

The Ontario Securities Commission

OSC Bulletin

September 27, 2002

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

The Ontario Securities Commission

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Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

SEPTEMBER 27, 2002

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

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

The Harry S. Bray Hearing Room
Ontario Securities Commission
Cadillac Fairview Tower
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20 Queen Street West
Toronto, Ontario
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Derek Brown	—	DB
Robert W. Davis, FCA	—	RWD
Harold P. Hands	—	HPH
Robert W. Korthals	—	RWK
Mary Theresa McLeod	—	MTM
H. Lorne Morphy, Q.C.	—	HLM
Robert L. Shirriff, Q.C.	—	RLS

SCHEDULED OSC HEARINGS

October 10, 2002 9:00 a.m. - 5:00 p.m. **Lydia Diamond Explorations of Canada, Jurgen von Anhalt, Emilia von Anhalt**

October 11, 2002 8:00 a.m. - 3:30 p.m. s. 127
M. Britton in attendance for Staff

October 15, 2002 2:00 p.m. - 6:30 p.m. Panel: PMM / HLM / MTM

October 16, 2002 8:00 a.m. - 2:30p.m.

October 4, 2002 9:30 a.m. **Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein, Robert Topol**

s. 127
in attendance for Staff
Panel: HIW

October 21 - 25, 2002 **Malcolm Robert Bruce Kyle & Derivative Services Inc.**

10:00 a.m. S. 8(4) and 21.7
J. Superina in attendance for Staff
Panel: HLM / RLS

October 28 to November 8, 2002 **Teodosio Vincent Pangia, Agostino Capista and Dallas/North Group Inc.**

10:00 a.m. s. 127
Y. Chisholm in attendance for Staff

November 11 to December 6, 2002 **Brian Costello**
10:00 a.m. s. 127
H. Corbett in attendance for Staff
Panel: PMM / KDA / MTM

November 18 to December 4, 2002 **Michael Goselin, Irvine Dyck, Donald Mccrory and Roger Chiasson**

10:00 a.m.

s. 127

T. Pratt in attendance for Staff

Panel: HLM

November 18 & 25, 2002
9:00 a.m. - 12:00 p.m.

YBM Magnex International Inc., Harry W. Antes, Jacob G. Bogatin, Kenneth E. 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)

November 19, 2002
9:00 a.m. - 3:00 p.m.

November 20 - 22, 27 - 29, 2002
9:30 a.m. - 4:30 p.m.

s.127

K. Daniels/M. Code/J. Naster/I. Smith in attendance for staff.

Panel: HIW / DB / RWD

March 24, 25, 26 & 27, 2003

Edwards Securities Inc., David Gerald Edwards, David Frederick Johnson, Clansman 98 Investments Inc. and Douglas G. Murdock

10:00 a.m.

s. 127

A. Clark in attendance for Staff

Panel: PMM

First Federal Capital (Canada) Corporation and Monter Morris Friesner

Global Privacy Management Trust and Robert Cranston

Irvine James Dyck

Ricardo Molinari, Ashley Cooper, Thomas Stevenson, Marshall Sone, Fred Elliott, Elliott Management Inc. and Amber Coast Resort Corporation

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

Offshore Marketing Alliance and Warren English

Philip Services Corporation

Rampart Securities Inc.

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

Southwest Securities

ADJOURNED SINE DIE

Buckingham Securities Corporation, Lloyd Bruce, David Bromberg, Harold Seidel, Rampart Securities Inc., W.D. Latimer Co. Limited, Canaccord Capital Corporation, BMO Nesbitt Burns Inc., Bear, Stearns & Co. Inc., Dundee Securities Corporation, Caldwell Securities Limited and B2B Trust

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

1.2 Notices of Hearing

1.2.1 Patrick Fraser Kenyon Pierrepont Lett, Milehouse Investment Management Limited, Pierrepont Trading Inc., BMO Nesbitt Burns Inc., John Steven Hawkyard and John Craig Dunn

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

AND

IN THE MATTER OF
PATRICK FRASER KENYON PIERREPONT LETT,
MILEHOUSE INVESTMENT MANAGEMENT LIMITED,
PIERREPONT TRADING INC.,
BMO NESBITT BURNS INC., JOHN STEVEN HAWKYARD
AND JOHN CRAIG DUNN

NOTICE OF HEARING
(Section 127)

TAKE NOTICE that the Ontario Securities Commission will hold a hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended at the offices of the Commission, located at 20 Queen Street West, Toronto, Ontario, in the Large Hearing Room, 17th Floor, on September 25, 2002 at 10:00 a.m. or as soon thereafter as the hearing can be held:

TO CONSIDER whether, pursuant to sections 127(1) and 127.1 of the Act, it is in the public interest for the Commission:

- (a) to make an order that trading in securities by Lett cease permanently or for such period as the Commission may direct;
- (b) to make an order that the respondents be reprimanded;
- (c) to make any order that registrations of Dunn and Hawkyard be suspended for a period of time or terminated permanently;
- (d) to make any order that Lett, resign any positions that he holds as a director or officer of an issuer;
- (e) to make an order that Lett and Dunn be prohibited from becoming or acting as a director or officer of any issuer;
- (f) to make an order that BMO Nesbitt Burns submit to a review of its practices and procedures and institute such changes as may be ordered by the Commission;
- (g) to make an order that the respondents pay costs to the Commission; and,
- (h) such other order or orders as Staff may request and the Commission consider appropriate.

BY REASON OF the allegations set out in the Statement of Allegations of Staff of the Commission and such additional allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that any party to the proceeding may be represented by counsel if that party attends or submits evidence at the hearing;

AND TAKE FURTHER NOTICE that upon the failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party and such party is not entitled to any further notice of the proceeding.

September 18, 2002.

"John Stevenson"

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

AND

**IN THE MATTER OF
PATRICK FRASER KENYON PIERREPONT LETT,
MILEHOUSE INVESTMENT MANAGEMENT LIMITED,
PIERREPONT TRADING INC.,
BMO NESBITT BURNS INC., JOHN STEVEN HAWKYARD
AND JOHN CRAIG DUNN**

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission make the following allegations:

I. THE RESPONDENTS

1. Patrick Fraser Kenyon Pierrepont Lett is an individual residing in Ontario and is, and was, between January 1996 and October 1999 (the "material period"), the President, a Director and the directing mind of Milehouse Investment Management Limited and Pierrepont Trading Inc. (collectively referred to as the "Companies").
2. Each of the Companies is incorporated under the laws of Ontario. Neither of the Companies has been registered in any capacity under the Securities Act.
3. Lett was sanctioned by the Commission in June of 1993. Lett was named as a respondent *In the matter of Gordon Capital Corporation*. Lett exposed Gordon Capital to risk and participated in transactions which placed Gordon Capital in breach of Ontario securities law and the By-Law's of the Toronto Stock Exchange. In addition, Lett misled Staff of the Commission before approaching Staff to cooperate in its investigation. The Commission ordered that Lett's registration be suspended for a six month period and that Lett complete a number of securities-related courses as a condition of future registration.
4. In April of 1998, the Alberta Securities Commission issued an Order to Freeze Property in the Milehouse account at Nesbitt in an attempt to satisfy an outstanding Settlement Agreement it had entered into with Lenzburg Capital Corporation, Lenzburg International Ltd. and William Lenz (the "Respondents"). The Respondents had deposited \$4,500,000 into the Milehouse account. On April 22, 1998, the Commission issued a similar direction. Eventually, Lett transferred out all the funds in the Milehouse account, except those that had been deposited by the Respondents, in accordance with the freeze orders.
5. The Respondents solicited investors to provide funds for investments that constituted trades which were distributions. Their actions breached the Alberta Securities Act and were contrary to the public interest as the Respondents were not registered and a preliminary prospectus and prospectus were not filed with the ASC as required. According to the Settlement Agreement, the Respondents were to return \$1,850,000 to the investors by August 30, 1997. The Order to Freeze Property was issued because the money was not returned.
6. Lett is currently not registered under the Act and was not registered during the material period. He was previously registered as follows:
 - i) from 1989 to 1995, with Trafalgar Capital Management Inc., which was registered as an Adviser in the categories of Investment Counsel and Portfolio Manager. Lett was registered as an Investment Counsel and Portfolio Manager, and, during the same time period, approved as a Director;
 - ii) in January 1991, approved as a Director of Arbitrage Risk Management Ltd., a Limited Market Dealer;
 - iii) Lett's registrations were suspended in June 1993 for a six month period pursuant to the Settlement Agreement in *Gordon Capital*;
 - iv) Lett's registration as a Director and Investment Counsel and Portfolio Manager with Trafalgar was suspended on June 15, 1995 due to involuntary non-renewal of the registration of Trafalgar; and,

v) in June 1994, under the *Commodity Futures Act* R.S.O. 1990, chapter C.20, as a Director and Counselling Officer with Trafalgar, which was registered as an Adviser in the category of Commodity Trading Manager. Lett's registration was suspended on June 15, 1995 due to the involuntary non-renewal of the registration of Trafalgar.

7. Lett has never been registered as a limited market dealer.
8. BMO Nesbitt Burns Inc. is registered as a Broker/Investment Dealer under the Act.
9. John Craig Dunn was registered under the Act from October 1994 to August 2002 as a trading officer with Nesbitt at its branch located at 1 Robert Speck Parkway, Mississauga, Ontario. From July 1986 to February 2002, Dunn was the Branch Manager of the Nesbitt branch located at 1 Robert Speck Parkway, Mississauga, Ontario.
10. John Steven Hawkyard was registered under the Act from October 1989 to April 1997 as a salesperson of Bank of Montreal Investment Management Limited, a dealer in the category of Mutual Fund Dealer. From March 1996 to April 1997, Hawkyard was the Manager of the Bank of Montreal - Private Banking Services Branch located at 1 Robert Speck Parkway, Mississauga, Ontario.
11. From November 1997 to August 2002, Hawkyard was registered as a salesperson of Nesbitt working out of the Nesbitt branch located at 1 Robert Speck Parkway, Mississauga, Ontario, the branch which was managed by Dunn.

II. OVERVIEW OF STAFF'S ALLEGATIONS

12. In engaging in the conduct described below, the respondents have acted contrary to Ontario securities law and the public interest.
13. As set out paragraphs 17-23 below, Lett and his Companies traded in securities without being registered, contrary to section 25(1)(a) of the Act. Lett and his Companies acted as "market intermediaries" by engaging or holding themselves out as engaging in the business of trading in securities.
14. As set out paragraphs 24-27 below, Dunn provided or caused others to provide Lett with letters that contained inaccurate representations (referred to as the "Proof of Funds Letters") regarding the accounts of Milehouse and Pierrepont at Nesbitt (referred to collectively as the "Lett Accounts"). Dunn's actions, which included preparing and signing such letters and causing others to prepare and sign these letters, were contrary to the public interest.
15. Hawkyard, while employed at the Bank of Montreal and later at Nesbitt, under the direction of Dunn, prepared and signed Proof of Funds Letters and caused others to prepare and sign these letters, contrary to the public interest.
16. As set out paragraph 28 below, Nesbitt failed to adequately supervise the Lett Accounts and Dunn's actions in relation to the Lett Accounts, contrary to the public interest and contrary to sections 1.2, 1.5(a) and 3.1 of Ontario Securities Commission Rule 31-505.

III. UNREGISTERED TRADING

17. In late 1995, Lett opened accounts in the name of Milehouse at the Mississauga Branch and at the Nesbitt branch located at 1 First Canadian Place, Toronto, Ontario. Lett also opened an account in the name of Pierrepont Trading Inc. (collectively, these accounts will be referred to as the "Lett Accounts"). Dunn was the Investment Advisor responsible for the Milehouse and Pierrepont accounts at the Mississauga Branch.
18. Seven investors (the "Investors") deposited approximately US \$21 million into the Lett Accounts at Nesbitt or the Milehouse account at the Bank of Montreal for the purpose of investing in an intended trading program.

19. The Investors were as follows:

INVESTOR	DESCRIPTION	AMOUNT INVESTED
1	Constantin Nasses - A resident of Monaco who was charged with insider trading in the United States in 1986 but has failed to respond to the charges.	US \$8,000,000
2	V.A. Velarde - A resident of Virginia who, in June of 1999, was charged by the Securities and Exchange Commission with aiding and abetting two lawyers in a prime bank scheme. This individual settled the charges.	US \$5,200,000
3	Lenzburg Capital Corp. - An Alberta corporation who was later subject to a freeze order, obtained by the Alberta Securities Commission for failing to return funds to investors, as required pursuant to the terms set out in a Settlement Agreement.	US \$4,500,000
4	Greater Ministries Interantional Inc. ("GMI") - A Florida corporation purportedly involved in evangelical missionary work. In 2001, the founder of this organization was convicted of fraud and conspiracy.	US \$1,275,000
5	A resident of New York.	US \$1,000,000
6	A resident of New York.	US \$1,000,000
7	A resident of Florida.	US \$ 250,000

20. Between January 1996 and October 1999, Dunn provided and caused others to provide Lett with approximately 18 Proof of Funds Letters regarding the accounts of Milehouse and Pierrepoint at Nesbitt. Dunn knew that the Proof of Funds Letters would be provided to third parties regarding the status of the Lett Accounts.
21. The Proof of Fund Letters were provided to a third party and were a necessary component of the intended trading "program" scam. This Program was to include the purchase on margin of a bank guarantee or debenture, issued by a foreign bank, through the Lett Accounts at Nesbitt. The proceeds from the purchase were to be directed to the third party who was represented as having access to a high yield trading program. The high yield trading program was represented as involving the purchase and sale of medium term bank notes. The bank notes were purchased at a substantial discount based upon a commitment issued by the United States Treasury Department. Substantial profits were to be earned because of the ability of the commitment holder to purchase at a discount. A portion of the profits on the subsequent sale of the bank notes were represented to be used for projects associated with the United States government (ie an American foreign policy initiative) or for humanitarian purposes. The balance of the profits would be left in the hands of the commitment holder. Profits in the range of 100% to 480% would allegedly be earned by the commitment holder which would be shared with Lett and the parties who would have provided funds in the first instance.
22. Lett did not purchase a bank guarantee or debenture and was never able to access the high yield trading program. However, Lett, Milehouse and Pierrepoint acted in furtherance of a trade by accepting the funds from the Investors, attempting to forward the funds to purchase the bank guarantee or debenture, (the proceeds would be used to access the high yield trading program), and by repeatedly providing the Proof of Funds letters to third parties.
23. During the material period, Milehouse and Pierrepoint had no discernible business activity other than its involvement in the intended trading program.

IV. PROOF OF FUNDS LETTERS – INACCURATE REPRESENTATIONS

24. During the material period, Dunn prepared and signed Proof of Fund Letters and caused others to prepare and sign such letters.
25. During the material period, Hawkyard, while employed at the Bank of Montreal and later at Nesbitt, under the direction of Dunn, prepared and signed Proof of Funds Letters and caused others to prepare and sign these letters. Some of the Proof of Funds Letters were written on Bank of Montreal letterhead and attempted to confirm the availability of funds in the Lett Accounts at Nesbitt.
26. The Proof of Funds Letters were prepared at the request of Lett. At times, Lett provided draft wording for these letters.

27. The Proof of Funds Letters contained the following inaccurate representations regarding the Lett Accounts:

	INACCURATE REPRESENTATION	FACT
i)	The letters indicated that, as of a certain date, a stated amount of money (ranging from US \$10 million to US \$100 million) was in the Lett Accounts or was available in the Lett Accounts.	In all cases, the stated amount of money was not in the Lett Accounts.
ii)	Some of the letters indicated that, for a period of time, the stated amount of money would be “held” in the Lett Accounts.	Nesbitt did not have a mechanism to place a “hold” on funds in the Lett Accounts.
iii)	Some of the letters attested to the legitimacy of the funds; for example, the letters stated that the funds were “clear”, “clean” “of non-criminal origin”, “unencumbered” or “legitimately earned or obtained”.	Neither Nesbitt, Dunn nor Hawkyard attempted to verify the source of the funds that were deposited into the Lett Accounts.

V. FAILURE TO SUPERVISE

28. Nesbitt failed to adequately supervise the Lett Accounts and Dunn’s actions in relation to the Lett Accounts, despite numerous indications that, at a minimum, close supervision was required:

- i. Nesbitt was aware that, in 1993, Lett had been the subject of an Ontario Securities Commission proceeding and was sanctioned.
- ii. In early 1996, the Investment Adviser for the First Canadian Place account signed a letter drafted by Lett in which Lett was seeking to present an inflated impression of the value of assets held in his account. Nesbitt’s Branch Manager and Retail Compliance Officer became aware of this occurrence at the time and the Investment Adviser was instructed never to author such a letter again.
- iii. In 1996, a member of the Investigation Department of the Toronto Stock Exchange advised a compliance officer at Nesbitt that he had learned of an inquiry by in relation to Lett and advised Nesbitt that it had shut down an operation that involved Lett and was dealing in prime bank notes.
- iv. On April 16, 1998, the Alberta Securities Commission issued an Order to Freeze Property in the Milehouse account at the Mississauga Branch with respect to the deposit of funds by Lenzburg Capital Corporation in the Milehouse account. On May 22, 1998, the Ontario Securities Commission issued a similar direction.
- v. In May 1998, Nesbitt became aware that Lett was depositing funds from certain of the Investors into the Milehouse account.
- vi. In May 1998, Nesbitt became aware that Dunn, in March 1998, had agreed in writing to terms and conditions with respect to funds deposited by third parties into the Milehouse account. One of the terms referred to funds remaining credited to the Milehouse account at Nesbitt for 1 year. After becoming aware of these terms, Nesbitt permitted the bulk of the funds in the Lett Accounts, other than the Lenzburg funds, to be transferred out.
- vii. In May 1998, Dunn advised a Senior Compliance Officer that he signed the letter referred to in subsection vi. above, simply because he was asked to do so by Lett.
- viii. In May 1998, a Senior Compliance Officer recommended that the Lett accounts be closed.
- ix. In May 1998, Nesbitt placed restrictions on Dunn and his actions in relation to the Lett Accounts. Dunn was told not to sign any letters unless the letter was approved by Compliance or legal department and was told that Lett could not deposit funds into the Milehouse account unless Nesbitt was satisfied that the funds belonged to Milehouse or Lett. In spite of the restrictions, Dunn continued to prepare, sign and caused others to sign Proof of Funds Letters. The restrictions were ineffectual because Nesbitt relied on Dunn to provide information.

29. Staff reserves the right to make such further and other allegations as the Commission may permit.

September 18, 2002.

1.3 News Releases

1.3.1 OSC Commences Proceedings in Respect of Patrick Fraser Kenyon Pierrepont Lett, Milehouse Investment Management Limited, Pierrepont Trading Inc., BMO Nesbitt Burns Inc., John Steven Hawkyard and John Craig Dunn

**FOR IMMEDIATE RELEASE
September 18, 2002**

**OSC COMMENCES PROCEEDINGS
IN RESPECT OF PATRICK FRASER KENYON
PIERREPONT LETT,
MILEHOUSE INVESTMENT MANAGEMENT LIMITED,
PIERREPONT TRADING INC.,
BMO NESBITT BURNS INC.,
JOHN STEVEN HAWKYARD AND
JOHN CRAIG DUNN**

TORONTO – The Ontario Securities Commission today issued a Notice of Hearing and Statement of Allegations in respect of Milehouse Investment Management Limited, Pierrepont Trading Inc., Patrick Fraser Kenyon Pierrepont Lett, the President and director of Milehouse and Pierrepont, and BMO Nesbitt Burns Inc., John Craig Dunn and John Steven Hawkyard.

The first appearance in this matter will be held at 10:00 a.m. on September 25, 2002, in the Large Hearing Room of the Commission located on the 17th Floor, 20 Queen Street West, Toronto, Ontario. The purpose of the hearing is to set a date for the hearing in respect of Lett, Milehouse, Pierrepont, Dunn and Hawkyard. A second date will be set to request the Commission's approval of settlement agreement between Staff and Nesbitt.

