

The Ontario Securities Commission

# OSC Bulletin

October 18, 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

OCTOBER 18, 2002

#### CURRENT PROCEEDINGS

BEFORE

#### ONTARIO SECURITIES COMMISSION

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

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

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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

DATE: TBA      **Patrick Fraser Kenyon Pierrepont Lett, Milehouse Investment Management Limited, Pierrepont Trading Inc., BMO Nesbitt Burns Inc.\*, John Steven Hawkyard and John Craig Dunn**

s. 127

K. Manarin in attendance for Staff

Panel: TBA

\*      BMO settled Sept. 23/02

DATE: TBA      **Meridian Resources Inc. and Steven Baran**

s. 127

K. Manarin in attendance for Staff

Panel: TBA

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

s. 127

I. Smith in attendance for Staff

Panel: HIW

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

s. 127

I. Smith in attendance for Staff

Panel: HIW

Notices / News Releases

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

10:00 a.m. S. 21.1 of the CFA  
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 1, 2002 **Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein, Robert Topol**

s. 127  
J. Superina in attendance for Staff  
Panel: HIW

November 11 to December 6, 2002 **Brian Costello**

10:00 a.m. s. 127  
H. Corbett in attendance for Staff  
Panel: PMM / KDA

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 / MTM

November 18 & 25, 2002 **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

January 8, 9 & 10, 2003 **Jack Banks A.K.A. Jacques Benquesus and Larry Weltman**

Time: TBA s. 127  
K. Manarin in attendance for Staff  
Panel: TBA

March 24, 25, 26 & 27, 2003 **Edwards Securities Inc., David Gerald Edwards, David Frederick Johnson, Clansman 98 Investments Inc. and Douglas G. Murdock**

s. 127  
A. Clark in attendance for Staff  
Panel: PMM

**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**

**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**

**1.1.2 Notice of Automation Review Program - For Market Infrastructure Entities in the Canadian Capital Markets**

**AUTOMATION REVIEW PROGRAM**

The Market Regulation Team of the Capital Markets Branch is publishing, in Chapter 25, a description of the Automation Review Program (ARP) that has been established to address issues relating to the increasing use of automation and its integration into the trading and clearing and settlement systems in the securities industry.

The purpose of the ARP is to establish an environment that will encourage regulated entities with significant trade volumes to employ technological and management best practices in their respective systems operations through the reporting of important technological accomplishments, plans and problems, coupled with periodic independent system reviews. Ad hoc employment of system examinations on specific issues, where appropriate, complete the program.

The ARP applies to recognised exchanges, recognised quotation trade and reporting systems, large alternative trading systems, recognised clearing agents and other entities identified by the Commission which have been notified of such requirement.

There are three components to the ARP:

1. Systems Reporting Procedures ("SRP")

The SRP reports are incident reports and periodic quarterly reports that contain significant technical and operational accomplishments, plans and problems. The SRP reports are produced internally by the entity.

2. Independent System Review ("ISR")

The regulated entity will periodically provide an ISR report, performed by a qualified independent auditor, or other auditor or consultant approved by the Commission.

3. System Examination Module ("Examination Report")

The Examination Report will involve an examination by the Commission of a regulated entity's systems and computer/network procedures. It is produced by Commission staff. Usually it will be one component of the Examination Modules of the Market Regulation Team's Examination Program.

A copy of the general (ARP) program is in Chapter 25. However the ARP is adapted to specific institutions and, over time, will be adapted to changes in the industry. Parties are notified of the Commission's intention to apply the program to the entity. Specific reporting, review and examination details are tailored to the nature of the business and reflect known risks and the level of regulatory oversight applicable to the entity. The ARP has been designed to i) provide a framework for the regulatory

oversight of systems capacity and reliability; and ii) help strengthen the entity's own internal processes through the benefits gained in responding to the ARP.

Staff is of the view that uniform and consistent approaches to the monitoring and regulation of certain aspects of automation are necessary in order to "foster fair and efficient capital markets and confidence in capital markets." Having a transparent, pre-defined, publicly-stated ARP provides a consistent set of expectations in an increasingly technical world.

