developed having regard to the training and experience of its employees and whether the firm or its employees have been previously disciplined or warned by the Exchange concerning violations of Exchange Requirements.

In developing compliance procedures, PO's must identify any exception reports, trading data and/or other documents to be reviewed. In appropriate cases, relevant information that cannot be obtained or generated by the PO should be sought from sources outside the firm including from the Exchange.

The following table identifies minimum compliance procedures for monitoring trading in listed securities on the Exchange that must be implemented by a PO. The compliance procedures and the Rules identified below are not intended to be an exhaustive list of the Rules and procedures that must be complied with in every case. POs are encouraged to develop

## Minimum Compliance Procedures for Trading Supervision

RULES & POLICIES	COMPLIANCE REVIEW PROCEDURES	POTENTIAL INFORMATION SOURCES	FREQUENCY & SAMPLE SIZE
<b>TIME CLOCKS</b> Rule 2-404	<ul style="list-style-type: none"> <li>Confirm accuracy of time clocks and computer network times.</li> <li>Remove unused or out of order machines</li> </ul>	<ul style="list-style-type: none"> <li>Time Clocks</li> <li>Trading Terminal system time</li> <li>OMS system time</li> </ul>	<ul style="list-style-type: none"> <li>Quarterly</li> </ul>
<b>ORDER TICKET REVIEW</b> Rule 2-404	<ul style="list-style-type: none"> <li>Ensure the presence of:               <ul style="list-style-type: none"> <li>- time stamp</li> <li>- quantity</li> <li>- price (if Limit Order)</li> <li>- security name or symbol</li> <li>- identity of trader (initial or sales code)</li> <li>- Client Name or Account Number</li> <li>- Special instructions from any client</li> </ul> </li> <li>For CFOD orders, ensure the presence of second time stamp and clear quantity or price changes.</li> </ul>	<ul style="list-style-type: none"> <li>Order Tickets</li> <li>The Diary List (formerly the CATS Diary List)</li> </ul>	<ul style="list-style-type: none"> <li>Quarterly</li> <li><del>Check original client tickets for one day, but not less than 25 tickets.</del> <u>Check 25 original client tickets selected randomly over the quarter.</u></li> </ul>
<b>ELECTRONIC RECORDS</b> Rule 2-404	Verify that electronically stored order information is: <ul style="list-style-type: none"> <li>- Being stored</li> <li>- Retrievable</li> <li>- Accurate</li> </ul>	<ul style="list-style-type: none"> <li>Firm and service bureau systems</li> </ul>	<ul style="list-style-type: none"> <li>Annually</li> </ul>
<b>MANIPULATIVE AND DECEPTIVE TRADING</b> Rule 4-202 Policy 4-202 (a)(b)&(c)	Review trading activity for: <ul style="list-style-type: none"> <li>- Wash trading.</li> <li>- Unrelated accounts that may demonstrate a pattern of crossing securities.</li> <li>- Off-market transactions which require execution on the Exchange.</li> </ul>	<ul style="list-style-type: none"> <li>Order Tickets</li> <li>The Diary List (formerly the CATS Diary List)</li> <li>Trading blotters</li> <li>New Client Application Forms.</li> <li>Monthly Statements</li> </ul>	<ul style="list-style-type: none"> <li>Quarterly</li> <li>Review sampling period should extend over several days.</li> </ul>
<b>ESTABLISHING ARTIFICIAL PRICES</b> Rule 4-202 Policy 4-202 Policy 4-202 (2) (e)(f)&(g) Pending Rule – See Regulatory Notice 2000-034	<ul style="list-style-type: none"> <li>Review tick setting trades entered at or near the close.</li> <li>Look for specific account trading patterns in tick setting trades.</li> <li>Review accounts for motivation to influence the price.</li> <li>Review separately, tick setting trades by Market on Close (MOC) or index related orders.</li> </ul>	<ul style="list-style-type: none"> <li>Order Tickets</li> <li>The Diary List (formerly the CATS Diary List)</li> <li>Equity History Report<sup>1</sup></li> <li>Closing Report from TSERS.<sup>2</sup></li> <li>New Client Application Forms</li> </ul>	<ul style="list-style-type: none"> <li>Monthly</li> <li>Emphasis on trades at the end of a month, quarter or year. (for trades which are not MOC or index related)</li> <li>For MOC or index related orders, check for reasonable price movement.</li> </ul>

<sup>1</sup> The Equity History Report of all trades and quotes will be available on the TSE Market Data Website as of December 11, 2000.

<sup>2</sup> The Closing Report will be delivered to PO's commencing December 1, 2000.