Allegations Relate to Trading without Registration, Failure to Adequately Supervise

The allegations relate to the conduct of the respondents between January 1996 and October 1999. Staff allege that Lett and his companies, Milehouse and Pierrepont, traded in securities without being registered, contrary to section 25(1)(a) of the Act. Dunn, who was the branch manager and investment adviser who managed the Milehouse and Pierrepont accounts at Nesbitt, acted contrary to the public interest by providing and causing others to provide Lett with letters that contained inaccurate representations regarding the accounts of Milehouse and Pierrepont at Nesbitt. Hawkyard, under the direction of Dunn and Lett, also provided or caused others to provide letters to Lett that contained inaccurate representations regarding the Milehouse and Pierrepont accounts at Nesbitt. Staff also allege that Nesbitt failed to adequately supervise the Milehouse and Pierrepont accounts and Dunn's actions in relation to these accounts, contrary to the public interest and contrary to sections 1.2, 1.5(a) and 3.1 of the Ontario Securities Commission Rule 31-505.

Copies of the Notice of Hearing and Statement of Allegations are available on the Commission's website, www.osc.gov.on.ca, or from the offices of the Commission at 20 Queen Street West, 19th Floor, Toronto.

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416-593-8314
1-877-785-1555 (Toll Free)

1.3.2 OSC Commences Proceedings in Respect of Patrick Fraser Kenyon Pierrepont Lett, Milehouse Investment Management Limited, Pierrepont Trading Inc., BMO Nesbitt Burns Inc., John Steven Hawkyard and John Craig Dunn

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

**FOR IMMEDIATE RELEASE
September 23, 2002**

**OSC COMMENCES PROCEEDINGS
IN RESPECT OF PATRICK FRASER KENYON
PIERREPONT LETT,
MILEHOUSE INVESTMENT MANAGEMENT LIMITED,
PIERREPONT TRADING INC.,
BMO NESBITT BURNS INC.,
JOHN STEVEN HAWKYARD AND
JOHN CRAIG DUNN**

TORONTO – The Ontario Securities Commission has approved the settlement agreement reached between Staff of the Commission and BMO Nesbitt Burns Inc. The agreement follows an enforcement action initiated Wednesday, September 18, 2002, in which OSC staff alleged that the respondent acted contrary to the public interest and contrary to Ontario securities law.

Robert W. Davis, Chair of the OSC panel that approved the settlement, told the hearing that “it was in the public interest” to approve the settlement agreement.

BMO Nesbitt Burns Inc. has agreed to the following sanctions:

- Nesbitt will make a voluntary payment to the Commission in the amount of \$100,000.
- Nesbitt is reprimanded by the Commission.
- Nesbitt will identify and implement new policies with respect to internal compliance reviews and non-trading activities in clients' accounts to address concerns identified by Staff. Nesbitt will report to staff within six months of the date of the order of the Commission approving this settlement agreement identifying the policies and procedures that have been implemented.
- Nesbitt will pay \$45,000 in respect of the costs of the investigation.

Copies of the Notice of Hearing issued by the Ontario Securities Commission, Statement of Allegations filed by Commission Staff, the Settlement Agreement and the Order made by the Commission are available at www.osc.gov.on.ca.

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

**1.3.3 Search Underway for Chair and Members of
New Auditor Oversight Organization**

**FOR IMMEDIATE RELEASE
September 24, 2002**

**SEARCH UNDERWAY FOR CHAIR AND MEMBERS OF
NEW AUDITOR OVERSIGHT ORGANIZATION**

TORONTO – A cross-Canada search is underway for candidates to serve as Chair of the Canadian Public Accountability Board (CPAB), announced David Brown, Chair of the Ontario Securities Commission and the Chair of the Council of Governors of the CPAB. A related search to fill the other seven Board Member positions will be concluded following the identification of the Chair.

The CPAB is a new independent organization established to oversee auditors of public companies. The Council of Governors also includes the Chairs of the B.C. and Quebec securities commissions, the Superintendent of Financial Institutions Canada and the President and CEO of The Canadian Institute of Chartered Accountants.

“We are looking for an outstanding individual who is known for his or her integrity and impeccable professional history,” said Brown. “Canada’s public and private sectors have joined together in light of recent events to recognize and address critical issues of confidence and sound practices in the areas of governance, auditing and accounting. The Chair of the CPAB will play a key role in this effort to enhance investor confidence in Canada.”

The mission of the CPAB is to contribute to public confidence in the integrity of financial reporting of Canadian public companies by promoting high quality, independent auditing. The members of the Board of the CPAB will ensure appropriate transparency in the conduct of its activities and oversee the design, implementation and enforcement of a system of independent oversight and inspection of auditors of Canada’s public companies.

Ideal candidates will be well-informed about current financial reporting and corporate governance issues and be a credible trustee and advocate for the public.

The Council of Governors also announced that it has retained Korn/Ferry International to assist in the search. Korn/Ferry will leverage its strong nation-wide network and global expertise to attract the highest calibre candidates.

Full details regarding the Chair and Board member positions will be available on Korn/Ferry’s website at cpab.kornferry.com.

To apply: Elan Pratzner
Regional Managing Director,
Canada
Korn/Ferry International
416-365-1841
Elan.Pratzner@kornferry.com

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

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

**1.3.4 OSC Proceedings in the Matter of
Terry G. Dodsley**

**FOR IMMEDIATE RELEASE
September 24, 2002**

**OSC PROCEEDINGS IN THE MATTER OF
TERRY G. DODSLEY**

TORONTO - The Ontario Securities Commission hearing in the matter of Terry G. Dodsley, adjourned September 13, 2002, will resume on Thursday, September 26, 2002 at 9:30 a.m. in the Main Hearing Room, 17th Floor, 20 Queen Street West, Toronto, Ontario.

Copies of the Notice of Hearing and Statement of Allegations are available on the Commission's website, www.osc.gov.on.ca, or from the offices of the Commission at 20 Queen Street West, 19th Floor, Toronto.

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

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

**1.3.5 OSC Proceedings in Respect of Patrick Fraser
Kenyon Pierrepont Lett, Milehouse Investment
Management Limited, Pierrepont Trading Inc.,
John Steven Hawkyard and John Craig Dunn**

**FOR IMMEDIATE RELEASE
September 24, 2002**

**OSC PROCEEDINGS IN RESPECT OF
PATRICK FRASER KENYON PIERREPONT LETT,
MILEHOUSE INVESTMENT MANAGEMENT LIMITED,
PIERREPONT TRADING INC.,
JOHN STEVEN HAWKYARD AND
JOHN CRAIG DUNN**

TORONTO – The Ontario Securities Commission has adjourned the hearing of this matter to a date to be determined by the Secretary's office.

Copies of the Order and Statement of Allegations are available from the Commission's website at www.osc.gov.on.ca or from the Commission, 20 Queen Street West, 19th Floor, Toronto.

For Media Inquiries: Eric Pelletier
Director, Communications
416-595-8913

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

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Jaime Arlindo Vilas-Boas - Director's Decision

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

AND

**IN THE MATTER OF
JAIME ARLINDO VILAS-BOAS**

DIRECTOR'S DECISION

Background

1. From October 8, 1998 to December 14, 2000, Jaime Arlindo Vilas-Boas (Applicant) was registered as a salesperson of Merrill Lynch Canada Inc. (Merrill), a dealer in the category of Broker and Investment Dealer. By letter dated October 30, 2001, BMO Mutual Funds (BMO) filed an application for the Applicant as a mutual fund salesperson. The application included a completed Form 4A – Application for Registration as a Mutual Fund Salesperson, fees and other related materials (Application).
2. Upon receipt of the Application, staff of the Registrant Regulation team, Capital Markets Branch, Ontario Securities Commission (OSC) performed routine inquiries and discovered that there were two outstanding Investment Dealers Association (IDA) investigations involving the Applicant.
3. Inquiries made of the IDA staff revealed that the investigations involved a client complaint submitted by Chris and Colleen McNeil (McNeil complaint) and comments made by Merrill on the Applicant's Uniform Termination Notice (UTN).
4. Following receipt of the IDA information, by letters dated January 24, 2002 and February 13, 2002, staff proposed that the Applicant's registration be subject to certain terms and conditions, pending the outcome of the IDA's investigations. The proposed terms and conditions required the filing of a monthly supervision report by the Applicant's supervising officer at BMO and also required that the Applicant sell mutual funds only. The Applicant had two choices. Either consent to the terms and conditions or exercise his right to be heard before the Director. The Applicant did not

consent to the imposition of terms and conditions on his registration.

5. By letter dated May 3, 2002, staff advised the Applicant that it had recommended to the Director that his application for registration be denied on the basis that he was not suitable for registration. The letter states that "It is staff's opinion that the above facts raise serious concerns about your integrity and trustworthiness as a securities industry professional."
6. The Applicant has asked for a right to be heard before the Director. The parties agreed to conduct this hearing in writing. In making my decision, I have been provided with the following documents:

- Written Submissions of Staff (undated), together with Staff Brief of Documents and Staff Brief of Authorities
- Affidavit of Kathie Lisa Johnston (Johnston) sworn July 18, 2002 (Johnston is an Investigator in the Enforcement department of the IDA)
- Written Submissions of the Applicant (undated) received by telecopy on August 28, 2002

IDA Investigation

7. The IDA has two principal concerns – the McNeil complaint and the information on the Applicant's UTN.
8. Although the IDA's investigation into these matters is not complete and the allegations have not been proven before a disciplinary panel, it is important to understand the IDA's concerns regarding the Applicant's conduct as a registrant. For this reason, the IDA's concerns will be summarized briefly.
9. The McNeil complaint relates to the Applicant's involvement in the incorporation and funding of their company, Myotec Inc. By letter to the IDA dated January 17, 2001, the McNeils' allege, among other things, that the Applicant misled them by stating that Merrill would be involved in the establishment and financing of Myotec. One of the allegations is that the Applicant produced a document on Merrill letterhead entitled "Steps to Going Public". The document stated that "In this transaction, Merrill Lynch is acting as Financial

- Advisor and Process Consultant". Johnston is advised that Merrill did not, in any way, participate in the venture.
10. The Applicant further recommended that the McNeils engage the services of Marvin Winick, who was represented to be a Chartered Accountant, to structure the financial affairs of the company. Johnston is advised that Mr. Winick was expelled from the Institute of Chartered Accountants of Ontario for professional misconduct in 1992. The Applicant advised Johnston that he had failed to verify Winick's credentials in any way before recommending him.
11. On the strength of the Applicant's representations, the McNeils engaged Winick and invested over \$85,000 in the venture.
12. In addition, the Applicant appears to have facilitated the sale of shares of Myotec to several individual investors without the benefit of a prospectus, in violation of section 53 of the *Securities Act* (Ontario). It also appears that the Applicant may have engaged in similar conduct with respect to a company called Urban Resorts Inc. (Urban)
13. As well, Johnston was advised by the Applicant's former manager at Merrill that Merrill had conducted an internal investigation of the Applicant's role in the Urban transaction. As a result of this investigation, the Applicant was reprimanded and would have been terminated from Merrill had he not resigned shortly after the reprimand was delivered.
14. The Applicants UTN states that the Applicant "resigned while on suspension from member firm [Merrill] prior to being terminated for cause" and that the Applicant "engaged in unauthorized corporate financing transactions".
- Staff submissions**
15. The written submissions of OSC staff provide a useful summary of the law in this area and I will provide some of that analysis in this decision.
16. Section 26 of the *Securities Act* provides that:
- Granting of Registration** – Unless it appears to the Director that the applicant is not suitable for registration... or that proposed registration... is objectionable, the Director shall grant registration... to an applicant.
- Terms and Conditions** – The Director may in his or her discretion restrict a registration by imposing terms and conditions [which]...may restrict the duration of a registration and may restrict the registration to trades in certain securities or a certain class of securities.
17. Clearly the onus of proof rests with staff of the Commission, who must establish that the registrant is "not suitable for registration" or that the registration is otherwise "objectionable".
18. I was referred to a number of Commission decisions including the *Mithras* and *Charko* decisions that read in part as follows:
- ... the role of the Commission is to protect the public interest by removing from the capital markets -- wholly or partially, permanently or temporarily, as the circumstances may warrant -- those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In doing so we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.
- Re Mithras Management Ltd.*, (1990) 13 OSCB 1600
- ... the Director must necessarily place a strong reliance on an applicant's past behaviour.
- Re Charko*, (1992) 15 OSCB 3986
19. I was also referred to various other decisions (listed below) where registrants had demonstrated a lack of understanding of their duties as registrants and whose reinstatement was denied.
- Re Ramdhani* (2002) 25 OSCB 1745
Re DiCostanzo (2001) 24 OSCB 5307
Re Bushell (2001) 24 OSCB 5669
Re Thatcher (2001) 24 OSCB 631
Re Curia (2000) 23 OSCB 1745
20. Staff also noted that in considering an application for registration from an individual who has failed to act in his clients' best interests, it is appropriate to take into account the principle of general deterrence. As expressed by Director Wolburgh-Jenah in considering the case of Craig Alan Jaynes:
- Mr. Jaynes' conduct as a registrant had clear consequences for many of his clients at Marchment. That such conduct should have little or no consequences for Mr. Jaynes, or indeed others who would follow his example and breach their obligations in like fashion, is inconceivable and wholly inconsistent with the important principle of general deterrence...
- Re Jaynes* (2000) 23 OSCB 1543

21. The Jaynes decision also notes that “[w]hile terms and conditions restricting registration may be appropriate in a wide variety of circumstances, they should not be used to “shore up” a fundamentally objectionable registration.”

Re Jaynes (2000) 23 OSCB 1543

22. Staff submits that the Applicant should not be registered as a mutual fund salesperson at this time, while serious questions are outstanding regarding his suitability for registration. Staff further argues that evidence gathered by the IDA staff to date provides a strong *prima facie* case that the Applicant has repeatedly breached the *Securities Act* while previously registered as a salesperson. As well, the Applicant’s former employer clearly recognized the seriousness of the Applicant’s breaches, giving him a written reprimand, and then informing the IDA that the Applicant’s employment would have been terminated had the Applicant not resigned.

23. As well, I was advised that the IDA’s investigation into the Applicant’s conduct is nearly complete, with the matter anticipated to proceed to litigation counsel shortly.

24. Staff therefore requests that the Applicant’s application for a registration as a mutual fund salesperson be denied. In the alternative, staff request that the Applicant be registered subject to terms and conditions.

Applicant submissions

25. In his submissions, the Applicant argues that

- staff’s position is ill founded in facts and instead relies on feelings, opinions and unsubstantiated allegations;
- there are no facts that justify staff’s opinion that the Applicant is not suitable for registration in accordance with legal standards;
- “there is absolutely no illustration herein that in the past, the Applicant did not understand his responsibilities, did not live up to his obligations, did not discharge his obligations to act fairly, honestly and good faith with his clients, that he committed any illegal act or legally reprehensible actions or that he acted dishonestly or fraudulently”;
- staff’s position is ill founded in law, “constituting on the part of staff, an arbitrary and abusive exercise of its discretionary power of recommendation which is not necessary for the protection of the public interest”; and

- nothing in staff’s written documents (as included in the written materials for this hearing) “would tend to demonstrate that from the Applicant’s past and/or present, one should fear for his future behaviour”.

Decision

26. On the basis of having reviewed and considered all written submissions provided to me, it is my decision to deny the registration of the Applicant as a mutual fund salesperson. In my opinion, it would be inappropriate to register the Applicant as a mutual fund salesperson while serious questions regarding his past conduct remain outstanding. Further, I think it is clear that the past conduct of the Applicant would lead to the conclusion that his conduct in the future may well be detrimental to the integrity of the capital markets (the *Mithras* test). In the words of the *Mithras* decision, “we must, of necessity, look to past conduct as a guide to what we believe a person’s future conduct might reasonably be expected to be...”. As well, I was guided by the *Charko* decision and determined that I must place a strong reliance on the Applicant’s past behaviour.

27. Further, I determined that it was inappropriate solely to impose terms and conditions on the Applicant’s registration. I decided that staff’s characterization of the Applicant’s conduct (based on evidence gathered by IDA staff to date) provided in staff’s words “a strong *prima facie* case that the applicant has repeatedly breached the *Securities Act* while previously registered”. As a result, I did not agree with the Applicant’s arguments that staff’s position is ill founded in fact or in law nor that it relied on feelings, opinions or unsubstantiated allegations.

28. The Applicant is, however, invited to re-apply for registration as a mutual fund salesperson following the conclusion of the IDA’s enforcement proceeding.

September 18, 2002.

“Marriane Bridge”

2.1.2 Dundee Realty Corporation - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Dutch auction issuer bid - With respect to securities tendered at or below the clearing price - Offeror exempt from the requirement in the legislation to take up and pay for securities proportionately according to the number of securities deposited by each securityholder, the associated disclosure requirement, and the valuation requirement on the basis that there is a liquid market for the securities.

Ontario Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am, ss. 95(7) and 104(2)(c).

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,
MANITOBA, ONTARIO, QUEBEC, NOVA SCOTIA,
NEWFOUNDLAND & LABRADOR**

AND

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

AND

**IN THE MATTER OF
DUNDEE REALTY CORPORATION
MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Newfoundland and Labrador (the "Jurisdictions") has received an application (the "Application") from Dundee Realty Corporation ("Dundee") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that, in connection with the proposed purchase by Dundee of a portion of its outstanding common shares (the "Shares") pursuant to an issuer bid (the "Offer"), Dundee be exempt from the requirements in the Legislation to:

- (i) take-up and pay for securities proportionately according to the number of securities deposited and not withdrawn by each securityholder (the "Proportionate Take-up and Payment Requirement");
- (ii) provide disclosure in the issuer bid circular (the "Circular") of such proportionate take-up and payment (the "Associated Disclosure Requirement"); and

- (iii) obtain a valuation of the Shares and provide disclosure in the Circular of such valuation, or a summary thereof (the "Valuation Requirement").

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 Dundee has represented to the Decision Makers that:

1. Dundee is a reporting issuer or the equivalent in each of the Jurisdictions.
2. Dundee is not in default of any requirement of the Legislation and is not on the list of defaulting reporting issuers maintained pursuant to such Legislation, where applicable.
3. The authorized capital of Dundee includes an unlimited number of Shares, of which approximately 16,687,408 were issued and outstanding as of August 7, 2002.
4. The Shares are listed and posted for trading on The Toronto Stock Exchange (the "TSX"). On August 7, 2002, the closing price of the Shares on the TSX was \$15.65 per Share. Based upon such closing price, the Shares had an aggregate market value of approximately \$261,157,935 on such date.
5. To the knowledge of management of Dundee, the only person or company that owns, directly or indirectly, or exercises control or direction over, more than 10% of the outstanding Shares is Dundee Bancorp Inc. ("Bancorp"), which owns approximately 6,909,245 Shares, representing approximately 41.4% of the outstanding Shares. Bancorp has advised Dundee that Bancorp does not intend to tender any Shares to the Offer.
6. Pursuant to the Offer, Dundee proposes to acquire 1,500,000 Shares, representing approximately 9% of the outstanding Shares.
7. The Offer will be made pursuant to a modified Dutch auction procedure (the "Procedure") as follows:
 - (a) the Circular will specify that the aggregate number of Shares (the "Specified Number") that Dundee intends to purchase under the Offer will be 1,500,000;
 - (b) the Circular will also specify that the range of prices (the "Range") within which Dundee is prepared to purchase Shares under the Offer is from \$15.50 to \$17.00 per Share;

- (c) holders of Shares (collectively, the “Shareholders”) wishing to tender to the Offer will have the right to either: (i) specify the lowest price within the Range at which the Shareholder is willing to sell some or all of their Shares (an “Auction Tender”); or (ii) elect to be deemed to have tendered some or all of their Shares at the Clearing Price determined in accordance with subparagraph 7(e) below (a “Purchase Price Tender”);
 - (d) all Shares tendered by Shareholders who fail to specify any tender price for such tendered Shares and fail to indicate that they have tendered such Shares pursuant to a Purchase Price Tender will be considered to have been tendered pursuant to a Purchase Price Tender;
 - (e) the purchase price (the “Clearing Price”) of the Shares tendered to the Offer will be the lowest price that will enable Dundee to purchase the Specified Number and will be determined based upon the number of Shares tendered and not withdrawn pursuant to an Auction Tender at each price within the Range and tendered and not withdrawn pursuant to a Purchase Price Tender, with each Purchase Price Tender being considered a tender at the lowest price within the Range for the purpose of calculating the Clearing Price;
 - (f) the aggregate amount that Dundee will expend pursuant to the Offer will not be ascertained until the Clearing Price is determined;
 - (g) all Shares tendered and not withdrawn at or below the Clearing Price pursuant to an Auction Tender and all Shares tendered and not withdrawn pursuant to a Purchase Price Tender will be taken up and paid for at the Clearing Price, subject to pro ration if the aggregate number of Shares tendered and not withdrawn at or below the Clearing Price pursuant to Auction Tenders and the number of Shares tendered and not withdrawn pursuant to Purchase Price Tenders exceeds the Specified Number;
 - (h) all Shares tendered and not withdrawn at prices above the Clearing Price will be returned to the tendering Shareholders;
 - (i) in the event more than the Specified Number of Shares are tendered at or below the Clearing Price (an “Over-Subscription”), the Shares to be purchased by Dundee will be pro rated from the Shares so tendered;
 - (j) all Shares tendered and not withdrawn by Shareholders who specify a tender price for such tendered Shares that falls outside the Range will be considered to have been improperly tendered, will be excluded from the determination of the Clearing Price, will not be purchased by Dundee and will be returned to the tendering Shareholders;
 - (k) tendering Shareholders who make either an Auction Tender or a Purchase Price Tender but fail to specify the number of Shares that they may wish to tender to the Offer will be considered to have tendered all Shares held by such Shareholder; and
 - (l) if the aggregate number of Shares validly tendered, or deemed to have been tendered, to the Offer at or below the Clearing Price and not withdrawn is less than or equal to the Specified Number, Dundee will purchase all Shares so deposited.
8. Prior to the expiry of the Offer, all information regarding the number of Shares tendered and the prices at which such Shares are tendered will be kept confidential, and the depository under the Offer will be directed by Dundee to maintain such confidentiality until the Clearing Price is determined.
9. Since the Offer is for less than all the Shares, if the number of Shares tendered to the Offer at or below the Clearing Price and not withdrawn exceeds the Specified Number, the Proportionate Take-Up and Payment Requirement would require Dundee to take-up and pay for deposited Shares proportionately, according to the number of Shares deposited by each Shareholder. In addition, the Associated Disclosure Requirement would require disclosure in the Circular that Dundee would, if Shares tendered to the Offer and not withdrawn exceeded the Specified Number, take-up such Shares proportionately according to the number of Shares tendered and not withdrawn by each Shareholder.
10. During the 12 months ended July 31, 2002:
- (a) the number of outstanding Shares was at all times at least 5,000,000, excluding Shares that either were beneficially owned, directly or indirectly, or over which control or direction was exercised, by related parties to Dundee or were not freely tradeable;

- (b) the aggregate trading volume of the Shares on the TSX was at least 1,000,000, Shares;
- (c) there were at least 1,000 trades in Shares on the TSX; and
- (d) the aggregate trading value based on the price of the trades referred to in paragraph (c) above was at least \$15,000,000.