Questions may be referred to any of:

Randee B. Pavalow  
Director of Capital Markets  
(416) 593-8257

Cindy Petlock  
Manager, Market Regulation  
(416) 593-2351

Dave McCurdy  
Technical Adviser, Market Regulation  
(416) 593-3669

### 1.1.3 Notice of Amendments to National Instrument 14-101 Definitions

#### NOTICE OF AMENDMENTS TO NATIONAL INSTRUMENT 14-101 DEFINITIONS

On September 3, 2002, the Commission, under section 143 of the *Securities Act* (the "Act"), made amendments to National Instrument 14-101 *Definitions*.

The amendments and the material required by the Act were delivered to the Minister of Finance on October 15, 2002. The Minister may approve or reject the amendments or return them for further consideration. If the Minister approves the amendments or does not take any further action by December 16, 2002, the amendments will come into force on December 31, 2002.

The Notice and amendments to National Instrument 14-101 *Definitions* are published in Chapter 5 of the Bulletin.



**1.3 News Releases**

**1.3.1 OSC Approves Settlements Between Staff and John Douglas Kirby, Michael Kennelly, Allan Dorsey and David Bending**

**FOR IMMEDIATE RELEASE  
October 10, 2002**

**ONTARIO SECURITIES COMMISSION APPROVES  
SETTLEMENTS BETWEEN STAFF  
AND JOHN DOUGLAS KIRBY, MICHAEL KENNELLY,  
ALLAN DORSEY AND DAVID BENDING**

**TORONTO** – On October 9, the Ontario Securities Commission convened hearings to consider settlements reached by Staff of the Commission and the respondents John Douglas Kirby, Michael Kennelly, Allan Dorsey and David Bending. The Commission panel, chaired by Lorne Morphy Q.C., approved all four settlements.

All these respondents were registered with the Commission to trade securities during the material time. Currently, only Allan Dorsey and David Bending are registered with the Commission. The Respondents sold Saxton securities to Ontario investors. None of these sales were booked through their respective sponsor firms. These respondents participated in illegal distributions of securities and engaged in other conduct contrary to Ontario securities law and the public interest.

Among other things, John Douglas Kirby engaged in an advertising campaign directed at seniors. In so doing, Mr. Kirby misrepresented to prospective clients the nature of the Saxton investment product. Mr. Kirby is prohibited from trading in any securities for twelve years except that after three years he may trade securities in his personal account. Mr. Kirby also is prohibited from becoming or acting as an officer or director of an issuer for twelve years. Mr. Kirby gave a written undertaking to the Commission that he will not apply for registration in any capacity for twelve years.

Among other things, Michael Kennelly actively solicited clients to move money out of secure investments to purchase the Saxton Securities. Mr. Kennelly is prohibited from trading in any securities for eight years except that after two years he may trade securities in his RRSP account. Mr. Kennelly also is prohibited from becoming or acting as an officer or director of an issuer for eight years. Mr. Kennelly will pay \$2,500 in costs and gave a written undertaking to the Commission that he will not apply for registration in any capacity for eight years.

The Commission reprimanded Allan Dorsey and ordered that his registration be suspended for ten months. Mr. Dorsey must successfully complete the Canadian Securities Course before his registration will be reinstated. Mr. Dorsey was reprimanded and paid costs in the amount of \$1,500.

The Commission reprimanded David Bending and ordered that his registration be suspended for eight months. Mr.

Bending must successfully complete the Canadian Securities Course before his registration will be reinstated. Mr. Bending was reprimanded and paid costs in the amount of \$2,000.

The settlement hearing respecting the respondent Douglas Cross was adjourned to a date to be fixed.

Copies of the Notice of Hearing, Statement of Allegations of Staff of the Commission and Settlement Agreements are available on the Commission's website, [www.osc.gov.on.ca](http://www.osc.gov.on.ca), or from the Commission offices at 20 Queen Street West, 19<sup>th</sup> Floor, Toronto.

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

**1.3.2 OSC Approves Settlement Between Staff and  
Foundation Equity Corporation**

**FOR IMMEDIATE RELEASE  
October 16, 2002**

**ONTARIO SECURITIES COMMISSION APPROVES  
SETTLEMENT BETWEEN STAFF  
AND FOUNDATION EQUITY CORPORATION**

**TORONTO** – At a hearing held on October 7, the Ontario Securities Commission (the “Commission”) approved a settlement agreement entered into between Staff of the Commission and the respondent Foundation Equity Corporation (“Foundation”).