SRO Notices and Disciplinary Decisions

RULES & POLICIES	COMPLIANCE REVIEW PROCEDURES	POTENTIAL INFORMATION SOURCES	FREQUENCY & SAMPLE SIZE
<p><b>GREY OR WATCH LIST</b></p> <p>Rule 4-202</p>	<p>Review for:</p> <ul style="list-style-type: none"> <li>- Any trading of Grey List issues by proprietary or employee accounts.</li> </ul>	<ul style="list-style-type: none"> <li>• Order Tickets</li> <li>• The Diary List (formerly the CATS Diary List)</li> <li>• Trading blotters</li> <li>• Firm Grey List or Watch List</li> <li>• Monthly statements</li> </ul>	<ul style="list-style-type: none"> <li>• Daily</li> </ul>
<p><b>RESTRICTED LIST</b></p> <p>Rule 4-202 Rule 4-303 Policy 4-303 Rule 4-304</p>	<p>Review for:</p> <ul style="list-style-type: none"> <li>- Any trading of Restricted List issues done by proprietary or employee accounts.</li> </ul>	<ul style="list-style-type: none"> <li>• Order Tickets</li> <li>• The Diary List (formerly the CATS Diary List)</li> <li>• Trading blotters</li> <li>• Firm Restricted List</li> <li>• Monthly statements</li> </ul>	<ul style="list-style-type: none"> <li>• Daily</li> </ul>
<p><b>FRONT RUNNING CUSTOMER ORDERS</b></p> <p>Rule 4-204 Policy 4-204</p>	<p>Review trading activity of proprietary and employee accounts prior to:</p> <ul style="list-style-type: none"> <li>- Large client orders.</li> <li>- Transactions that would impact the market.</li> </ul>	<ul style="list-style-type: none"> <li>• Order Tickets</li> <li>• The Diary List (formerly the CATS Diary List)</li> <li>• Equity History Report</li> </ul>	<ul style="list-style-type: none"> <li>• Quarterly</li> <li>• Sample period should extend over several days.</li> </ul>
<p><b>SALE FROM CONTROL BLOCKS</b></p> <p>Rule 4-305 Policy 4-305</p>	<ul style="list-style-type: none"> <li>• Review all known sales from control blocks to ensure regulatory requirements have been met.</li> <li>• Review large trades to determine if they are undisclosed sales from control block.</li> </ul>	<ul style="list-style-type: none"> <li>• Order Tickets</li> <li>• Trading blotters</li> <li>• New Client Application Form</li> <li>• OSC Bulletin</li> <li>• TSE listed company bulletins</li> </ul>	<ul style="list-style-type: none"> <li>• As required.</li> <li>• Sample trades over 250,000 shares</li> </ul>
<p><b>ORDER HANDLING RULES</b></p> <p>Rule 4-402 Policy 4-402 Rule 4-502 Policy 4-502-</p>	<ul style="list-style-type: none"> <li>- Review Customer Principal trades of 5000 shares and under for compliance with Order Exposure &amp; Customer Principal Transaction Rules.</li> </ul>	<ul style="list-style-type: none"> <li>• Order Tickets</li> <li>• Equity History Report</li> <li>• Trading blotters</li> <li>• The Diary List (formerly the CATS Diary List)</li> </ul>	<ul style="list-style-type: none"> <li>• Quarterly</li> <li>• Sample specifically: <ul style="list-style-type: none"> <li>- Trader managed orders under 1200 shares.</li> <li>- Trader managed orders between 1200 and up to and including 5000 shares.</li> <li>- Verify that orders of 1200 shares and under are not arbitrarily withheld from the market.</li> </ul> </li> </ul>
<p><b>TRADE MARKERS</b></p> <p>Rule 4-403 Policy 4-403</p>	<ul style="list-style-type: none"> <li>• Verify that appropriate client, employee and proprietary trade markers are being employed. Specifically: <ul style="list-style-type: none"> <li>- N</li> <li>- NX</li> <li>- R</li> </ul> </li> <li>• Ensure that client orders are <u>not</u> being improperly entered with the pro markers.</li> </ul>	<ul style="list-style-type: none"> <li>• Order Tickets</li> <li>• Trading Blotters</li> <li>• The Diary List (formerly the CATS Diary List)</li> </ul>	<ul style="list-style-type: none"> <li>• Quarterly</li> <li>• Sample should include one full day of trading for orders not entered through an OMS system.</li> </ul>
<p><b>TRADE DISCLOSURES</b></p> <p>Rule 4-502 Policy 4-502</p>	<p>Verify appropriate trade disclosures are made on client confirmations.</p> <ul style="list-style-type: none"> <li>-- principal</li> <li>-- average price</li> <li>-- related issuer</li> </ul>	<ul style="list-style-type: none"> <li>• Trading Blotters</li> <li>• Client Confirmations</li> <li>• The Diary List (formerly the CATS Diary List)</li> <li>• Order Tickets</li> </ul>	<ul style="list-style-type: none"> <li>• Quarterly</li> <li>• Sample should include non-OMS trades</li> </ul>

**SRO Notices and Disciplinary Decisions**

RULES & POLICIES	COMPLIANCE REVIEW PROCEDURES	POTENTIAL INFORMATION SOURCES	FREQUENCY & SAMPLE SIZE
<p><b>NORMAL COURSE ISSUER BIDS</b></p> <p>Rule 6-501 Policy 6-501</p>	<p>Review NCIBs for:</p> <ul style="list-style-type: none"> <li>- Maximum stock purchase limits of 5% in 1 year or 2% in 30 days are observed.</li> <li>- Purchases for NCIBs are not occurring while a sale from control is being made.</li> <li>- Purchases are not made on upticks.</li> <li>- Trade Reporting to TSE (if firm reports on behalf of issuer).</li> </ul>	<ul style="list-style-type: none"> <li>• Order Tickets</li> <li>• The Diary List (formerly the CATS Diary List)</li> <li>• Trading Blotters</li> <li>• New Client Application Form</li> </ul>	<ul style="list-style-type: none"> <li>• Quarterly</li> </ul>

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## Chapter 25

# Other Information

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