11. The market value of the Shares on the TSX was at least \$75,000,000 for the month of July 2002.

12. As a result of the information contained in paragraphs 10 and 11 above and because it is reasonable to conclude that, following completion of the Offer, there will be a market for the beneficial owners of Shares who do not tender to the Offer that is not materially less liquid than the market that exists at the time the Offer is made, Dundee intends to rely upon the exemptions from the Valuation Requirement contained in Sections 3.4(3) of Ontario Securities Commission Rule 61-501 and Quebec Local Policy Statement Q-27 (the "Presumption of Liquid Market Exemptions").

13. The Circular will:

- (a) disclose the mechanics for the take-up and payment for, or return of, Shares as described in paragraph 7 above;
- (b) explain that, by tendering Shares at the lowest price in the Range or pursuant to a Purchase Price Tender, a Shareholder can reasonably expect that Shares so tendered will be purchased at the Clearing Price, subject to pro ration as described in paragraph 7 above;
- (c) describe the effect that the Offer, if successful, will have on the direct or indirect voting interest of Bancorp;
- (d) disclose the facts supporting Dundee's reliance on the Presumption of Liquid Market Exemptions, calculated with reference to the date of the announcement of the Offer; and
- (e) except to the extent exemptive relief is granted by this decision, contain the disclosure prescribed by the Legislation for issuer bids.

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, in connection with the Offer, Dundee is exempt from the Proportionate Take-up and Payment Requirement, the Associated Disclosure Requirement, and the Valuation Requirement, provided that Shares tendered to the Offer and not withdrawn are taken up and paid for, or returned to the Shareholders, in accordance with the Procedure.

September 4, 2002.

"Robert W. Korthals"

"Robert L. Shirriff"

2.1.3 AGF Funds Inc. and Beatrice Ip - Decision

Headnote

Decision pursuant to section 4.1 of Ontario Securities Commission Rule 31-505 (the "Rule") exempting applicants from the requirement under subsection 1.3(3) of the Rule subject to certain terms and conditions.

Statutes Cited

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

Rules Cited

Ontario Securities Commission Rule 31-505 (1999) 22 O.S.C.B. 731, ss. 1.3(2), ss. 1.3(3), s. 4.1.
Ontario Securities Commission Rule 31-502 (2000) 23 O.S.C.B. 5658.

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

AND

**IN THE MATTER OF
AGF FUNDS INC. and BEATRICE IP**

**DECISION
(Rule 31-505)**

UPON the application of AGF Funds Inc. (**AGF**) and Beatrice Ip (together, the **Applicants**) pursuant to section 4.1 of Ontario Securities Commission Rule 31-505 – *Conditions of Registration* (the **Registration Rule**) for an exemption from the requirement under subsection 1.3(3) of the Registration Rule that Ms Ip meet certain proficiency requirements under Ontario Securities Commission Rule 31-502 – *Proficiency Requirements for Registrants* (the **Proficiency Rule**) in order for supervisory functions, other than the supervisory functions enumerated in subsection 1.3(2) of the Registration Rule, to be delegated to Ms Ip by the designated compliance officer of AGF (the **Application**);

AND UPON considering the Application;

AND UPON the Applicants having represented to the Director that:

1. AGF is registered with the Ontario Securities Commission as an adviser in the categories of investment counsel and portfolio manager and a dealer in the category of mutual fund dealer.
2. Ms Ip has worked in the securities industry for approximately 16 years, 13 of them in a compliance role.
3. Ms Ip has completed the Canadian Investment Funds Course and the Partners, Directors and Senior Officers Qualifying Examination.

4. Ms Ip is a member of the Institute of Internal Auditors.
5. Ms Ip has been with the AGF organization since 1986. Ms Ip is currently Senior Vice-President, Corporate Secretary and Chief Auditor of AGF. In this capacity, prior to the implementation of the Registration Rule, she had full responsibility for all compliance functions at AGF. In addition to the Chief Auditor responsibilities, Ms Ip was responsible for ensuring that all regulatory filings required by the AGF Group of Companies were completed on a timely basis. Ms Ip was also responsible for the enhancement of corporate governance procedures through the introduction of corporate compliance risk monitoring.
6. Ms Ip does not, however, meet the qualification criteria in subsection 1.3(3) of the Registration Rule to be delegated supervisory functions by the designated compliance officer of AGF.
7. The designated compliance officer of AGF will not delegate and Ms Ip will not assume the supervisory functions enumerated in subsection 1.3(2) of the Registration Rule.

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

NOW THEREFORE, pursuant to section 4.1 of the Registration Rule, the Director hereby exempts the Applicants from the requirement of subsection 1.3(3) of the Registration Rule that Ms Ip meet the proficiency requirements of the Proficiency Rule in order for Ms Ip to be delegated supervisory functions by the designated compliance officer of AGF;

PROVIDED THAT:

- (A) The designated compliance officer of AGF shall not delegate and Ms Ip shall not assume the supervisory functions enumerated in subsection 1.3(2) of the Registration Rule; and
- (B) If the proficiency requirements applicable to compliance officer's delegates of registrants in the categories of investment counsel and portfolio manager are amended, the relief provided for in this Decision will terminate one year following the date such amendment comes into effect, unless the Director determines otherwise.

September 19, 2002.

"David M. Gilkes"

**2.1.4 Nuance Communications, Inc. -
MRRS Decision**

Headnote

MRRS – Registration and prospectus relief for issuance of securities by foreign issuer to Canadian employees and related trades under stock ownership plans – issuer bid relief for foreign issuer in connection with acquisition of shares under stock ownership plans – Issuer with de minimis Canadian presence.

Applicable Ontario Statutes

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 52, 74(1), 104(2)(c).

Applicable Ontario Rules

Rule 45-503 – Trades to Employees, Executives and Consultants.

Applicable Instrument

Multilateral Instrument 45-102 – Resale of Securities – s. 2.14.

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

AND

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

AND

**IN THE MATTER OF
NUANCE COMMUNICATIONS, INC.**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “**Decision Maker**”) in each of Ontario and British Columbia (the “**Jurisdictions**”) has received an application from Nuance Communications, Inc. (“**Nuance**” or the “**Company**”) for a decision pursuant to the securities legislation of the Jurisdictions (the “**Legislation**”) that

- (i) the requirements contained in the Legislation to be registered to trade in a security (the “**Registration Requirement**”), and the requirement to file and obtain a receipt for a preliminary prospectus and prospectus (the “**Prospectus Requirement**”) (the Registration Requirement and the Prospectus Requirement are, collectively, the “**Registration and Prospectus Requirements**”) will not apply to certain

trades in securities of Nuance made in connection with the Nuance Communications, Inc. 2000 Employee Stock Purchase Plan (the “**ESPP**”) and the Nuance Communications, Inc. 2000 Stock Plan (the “**2000 SOP**”) (the “**SOP**” together with the ESPP, the “**Plans**”);

- (ii) the Registration Requirement will not apply to first trades of shares (“**Shares**”) acquired under the Plans executed on an exchange or market outside of Canada; and
- (iii) the requirements contained in the Legislation relating to the delivery of an offer and issuer bid circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, taking up and paying for securities tendered to an issuer bid, disclosure, restrictions upon purchases of securities, bid financing, identical consideration and collateral benefits together with the requirement to file a reporting form within 10 days of an exempt issuer bid and pay a related fee (the “**Issuer Bid Requirements**”) will not apply to certain acquisitions by the Company of Shares pursuant to the Plans in each of the Jurisdictions;

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 Nuance has represented to the Decision Makers as follows:

1. Nuance is presently a corporation in good standing incorporated under the laws of the State of Delaware. Nuance’s head office is located in Menlo Park, California.
2. Nuance and affiliates of Nuance (“**Nuance Affiliates**”) (Nuance and Nuance Affiliates are collectively, the “**Nuance Companies**”) develop, market and support software that enables enterprises and telecommunications carriers to automate the delivery of information and services over the telephone.
3. The Company is registered with the Securities Exchange Commission (the “**SEC**”) in the U.S. under the U.S. Securities Exchange Act of 1934 (the “**Exchange Act**”) and is not exempt from the reporting requirements of the Exchange Act pursuant to Rule 12g 3-2.
4. Nuance is not a reporting issuer in any of the Jurisdictions and has no present intention of

- becoming a reporting issuer in any of the Jurisdictions.
5. The authorized share capital of Nuance consists of: 250,000,000 shares of common stock (“**Shares**”) and 0 shares of preferred stock (“**Preferred Shares**”). As of March 31, 2002, there were 33,383,453 Shares, and 0 Preferred Shares issued and outstanding.
 6. The Shares are quoted on The Nasdaq Stock Market (the “**Nasdaq**”).
 7. Nuance intends to use the services of one or more agents/brokers in connection with the Plans (each an “**Agent**”). Charles Schwab & Co., Inc. (“**Schwab**”) has initially been appointed by Nuance to act as Agent for the Plans. Schwab is a corporation registered under applicable U.S. securities or banking legislation to conduct retail trades in securities and is not registered in either Jurisdiction to conduct such trades. Nuance may at any time appoint additional or replacement Agents under the Plans. Any Agent appointed in replacement of, or in addition to, Schwab, if not a registrant in the Jurisdictions, would be registered under applicable U.S. legislation.
 8. The role of the Agent may include: (a) disseminating information and materials to Participants (as defined below) in connection with the Plans; (b) assisting with the administration of and general record keeping for the Plans; (c) holding Shares on behalf of Participants, Former Participants (as defined below) and Permitted Transferees (as defined below) in limited purpose brokerage accounts; (d) facilitating Option (as defined below) exercises (including cashless exercises and stock swap exercises) under the Plans; (e) facilitating the payment of withholding taxes, if any, by cash or the tendering or withholding of Shares; (f) facilitating the reacquisition of Awards (as defined below) under the terms of the Plans; and (g) facilitating the resale of Shares issued in connection with the Plans.
 9. The purpose of the SOP is to attract and retain the best available personnel, to provide additional incentive to Participants and to promote the success of Nuance's business. The purpose of the ESPP is to provide Participants with an opportunity to purchase Shares of the Company through accumulated payroll deductions.
 10. Subject to annual adjustments as described in the Plans, the initial maximum number of Shares that may be issued pursuant to the Plans are: 1,000,000 Shares under the ESPP and 7,747,670 Shares under the SOP.
 11. The SOP permit grants of: (a) options on Shares (“**Options**”) and (b) stock purchases rights for restricted stock (“**Stock Purchase Rights**”) (Options and Stock Purchase Rights are collectively, “**Awards**”) to employees, including employee officers and directors of the Nuance Companies (“**SOP Participants**”).
 12. Under the ESPP, employees of the Nuance Companies (“**ESPP Participants**”) are offered an opportunity to purchase Shares by means of applying accumulated payroll deductions to the purchase of Shares at a discount price determined in accordance with the terms of the ESPP.
 13. Employees of the Nuance Companies eligible to participate in the Plans will not be induced to purchase Shares or to exercise Awards by expectation of employment or continued employment.
 14. Officers of the Nuance Companies who participate in the SOP will not be induced to purchase Shares or to exercise Awards by expectation of appointment or employment or continued appointment or employment as an officer.
 15. As of June 17, 2002, there were 69 persons resident in Canada eligible to receive Shares or Awards under or participate in the Plans: 11 persons resident in Ontario; 1 person resident in British Columbia and 57 persons resident in Quebec.
 16. All necessary securities filings have been made in the U.S. in order to offer the Plans to Participants resident in the U.S.
 17. A prospectus prepared according to U.S. securities laws describing the terms and conditions of each of the Plans will be delivered to each SOP Participant who receives an Award or Shares under the SOP and to each ESPP Participant who is eligible to participate in the ESPP. The annual reports, proxy materials and other materials Nuance provides to its U.S. shareholders will be provided or made available upon request to SOP Participants and ESPP Participants (together “**Participants**”) resident in the Jurisdictions who acquire and retain Shares under the Plans at substantially the same time and in substantially the same manner as such documents would be provided to U.S. shareholders.
 18. The Plans are administered by a committee appointed by the board of directors of Nuance (the “**Committee**”).
 19. Generally, in order to exercise an Option under the SOP, an optionee must submit a written notice of exercise to Nuance or to the Agent identifying the Option, the number of Shares being purchased and the method of payment.

20. The SOP provides that on exercise of Options, the payment of the exercise price in order to acquire the underlying Shares may be made: (a) in cash; (b) by the surrender of Shares owned by the Option holder to the Company for cancellation ("**Stock-Swap Exercises**") or to the Agent for resale; (c) the retention of a number of Shares by the Company from the total number of Shares into which the Option is exercised; (d) by a combination of the foregoing; or (e) such other consideration and method of payment permitted by the Committee at an exercise price determined in accordance with the terms of the SOP.
21. Options will vest and will be exercisable as specified in the Option agreement as determined by the Committee. The Option exercise price for each Share purchased under any Option will be specified in the Option agreement and will not be less than the fair market value (as such term is defined in the SOP).
22. The term of each Option will be fixed by the Committee, provided however that the term shall be no more than ten (10) years from the date of the grant. The date of exercise will be chosen by the Option holder.
23. Under the SOP, the Committee may at any time offer to buy out for a payment in cash or Shares, an option previously granted on terms and conditions determined by the Committee ("**Option Buyouts**").
24. Under the SOP, Options or Stock Purchase Rights may be forfeited or surrendered by SOP Participants to the extent such Awards expire or become unexercisable without having been exercised in full or where the SOP Participant's relationship with Nuance is terminated or where Awards are cancelled on a merger or sale of assets or on the dissolution or liquidation of Nuance or where Awards are surrendered pursuant to an Option Exchange Program (as that term is defined in the SOP) ("**Award Cancellations**").
25. Under the SOP, on the termination of the SOP Participant's service with Nuance, Shares awarded under Restricted Stock Purchase Agreements (as defined in the SOP) which evidences the terms and restrictions applying to Shares purchased under a Stock Purchase Right may be subject to a Share reacquisition or Share repurchase option in favor of Nuance in accordance with the terms of the SOP ("**Repurchase Option**").
26. Nuance shall have the right to deduct applicable taxes from any payment under the Plans by withholding, at the time of delivery or vesting of cash or Shares under the Plans, an appropriate amount of cash or Shares ("**Share Withholding Exercises**") or a combination thereof for a payment of taxes required by law or to take such other action as may be necessary in the opinion of Nuance or the Committee to satisfy all obligations for the withholding of such taxes.
27. Awards and rights under the Plans are not transferable by a Participant other than by will or beneficiary designation or by the laws of intestacy unless otherwise provided for by the Committee.
28. Following the termination of a Participant's relationship with the Nuance Companies for reasons of disability, retirement, termination, change of control or any other reason ("**Former Participants**"), and on the death of a Participant where Awards have been transferred by will or pursuant to a beneficiary designation or the laws of intestacy or otherwise ("**Permitted Transferees**"), the Former Participants and Permitted Transferees will continue to have rights in respect of the Plans ("**Post-Termination Rights**").
29. Post-Termination Rights may include, among other things: (a) the right to exercise Awards for a period determined in accordance with the SOP; (b) the right of a Participant who receives payment in lieu of notice of termination of employment to continue to participate in the ESPP during the period in which the Participant is subject to such payment in lieu of notice; (c) the right to receive payment of accumulated payroll deductions in his or her account, without interest under the ESPP; and (d) the right to sell Shares acquired under the Plans through the Agent.
30. Post-Termination Rights will only be effective where such rights accrued while the Participant had a relationship with the Nuance Companies.
31. As there is no market for the Shares in Canada and none is expected to develop, it is expected that the resale by Participants, Former Participants and Permitted Transferees of the Shares acquired under the Plans will be effected through the Nasdaq.
32. As of June 17, 2002, Canadian shareholders did not own, directly or indirectly, more than 10% of the issued and outstanding Shares and did not represent in number more than 10% of the shareholders of Nuance. If at any time during the currency of the Plans Canadian shareholders of Nuance hold, in aggregate, greater than 10% of the total number of issued and outstanding Shares or if such shareholders constitute more than 10% of all shareholders of Nuance, Nuance will apply to the relevant Jurisdiction for an order with respect to further trades to and by Participants in that Jurisdiction in respect of the Shares acquired under the Plans.

33. Pursuant to the SOP, the acquisition of Awards by the Company in the following circumstances may constitute an "issuer bid": Stock Swap Exercises, Share Withholding Exercises and the Repurchase Option.
34. The issuer bid exemptions in the Legislation may not be available for such acquisitions by the Company since such acquisitions may occur at a price that is not calculated in accordance with the "market price," as that term is defined in the Legislation and may be made from Permitted Transferees.
35. The Legislation of all of the Jurisdictions may not contain exemptions from the Prospectus and Registration Requirements for all the intended trades in Awards and Shares under the Plans.
36. When the Agents sell Shares on behalf of Participants, Former Participants and Permitted Transferees, the Agents, Participants, Former Participants and Permitted Transferees may not be able to rely upon the exemptions from the Registration and Prospectus Requirements contained in the Legislation of the Jurisdictions.
- (c) exchange or market outside of Canada or to a person or company outside of Canada; and
the Issuer Bid Requirements will not apply to the acquisition by Nuance of Awards or Shares from Participants, Former Participants or Permitted Transferees provided such acquisitions are made in accordance with the terms of the Plans.

September 19, 2002.