Foundation, a private company based in Alberta, carried out an unlawful distribution of securities when it sold approximately 1.2 million shares that it owned in Global Thermoelectric Inc. (“Global”) through the Toronto Stock Exchange. At the time of the sale, Foundation owned more than 20% of the issued and outstanding shares of Global and therefore was deemed under the *Securities Act* to be a party in a position to materially affect the control of Global. Foundation sold the shares from its control block without satisfying the applicable hold period and notice requirements under the *Securities Act*.

Under the terms of the settlement approved by the Commission, Foundation is required to retain counsel in Ontario to carry out all future filings with the Commission and the TSX, must provide its Ontario counsel and any stockbrokers it employs to carry out sales of publicly traded securities in Ontario with regularly updated information concerning the status of Foundation’s shareholdings, and must ensure that at any given time at least one of its directors has successfully completed the Partners, Directors and Officers course. In addition, the Commission reprimanded Foundation and ordered it to pay \$2000 in costs.

Copies of the Notice of Hearing, Statement of Allegations of Staff of the Commission and the Settlement Agreement are available on the Commission’s website, [www.osc.gov.on.ca](http://www.osc.gov.on.ca), or from the Commission offices at 20 Queen Street West, 19<sup>th</sup> Floor, Toronto.

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## Chapter 2

# Decisions, Orders and Rulings

### 2.1 Decisions

#### 2.1.1 Rainmaker Entertainment Group Ltd. - MRRS Decision

##### Headnote

Mutual Reliance Review System for Exemptive Relief Applications – as a result of an amalgamation and a plan of arrangement, issuer has only one security holder – issuer deemed to have ceased to be a reporting issuer.

##### Applicable Ontario Statutory Provisions

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

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

**AND**

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

**AND**

**IN THE MATTER OF  
RAINMAKER ENTERTAINMENT GROUP LTD.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, Alberta and Quebec (the "Jurisdictions") has received an application from Rainmaker Entertainment Group Ltd. (the "Filer") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the Filer be deemed to have ceased to be a reporting issuer under the Legislation;

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

1. Rainmaker Entertainment Group Ltd. ("Predecessor Rainmaker"), one of the predecessor companies of the Filer, was incorporated under the laws of British Columbia on July 22, 1999.

2. Rainmaker Studios Inc., one of the predecessor companies of the Filer, was incorporated under the laws of British Columbia on May 11, 1994.

3. 646099 B.C. Ltd. ("Rainmaker Holdings"), one of the predecessor companies of the Filer, was incorporated under the laws of British Columbia on April 19, 2002.

4. Predecessor Rainmaker amalgamated with Rainmaker Studios Inc. and Rainmaker Holdings under the laws of British Columbia on May 31, 2002 to form the Filer.

5. The Filer's head office is located at 50 West 2<sup>nd</sup> Avenue, Vancouver, British Columbia, V5Y 1B3. The Filer is a reporting issuer in each of the Jurisdictions.

6. The Filer's authorized capital consists of 200,000,000 common shares ("Common Shares"). The issued and outstanding capital of the Filer consists of 2,819,372 Common Shares and \$33,988,035.94 principal amount of subordinated notes. There are no other securities, including debt securities, of the Filer outstanding.

7. Rainmaker Income Fund (the "Fund") is an unincorporated open-ended limited purpose trust established under the laws of British Columbia by Declaration of Trust dated April 22, 2002. As of September 20, 2002, there were 10,715,003 units (Fund Units) and 625,683 special voting units ("Special Voting Fund Units") of the Fund outstanding.

8. Rainmaker Capital Limited Partnership (the "Partnership") is a limited partnership formed under the laws of British Columbia on May 21, 2002. As of September 20, 2002, the Partnership had 10,715,003 Class A limited partnership units (Class A LP Units), 625,683 Class B limited partnership units ("Class B LP Units") and one general partnership unit outstanding.

9. Rainmaker GP Capital Inc. ("Rainmaker GP") was incorporated under the laws of British Columbia on April 19, 2002. Rainmaker GP is the general partner of the Partnership. Rainmaker GP's authorized capital consists of 500,000 common shares and 500,000 preferred shares. The issued and outstanding capital of Rainmaker GP consists of one common share.