"H. Lorne Morphy"

"Harold P. Hands"

AND WHEREAS pursuant to the System, this 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 Registration and Prospectus Requirements will not apply to any trade or distribution of Awards or Shares made in connection with the Plans, including trades and distributions involving Nuance, the Nuance Affiliates, the Agents, Participants, Former Participants, and Permitted Transferees, provided that, the first trade in Shares acquired through the Plans pursuant to this Decision will be deemed a distribution or primary distribution to the public under the Legislation unless the conditions in subsection 2.14(1) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied;
- (b) the first trade by Participants, Former Participants, and Permitted Transferees, in Shares acquired pursuant to the Plans including first trades effected through the Agents, will not be subject to the Registration Requirement, provided such first trade is executed through a stock

2.1.5 Patriot Equities Corporation - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Decision declaring corporation to be no longer a reporting issuer following the acquisition of all of its outstanding 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 QUEBEC**

AND

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

AND

**IN THE MATTER OF
PATRIOT EQUITIES CORPORATION
MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (collectively the "Decision Makers") in each of Alberta, Ontario and Québec (the "Jurisdictions") has received an application from Patriot Equities Corporation (the "Patriot") (the "Filer") for a decision under the securities legislation (the "Legislation") that Patriot be deemed to have ceased to be a reporting issuer under the Legislation;
2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Alberta Securities Commission is the principal regulator of this application;
3. AND WHEREAS Patriot has represented to the Decision Makers that:
 - 3.1 Patriot is a public company incorporated under the *Business Corporations Act* (Alberta) with its registered office in Calgary, Alberta;
 - 3.2 the authorized share capital of Patriot consists of an unlimited number of common shares ("Common Shares") and an unlimited number of preferred shares, of which, as at August 6, 2002, a total of 6,119,588 Common Shares and no preferred shares were issued and outstanding, and no other securities including debt securities, of Patriot are issued and outstanding;

3.3 Patriot is a reporting issuer in the provinces of British Columbia, Alberta, Manitoba, Ontario and Québec and is not in default of its obligations as a reporting issuer in such jurisdictions (except in Québec with respect to the failure to file a confirmation of mailing for the unaudited consolidated comparative interim financial statements dated March 31, 2002 and 2001 with the Commission des valeurs mobilières du Québec);

3.4 Patriot was the target of a take-over bid (the "Takeover Bid") by FSI Acquisitions Corp. ("FSI") for all of its issued and outstanding common shares (the "Shares") and all Shares issued on the exercise of currently outstanding options to acquire Shares. FSI was successful in obtaining 90.8% of the Shares pursuant to the Takeover Bid and following utilization of compulsory acquisition procedures under the *Business Corporations Act* (Alberta), the Applicant is now a wholly-owned subsidiary of FSI;

3.5 at the close of trading on August 9, 2002, the Common Shares were delisted from the TSE and no securities of Patriot are listed on any exchange in Canada or elsewhere;

3.6 as a result of the Takeover, FSI is the sole security holder of Patriot;

3.7 Patriot does not intend to seek public financing by way of an offering of its securities;

4. AND WHEREAS under the System, this MRSS Decision Document evidences the decision of each Commission (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. IT IS THE DECISION of the Decision Makers under the Legislation is that Patriot be deemed to have ceased to be a reporting issuer in the Jurisdictions.

September 9, 2002.

"Patricia M. Johnston"

2.2 Orders

2.2.1 Normandy Mining Limited - s. 83

Headnote

Issuer deemed to have ceased to be reporting issuer under the Act.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 1(1), 6(3) and 83.

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

AND

**IN THE MATTER OF
NORMANDY MINING LIMITED**

**ORDER
(Section 83 of the Act)**

WHEREAS the Ontario Securities Commission (the "Commission") has received an application from Newmont Mining Corporation ("Newmont"), a corporation incorporated under the laws of the State of Delaware, for an order pursuant to section 83 of the Act deeming Normandy Mining Limited (the "Issuer") to have ceased to be a reporting issuer under the Act;

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

AND UPON Newmont having represented to the Commission as follows:

1. The Issuer is a corporation governed by the laws of Australia with its registered office located at 100 Hutt Street, Adelaide, South Australia, 5000. Its principal trading market was the Australian Stock Exchange. The Issuer is a reporting issuer in Ontario and is not on the list of reporting issuers that are in default.
2. The American Depositary Shares ("ADSs") of the Issuer were listed on The Toronto Stock Exchange (the "TSX") under the symbol NDY. On June 24, 2002, the ADSs were delisted from the TSX. To the best of Newmont's knowledge, there were currently 2,254,595,364 Ordinary Shares and 5,738,629 ADSs of the Issuer issued and outstanding immediately prior to the compulsory acquisition as described below. The Ordinary Shares were listed on the Australian Stock Exchange but were recently de-listed from such exchange. No other securities, including debt securities, are listed on any other exchange.

3. On December 20, 2001, Newmont, by way of an affiliate, mailed to shareholders not resident in Canada and the United States, its offer to acquire all of the outstanding Ordinary Shares, including Ordinary Shares represented by ADSs, not previously owned by Newmont, for consideration of 0.0385 shares of common stock in Newmont for each Ordinary Share, plus A\$0.50 per Ordinary Share.
4. On January 10, 2002, after a registration statement in the United States was declared effective by the Securities and Exchange Commission and exemptive relief was granted in Canada, Newmont, by way of an affiliate, mailed its offer to acquire all of the outstanding Ordinary Shares, including Ordinary Shares represented by ADSs, not previously owned by Newmont, for consideration of 0.0385 shares of common stock in Newmont for each Ordinary Share, plus A\$0.50 per Ordinary Share.
5. At the conclusion of the Newmont Offer, Newmont held, through its affiliates, more than 95% of the Ordinary Shares (including Ordinary Shares represented by ADSs).
6. On February 27, 2002, Newmont announced that it would exercise its compulsory acquisition rights under Australian law to acquire the remaining 105,334,373 Ordinary Shares (representing approximately 4.672% of the issued and outstanding Ordinary Shares on a fully diluted basis) and 4,337,845 ADSs (representing approximately 1.93% of the issued and outstanding Ordinary Shares on a fully diluted basis) that had not been tendered under the Newmont offer.
7. To the best of Newmont's knowledge, Canadian residents who were holders of Ordinary Shares and who did not tender under the Newmont offer accounted for approximately 0.01312% of the total Ordinary Shares not tendered. To the best of Newmont's knowledge, Canadian residents who were holders of ADSs and who did not tender under the Newmont offer accounted for approximately 0.01071% of the total ADSs not tendered.
8. The compulsory acquisition of the remaining Ordinary Shares and ADSs was completed in early June 2002. Accordingly, Newmont is the sole holder of the Ordinary Shares and ADSs. To the best of Newmont's knowledge, the only public debt outstanding is a note issuance done through Merrill Lynch in the U.S. and there is no public debt outstanding in Canada.
9. The Issuer does not intend to seek public financing by way of an offering of its securities.

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

IT IS ORDERED pursuant to section 83 of the Act that Normandy Mining Limited is deemed to have ceased to be a reporting issuer effective as of the date of this order.

September 19, 2002.

"John Hughes"

2.2.2 New Inca Gold Ltd. - s. 144

Headnote

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

Statutes Cited

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

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

AND

**IN THE MATTER OF
NEW INCA GOLD LTD.**

**ORDER
(SECTION 144)**

WHEREAS the securities of NEW INCA GOLD LTD. ("NEW INCA") are subject to a Temporary Order (the "Temporary Order") of the Director made on behalf of the Ontario Securities Commission (the "Commission"), pursuant to paragraph 2 subsection 127(1) and subsection 127(5) of the Act, on February 22, 2002 as extended by further order (the "Extension Order" and collectively, the "Cease Trade Order") of the Director, made on March 6, 2002, on behalf of the Commission pursuant to subsection 127(8) of the Act, that trading in the securities of NEW INCA cease until the Temporary Order, as extended by the Extension Order, is revoked by a further Order of Revocation;

AND UPON NEW INCA having applied to the Commission pursuant to section 144 of the Act for an Order revoking the Cease Trade Order;

AND UPON NEW INCA having represented to the Commission that:

1. NEW INCA was incorporated under the laws of Bermuda on October 7, 1996 and has been a reporting issuer in the Province of Ontario since August 18, 1997;
2. The authorized capital of the NEW INCA consists of a 98,810,000 common shares of which 10,509,750 are issued and outstanding as at the date hereof;
3. The Temporary Order was issued due to the failure of NEW INCA to file with the Commission audited annual financial statements for the year ended September 30, 2001 (the "Financial Statements") as required by the Act;

4. The Financial Statements were not filed with the Commission because NEW INCA was inactive ;
5. The Financial Statements for the year ended September 30, 2001 and the interim financial statements (the "Interim Financial Statements") for the periods ended December 31, 2001, March 31, 2002 and June 30, 2002 were filed with the Commission via SEDAR on June 20, 2002 and August 23, 2002, respectively;
6. NEW INCA is not considering and is not involved in any discussions relating to a reverse take-over transaction;
7. Except for a Cease Trade Order, NEW INCA is not otherwise in default of any requirements of the Act or the regulation made thereunder;

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

AND UPON the Commission being satisfied that NEW INCA is now current with the continuous disclosure requirements under Part XVIII of the Act and has remedied its default in respect of such requirements;

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

IT IS ORDERED pursuant to section 144 of the Act that the Cease Trade Order be and is hereby revoked.

September 20, 2002.

"John Hughes"

2.2.3 Morgan Stanley Alternative Investment Partners LP et al. - ss. 38(1) of the CFA

Headnote

Subsection 38(1) of the Commodity Futures Act (Ontario) - relief from the requirements of subsection 22(1)(b) of the CFA, for a period of three years, in respect of advising certain mutual funds and non-redeemable investment funds in respect of investments in and investments in investment vehicles that may invest in, commodity futures contracts and options traded on commodity futures exchanges outside Canada subject to certain terms and conditions.

Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C20, as am., ss. 22(1)(b), 38(1).
Securities Act, R.S.O. 1990, c. S.5 as am., ss. 53 and 62.

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

AND

IN THE MATTER OF

**MORGAN STANLEY ALTERNATIVE
INVESTMENT PARTNERS LP,
MORGAN STANLEY AIP GP LP,
MSDW AIP (CAYMAN) LTD.**

AND

MORGAN STANLEY AIP (CAYMAN) GP LTD.

**ORDER
(Subsection 38(1) of the CFA)**

UPON the application of Morgan Stanley Alternative Investment Partners LP, Morgan Stanley AIP GP LP, MSDW AIP (Cayman) Ltd. and Morgan Stanley AIP (Cayman) GP Ltd. (the "Applicants") to the Ontario Securities Commission (the "Commission") for an order pursuant to subsection 38(1) of the CFA that each of the Applicants and their respective directors, partners, officers, and employees are exempt, for a period of three years, from the requirements of paragraph 22(1)(b) of the CFA in respect of advising certain mutual funds and non-redeemable investment funds (the "Funds"), the securities of which will be offered primarily outside of Canada but may also be privately placed in Ontario, in respect of investments in investment vehicles that may invest in, commodity futures contracts and options traded on commodity futures exchanges outside Canada and cleared through clearing corporations outside Canada, and, in certain cases, direct investments in such instruments subject to certain terms and conditions;

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

AND UPON the Applicants having represented to the Commission that:

1. The Applicants are Morgan Stanley Alternative Investment Partners LP, Morgan Stanley AIP GP LP, MSDW AIP (Cayman) Ltd. and Morgan Stanley AIP (Cayman) GP Ltd. Each of the Applicants is an indirect affiliate of Morgan Stanley, a global financial services firm incorporated under the laws of the State of Delaware, the common stock of which is listed on the New York Stock Exchange and on the Pacific Exchange. Morgan Stanley Alternative Investment Partners LP is a limited partnership organized under the laws of the state of Delaware. Morgan Stanley AIP GP LP is a limited partnership organized under the laws of the state of Delaware. MSDW AIP (Cayman) Ltd. is an exempted company organized under the laws of the Cayman Islands. Morgan Stanley AIP (Cayman) GP Ltd. is an exempted company organized under the laws of the Cayman Islands. None of the Applicants is resident in Canada.
2. The Funds include funds that are offshore feeder funds (the "Feeder Funds") that are established outside of Canada and outside of the United States. Two of the Applicants (MSDW AIP (Cayman) Ltd. and Morgan Stanley AIP (Cayman) GP Ltd.) serve as general partner of the Feeder Funds and cause the assets of the Feeder Funds to be invested primarily in Funds established in the United States ("U.S. Funds").
3. The Funds advised by the Applicants are or will be established outside of Canada. Securities of the Funds are or will be primarily offered outside of Canada to institutional investors and high net worth individuals. Securities of the Funds will be offered to a small number of Ontario residents who will be at the time of their investment institutional investors or high net worth individuals. Such securities will be offered and distributed in Ontario through registrants (as defined under the *Securities Act* (Ontario) (the "OSA")), which have the appropriate registration, in reliance upon an exemption from the requirements of sections 53 and 62 of the OSA.
4. All of the Funds are or will be "fund of funds" which will primarily invest in certain investment vehicles unaffiliated with the Applicants and which are, or will be, established outside of Canada (the "Underlying Funds"). The Feeder Funds invest in the Underlying Funds indirectly by investing directly in the U.S. Funds that invest directly in the Underlying Funds.
5. Certain of the Underlying Funds may invest in commodity futures contracts and options traded on organized exchanges outside of Canada and cleared through clearing corporations located outside of Canada. Certain of the Funds advised
6. The Underlying Funds in which the Funds will from time to time invest are, or will be, managed by certain third party managers outside of Canada (the "Managers") and are investing, or will invest, in investments selected by the Managers which may include commodity futures contracts and options. The Managers are unaffiliated with the Applicants and do not, and will not in the future, provide advice directly to the Funds.
7. One or more of the Applicants have selected, or will select, the Underlying Funds in which the Funds have invested, or will invest, based on the investment strategies implemented by the Manager of the relevant Underlying Fund and the respective investment objectives and policies of the Fund that has invested, or will invest, in the Underlying Fund. The investment strategies implemented by the Managers may include investing in commodity futures contracts and options.
8. By selecting an Underlying Fund based upon the Underlying Fund's investment strategy, where such strategy may specifically involve investing in commodity futures contracts and options, and by advising the Funds directly on investing in commodity futures and options contracts, the Applicants currently provide, or will in the future provide, advice with respect to commodity futures contracts and options or securities to the Funds.
9. Certain affiliates of the Applicants are registered with the Ontario Securities Commission. Morgan Stanley & Co. Incorporated is registered under the OSA in the categories of international dealer and international adviser (investment counsel and portfolio manager). An affiliate of the Applicants, Morgan Stanley Investment Management Inc., is registered under the OSA in the category of international adviser (investment counsel and portfolio manager). Another affiliate of the Applicants, Morgan Stanley Canada Limited, is registered under the OSA as a broker and investment dealer (equities and options). Morgan Stanley & Co. Limited and Morgan Stanley & Co. International Limited, two other affiliates of the Applicants, are registered under the OSA as international dealers. The Applicants are not, and have no current intention of becoming registered, in any capacity under the OSA or the CFA.
10. Each of the Applicants, where required, is registered or licensed under the applicable legislation of its principal jurisdiction to provide advice to the Funds, or is entitled to rely on appropriate exemptions from such registrations or

licences pursuant to the applicable legislation of its principal jurisdiction. In particular:

- (a) Morgan Stanley Alternative Investment Partners LP is a registered investment adviser with the U.S. Securities and Exchange Commission (the "SEC"), and a registered commodity pool operator with the U.S. Commodity Futures Trading Commission (the "CFTC");
- (b) Morgan Stanley AIP GP LP is a registered investment adviser with the SEC, a registered commodity trading advisor with the U.S. National Futures Association and a registered commodity pool operator with the CFTC;
- (c) MSDW AIP (Cayman) Ltd. is not required to be, and accordingly is not, currently registered as an investment adviser with the SEC but is a registered commodity pool operator with the CFTC; and
- (d) Morgan Stanley AIP (Cayman) GP Ltd. is not required to be, and accordingly is not, currently registered as an investment adviser with the SEC but is a registered commodity pool operator with the CFTC.

11. None of the Funds is, and none has any current intention of becoming, a reporting issuer in Ontario or in any other Canadian jurisdiction.

12. Prospective investors in the Funds who are Ontario residents will receive disclosure that includes (i) a statement that there may be difficulty in enforcing any legal rights against any of the applicable Fund (or any of the Underlying Funds), the Applicant advising the relevant Fund, the trustee or manager of the applicable Fund (or of any of the Underlying Funds) because they are resident outside of Canada and all or substantially all of their assets are situated outside of Canada; and (ii) a statement that the Applicant advising the relevant Fund and, where applicable, the Managers advising the relevant Underlying Fund are not, or will not be, registered with or licensed by any securities regulatory authority in Canada and, accordingly, the protections available to clients of a registered adviser will not be available to purchasers of securities of such Fund.

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

IT IS ORDERED pursuant to subsection 38(1) of the CFA that each of the Applicants and their respective directors, partners, officers, and employees responsible for advising the Funds are not subject to the requirements of paragraph 22(1)(b) of the CFA in respect of their advisory

activities in connection with the Funds, for a period of three years, provided that at the time such activities are engaged in:

- (a) any such Applicant, where required, is or will be, registered or licensed under the applicable legislation of its principal jurisdiction to provide advice to the Funds, or is, or will be entitled to rely on appropriate exemptions from such registrations or licences pursuant to the applicable legislation of its principal jurisdiction;
- (b) the Funds and the Underlying Funds invest in commodity futures contracts and options traded on organized exchanges outside of Canada and cleared through clearing corporations located outside of Canada and other derivative instruments traded over the counter;
- (c) securities of the Funds will be offered primarily outside of Canada and will only be distributed in Ontario through a registrant (as defined under the OSA), and in reliance upon an exemption from the requirements of sections 53 and 62 of the OSA and upon an exemption from the adviser registration requirement provided under section 7.10 of Commission Rule 35-502 Non-Resident Advisers; and
- (d) prospective investors in the Funds who are Ontario residents will receive disclosure that includes (i) a statement that there may be difficulty in enforcing any legal rights against any of the applicable Fund (or any of the Underlying Funds), the Applicant advising the relevant Fund, the trustee or manager of the applicable Fund (or of any of the Underlying Funds) because they are resident outside of Canada and all or substantially all of their assets are situated outside of Canada; and (ii) a statement that the Applicant advising the relevant Fund and, where applicable, the Managers advising the relevant Underlying Fund are not, or will not be, registered with or licensed by any securities regulatory authority in Canada and, accordingly, the protections available to clients of a registered adviser will not be available to purchasers of securities of such Fund.

September 20, 2002.

"Howard I. Wetston"

"Robert L. Sheriff"

2.2.4 Patrick Fraser Kenyon Pierrepont Lett et al. -
s. 127

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

AND

**IN THE MATTER OF
PATRICK FRASER KENYON PIERREPONT LETT,
MILEHOUSE INVESTMENT MANAGEMENT LIMITED,
PIERREPONT TRADING INC.,
BMO NESBITT BURNS INC.,
JOHN STEVEN HAWKYARD AND
JOHN CRAIG DUNN**

**ORDER
(Section 127)**

WHEREAS on September 18, 2002 the Ontario Securities Commission issued a Notice of Hearing pursuant to section 127 and 127.1 of the *Securities Act*;

AND WHEREAS Staff of the Commission requested that this matter be adjourned to a date to be determined by the secretary's office;

AND WHEREAS the respondents have consented to the adjournment;

AND WHEREAS the Commission considers it to be in the public interest to make this order;

IT IS ORDERED THAT this matter be adjourned to a date to be determined by the secretary's office.

September 24, 2002.

"Paul M. Moore"

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 Reasons for Decision

3.1.1 James Frederick Pincock

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

AND

**IN THE MATTER OF
JAMES FREDERICK PINCOCK**

Hearing:	August 27, 2002
Panel:	Paul M. Moore, Q.C. - Vice-Chair (Panel Chair) Robert L. Shirriff, Q.C. - Commissioner
Appearances:	Johanna Superina - For the Staff Stephanie Collins of the Ontario Securities Commission Linda Fuerst - For J.F. Pincock

**EXCERPT FROM THE SETTLEMENT HEARING
CONTAINING THE ORAL REASONS FOR DECISION**

The following statement has been prepared for purposes of publication in the Ontario Securities Commission Bulletin and is based on the transcript of the hearing, including oral reasons delivered at the hearing, in the matter of James Frederick Pincock. The transcript has been edited, supplemented and approved by the panel for the purpose of providing a public record of the panel's decision in the matter. This decision should be read together with the settlement agreement and the order attached.

•••••

Vice-Chair Moore:

We approve the settlement agreement as being in the public interest.

Facts

[1] The facts in support of the proposed sanctions are set out in the settlement agreement, dated August 23, 2002.

[2] Briefly, the facts are that from May 1995 to May 1999 (the material time), Pincock was the President of Britwirth Investment Company Limited and an officer or

director of Fulton Park Limited and Wifsta Limited. Pincock and his then spouse were the sole shareholders of Britwirth. At the material time, Pincock, Britwirth, Fulton Park, and Wifsta were not registered in any capacity under the Securities Act.

[3] During the material time, Pincock traded in securities where such trading was a distribution of securities without having filed a preliminary prospectus and a prospectus, and obtaining receipts therefor from the director as required by section 53(1) of the Act. Further, Pincock traded in securities without registration contrary to section 25(1) of the Act.

[4] In particular, Pincock received funds in the amount of at least CDN \$1.45 million and at least US \$550,000 from at least 150 investors in Ontario and elsewhere to purchase securities in at least seven companies. The funds Pincock received from investors were deposited into accounts in the name of Britwirth, Fulton Park or Wifsta. These accounts were held at several brokerage firms in Ontario. Pincock arranged for the investors to purchase securities in the companies through pooling and subscription agreements entered into between the investors and Britwirth, Fulton Park or Wifsta.

[5] After receiving funds from investors for the purchase of securities in the companies, Britwirth, Fulton Park and Wifsta, under Pincock's direction, purchased securities in the companies. Britwirth, Fulton Park and Wifsta then distributed securities in the companies to the investors who had purchased securities through the agreements.

[6] In relation to the sale of the securities of one of the companies, Britwirth earned commissions in the amount of CDN \$139,200; in relation to the sale of securities of another company, Britwirth earned fees in the amount of US \$81,000.

[7] Further, during the material time, Pincock, on his own behalf or in his capacity as president of Britwirth, acted as an adviser to the investors or as portfolio manager for the purpose of managing investments on behalf of clients. As I stated previously, he and Britwirth were not registered in any capacity under the Act.

[8] There is no allegation or evidence that investors suffered any harm or damage directly as a result of this conduct.

[9] Pincock admits that he breached the prospectus and registration requirements of Ontario securities law and that such conduct was contrary to the public interest.

[10] We have determined that it is in the public interest for the Commission to approve the settlement agreement and to make the proposed order for the reasons that I will now give.

Reasons

[11] The settlement reflects a disposition that is commensurate with the seriousness of Pincock's misconduct and is fair and proportional in the circumstances.

[12] In particular, we are satisfied that the sanctions are appropriate for the following reasons.

[13] First, Pincock has recognized his misconduct and has agreed to sanctions as set out in Part IV of the proposed settlement. These sanctions prohibit him from participation in Ontario's capital markets. They include an undertaking not to apply for registration for five years, a prohibition from acting as an officer or director of a registrant or issuer for five years, and a cease trade for a period of five years with the exception that after three years Pincock may trade in securities beneficially owned by him in his personal accounts in his name.

[14] Second, Pincock has no prior disciplinary history with the Commission.

[15] Third, by entering into a settlement agreement, staff and Pincock have avoided the necessity of conducting a more lengthy and expensive proceeding.

Reprimand

[16] Mr. Pincock, you are hereby reprimanded.

Conclusion

[17] We would like to thank both counsel for their presentation. The list of precedent settlement agreements and the table showing the various sanctions was particularly helpful. We are satisfied that this case has been properly disposed of.

August 27, 2002.

"Paul M. Moore"

"Robert L. Shirriff"

Chapter 4

Cease Trading Orders

4.1.1 Temporary, Extending & Rescinding Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Extending Order	Date of Lapse/Expire
3D Visit Inc.	17 Sep 02	27 Sep 02		19 Sep 02
Asset Management Software Systems Corp.	18 Sep 02	30 Sep 02		
Cogent Capital Corp.	24 Sep 02	04 Oct 02		
Excam Developments Inc.	25 Sep 02	07 Oct 02		
Miracle Entertainment, Inc.	23 Sep 02	04 Oct 02		
Proprietary Industries Inc.	18 Sep 02	30 Sep 02		
Seahawk Minerals Ltd.	09 Sep 02	20 Sep 02	20 Sep 02	
Vindicator Industries Inc.	06 Sep 02	18 Sep 02		20 Sep 02
WavePOINT Systems Inc.	13 Sep 02	25 Sep 02	25 Sep 02	

4.3.1 Issuer CTO's Revoked

Company Name	Date of Revocation
Intelligent Web Technologies	20 Sep 02
New Inca Gold Ltd.	20 Sep 02

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Chapter 7

Insider Reporting

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

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

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

Exempt Financings

The Ontario Securities Commission reminds issuers and other parties relying on exemptions that they are responsible for the completeness, accuracy, and timely filing of Forms 45-501F1 and 45-501F2, and any other relevant form, pursuant to section 27 of the *Securities Act* and OSC Rule 45-501 ("Exempt Distributions").

REPORTS OF TRADES SUBMITTED ON FORM 45-501F1

<u>Transaction Date</u>	<u>Purchaser</u>	<u>Security</u>	<u>Total Purchase Price (\$)</u>	<u>Number of Securities</u>
31-Aug-2002	6 Purchasers	AGII Growth Fund - Trust Units	865,839.80	160,400.00
23-Aug-2002	Lindon Leasing Limited;2014111 Ontario Inc.	Arrow Ascendant Arbitrage Fund - Trust Units	105,000.00	10,355.00
31-Aug-2002	6 Purchasers	Arrow Elkhorn US Long/Short Fund - Trust Units	1,140,943.74	24,909.00
23-Aug-2002 8/30/02	John Sylvain;John G. Jamieson	Arrow Epic Capital Fund - Trust Units	145,000.00	12,936.00
30-Aug-2002 9/6/02	John G. Jamieson;2014111 Ontario Inc.	Arrow Goodwood Fund - Trust Units	270,000.00	29,865.00
23-Aug-2002	David Thomas	Arrow Milford Capital Fund - Trust Units	25,300.64	2,563.00
30-Aug-2002	John G. Jamieson	Arrow White Mountain Fund - Trust Units	120,000.00	12,344.00
05-Sep-2002	Hall A. Tingley;Dennis Bernhard	Bioteq Environmental Technologies Inc. - Debentures	300,000.00	300,000.00
28-Aug-2002	Matthews Family Trust	BlazePhotonic Limited - Shares	773,909.00	38,812,460.00
28-Aug-2002	Matthews Family Trust	BlueArc Corporation - Common Shares	13,533,289.00	12,807,517.00
16-Aug-2002	Julian Disabatino	BPI American Opportunities Fund - Units	30,302.86	320.00
16-Aug-2002	1504603 Ontario Inc.	BPI Global Opportunitites III Fund - Units	56,250.00	640.00
28-Aug-2002	3852954 Canada Inc.	Bridgewater Systems Corp. - Common Shares	2,292,875.00	1,088,179.00
28-Aug-2002	Matthews Family Trust	Cavendish Kinetics Limited - Shares	773,909.00	3,635,610.00
30-Aug-2002	10 Purchasers	CMS Group Inc. - Common Shares	131,957.00	3,565,045.00

Notice of Exempt Financings

30-Aug-2002	13 Purchasers	Concordia University - Debentures	86,343,653.25	86,425,000.00
28-Aug-2002	John F. Driscoll	Endev Energy Inc. - Common Shares	25,000.00	50,000.00
28-Aug-2002	Matthews Family Trust	GotCompany.com Inc. - Common Shares	3,049,545.00	20,618,711.00
31-Aug-2002	5 Purchasers	Harbour Capital Canadian Balanced Fund - Trust Units	3,728,568.92	28,821.00
30-Aug-2002	Lynn Factor;Zed Financial Partners	Heritage Explorations Ltd. - Units	77,250.00	103,000.00
28-Aug-2002	Matthews Family Trust	Interprovider Limited - Shares	0.00	2,500,000.00
28-Aug-2002	Matthews Family Trust	ITF Optical Technologies Inc. - Common Shares	5,417,364.00	1.00
06-Sep-2002	Quest Ventures Ltd.;Dundee Bancorp Inc.	Kinetic Energy Inc. - Special Warrants	800,000.00	8,000,000.00
16-Aug-2002	Reid Hodgson	Landmark Global Opportunities Fund - Units	50,000.00	109.00
16-Aug-2002	3 Purchasers	Landmark Global Opportunities Fund - Units	139,260.97	1,279.00
28-Aug-2002	386496 Canada Inc.	Longitude Fund Limited Partnership - Units	5,616,346.00	11,350.00
30-Aug-2002	Trilwood Investments GmbH	Meikle Group Inc. - Common Shares	10,000,000.00	9,450,122.00
28-Aug-2002	Matthews Family Trust	Memsic, Inc. - Preferred Shares	1,749,004.00	4,836,444.00
09-Aug-2002	Evert Grift	Microsource Online, Inc. - Common Shares	6,000.00	1,000.00
08-Aug-2002	Michael Marino	Microsource Online, Inc. - Common Shares	3,000.00	500.00
21-Aug-2002	John Morris	Microsource Online, Inc. - Common Shares	1,200.00	200.00
21-Aug-2002	Randy Rogers	Microsource Online, Inc. - Common Shares	1,200.00	200.00
04-Sep-2002	Edgar Wilson	Microsource Online, Inc. - Common Shares	12,000.00	2,000.00
04-Sep-2002	John Vandommelen	Microsource Online, Inc. - Common Shares	1,200.00	200.00
05-Sep-2002	John Milligan	Microsource Online, Inc. - Common Shares	1,200.00	200.00
05-Sep-2002	Marvin Roberts	Microsource Online, Inc. - Common Shares	6,000.00	1,000.00
06-Sep-2002	Leo Klein	Microsource Online, Inc. - Common Shares	6,000.00	1,000.00

Notice of Exempt Financings

01-Aug-2002	3 Purchasers	MMCAP Limited Partnership Fund - Limited Partnership Units	152,500.00	142.00
26-Aug-2002	12 Purchasers	Morgain Minerals Inc. - Units	656,125.00	2,262,500.00
28-Aug-2002	Matthews Family Trust	NoHold, Inc. - Preferred Shares	2,466,543.00	11,919,735.00
13-Aug-2002	IBM World Trade Corporation	Rand A. Technology Corporation - Warrants	0.00	1,820,217.00
30-Aug-2002	Jack Schoenmakers	Result Energy Inc. - Common Shares	25,000.25	45,455.00
28-Jun-2002 7/17/02	4 Purchasers	Silicon Optix Inc. - Preferred Shares	433,398.73	261,904.00
28-Aug-2002	Matthews Family Trust	Synad Technologies Limited - Preferred Shares	5,968,163.00	9,174,592.00
16-Aug-2002	1504603 Ontario Inc.	Trident Global Opportunities Fund - Units	56,250.00	525.00
28-Aug-2002	Matthews Family Trust	Valaran Corporation - Preferred Shares	773,909.00	1,681,615.00
30-Aug-2002	Janne Duncan	Vertex Fund - Trust Units	25,000.00	958.00

RESALE OF SECURITIES - (FORM 45-501F2)

<u>Transaction Date</u>	<u>Seller</u>	<u>Security</u>	<u>Total Selling Price</u>	<u>Number of Securities</u>
21-Aug-2002	Aecon Group Inc.	Investors Group Trust Co. - Common Shares	5.85	500.00

NOTICE OF INTENTION TO DISTRIBUTE SECURITIES AND ACCOMPANYING DECLARATION UNDER SECTION 2.8 OF MULTILATERAL INSTRUMENT 45-102 RESALE OF SECURITIES - FORM 45-102F3

<u>Seller</u>	<u>Security</u>	<u>Number of Securities</u>
MacKay Shields LLC	Algoma Steel Inc. - Common Shares	4,260,876.00
F.D.L & associates Ltee	F.D.L. & Associates Ltee - Shares	50,000.00
Mark D. Cohen	Gendis Inc. - Common Shares	69,000.00
Windarra Minerals Ltd.	Mishibishu Gold Corporation - Common Shares	10,000,000.00
Bayside Financial Corp.	Parkland Income Fund - Units	500,000.00
Targa Group Inc.	Plaintree Systems Inc. - Common Shares	6,661,665.00
Targa Group Inc.	Plaintree Systems Inc. - Common Shares	34,550,760.00
Michael R. Faye	Spectra Inc. - Common Shares	250,000.00
Andrew J. Malion	Spectra Inc. - Common Shares	550,000.00
Teck Comico Limited	Western Copper Holdings Limited - Common Shares	1,500,000.00

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:

Calloway Real Estate Investment Trust
Principal Regulator - Alberta

Type and Date:

Preliminary Prospectus dated September 18th, 2002
Mutual Reliance Review System Receipt dated September 19th, 2002

Offering Price and Description:

\$ *

* Units @ \$10 per Unit

Underwriter(s) or Distributor(s):

TD Securities Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Desjardins Securities Inc.

Promoter(s):

-

Project #481772

Issuer Name:

CP Ships Limited
Principal Regulator - Alberta

Type and Date:

Preliminary Short Form Prospectus dated September 20th, 2002
Mutual Reliance Review System Receipt dated September 23rd, 2002

Offering Price and Description:

US\$200,000,000 10 3/8 % Senior Notes Due 2012

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #482230

Issuer Name:

Crescent Point Energy Ltd.
Principal Regulator - Alberta

Type and Date:

Preliminary Prospectus dated September 18th, 2002
Mutual Reliance Review System Receipt dated September 19th, 2002

Offering Price and Description:

3,255,000 Class A Shares Issuable upon the Exercise of Special Warrants @ \$3.10 per Special Warrant

Underwriter(s) or Distributor(s):

Yorkton Securities Inc.
Griffiths McBurney & Partners
Firstenergy Capital Corp.
National Bank Financial Inc.
Haywood Securities Inc.
Octagon Capital Corporation

Promoter(s):

Paul Colborne

Project #481913

Issuer Name:

diversiTrust Income Fund
Principal Regulator - Ontario

Type and Date:

Preliminary Prospectus dated September 20th, 2002
Mutual Reliance Review System Receipt dated September 23rd, 2002

Offering Price and Description:

Maximum \$ * (* Trust Units) @ \$0.0771 per Trust Unit

Underwriter(s) or Distributor(s):

Scotia Capital Inc.

Promoter(s):

Dynamic Mutual Funds Ltd.

Project #482154

Issuer Name:

Falcon Trust
Principal Regulator - Ontario

Type and Date:

Preliminary Short Form Prospectus dated September 20th, 2002
Mutual Reliance Review System Receipt dated September 23rd, 2002

Offering Price and Description:

\$147,500,000 Commercial Mortgage Pass-Through Certificates, Series 2002-SMU

Underwriter(s) or Distributor(s):

Scotia Capital Inc.

Promoter(s):

Falcon Trust
Scotia Capital Inc.

Project #482198

Issuer Name:

LionOre Mining International Ltd.
Principal Regulator - Ontario

Type and Date:

Preliminary Short Form Prospectus dated September 19th, 2002

Mutual Reliance Review System Receipt dated September 20th, 2002

Offering Price and Description:

CAD\$100,375,000
27,500,000 Common Shares Issuable Upon Exercise of
27,500,000 Special Warrants @ \$3.65 per
Special Warrant

Underwriter(s) or Distributor(s):

RBC Dominion Securities Inc.
Haywood Securities Inc.

Promoter(s):

-

Project #481919

Issuer Name:

Mackenzie Ivy European Capital Class
Mackenzie Universal American Growth Capital Class
Principal Regulator - Ontario

Type and Date:

Preliminary Simplified Prospectus dated September 20th, 2002

Mutual Reliance Review System Receipt dated September 24th, 2002

Offering Price and Description:

Offering Series A, F, I, M, O and R

Underwriter(s) or Distributor(s):

Mackenzie Financial Corporation

Promoter(s):

-

Project #482257

Issuer Name:

Maestral Quebec Growth Fund Inc.
Maestral Canadian Dividend Fund
Principal Regulator - Quebec

Type and Date:

Preliminary Simplified Prospectus dated September 16th, 2002

Mutual Reliance Review System Receipt dated September 17th, 2002

Offering Price and Description:

Retail Class Units, Fee Class Units and Institutional Class Units

Underwriter(s) or Distributor(s):

Desjardins Trust Inc.
Desjardins Trust
Desjardins Trust Investment Services Inc.

Promoter(s):

Desjardins Trust Inc.

Project #481109

Issuer Name:

MIX U.S. Mid Cap Value Class
MIX U.S. Large Cap Value Class
MIX U.S. Large Cap Growth Class
MIX U.S. Large Cap Core Class
MIX Trimark Select Canadian Growth Class
MIX Trimark Global Class
MIX Short Term Yield Class
MIX SEAMARK Total U.S. Equity Class
MIX SEAMARK Total Global Equity Class
MIX SEAMARK Total Canadian Equity Class
MIX Japanese Class
MIX International Value Class
MIX International Growth Class
MIX Global Value Class
MIX Global Sector Class
MIX Global Equity Class

MIX F.I. International Portfolio Class

MIX F.I. Growth America Class

MIX F.I. Canadian Disciplined Equity Class

MIX European Class

MIX Elliott & Page U.S. Mid Cap Class

MIX Elliott & Page Growth Opportunities Class

MIX Canadian Large Cap Value Class

MIX Canadian Large Cap Growth Class

MIX Canadian Large Cap Core Class

MIX Canadian Equity Value Class

MIX AIM Canadian First Class

MIX AIM American Mid Cap Growth Class

Principal Regulator - Ontario

Type and Date:

Preliminary Simplified Prospectus dated September 23rd, 2002

Mutual Reliance Review System Receipt dated September 23rd, 2002

Offering Price and Description:

Advisor Series and Series F shares

Underwriter(s) or Distributor(s):

Elliott & Page Limited

Promoter(s):

Elliott & Page Limited

Project #482310

Issuer Name:

Pharmaceutical Trust, 2002 Portfolio
Principal Regulator - Ontario

Type and Date:

Preliminary Simplified Prospectus) dated September 20th, 2002

Mutual Reliance Review System Receipt dated September 23rd, 2002

Offering Price and Description:

Respecting Series A and Series F Units

Underwriter(s) or Distributor(s):

First Defined Portfolio Management Co.

Promoter(s):

First Defined Portfolio Management Co.

Project #482314

Issuer Name:

TD Capital Trust II
Principal Regulator - Ontario

Type and Date:

Preliminary Prospectus dated September 17th, 2002
Mutual Reliance Review System Receipt dated September 18th, 2002

Offering Price and Description:

\$* - * TD Capital Trust II Securities - Series 2012-1 (TD CaTS II) @ \$1,000 per TD CaTS II

Underwriter(s) or Distributor(s):

TD Securities Inc.

Promoter(s):

The Toronto-Dominion Bank

Project #481282

Issuer Name:

The Toronto-Dominion Bank
Principal Regulator - Ontario

Type and Date:

Preliminary Prospectus dated September 17th, 2002
Mutual Reliance Review System Receipt dated September 18th, 2002

Offering Price and Description:

\$* - * TD Capital Trust II Securities - Series 2012-1 (TD CaTS II) @ \$1,000 per TD CaTS II

Underwriter(s) or Distributor(s):

TD Securities Inc.

Promoter(s):

The Toronto-Dominion Bank

Project #481280

Issuer Name:

Terraquest Energy Corporation
Principal Regulator - Alberta

Type and Date:

Preliminary Prospectus dated September 19th, 2002
Mutual Reliance Review System Receipt dated September 19th, 2002

Offering Price and Description:

11,000,000 Common Shares issuable on exercise of
outstanding Special Warrants
@ \$0.50 per Special Warrant

Underwriter(s) or Distributor(s):

Griffiths McBurney & Partners

Peters & Co. Limited

Promoter(s):

-

Project #481892

Issuer Name:

The VenGrowth Advanced Life Sciences Fund Inc.
Principal Regulator - Ontario

Type and Date:

Preliminary Prospectus dated September 19th, 2002
Mutual Reliance Review System Receipt dated September 23rd, 2002

Offering Price and Description:

Class A Shares

Underwriter(s) or Distributor(s):

-

Promoter(s):

APSFA/AGFFP SPONSOR CORP.

Project #482149

Issuer Name:

The VenGrowth II Investment Fund Inc.
Principal Regulator - Ontario

Type and Date:

Preliminary Prospectus dated September 19th, 2002
Mutual Reliance Review System Receipt dated September 23rd, 2002

Offering Price and Description:

Class A Shares

Underwriter(s) or Distributor(s):

-

Promoter(s):

APSFA/AGFFP SPONSOR CORP.