10. Effective May 31, 2002, all of the issued and outstanding Common Shares were indirectly

- acquired by Rainmaker Income Fund pursuant to a plan of arrangement dated May 27, 2002 (the "Plan of Arrangement").
11. Holders of Predecessor Rainmaker common shares approved the Plan of Arrangement at an extraordinary general meeting of Predecessor Rainmaker held on May 27, 2002.
12. In connection with the Plan of Arrangement each common share of Predecessor Rainmaker was indirectly exchanged for either: (a) one Fund Unit; or (b) one Class B LP Unit and one Special Voting Fund Unit.
13. Under the Plan of Arrangement, the exchange transaction referred to in the preceding paragraph was completed as follows:
- (a) Each common share of Predecessor Rainmaker was exchanged for either: (i) one common share and \$3.17 subordinated notes of Predecessor Rainmaker; or (ii) one Class B LP Unit;
  - (b) Holders of common shares of Predecessor Rainmaker who elected to exchange their Predecessor Rainmaker common shares for common shares and subordinated notes of Rainmaker Holdings exchanged such Rainmaker Holdings common shares and subordinated notes for Fund Units (the "Fund Exchange").
  - (c) The Fund subsequently transferred the common shares and subordinated notes of Rainmaker Holdings that the Fund received as a result of the Fund Exchange to the Partnership in exchange for subordinated notes of the Partnership;
  - (d) Predecessor Rainmaker, Rainmaker Holdings and Rainmaker Studios amalgamated to form the Filer.
  - (e) Holders of common shares of Predecessor Rainmaker who elected to receive Class B LP Units in exchange for their Predecessor Rainmaker common shares were issued one Special Voting Fund Unit for each Class B LP Unit that they held.
14. After completion of the Plan of Arrangement:
- (a) The Fund Units are owned by former holders of Predecessor Rainmaker common shares in the same proportion as the number of Predecessor Rainmaker common shares that were held by such holders prior to the Plan of Arrangement;
  - (b) The Class B LP Units and Special Voting Fund Units are owned by former holders of Predecessor Rainmaker common shares in the same proportion as the number of Predecessor Rainmaker common shares that were held by such holders prior to the Plan of Arrangement. Each Class B LP Unit and Special Voting Fund Unit is exchangeable for no additional consideration into one Fund Unit. Until exchanged into Fund Units, the Class B LP Units and Special Voting Fund Units together provide the holders thereof with the equivalent voting and economic entitlement to the Fund as holders of Fund Units;
  - (c) The Partnership is the sole holder of all of the outstanding Common Shares and subordinated notes of the Filer;
  - (d) The Fund owns all of the Class A LP Units and subordinated notes of the Partnership;
  - (e) The Fund is the sole holder of all of the outstanding securities of Rainmaker GP, the general partner of the Partnership; and
  - (f) The Fund Units were listed on the Toronto Stock Exchange and began trading on June 4, 2002.
15. Other than the Filer's failure to file and deliver to its security holders an annual report for the fiscal year ended December 31, 2001 (the "Annual Report") and the interim financial statements for the three month period ended March 31, 2002 (the "Interim Financials") and to file an annual information form for the fiscal year ended December 31, 2001 (the "AIF"), the Filer is not in default of any requirements of the Legislation.
16. In place of the Interim Financials, the Filer has filed interim financial statements for the period commencing January 1, 2002 and ending May 30, 2002.
17. Although the Filer did not file and deliver to its securityholders the Annual Report or file the AIF, an information circular dated April 27, 2002 prepared in connection with the Plan of Arrangement was delivered to former holders of Predecessor Rainmaker common shares and contained prospectus level disclosure regarding Predecessor Rainmaker, the Fund and the Plan of Arrangement. As required by the Legislation, the Fund will file an annual information form on a going forward basis.

18. The financial statements of the Fund will be prepared on a consolidated basis and will disclose, to the extent required under Canadian generally accepted principles, the financial results of the Filer. Additional continuous disclosure documents required to be filed under the Legislation by the Fund that are required to contain disclosure regarding the Fund's business and operations will include disclosure of the Filer's business and operations.
19. The Common Shares were delisted from the Toronto Stock Exchange on June 3, 2002 and no securities of the Filer are listed or quoted on any exchange or market.
20. Other than the Common Shares and subordinated notes held by the Partnership, the Filer has no securities, including debt securities, outstanding.
21. The Filer does not intend to seek public financing by way of an offering of its securities.