Project #482151

Issuer Name:

True North Gems Inc.
Principal Regulator - British Columbia

Type and Date:

Preliminary Prospectus dated September 23rd, 2002
Mutual Reliance Review System Receipt dated September 23rd, 2002

Offering Price and Description:

- (1) \$1,000,000 - 2,000,000 Offered Securities @ \$0.50 per Offered Security
- (2) Secondary distribution of 896,000 Common Shares on exercise of 896,000 previously issued Series A special warrants @ \$0.125 per special warrant
- (3) Secondary distribution of 96,000 Common Shares on exercise of 96,000 previously issued Series B special warrants @ \$0.3125 per special warrant
- (4) Secondary distribution of 1,336,437 Common Shares on exercise of 1,336,437 previously issued Series C special warrants @ \$0.25 per special warrant
- (5) Secondary distribution of 1,167,185 Series D Units on exercise of 1,167,185 previously issued Series D special warrants @ \$0.38 per special warrant
- (6) Secondary distribution of 448,000 Series E Units on exercise of 448,000 previously issued Series E special warrants @ \$0.50 per special warrant
- (7) Secondary distribution of 2,982,515 Series F Units on exercise of 2,982,515 previously issued Series F special warrants @ \$0.50 per special warrant
- (8) Secondary Distribution of 400,000 Units to Expatriate Resources Ltd.

Underwriter(s) or Distributor(s):

Canaccord Capital Corporation

Promoter(s):

Andrew Lee Smith
Brad Wilson
Bernard Gaboury
Bruce Patnode

Project #482433

Issuer Name:

TD Private Canadian Bond Income Fund
TD Private Canadian Bond Return Fund
TD Private Canadian Corporate Bond Fund
Principal Regulator - Ontario

Type and Date:

Amendment #1 dated September 13th, 2002 to Final Simplified Prospectus and Annual Information Form dated March 26th, 2002
Mutual Reliance Review System Receipt dated 18th day of September, 2002

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #416740

Issuer Name:

National Bank High Yield Bond Fund
National Bank/Fidelity True North Fund
National Bank European Small Capitalization Fund
National Bank Emerging Markets Fund
National Bank/Fidelity Focus Financial Services Fund
National Bank/Fidelity Growth America Fund
National Bank/Fidelity International Portfolio Fund
National Bank/Fidelity Global Asset Allocation Fund
National Bank/Fidelity Canadian Asset Allocation Fund
National Bank Global Equity RSP Fund
National Bank Global Equity Fund
National Bank Canadian Opportunities Fund
National Bank Global Technologies RSP Fund
National Bank Future Economy RSP Fund
National Bank Global Technologies Fund
National Bank Natural Resources Fund
National Bank Future Economy Fund
National Bank Québec Growth Fund
National Bank American RSP Index Fund
National Bank Canadian Index Fund
National Bank Small Capitalization Fund
National Bank International RSP Index Fund
National Bank Bond Fund
National Bank Secure Diversified Fund
National Bank Moderate Diversified Fund
National Bank Aggressive Diversified Fund
National Bank Intrepid Diversified Fund
National Bank Conservative Diversified Fund
National Bank Protected Global RSP Fund
National Bank Protected Canadian Equity Fund
National Bank Protected Growth Balanced Fund
National Bank Protected Retirement Balanced Fund
National Bank Protected Canadian Bond Fund
National Bank Canadian Index Plus Fund
National Bank American Index Plus Fund
National Bank Treasury Management Fund
National Bank Asia-Pacific Fund
National Bank European Equity Fund
National Bank Global RSP Bond Fund
National Bank Canadian Equity Fund
National Bank Dividend Fund
National Bank Retirement Balanced Fund
National Bank Mortgage Fund
National Bank U.S. Money Market Fund
National Bank Corporate Cash Management Fund
National Bank Money Market Fund
National Bank Treasury Bill Plus Fund
Principal Regulator - Quebec

Type and Date:

Amendment #1 dated September 6th, 2002 to Final Simplified Prospectus and Annual Information Form) dated March 28th, 2002 Mutual Reliance Review System Receipt dated 18th day of September, 2002

Offering Price and Description:

Mutual Funds Net Asset Value

Underwriter(s) or Distributor(s):

National Bank Securities Inc.

Promoter(s):

National Bank Securities Inc.

Project #425102

Issuer Name:

Mavrix American Growth Fund
Mavrix Canadian Strategic Equity Fund
Mavrix Diversified Fund
Mavrix Dividend & Income Fund
Mavrix Enterprise Fund
Mavrix Explorer Fund
Mavrix Global Fund
Mavrix Growth Fund
Mavrix Money Market Fund
Mavrix Sierra Equity Fund
Mavrix Strategic Bond Fund
Principal Regulator - Ontario

Type and Date:

Amendment #1 dated September 18th, 2002 to Simplified Prospectus and Annual Information Form dated June 27th, 2002 Mutual Reliance Review System Receipt dated 24th day of September, 2002

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

Mavrix Fund Management Inc.

Project #451456

Issuer Name:

Phoenix Matachewan Mines Inc.
Principal Regulator - Ontario

Type and Date:

Amend and Restated Preliminary Prospectus dated September 19th, 2002 Mutual Reliance Review System Receipt dated 23rd day of September, 2002

Offering Price and Description:

Maximum:\$1,000,000 through issuance of a mixture of Units and Flow-Through Units (collectively, the "Offered Securities") not exceeding 4,000,000 Offered Securities @ \$0.25 per Offered Security \$310,000 - 1,550,000 Common Shares and 637,500 Purchase Warrants

Issuable upon the exercise of Special Warrants previously issued

Underwriter(s) or Distributor(s):

Union Securities Ltd.
Jones, Gable & Company Limited

Promoter(s):

Robin B. Dow

Project #461440

Issuer Name:

BPI American Equity Fund (Class A, Class F and Class I units)
BPI American Equity RSP Fund (Class A, Class F and Class I units)
BPI American Equity Sector Fund (Sector A and Sector F shares)
BPI Global Equity Fund (Class A, Class F and Class I units)
BPI Global Equity RSP Fund (Class A, Class F and Class I units)
BPI Global Equity Sector Fund (Sector A and Sector F shares)
BPI International Equity Fund (Class A, Class F and Class I units)
BPI International Equity RSP Fund (Class A and Class F units)
BPI International Equity Sector Fund (Sector A and Sector F shares)
Harbour Fund (Class A, Class F and Class I units)
Harbour Sector Fund (Sector A, Sector F and Sector T shares)
Harbour Foreign Equity Sector Fund (Sector A, Sector F and Sector I shares)
Harbour Foreign Equity RSP Fund (Class A and Class F units)
Landmark American Fund (Class A, Class F and Class I units)
Landmark American RSP Fund (Class A, Class F and Class I units)
Landmark American Sector Fund (Sector A and Sector F shares)
Landmark Canadian Fund (Class A, Class F and Class I units)
Landmark Canadian Sector Fund (Sector A and Sector F shares)
Landmark Global Sector Fund (Sector A and Sector F shares)
Landmark Global RSP Fund (Class A and Class F units)
Signature Canadian Fund (Class A and Class F units)
Signature Canadian Sector Fund (Sector A and Sector F shares)
Signature Canadian Resource Fund (Class A and Class F units)
Signature Canadian Resource Sector Fund (Sector A and Sector F shares)
Signature Explorer Fund (Class A and Class F units)
Signature Explorer Sector Fund (Sector A and Sector F shares)
Signature Select Canadian Fund (Class A, Class F and Class I units)
Signature Select Canadian Sector Fund (Sector A, Sector F and Sector T shares)
Harbour Growth & Income Fund (Class A, Class F and Class I units)
Signature Canadian Balanced Fund (Class A and Class F units)
Signature Canadian Income Fund (Class A and Class F units)
(Formerly CI Canadian Income Fund)
Signature Dividend Fund (Class A and Class F units)
Signature Dividend Sector Fund (Sector A and Sector F shares)

Signature Dividend Income Fund (Class A and Class I units)
Signature High Income Fund (Class A, Class F and Class I units)
Signature High Income Sector Fund (Sector A, Sector F and Sector T shares)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated August 28th, 2002
Mutual Reliance Review System Receipt dated 18th day of September, 2002
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
CI Mutual Funds Inc.
Project #471171

Issuer Name:

Ethical US Special Equity Fund
Ethical International Equity Fund
Ethical Global Growth Fund
Ethical European Equity Fund
Ethical RSP European Equity Fund
Ethical RSP International Equity Fund
Ethical Canadian Dividend Fund
Principal Regulator - British Columbia
Type and Date:
Final Simplified Prospectus and Annual Information Form dated September 20th, 2002
Mutual Reliance Review System Receipt dated 20th day of September, 2002
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Credential Asset Management Inc.
Promoter(s):
-
Project #470953

Issuer Name:

TransForce Income Fund
Principal Regulator - Quebec
Type and Date:
Final Prospectus dated September 18th, 2002
Mutual Reliance Review System Receipt dated 19th day of September, 2002
Offering Price and Description:
\$102,000,000 - 12,000,000 Trust Units @ \$8.50 per Unit
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Scotia Capital Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Desjardins Securities Inc.
TD Securities Inc.
Sprott Securities Inc.
Promoter(s):
Transforce Inc.
Project #472087

Issuer Name:

TriLoch Resources Inc.
Principal Regulator - Alberta (ASC)

Type and Date:

Final Prospectus dated September 16th, 2002
Mutual Reliance Review System Receipt dated 17th day of
September, 2002

Offering Price and Description:

\$9,000,000.00 - Minimum: 5,000 Units (\$5,000,000);
Maximum: 9,000 Units (\$9,000,000) @\$1,000.00 per Unit

Underwriter(s) or Distributor(s):

Griffiths McBurney & Partners

Promoter(s):

Allan E. Spurgeon
James N. McIndoe
R. Glenn Dawson

Project #472295

Issuer Name:

WOLFDEN RESOURCES INC.
Principal Regulator - Ontario

Type and Date:

Final Prospectus dated September 23rd, 2002
Mutual Reliance Review System Receipt dated 23rd day of
September, 2002

Offering Price and Description:

\$6,659,905 -600,000 Flow-Through Common Shares
issuable upon the exercise of Class A Special Warrants,
1,800,000

Common Shares and 900,000 Warrants issuable upon the
exercise of Class B Special Warrants,
2,932,733 Flow-Through Common Shares issuable upon
the exercise of Class C Special Warrants,
2,242,048 Flow-Through Common Shares issuable upon
the exercise of Class E Special Warrants
and 869,565 Common Shares issuable upon the exercise
of Class F Special Warrants

Underwriter(s) or Distributor(s):

Canaccord Capital Corporation
Dundee Securities Corporation
Griffiths McBurney & Partners
Haywood Securities Inc.

Promoter(s):

-

Project #474556

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Biremis Corporation Attention: Joseph Gregory Ianni 443 University Avenue, 3 rd Floor Toronto ON M5G 2H6	Limited Market Dealer	Sep 18/02
New Registration	Time Equities Securities Canada Inc. Attention: Leonid Gorelik c/o Baker & McKenzie Barristers & Solicitors BCE Place, 181 Bay Street Suite 2100, PO Box 874 Toronto ON M5J 2T3	Limited Market Dealer	Sep 18/02
New Registration	Stern Growth Management Inc. Attention: Arthur Stern 95 Wellington Street West 22 nd Floor Toronto ON M5J 2N7	Limited Market Dealer	Sep 23/02
New Registration	Hallmark Capital Corporation Attention: David Jae Gold 55 Hillholm Boulevard Richmond Hill ON L4B 2H6	Limited Market Dealer	Sep 23/02
New Registration	Daiwa Securities SMBC Europe Limited Attention: Kathleen Ward c/o 152928 Canada Inc. 5300 Commerce Court West 199 Bay Street Toronto ON M5L 1B9	International Dealer	Sep 24/02
New Registration	Grantham, Mayo, Van Otterloo & Co. LLC Attention: Scott Darren Hogan 40 Rows Wharf Boston MA 02110 USA	International Adviser Investment Counsel & Portfolio Manager	Sep 24/02
Change of Name	Newport Securities Inc. Attention: Moyra Mackay 40 King Street West Suite 5012 Toronto ON M5H 3Y2	From: Brompton Securities Limited To: Newport Securities Inc.	Aug 15/02

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 IDA Discipline Penalties Imposed on Nicolas Tsaconakos – Violation of By-laws 17.1, 17.2, 17.2A and 29.1, Regulations 1300.1, 1300.2 and Policy Nos. 2 and 3

Contact:

Sharon Lane
Enforcement Counsel
(416) 865-3039

BULLETIN # 3046
September 17, 2002

DISCIPLINE

DISCIPLINE PENALTIES IMPOSED ON NICOLAS TSACONAKOS – VIOLATION OF BY-LAWS 17.1, 17.2, 17.2A AND 29.1, REGULATIONS 1300.1, 1300.2 AND POLICY NOS. 2 AND 3

Person Disciplined The Ontario District Council of the Investment Dealers Association of Canada (“the Association”) has imposed discipline penalties on Nicolas Tsaconakos (“Mr. Tsaconakos”), at the relevant times, Chief Operating Officer (“COO”), Chief Financial Officer (“CFO”) and Ultimate Designated Person (“UDP”) of Rampart Securities Inc. (“Rampart”),

By-laws, Regulations, Policies Violated On September 17, 2002, the Ontario District Council considered, reviewed and accepted a settlement agreement negotiated between Mr. Tsaconakos and Association Staff.

Pursuant to the Settlement Agreement, Mr. Tsaconakos admitted that that he engaged in conduct unbecoming his positions, by failing to:

- Ensure that Rampart was in compliance with Association Requirements pursuant to Association By-laws 17.1, 17.2 and 17.2A, Regulations 1300.1 and 1300.2 and Policy Nos. 2 and 3;
- Carry out his duties and responsibilities to ensure that Rampart fulfilled representations given to the Association to put into place and implement procedures to ensure compliance with Association requirements, contrary to By-law 29.1

Penalty Assessed Mr. Tsaconakos has agreed to the following penalties:

- A monetary fine in the amount of \$175,000.00;
- Mr. Tsaconakos will never seek approval for registration for employment by a Member of the Association for any position with regulatory compliance or regulatory supervisory responsibilities.

Summary Of Facts The Respondent was registered as Rampart’s Chief Operating Officer (“COO”) from September 27, 1999 forward, as Chief Financial Officer (“CFO”) from September 27, 1999 to January 18, 2001 and as Ultimate Designated Person (“UDP”) from November 23, 1999 forward.

As UDP, Mr. Tsaconakos was ultimately obligated to ensure that the policies and procedures for the opening of new accounts were followed and the supervision of account activity, including the establishment and maintenance of procedures for account supervision, as prescribed by Association Regulation 1300.2 and Policy 2.

As CFO, Mr. Tsaconakos was ultimately responsible for continuously monitoring Rampart’s capital position to ensure that the Risk Adjusted Capital was maintained at all times, as prescribed by Association Policy 3 in order for Rampart to be in compliance with Association By-law 17.1.

As CFO and COO, Mr. Tsaconakos was ultimately responsible for taking action to avert or remedy any projected or actual capital deficiency and was required to report any capital deficiencies immediately to the Association, as prescribed by Association Policy 3.

As CFO, COO and a member of the Executive Committee, Mr. Tsaconakos was primarily responsible along with other senior officers and directors of Rampart for ensuring adequate internal control of Rampart by establishing and maintaining policies and procedures to comply with the Association's Internal Control Policy Statements, as prescribed by Association Policy 3. In addition, it was the responsibility of such senior officers and directors to take reasonable steps to ensure that Rampart compliance staff and employees implemented such policies.

When Mr. Tsaconakos became registered as COO, CFO and UDP in 1999, Rampart already had serious regulatory compliance problems which had been identified by the Association in 1997, 1998 and 1999.

It was Mr. Tsaconakos' responsibility as COO, CFO and UDP to exercise the necessary due diligence to identify Rampart's regulatory compliance problems in existence upon his arrival and to rectify such deficiencies. His regulatory responsibilities prevailed throughout his registration.

Mr. Tsaconakos entered into a fixed term employment contract with Rampart and he agreed to remain as COO as a requirement of a contract between Rampart and a third party. These facts did not absolve him of his duty to discharge his regulatory responsibilities.

Mr. Tsaconakos did make some attempt to address many of the regulatory compliance deficiencies that had been identified by the Association, including *inter alia*, the hiring of a CFO, CCO and other administrative staff.

Despite representations from Rampart that the recurring sales and financial compliance and regulatory capital problems would be rectified, in 2000 and 2001 many of the deficiencies identified by the Association in 1997, 1998 and 1999 continued and additional deficiencies were identified in the areas of supervision and internal control policies. These included, *inter alia*, insufficient supervision of trading desks, RRs and client accounts, insufficient daily and monthly review of client accounts and no evidence of inquiries, responses and actions taken despite suitability concerns and questionable/suspicious trading activity. In addition, the Association found the firm's institutional safeguards to be inadequate and expressed serious concerns with the financial monitoring of the firm. Rampart experienced capital deficiencies in February and August, 2000 and March to May, 2001.

The Respondent, as CFO, COO and UDP, was or ought to have been aware of the regulatory deficiencies described above and, where he was aware of such deficiencies, he failed to exercise his authority to rectify the deficiencies. Acting within the scope of his authority, he:

- a) permitted serious regulatory deficiencies to exist, continue and/or worsen; and
- b) relied on representations made by other Rampart senior officers, directors and principals, as well as compliance staff, that the concerns of the Association were being addressed; and
- c) failed to exercise the necessary due diligence to satisfy himself adequately on questionable or suspicious activities within Rampart, despite representations from Rampart officers, staff, directors or principals, that the activities were within regulatory requirements or being addressed; and
- d) failed to ensure that where information about regulatory deficiencies was brought to the attention Rampart's senior officers, directors and principals, that action was taken to ensure regulatory compliance; and
- e) exercised conduct unbecoming by continuing to hold each of his registered positions and responsibilities there under after he recognized that he was unable to fulfill the mandate and responsibilities of such positions.

Kenneth A. Nason
Association Secretary

**IN THE MATTER OF
DISCIPLINE PURSUANT TO BY-LAW 20
OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA**

**RE: NICOLAS TSACONAKOS
SETTLEMENT AGREEMENT**

I. INTRODUCTION

1. The staff ("Staff") of the Investment Dealers Association of Canada (the "Association") has conducted an investigation (the "Investigation") into the conduct of Nicolas George Tsakonakos (the "Respondent").
2. The Investigation discloses matters for which the District Council of the Association (the "District Council") may penalize the Respondent by imposing penalties.

II. JOINT SETTLEMENT RECOMMENDATION

3. Staff and the Respondent consent and agree to the settlement of these matters by way of this Settlement Agreement in accordance with By-Law 20.25.
4. This Settlement Agreement is subject to the acceptance of the District Council, in accordance with By-Law 20.26. The District Council may also impose a lesser penalty or less onerous terms than those provided in this Settlement Agreement, or, with the consent of the Respondent, it may also impose a penalty or terms more onerous than those provided by this Settlement Agreement.
5. Staff and the Respondent jointly recommend that the District Council accept this Settlement Agreement.
6. If, at any time prior to the acceptance of this Settlement Agreement, or the imposition of a lesser penalty or less onerous terms, or the imposition, with the consent of the Respondents, of a penalty or terms more onerous, by the District Council, there are new facts or issues of substantial concern in the view of Staff, Staff will be entitled to withdraw this Settlement Agreement from consideration by the District Council.

III. STATEMENT OF FACTS

7. Solely for the purposes of this proceeding and of any other proceeding commenced by a securities regulatory agency, Staff and the Respondent agree with the facts as set out in this Settlement Agreement.

Rampart Securities Inc.

8. Formerly Rampart Securities Inc. ("Rampart") was a wholly owned subsidiary of Rampart Mercantile Inc. ("Rampart Mercantile"), a company that traded on the Canadian Venture Exchange ("CDNX"). Rampart was operated previously under the name of Merit Investment Corporation ("Merit"). Merit was a member of the Toronto Stock Exchange and became a member of the Association with the amalgamation of member regulation responsibility in 1997. In 1997 Merit changed its name to Rampart. Rampart and its predecessor companies are referred to as Rampart within this Settlement Agreement. At all material times, Rampart was a Member of the Association.

The Respondent

9. The Respondent was registered as Rampart's Chief Operating Officer ("COO") at all material times from September 27, 1999 forward, as Chief Financial Officer ("CFO") from September 27, 1999 to January 18, 2001 and as Ultimate Designated Person ("UDP") at all material times from November 23, 1999 forward.