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

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

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

October 8, 2002.

"John Hughes"

## 2.1.2 Schering-Plough Corporation - MRRS Decision

### Headnote

MRRS - registration relief for trades by former employees and permitted transferees of securities acquired under employee incentive plans - issuer bid relief for foreign issuer in connection with acquisition of shares under employee incentive plans.

### Applicable Ontario Statutory Provisions

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

### Applicable Ontario Rule

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

### Applicable Instrument

Multilateral Instrument 45-102 - Resale of Securities.

**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  
SCHERING-PLOUGH CORPORATION**

**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 Schering-Plough Corporation ("Schering-Plough" or the "Company") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that:

- (a) the requirements contained in the Legislation to be registered to trade in a security (the "Registration Requirement"), will not apply to certain trades of shares (as defined below) acquired under the Schering-Plough Corporation 1997 Stock Incentive Plan (the "1997 Plan") and the Schering-Plough Corporation 2002 Stock Incentive Plan (the "2002 Plan") (the 1997 Plan and the 2002 Plan are collectively the "Plans") provided that the conditions in subsection 2.14(1) of Multilateral Instrument 45-102 - *Resale of Securities* are satisfied; and

- (b) 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** Schering-Plough has represented to the Decision Makers as follows:

1. Schering-Plough is a corporation incorporated under the laws of the State of New Jersey. The executive offices of Schering-Plough are located in Kenilworth, New Jersey;
2. Schering-Plough and affiliates of Schering-Plough ("Schering-Plough Affiliates") (Schering-Plough and Schering-Plough Affiliates are collectively, the "Schering-Plough Companies") are primarily engaged in the discovery, development, manufacturing and marketing of new medical therapies and treatment programs;
3. Schering-Plough is registered with the Securities Exchange Commission ("SEC") in the U.S. under the U.S. Securities Exchange Act of 1934 ("Exchange Act") and is not exempt from the reporting requirements of the Exchange Act pursuant to Rule 12g 3-2 made thereunder;
4. Schering-Plough is not a reporting issuer in either of the Jurisdictions and has no present intention of becoming a reporting issuer in either of the Jurisdictions;
5. The authorized share capital of Schering-Plough consists of 2,400,000,000 shares of common stock ("Shares"), and 50,000,000 shares of preferred stock ("Preferred Shares"). As of December 31, 2001, there were 1,465,887,953 Shares and no Preferred Shares issued and outstanding;
6. The Shares are listed for trading on the New York Stock Exchange ("NYSE");
7. Schering-Plough intends to use the services of one or more agents / brokers ("Agent(s)") under the Plans. The current Agent for the Plans is Salomon Smith Barney Inc. The current Agent is not registered to conduct retail trades in the Jurisdictions and, if replaced, or if additional Agents are appointed, such replacement Agents or additional Agents are not expected to be so registered in the Jurisdictions. Replacement Agents or additional Agents will be registered under applicable U.S. securities or banking legislation to trade in securities, if required under such legislation, and will be authorized by Schering-Plough to provide services under the Plans;
8. The Agent's role in the Plans may include: (a) assisting with the administration of the Plans, including record-keeping functions; (b) facilitating the exercise of Options (as defined below) granted under the Plans (including cashless and stock-swap exercises) to the extent that they are exercisable for Shares; (c) facilitating the issuance of Shares; (d) facilitating the cancellation and surrender of Awards (as defined below) as permitted under the Plans; (e) holding Shares issued under the Plans on behalf of Participants, Former Participants (as defined below) and Permitted Transferees (as defined below); (f) facilitating the resale of Shares issued in connection with the Plans; and (g) facilitating the mechanisms as set out in the Plans for the payment of withholding taxes;
9. The Plans provide for grants of options exercisable for Shares ("Options"), deferred stock unit awards ("Deferred Stock Unit Awards"), and performance awards ("Performance Awards") (collectively, Shares, Options, Deferred Stock Unit Awards and Performance Awards, are "Awards") to the employees of Schering-Plough and its affiliates. Employees are herein referred to as the "Participants";
10. The Shares issued under the Plans will be previously authorized but unissued Shares or reacquired Shares, whether bought on the market or otherwise;
11. Employees who participate in the Plans will not be induced to purchase Shares by expectation of employment or continued employment;
12. The Plans are administered by the board of directors ("Board") of the Company and/or the Executive Compensation and Organization Committee appointed by the Board ("Committee");
13. All necessary securities filings will be made in the U.S. in order to offer the Plans to employees of the Schering-Plough Companies resident in the U.S.;

14. A prospectus prepared according to U.S. securities laws describing the terms and conditions of the Plans will be delivered to each Canadian Participant who receives an Award under the Plans. The annual reports, proxy materials and other materials Schering-Plough is required to file with the SEC will be provided or made available to Canadian Participants at the same time and in the same manner as the documents are provided or made available to U.S. Participants;
15. Following the termination of a Participant's employment relationship with the Schering-Plough Companies for reasons of disability, retirement, termination (other than for cause), sale, divestiture, spin-off or Change of Control (as defined in the Plans), former employees ("Former Participants") will continue to have rights in respect of the Options as set forth in the Plans ("Post-Termination Rights"). The Plans also set forth certain rights in the event of a Participant's death. The Committee may grant Options that are transferable, or amend outstanding Options granted under the Plans to make them transferable by the optionee to one or more members of the optionee's immediate family (spouse, children and grandchildren) ("Permitted Transferees"), to a partnership to which the only partners are members of the optionee's immediate family, or to a trust established by the optionee for the benefit of one or more members of the optionee's immediately family. The Committee may in its discretion permit transfers to other persons or entities. Transferable Options shall become immediately exercisable upon transfer. Permitted Transferees will also have certain Post-Termination Rights. Post-Termination Rights may include, among other things, the right of a Former Participant or Permitted Transferee to exercise Options for a period determined in accordance with the Plans, the right to sell Shares acquired under the Plans through the Agent, and the right to acquire Shares in certain circumstances. Post-Termination Rights will only be issued where the right to receive them was earned by a Former Participant while the Former Participant had an employment relationship with Schering-Plough. Awards are otherwise non-transferable;
16. The sale of Shares acquired under the Plans may be made by Participants, Former Participants or Permitted Transferees through the Agent;
17. As of March 31, 2002, shareholders resident in Canada 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 the Company. If at any time during the currency of the Plans shareholders resident in Canada 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 the Company, the Company will apply to the relevant Jurisdiction for an order with respect to further trades to and by Participants in that Jurisdiction in respect of Shares acquired under the Plans;
18. The maximum number of Shares that may be issued under the 1997 Plan is 72,000,000 and under the 2002 Plan is 72,000,000. The foregoing maximum amount is subject to adjustment as provided for in the Plans;
19. The Company may require any Participant to pay to the Company the amount of any taxes which the Schering-Plough Companies are required to withhold in connection with the exercise of Options and/or distributions from Awards. Such tax payments may be made to the Company in cash, in Shares, or in Shares withheld by Schering-Plough from Shares issuable upon exercise of the Option or distribution of the Awards ("Share Withholding Exercises") or in such other consideration as shall be approved by the Committee;
20. The purposes of the Plans include aiding Schering-Plough in securing and retaining employees of outstanding ability and to provide additional motivation to such employees to exert their best efforts on behalf of the Company;
21. The Committee may, in its sole discretion, grant Options to eligible Participants. Each Option granted under the Plans will be evidenced by an Option Award Letter ("Option Award Letter");
22. As of February 2002, there were 24 Participants in Canada eligible to receive Options under the Plans: 6 Participants in Ontario; 1 Participant in British Columbia; and 17 Participants in Québec;
23. Subject to the provisions of the Plans, the Committee has the sole authority to determine the number of Shares covered by each Option and the conditions and limitations applicable to the exercise of the Option. The Committee may delegate some or all of its authority under the Plans, pursuant to its terms;
24. Subject to provisions of the Plans, Options shall be exercisable at such times and subject to such terms and conditions as the Committee may specify. Generally, no Option shall be exercisable after the expiration of ten years from the date of grant;
25. The Option price ("Option Price") for Options will be specified in the Option Award Letter and will be established at the discretion of the Committee; provided, however, that the Option Price per Share for an Option shall be not less than the Fair