Rampart's Regulatory Compliance History (1997 through 2001)

Sales Compliance Reviews in 1997, 1998 and 1999 (Prior to the Arrival of the Respondent at Rampart)

10. In 1997 and 1998 the Association conducted Sales Compliance Reviews of Rampart. In each of these reviews, the Association found repeated failures in Rampart's sales compliance systems. These deficiencies were reported to Rampart in 1997 and 1998 and the Association provided a written report after each review outlining the repeated and additional deficiencies.
11. The 1999 Sales Compliance Review took place immediately prior to the Respondent's arrival at Rampart in September 1999. The regulatory deficiencies identified in the 1999 Sales Compliance Review included deficiencies identified in the 1997 and 1998 Sales Compliance reviews as well as additional deficiencies. The Respondent was present at the

exit interview with Association staff where a general overview of the deficiencies found during the field review were presented and discussed.

12. The 1997, 1998 and 1999 Sales Compliance Reviews informed Rampart that the reviews had revealed significant failures in Rampart's compliance systems resulting in unwarranted risks to its clients. These failures included, *inter alia*, high levels of suitability issues which appeared to be either undetected or not addressed, failure to fully conduct the daily and monthly reviews, allowance of futures clients to trade beyond their loss limits and the acceptance of documents and authorisations without checking clients' signatures.

Financial Compliance and Regulatory Capital in 1998 and 1999 (Prior to and Immediately Following the Arrival of the Respondent at Rampart)

13. In 1998 and 1999, the Association conducted Financial Compliance Reviews of Rampart. The results were reported to Rampart and the Association provided a written report to Rampart after each review outlining the regulatory deficiencies.
14. In particular, in 1998 and 1999 the Association determined that Rampart failed to design, establish, oversee and implement an effective financial compliance program to ensure proper compliance with regulatory requirements regarding maintenance of adequate risk adjusted capital, monitoring of regulatory capital and reliability of financial reporting. The Association had confirmed periods of capital deficiency (January 1997, January 1999, and September, October and November 1999) and expressed serious concerns about Rampart's lack of controls over the accounting and regulatory reporting functions, in particular the credit control and reconciliation functions.

The Respondent's Responsibilities

15. As UDP, the Respondent was ultimately obligated to ensure that the policies and procedures for the opening of new accounts were followed and the supervision of account activity, including the establishment and maintenance of procedures for account supervision, as prescribed by Association Regulation 1300.2 and Policy 2.
16. As CFO, the Respondent was ultimately responsible for continuously monitoring Rampart's capital position to ensure that the Risk Adjusted Capital was maintained at all times, as prescribed by Association Policy 3 in order for Rampart to be in compliance with Association By-law 17.1.
17. As CFO and COO, the Respondent was ultimately responsible for taking action to avert or remedy any projected or actual capital deficiency and was required to report any capital deficiencies immediately to the Association, as prescribed by Association Policy 3.
18. On October 26, 1999, at a Rampart Board of Directors meeting, an Executive Committee was created, comprised of the Respondent (as Chief Financial and Operating Officer of Rampart), along with Henry Cole (President and a director), Dominique Monardo and Sean Shanahan (Rampart directors) to run Rampart's business on a day-to-day basis.
19. As CFO, COO and a member of the Executive Committee, the Respondent was primarily responsible along with other senior officers and directors of Rampart for ensuring adequate internal control of Rampart by establishing and maintaining policies and procedures to comply with the Association's Internal Control Policy Statements, as prescribed by Association Policy 3. In addition, it was the responsibility of such senior officers and directors to take reasonable steps to ensure that Rampart compliance staff and employees implemented such policies.

Acknowledgement of the Challenges and Responsibilities Facing the Respondent

20. Prior to the Respondent's arrival, Rampart had not had a registered CFO, COO, UDP or Chief Compliance Officer ("CCO") for much of the preceding two years.
21. When the Respondent became registered as COO, CFO and UDP in 1999, Rampart already had serious regulatory compliance problems as noted in paragraphs 10 through 14 above.
22. The Respondent acknowledges that it was his responsibility as COO, CFO and UDP to exercise the necessary due diligence to identify Rampart's regulatory compliance problems in existence upon his arrival and to rectify such deficiencies.
23. The Respondent acknowledges that his regulatory responsibilities prevailed throughout his registration.

24. Rampart reported to the Association that the Respondent was hired and given the responsibility and authority to impose policies and controls to rectify the regulatory compliance deficiencies.
25. The Respondent entered into a fixed term contract of employment with Rampart and he agreed to remain as COO as a requirement of a contract between Rampart and a third party. The Respondent acknowledges that although these facts affected his decision to remain at Rampart, they did not absolve him of his duty to discharge his regulatory responsibilities.
26. The Association acknowledges that the Respondent did make some attempt to address many of the regulatory compliance deficiencies that had been identified by the Association, including *inter alia*, the hiring of a CFO, CCO and other administrative staff.

Rampart's Continued Regulatory Compliance Deficiencies after the Arrival of the Respondent at Rampart

27. In October 2000 a Sales Compliance review was conducted at Rampart. Despite representations from Rampart that the recurring problems would be rectified, many of the deficiencies identified by the Association in 1997, 1998 and 1999 continued and additional deficiencies were identified in the areas of supervision and internal control policies, including *inter alia*, insufficient supervision of trading desks, RRs and client accounts, insufficient daily and monthly review of client accounts and no evidence of inquiries, responses and actions taken despite suitability concerns and questionable/suspicious trading activity, inadequate institutional safeguards and internal control policies.
28. In 2000 and 2001 Financial Compliance reviews were conducted at Rampart. Despite representations from Rampart that the recurring problems would be rectified, many of the deficiencies identified by the Association in paragraphs 13 and 14 above continued and the Association continued to express serious concern over Rampart's internal controls, including the financial monitoring of the firm. Rampart experienced capital deficiencies in February and August, 2000 and March to May 2001.

Rampart's Contraventions

29. Pursuant to an Order of the Ontario Superior Court of Justice dated October 24, 2002, Rampart was thereafter administered by a trustee pursuant to Part XII of the *Bankruptcy and Insolvency Act*.
30. At a disciplinary hearing on January 21, 2002, which the trustee for the estate of Rampart did not oppose, the Ontario District Council found that Rampart committed the following violations for the time periods from 1997 through 2001:
 - (a) Rampart engaged in conduct unbecoming a Member, contrary to Association By-Law 29.1 by:
 - (i) failing to design, establish, oversee and implement effective sales and financial compliance programs; and
 - (ii) failing to ensure that Rampart fulfilled representations provided to the Association to put into place and carry out procedures to ensure compliance with Association requirements;
 - (b) Rampart contravened Association Regulation 1300.2 by:
 - (i) failing to establish and maintain a supervisory environment in accordance with Association Policy No. 2, and
 - (ii) failing to ensure that accounts were properly opened and supervised as required by Association Policy No.2;
 - (c) Rampart contravened Association By-law 17.2 by failing to keep and maintain a proper system of books and records;
 - (d) Rampart contravened Association By-law 17.2A by failing to establish and maintain internal controls in Accordance with Association Policy No. 3;
 - (e) Rampart contravened Association By-law 17.1 during the months of January 1997, January, March, September, October and November, 1999, February and August, 2000 and March to May, 2001, by failing to maintain its risk-adjusted capital greater than zero;
 - (f) Rampart contravened Association Policy No. 3 by failing to continuously monitor its capital position to ensure that the Risk Adjusted Capital was maintained as prescribed by Association requirements.

The Respondent

31. The Respondent, as CFO, COO and UDP for the periods noted above, was or ought to have been aware of the regulatory deficiencies described above in Section III and, where he was aware of such deficiencies, he failed to exercise his authority to rectify the deficiencies. Acting within the scope of his authority, he:
- (a) permitted serious regulatory deficiencies to exist, continue and/or worsen; and
 - (b) relied on representations made by other Rampart senior officers, directors and principals, as well as compliance staff, that the concerns of the Association were being addressed; and
 - (c) failed to exercise the necessary due diligence to satisfy himself adequately on questionable or suspicious activities within Rampart, despite representations from Rampart officers, staff, directors or principals, that the activities were within regulatory requirements or being addressed; and
 - (d) failed to ensure that where information about regulatory deficiencies was brought to the attention Rampart's senior officers, directors and principals, that action was taken to ensure regulatory compliance; and
 - (e) exercised conduct unbecoming by continuing to hold each of his registered positions and responsibilities thereunder after he recognized that he was unable to fulfill the mandate and responsibilities of such positions as recognized in paragraphs 10 through 14.

IV. CONTRAVENTIONS

32. As a consequence of the acts and omissions referred to in paragraph 31 above, the Respondent engaged in conduct unbecoming his positions, by failing to:
- (a) ensure Rampart was in compliance with Association Requirements pursuant to Association By-laws 17.1, 17.2, 17.2A, Regulation 1300.1, 1300.2 and Policy Nos. 2 and 3;
 - (b) carry out his duties and responsibilities to ensure that Rampart fulfilled representations given to the Association to put into place and implement procedures to ensure compliance with Association requirements, contrary to By-law 29.1

V. ADMISSION OF CONTRAVENTIONS AND FUTURE COMPLIANCE

33. The Respondent admits contravening the By-laws, Regulations and Policies of the Association set out in Section IV of this Settlement Agreement. The Respondent acknowledges his responsibility to comply with the By-laws, Regulations and Policies of the Association.

VI. PENALTIES AND TERMS

34. The Respondent and Staff agree to the imposition of discipline penalties by Association pursuant to this Settlement Agreement as follows.
- (a) a fine in the amount of \$175,000.00 (one hundred and seventy-five thousand dollars and zero cents), inclusive of the Association's costs; and
 - (b) the Respondent will never seek approval for registration for employment by a Member of the Association for any position with regulatory compliance or regulatory supervisory responsibilities.

VII. EFFECTIVE DATE

35. This Settlement Agreement shall become effective and binding upon the Respondent and Staff in accordance with its terms as of the date of:
- its acceptance; or
- (a) the imposition of a lesser penalty or less onerous terms; or
 - (b) the imposition, with the consent of the Respondent, of a penalty or terms more onerous,
- by the District Council.

VIII. WAIVER

36. If this Settlement Agreement becomes effective and binding, the Respondent hereby waives his right to a hearing under the Association By-laws in respect of the matters described herein and further waives any right of appeal or review which may be available under such By-laws or any applicable legislation.

IX. STAFF COMMITMENT

37. If this Settlement Agreement becomes effective and binding, Staff will not proceed with disciplinary proceedings against the Respondent herein under Association By-laws in relation to the facts set out in Section III of the Settlement Agreement.

X. PUBLIC NOTICE OF DISCIPLINE PENALTY

38. If this Settlement Agreement becomes effective and binding:

- (a) the Respondent shall be deemed to have been penalized by the District Council for the purpose of giving written notice to the public thereof by publication in an Association Bulletin and by delivery of the notice to the media, the securities regulators and such other persons, organizations or corporations, as required by Association By-laws and any applicable Securities Commission requirements; and
- (b) the Settlement Agreement and the Association Bulletin shall remain on file and shall be disclosed to members of the public upon request.

XI. EFFECT OF REJECTION OF SETTLEMENT AGREEMENT

39. If the District Council rejects this Settlement Agreement:

- (a) the provisions of By-Laws 20.10 to 20.24, inclusive, shall apply, provided that no member of the District Council rejecting this Settlement Agreement shall participate in any hearing conducted by the District Council with respect to the same matters which are the subject of the Settlement Agreement; and
- (b) the negotiations relating thereto shall be without prejudice and may not be used as evidence or referred to in any hearing.

AGREED TO by the Respondent, in the City of Toronto, in the Province of Ontario, this "6th" day of "September", 2002

"Thomas N.T. Sutton"

"Nicolas George Tsaconakos"

AGREED TO by Staff at the City of Toronto, in the Province of Ontario, this "5th" day of "September", 2002

"Nina Genova"

"Jeffrey Kehoe"

Director of Enforcement Litigation, Enforcement Department, on behalf of Staff of the Investment Dealers Association of Canada

ACCEPTED by the Ontario District Council of the Investment Dealers Association of Canada, at the City of Toronto, in the Province of Ontario, this "17th" day of "September" , 2002.

Investment Dealers Association of Canada
(Ontario District Council)

Per: Hon. Fred Kaufman, chair

Per: Michael Walsh

Per: "David Kerr"

13.1.2 IDA Policy 8 Regarding Reporting and Record Keeping Requirements – Notice of Commission Approval

IDA POLICY 8 – REPORTING AND RECORD-KEEPING REQUIREMENTS

NOTICE OF COMMISSION APPROVAL

The Ontario Securities Commission approved IDA Policy 8 regarding reporting and record-keeping requirements. In addition, the Saskatchewan Securities Commission approved, the Alberta Securities Commission did not disapprove and the British Columbia Securities Commission did not object to this policy. The purpose of the Policy is to set out what must be reported by the registrants to the IDA Member firms and what must be reported by the Member firms to the IDA. The Policy also sets out the record-keeping requirements for documentation associated with all the items that must be reported, the instances when an internal investigation must be conducted by a Member and the rule that registrants cannot enter into a settlement agreement without the consent of the Member. Finally, the amendments allow the IDA to impose a prescribed administrative fee for non-compliance with the Policy. A copy and description of the Policy was published on July 12, 2002 at (2002) 25 OSCB 4606. No comments were received.

One submission was received in response to the request for comments. The comments were made by Market Regulation Services Inc. and were sent by letter dated August 21, 2002. The IDA's summary of the comments received and its response to them are set out below.

SUMMARY OF WRITTEN QUESTIONS AND COMMENTS RECEIVED ON THE PROPOSED REGULATION

Comment

Under Policy 8, the Member would not be under an obligation to inform the SRO or regulatory agency whose rules were breached of either the investigation or the results of the investigation. While the "designated SRO" would in the ordinary course be expected to provide another SRO with particulars under information sharing arrangements, RS would suggest that the provision in Policy 8 be broadened to impose directly on the Member an obligation to report to the SRO whose rules were breached if a report has not been made to that SRO in accordance with clause (h) of section B.1. of Part I of the Policy.

Response

It would be inappropriate to amend Policy 8 to impose directly on Members an obligation to report to the SRO whose rules were breached. The basis for receipt of Policy 8 information by the IDA and compliance with Policy 8 by the Members is the contractual relationship by which the Members submit to IDA jurisdiction. The IDA does not have

the jurisdiction to require reporting to "other SROs whose rules were breached". Reporting requirements to RS Inc. is a matter between RS Inc. and those firms and individuals that fall within its regulatory jurisdiction.

Comment

RS would suggest that the list of reportable subject matters of investigations be broadened by providing a "basket clause" such as "other similar or related matters". For example, UMIR prohibits, "manipulative methods of trading" and activities which would constitute "frontrunning" or breaches of "just and equitable principles of trade". In the view of RS, the reporting obligation should be given an expansive interpretation that may take into account differences in wording and effect of various provisions from different self-regulatory organization".

Response

ComSet sets out a list of types of violations that Members may choose from with the option to use the "other" text box should the violation not be found in the list.

The list of the types of violations set out in ComSet is as follows:

Adequacy of books and records;
Churning and excessive trading;
Client priority rule violations;
Conflict of Interest;
Falsification/Forgery of Documentation;
Inappropriate personal financial dealings;
Insider trading/ self-dealing;
Internal control violations;
Manipulation and wash trading;
Misrepresentation;
Prospectus, Exemptions and Related matters;
Supervision;
Theft and fraudulent activities;
Trading outside jurisdiction;
Transfer of accounts;
Unauthorized or Discretionary Trading;
Unsuitable Investments;
Violation of IDA Order;
Violation of Commission or other SROs Order and Other.

The wording of this list is broad enough to cover most situations and Policy 8 does not specifically define these violations. For example, depending on the circumstances, "deceptive trading methods" could come under the category of fraud, while "frontrunning" could fall under the category of "client priority violations". The categories are believed to be adequate as currently set out and serve to encompass the types of offences referred to in the comment letter.

13.1.3 IDA Discipline Penalties Imposed on Michael Anthony Whistle – Violations of Regulation 1300.4 and By-Law 29.1

Contact:
Ricardo Codina
Enforcement Counsel
(416) 943-6981
rcodina@ida.ca

BULLETIN # 3049
September 23, 2002

DISCIPLINE

**DISCIPLINE PENALTIES IMPOSED ON MICHAEL ANTHONY WHISTLE
– VIOLATIONS OF REGULATION 1300.4 AND BY-LAW 29.1**

**Person
Disciplined**

The Ontario District Council of the Investment Dealers Association of Canada (the “Association”) has imposed discipline penalties on Michael Anthony Whistle (“Whistle”), formerly an approved person and branch manager with T.D. Securities Inc. (“T.D.”).

**By-laws,
Regulations,
Policies
Violated**

On September 17, 2002, the Ontario District Council considered, reviewed and accepted a Settlement Agreement negotiated between Whistle and Association Staff. The settlement approval hearing was held *in camera* at Whistle’s request.

Pursuant to the Settlement Agreement, Whistle admitted that he had violated Association Regulation 1300.4 by carrying out a large number of discretionary trades in the accounts of ten clients without the accounts having been approved and accepted in writing as discretionary accounts as required by Association Regulation 1300.4(a) and (b).

Whistle also admitted to engaging in a business conduct or practice that is unbecoming or detrimental to the public interest, contrary to Association By-Law 29.1, by:

- Trading in a manner or in securities that were inconsistent with his clients’ investment objectives and risk tolerance level
- Depositing monies in client accounts without disclosing same to his employer.

**Penalty
Assessed**

Whistle is permanently prohibited from holding any supervisory or compliance position with any Member of the Association. Furthermore, Whistle may not re-apply for approval in any capacity for a period of at least two years commencing on September 17, 2002. Should Whistle re-apply for approval in the future, he will be required to submit to a hearing to determine his fitness for approval.

Whistle will also pay \$ 1,487.38 to the Association in disgorged commissions related to his misconduct and will pay a portion of the Association’s investigation costs in the amount of \$ 894.60.

Facts

Whistle was employed in the investment industry from January 1987 until his dismissal from T.D. in October 1999. Between January 1997 and October 1999, Whistle was employed by T.D. From January 1997 to January 1999, Whistle was a branch manager at one of T.D.’s offices in Thunder Bay, Ontario. He continued to work at that office as a registered representative until October 1999.

During the time that Whistle was employed at T.D., he was suffering from a medical disorder, which was, at that time, undiagnosed and untreated.

Between February 1997 and October 1999, Whistle traded in the accounts of ten clients (“the Clients”) without obtaining their prior authorization. Although the Clients received trade confirmation slips and other information in the mail regarding their account activities, they did not know that Whistle was required to obtain their authorization prior to carrying out each trade in their accounts. In some instances, Whistle had general discussions with the Clients prior to trading. However, specific instructions were not obtained and the requirements of Association Regulation 1300.4 were not met.

The discretionary trading consisted primarily of intensive mutual fund switching. As an example, there were nineteen mutual fund switches in one Client account over a period of fourteen days. Discretionary mutual fund switching also occurred in nine other Client accounts.

The mutual fund switching was unsuitable for a number of the Clients because short term trading was

not part of their investment objectives. Whistle also purchased four securities for some of his Clients that were unsuitable for them given their investment objectives and risk tolerance levels.

Between January 1997 and February 1998, Whistle also deposited his own funds into client accounts on eleven occasions. He did not disclose these deposits to T.D. thereby contravening T.D.'s Compliance Manual and Association By-law 29.1.

Whistle has not been an approved person in any capacity since October 1999.

Kenneth A. Nason
Association Secretary

Bulletin No. 3049

**IN THE MATTER OF
DISCIPLINE PURSUANT TO BY-LAW 20
OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA**

RE: MICHAEL ANTHONY WHISTLE

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The staff ("Staff") of the Investment Dealers Association of Canada (the "Association") has conducted an investigation (the "Investigation") into the conduct of Michael Anthony Whistle ("the Respondent").
2. The Investigation discloses matters for which the Ontario District Council of the Association (the "District Council") may penalize the Respondent by imposing penalties.

II. JOINT SETTLEMENT RECOMMENDATION

3. Staff and the Respondent consent and agree to the settlement of these matters by way of this Settlement Agreement in accordance with By-Law 20.25.
4. This Settlement Agreement is subject to the acceptance of the District Council, in accordance with By-Law 20.26. The District Council may also impose a lesser penalty or less onerous terms than those provided in this Settlement Agreement, or, with the consent of the Respondent, it may also impose a penalty or terms more onerous than those provided by this Settlement Agreement.
5. Staff and the Respondent jointly recommend that the District Council accept this Settlement Agreement.
6. If, at any time prior to the acceptance of this Settlement Agreement, or the imposition of a lesser penalty or less onerous terms, or the imposition, with the consent of the Respondent, of a penalty or terms more onerous, by the District Council, there are new facts or issues of substantial concern in the view of Staff, Staff will be entitled to withdraw this Settlement Agreement from consideration by the District Council.

III. STATEMENT OF FACTS

7. Solely for the purposes of this proceeding, Staff and the Respondent agree with the facts as set out in this Settlement Agreement.

(A) THE RESPONDENT'S REGISTRATION HISTORY

8. The Respondent was employed in the investment industry from January 1987 until his dismissal from TD Securities Inc. (Evergreen Division) ("TD") in October 1999. Between January 1997 and January 1999, the Respondent was employed by TD as a branch manager for one of TD's offices in Thunder Bay, Ontario. Between January 1999 and October 1999, he was employed with TD as a registered representative.

(B) THE RESPONDENT'S CLIENTS

9. Between January 1997 and February 1998, the Respondent opened accounts for E.H., R.B., D.C., M.C., M.T., H.T., R.M., K.M., E.P. and A.P. ("the Clients"). The Clients were conservative investors some of whom had been referred to the Respondent by the TD Bank in order to get better returns on their portfolios which consisted largely of mutual funds, GICs and other capital secured investment products.
10. Other than R.B., D.C. and M.C., all of the Clients were over the age of 50 when they opened accounts with TD. Some were retired from employment while others expected to retire in the next few years.

(C) DISCRETIONARY TRADING

11. With the exception of K.M., whom the Respondent had never met nor spoken to, the Respondent had general discussions with the Clients about their investments. Although the Clients received trade confirmation slips and other information in the mail regarding their account activities and, therefore, became aware of the transactions after they had occurred, they did not know that the Respondent was required to obtain their consent prior to carrying out each

trade in their accounts. The Clients believed that the Respondent was generally authorized to conduct transactions in their accounts.

12. Between December 1998 and April 2000, the Clients lodged complaints with TD alleging, *inter alia*, unauthorized and/or unsuitable trading by the Respondent in their accounts.
13. The Respondent failed to obtain the Clients' authorization before carrying out the transactions described in paragraphs 14 to 26 herein. In some instances, there was some general discussion with the Clients about the investments proposed. However, for all the transactions described herein, the Respondent failed to obtain the Clients' prior authorization with respect to one or more of the following transactional elements:
 - (i) the security to be traded;
 - (ii) the quantity of the security to be traded;
 - (iii) the security's price for the transaction; and/or
 - (iv) the time of the transaction.
14. For account 8K-0125 belonging to M.T. and H.T., the following transactions were unauthorized:
 - a. Twelve mutual fund switches totaling \$ 165,577.60 between December 18 and 31, 1997;
 - b. Nineteen mutual fund switches totaling \$ 422,199.20 between February 4 and 18, 1998;
 - c. Fifteen mutual fund switches totaling \$ 377, 498.98 between April 6 and 29, 1998;
 - d. Eighteen mutual fund switches totaling \$ 609,002.78 between June 12 and 30, 1998;
 - e. Two mutual fund switches totaling \$ 24, 086.16 on July 8 and 9, 1998; and
 - f. Thirteen mutual fund switches totaling \$ 465,105.36 between August 11 and 24, 1998, and additional mutual fund sales totaling \$ 29, 863. 26 on August 12, 14 and 20, 1998.
15. For account 8K-0144 belonging to H.T., the following transactions were unauthorized:
 - a. One mutual fund switch for \$ 9, 463.75 on January 30, 1998;
 - b. One mutual fund switch for \$ 531.51 on April 28, 1998;
 - c. Three mutual fund switches totaling \$ 24,522 between June 15 to 25, 1998;
 - d. One mutual fund switch for \$ 8,237.28 on July 17 1998;
 - e. Four mutual fund switches for \$ 27, 843.06 between September 3 and 30, 1998; and
 - f. One mutual fund switch for \$6,929.66 on November 19, 1998.
16. For account 8K-0813 belonging to D.C., the following transactions were unauthorized:
 - a. Mutual fund switches involving eleven purchases totaling \$ 75,621.71 and seven sales totaling \$ 66, 484.14 between January 7 and 30, 1998;
 - b. Two mutual fund switches totaling \$ 18, 654.08 on April 22, 1998;
 - c. Purchase of 550 shares in Poco Petroleum Ltd. ("Poco") on July 16, 1998, and the sale of six mutual funds having a value of \$ 8, 354.65 on July 16 and 20, 1998;
 - d. Eight mutual fund switches totaling \$ 77, 661.70 between January 12 and 29, 1999; and
 - e. Sale of 550 shares of Poco on February 1, 1999, and purchase of one mutual fund for \$ 5,800.00 on February 3, 1999.

SRO Notices and Disciplinary Proceedings

17. For account 8K-0812 belonging to M.C., the following transactions were unauthorized:
 - a. One mutual fund switch for \$500.00 on March 25, 1998;
 - b. Two mutual fund switches totaling \$ 10,573.14 on April 20 and 22, 1998;
 - c. One mutual fund switch for \$ 1,000.00 on June 26, 1998;
 - d. Purchase of 700 shares of Poco and the sale of eight mutual funds totaling \$ 10, 693.27 on July 16, 1998;
 - e. Nine mutual fund switches for \$ 60, 792.82 between January 12 and 29, 1999; and
 - f. Sale of 700 shares of Poco on February 1, 1999, and the purchase of \$ 7, 236.25 in mutual funds on February 3, 1999.

18. For account 8K-0925 belonging to K.M. and R.M., the following transactions were unauthorized:
 - a. Two mutual fund switches for \$ 55, 223.15 on April 22 and 23, 1998;
 - b. Sale of one mutual fund for \$5,019.77 on April 30, 1998, and the purchase of another for \$ 4,990.00 on May 5, 1998;
 - c. Three mutual fund switches totaling \$76,101.61 on September 29 and 30, 1998;
 - d. Two mutual fund switches totaling \$ 25, 363.21 on November 16, 1998; and
 - e. One mutual fund switch for \$ 29,001.80 on December 3, 1998.

19. For account 8K-0926 belonging to K.M., the following transactions were unauthorized:
 - a. Five mutual fund switches totaling \$ 33, 142.60 between April 21 and 23, 1998;
 - b. Five mutual fund switches totaling \$ 22,409.18 on September 29 and 30, 1998; and
 - c. One mutual fund switch for \$ 9,048.75 on November 16, 1998.

20. For account 8K-0927 belonging to K.M., the following transactions were unauthorized:
 - a. Four mutual fund switches totaling \$19,187.32 between April 21 and 23, 1998;
 - b. One mutual fund switch for \$305.35 on May 5, 1998;
 - c. Five mutual fund switches totaling \$ 17, 615.45 on September 29 and 30, 1998; and
 - d. One mutual fund switch for \$ 4, 424.76 on November 18, 1998.

21. For account 8K-0399 belonging to E.P., the following transactions were unauthorized:
 - a. Two mutual fund switches totaling \$ 31,408.50 on August 11 and 12, 1998;
 - b. Two mutual fund switches totaling \$ 28,496.48 on September 9 and 10, 1998;
 - c. One mutual fund switch for \$ 11,542.02 on November 17, 1998, and the sale of one mutual fund for \$ 1,200.00 on November 25, 1998;
 - d. The sale of three mutual funds totaling \$ 2,500.20 and the purchase of one mutual fund for the same amount on January 11, 1999; and
 - e. Purchase of 900 shares of Battle Mountain Canada Inc. ("Battle Mountain") on August 20, 1999, and the sale of same on September 30, 1999.

22. For account 8K-0397 belonging to A.P., the following transactions were unauthorized:
- a. Purchase of 350 shares of Poco on July 21, 1998;
 - b. Six mutual fund switches totaling \$178,382.57 between August 11 and 20, 1998;
 - c. Two mutual fund switches totaling \$ 77,110.82 on September 9 and 10, 1998;
 - d. Two mutual fund switches totaling \$ 57,832.39 on November 16 and 25, 1998;
 - e. Two mutual fund switches totaling \$ 27,858.88 on January 7 and 12, 1999, and the purchase of one additional mutual fund for \$ 2,400.00 and the sale of another mutual fund for \$2,356.98 on January 11, 1999;
 - f. Sale of 350 shares of Poco and purchase of 1,500 shares of Battle Mountain on August 20, 1999; and
 - g. Sale of 1,500 shares of Battle Mountain on September 30, 1999.
23. For account 8K-0398 belonging to A.P. and E.P., the following transactions were unauthorized:
- a. Eight mutual fund switches totaling \$ 260,621.10 between August 7 and 20, 1998;
 - b. Eight mutual fund switches totaling \$ 238,821.64 between September 4 and 29, 1998;
 - c. Three mutual fund switches totaling \$ 127,657.97 on November 4, 16 and 25, 1998, and the purchase of 1,000 shares of Poco on November 19 and the sale of same on November 26, 1998;
 - d. One mutual fund switch for \$ 12, 064.38 on December 14, 1998;
 - e. Repurchase of 1,000 shares of Poco on December 14, 1998 and the sale of same on January 11, 1999;
 - f. One mutual fund switch for \$ 59,741.21 on January 29, 1999; and
 - g. Purchase of 5,000 shares of Battle Mountain on August 20, 1999, and the sale of same on September 30, 1999.
24. For account 8K-0192 belonging to E.H, the following transactions were unauthorized:
- a. Purchase of 8,300 NCE Diversified Income Trust Units on February 27, 1997;
 - b. Sale of 8,300 NCE Diversified Income Trust Units on November 17 and 18, 1997;
 - c. Purchase of 7,000 shares of Nebex Resources Ltd. on November 17 and 20, 1997;
 - d. Purchase of 200 shares of Toronto Dominion Bank on November 17, 1997, and sale of these shares on March 3, 1998;
 - e. Purchase of 300 shares of Petro-Canada on November 18, 19, and 20, 1997;
 - f. Purchase of 100 shares of Potash Corporation of Saskatchewan Inc. on November 18, 1997; and
 - g. Purchase of 400 shares of Com Development International Ltd. on March 3, 1998.
25. For account 8K-0994 belonging to R.B, the following transactions were unauthorized:
- a. Sale of \$ 20, 347.37 in GICs on May 19, 1998; and
 - b. Five mutual fund purchases totaling \$ 32, 548.38 on May 22 and 26, 1998.
26. For account 8K-1015 belonging to R.B, the following transactions were unauthorized:
- a. Two mutual fund purchases totaling \$4, 149 on July 3 and 7, 1998.

27. None of the accounts referred to in paragraphs 14 to 26 above were accepted by TD as discretionary accounts pursuant to Association Regulation 1300.4(a) and 1300.4 (b). The Respondent was accordingly not permitted to treat them as discretionary accounts and was required to obtain the Clients' prior authorization before each specific trade was carried out in their accounts. By treating these accounts as discretionary accounts, the Respondent violated Association Regulation 1300.4.

(D) UNSUITABLE TRANSACTIONS

28. On or about July 25, 1997, the Respondent purchased 8,300 NCE Diversified Income Trust Units for account 8K-0192 belonging to E.H. On or about November 17 and 20, 1997, the Respondent purchased a total of 7,000 shares of Nebex Resources Ltd. for the same account. Neither of these investments was consistent with E.H.'s objective of capital preservation.
29. Between December 1997 and August 1998, the Respondent switched several mutual funds in account 8K-0125 belonging to M.T. and H.T. In December 1997, February 1998, April 1998, June 1998 and August 1998, the Respondent switched mutual funds in this account between 13 and 19 times. As H.T. and M.T.'s investment objectives did not include short term trading, this pattern of trading was unsuitable for them.
30. In January, April and July 1998, and in January and February 1999, the Respondent switched several mutual funds in account 8K-0813 belonging to D.C. In January 1999, the Respondent also switched several mutual funds in account 8K-0812 belonging to M.C. The trading in these accounts was inconsistent with D.C. and M.C.'s investment objectives which did not include short term trading.
31. On July 16, 1998, the Respondent purchased 550 shares of Poco for account 8K-0813. On the same day, he purchased 700 shares of Poco for account 8K-0812. Poco was a high risk security the purchase of which was inconsistent with D.C. and M.C.'s investment objectives.
32. In April and May 1998, and in September to December 1998, the Respondent switched several mutual funds in account 8K-0925 belonging to R.M. and K.M. Similar transactions occurred in accounts 8K-0926 and 8K-0927 belonging to K.M. in April and September 1998. This pattern of trading was unsuitable for R.M. and K.M. because their investment objectives did not include short term trading.
33. The Respondent switched several mutual funds in account 8K-0397 belonging to A.P. in August 1998, September 1998, November 1998 and January 1999, and in account 8K-0398 belonging to E.P. and A.P. during the same period of time (with the exception of January 1999). This pattern of trading was unsuitable for E.P. and A.P. as their investment objectives did not include short term trading.
34. On July 21, 1998, the Respondent purchased shares in Poco for account 8K-0397. On December 14, 1998, the Respondent purchased shares in Poco for account 8K-0398. Poco was a high risk security the purchase of which was inconsistent with A.P. and E.P.'s risk tolerance level.
35. In August 1999, the Respondent purchased shares of Battle Mountain for accounts 8K-0397, 8K-0398 and 8K-0399. Battle Mountain was a high risk security the purchase of which was also inconsistent with A.P. and E.P.'s risk tolerance level.
36. The Clients trusted the Respondent to make investments for them that were consistent with their objectives and appropriate for them. Frequent mutual fund switches and the purchase of high risk securities were unsuitable for them. By making those purchases and switches, the Respondent violated Association By-law 29.1.

(E) PAYMENTS MADE TO CLIENTS

37. The Respondent made the following deposits into client accounts from his own funds:
- a. Payment in the amount of \$ 1,750.00 to J.W. on or about January 20, 1997;
 - b. Payment in the amount of \$ 1,305.50 to P.A. on or about January 31, 1997;
 - c. Payment in the amount of \$600.50 to W.M. on or about May 6, 1997;
 - d. Payment in the amount of \$350.50 to B.M. on or about August 26, 1997;
 - e. Payment in the amount of \$305.00 to T.P. on or about September 9, 1997;

- f. Payment in the amount of \$ 2,300.00 to J.Wi. on or about November 4, 1997;
- g. Payment in the amount of \$800.00 to R.W. on or about January 20, 1997;
- h. Payment in the amount of \$ 1,980.00 to J.Wi. on or about January 20, 1997;
- i. Payment in the amount of \$ 1,000.00 to J.P. on or about March 17, 1997;
- j. Payment in the amount of \$ 2,065.00 to F.N. on or about February 28, 1997; and
- k. Payment in the amount of \$500.00 to T.B. on or about February 11, 1998.

38. The Respondent did not disclose the deposits referred to in paragraph 37 to TD.

39. By making the payments referred to in paragraph 37, without disclosing them to his employer, the Respondent contravened Standard C of the Conduct and Practices Handbook, TD's Compliance Manual and Association By-law 29.1.

(F) CLIENT LOSSES AND COMMISSIONS

40. While they were under the Respondent's care, the Clients' accounts sustained losses in the aggregate amount of approximately \$ 64,700.00.

41. The Respondent did not receive any commission for the various mutual fund transactions conducted in the Clients' accounts which are described in paragraphs 14 to 26 herein. The total commissions earned by the Respondent as a result of all of the discretionary trading referred to herein was \$ 1,487.38.

(G) THE RESPONDENT'S MEDICAL CONDITION

42. Between January 1997 and October 1999, the Respondent was suffering from a disorder which was, at that time, undiagnosed and untreated.

IV. CONTRAVENTIONS

43. The Respondent has violated Association Regulation 1300.4 by carrying out discretionary trades in client accounts without the accounts having been approved and accepted in writing as discretionary accounts as required by Association Regulation 1300.4(a) and 1300.4 (b).

44. The Respondent has engaged in a business conduct or practice that is unbecoming or detrimental to the public interest, contrary to Association By-law 29.1, by:

- a. trading in a manner or in securities that were inconsistent with the Clients' investment objectives and risk tolerance level, contrary to Association Regulation 1300.1(c); and
- b. depositing monies in client accounts without disclosing same to his employer.

V. ADMISSION OF CONTRAVENTIONS AND FUTURE COMPLIANCE

45. The Respondent admits contravening the Regulation and By-Law of the Association set out in Section IV of this Settlement Agreement. The Respondent acknowledges his responsibility to comply with the By-laws, Regulations, Rulings and Policies of the Association.

VI. PENALTIES

46. The Respondent and Staff hereby agree to the penalties described in this Section.

47. The Respondent shall be permanently prohibited from holding any supervisory or compliance position with any Member of the Association.

48. The Respondent shall not apply for approval for any non-supervisory or non-compliance position for a period of at least two years from the effective date of this Settlement Agreement.

49. The Respondent shall not be approved for any non-supervisory or non-compliance position until District Council has considered his application for approval, pursuant to Association By-law 20.4, and has determined that he is fit for approval.

50. The Respondent shall pay \$ 1,487.38 to the Association as disgorged commissions within ninety days of the effective date of this Settlement Agreement.

VII. ASSOCIATION COSTS

51. The Respondent shall pay a portion of the Association's costs of the Investigation in the amount of \$ 894.60, payable to the Association within ninety days from the effective date of this Settlement Agreement.

VIII. EFFECTIVE DATE

52. This Settlement Agreement shall become effective and binding upon the Respondent and Staff in accordance with its terms as of the date of:

- (a) its acceptance; or
- (b) the imposition of a lesser penalty or less onerous terms; or
- (c) the imposition, with the consent of the Respondent, of a penalty or terms more onerous, by the District Council.

IX. WAIVER

53. If this Settlement Agreement becomes effective and binding, the Respondent hereby waives his right to a hearing under the Association By-laws in respect of the matters described herein and further waives any right of appeal or review which may be available under such By-laws or any applicable legislation.

X. STAFF COMMITMENT

54. If this Settlement Agreement becomes effective and binding, Staff will not proceed with disciplinary proceedings against the Respondent herein under Association By-laws in relation to the facts set out in Section III of the Settlement Agreement.

XI. PUBLIC NOTICE OF DISCIPLINE PENALTY

55. If this Settlement Agreement becomes effective and binding:

- (a) the Respondent shall be deemed to have been penalized by the District Council for the purpose of giving written notice to the public thereof by publication in an Association Bulletin and by delivery of the notice to the media, the securities regulators and such other persons, organizations or corporations, as required by Association By-laws and any applicable Securities Commission requirements; and
- (b) the Settlement Agreement and the Association Bulletin shall remain on file and shall be disclosed to members of the public upon request.

XII. EFFECT OF REJECTION OF SETTLEMENT AGREEMENT

56. If the District Council rejects this Settlement Agreement:

- (a) the provisions of By-Laws 20.10 to 20.24, inclusive, shall apply, provided that no member of the District Council rejecting this Settlement Agreement shall participate in any hearing conducted by the District Council with respect to the same matters which are the subject of the Settlement Agreement; and
- (b) the negotiations relating thereto shall be without prejudice and may not be used as evidence or referred to in any hearing.

AGREED TO by the Respondent, in the City of Thunder Bay, in the Province of Ontario, this “29th” day of “August”, 2002

“Michael A. Whistle”

AGREED TO by Staff at the City of Toronto, in the Province of Ontario, this “9th” day of “September”, 2002

“R. Anderson”

“Jeffrey Kehoe”

Director of Enforcement Litigation, Enforcement Division, on behalf of Staff of the Investment Dealers Association of Canada

ACCEPTED by the Ontario District Council of the Investment Dealers Association of Canada, at the City of Toronto, in the Province of Ontario, this “17th” day of “September”, 2002.

Investment Dealers Association of Canada
(Ontario District Council)

Per: Hon. Fred Kaufman, Chair

Per: David Kerr

Per: Michael Walsh

Chapter 25

Other Information

25.1.1 Securities

RELEASE FROM ESCROW

<u>COMPANY NAME</u>	<u>DATE</u>	<u>NUMBER AND TYPE OF SHARES</u>	<u>ADDITIONAL INFORMATION</u>
Corner Bay Silver Inc.	Sept. 23/02	293,409 - common shares	Release allows WMC International Limited to participate in an arrangement by Pan American Silver Corp.

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