- Market Value (as defined in the Plans) of a Share on the effective date of grant of the Option;
26. Generally, Fair Market Value for the purposes of the Plans shall equal the closing price of the Shares on the NYSE on the day of grant of the Option;
27. The Committee shall establish procedures governing the exercise of Options. Generally, in order to exercise an Option, a Participant, Former Participant or Permitted Transferee must submit to Schering-Plough or to the Agent a notice of exercise in the form and manner prescribed by the Committee ("Notice of Exercise") identifying the Option and number of Shares being purchased, together with full payment for the Shares, including applicable taxes, if any. No Option shall be exercised for less than the lesser of 100 Shares or the full number of Shares for which the Option is then exercisable;
28. The Notice of Exercise shall specify which of the following types of exercise will be used to pay the Option Price and other costs, if any including:
- (a) Cash Exercise. The Option holder shall deliver the full Option Price and applicable withholding taxes and transaction fees, if any (collectively, "Exercise Costs") in cash or cash equivalents to the Agent or to Schering-Plough at the time of exercise. Following receipt of the Exercise Costs, Schering-Plough shall issue the Shares underlying the exercised portion of the Options to the Agent or directly to the Option holder;
  - (b) Cashless for Cash Exercise. If permitted by the Committee or the Option Award Letter, a Cashless for Cash Exercise is an Option exercise and sale of all Shares being purchased through the Option exercise ("Cashless for Cash Exercise"). If the Option holder requests a Cashless for Cash Exercise, the Option holder shall deliver an irrevocable direction to the Agent to sell all or part of the Shares underlying the Options being exercised. Upon receipt of such direction, the Agent shall sell the Shares as soon as practicable and, upon settlement of the trade, shall transfer to Schering-Plough from the proceeds of the sale an amount equal to the Exercise Price and withholding taxes for the Shares purchased. As soon as practicable thereafter, the proceeds from the sale of the Shares (less the Exercise Costs) shall be delivered to the Option holder;
  - (c) Stock Swap Exercise. If permitted by the Committee, an Option exercise and
- surrender of Shares already owned by an Option holder for at least six months before the date of payment having a Fair Market Value equal to the Exercise Costs ("Stock-Swap Exercise"). If the Option holder requests a Stock-Swap Exercise, that Option holder must deliver to the Agent Shares owned by the Option holder for at least six months before the date of payment having an aggregate Fair Market Value equal to the Exercise Costs. As soon as practicable thereafter, the applicable number of Shares will be delivered to the Option holder or to the Agent on behalf of the Option holder;
- (d) The Committee may from time to time establish Option exercise procedures for purposes of permitting an Option holder to elect to defer receipt of all or a portion of the Shares subject to such Option and/or to receive cash at such later time or times in lieu of such deferred Shares in the event of a Cashless for Cash Exercise;
  - (e) in any other form of legal consideration that may be acceptable to the Committee;
29. During the 60-day period from and after a Change of Control (the "Exercise Period"), a Participant shall have the right to surrender all or part of the Participant's Options to the Company and to receive cash in exchange ("Option Surrenders");
30. Awards of Deferred Stock Units ("Units") may be made under the Plans in addition to or in lieu of Option grants. The number of Units allotted to a Participant shall be credited to a memorandum account maintained by the Company for the Participant. Shares equal in number to the number of Units awarded to the Participant shall be distributed to such Participant in a single lump sum on the second, third, fourth or fifth anniversary of the date on which such award of Units was made or in two, three, four or five equal or unequal annual installments commencing on a date not earlier than six months after such award date and on each anniversary thereafter for the duration of the installment period, all as specified in the award of such Units; provided, however, that the Committee may, in its sole discretion, accelerate the payment of any lump sum or installment in the event of the retirement or permanent disability of a Participant or for any other reason decided by the Committee;
31. Where a Participant ceases to be an employee of the Schering-Plough Companies for any reason other than retirement, permanent disability, or death, the total number of Units credited to the memorandum account shall be forfeited as of the



- date of such termination of employment unless the Committee, in its sole discretion waives such forfeiture ("Unit Forfeiture");
32. If a Participant or Former Participant dies, such number of Shares as is equal to the total number of Units credited to the memorandum account as of the date of death shall be distributed to designated beneficiaries as soon thereafter as practicable;
33. The Committee may, prior to or at the time of grant, designate an award of Units as a performance award ("Performance Award") in which event it shall condition the grant or vesting, as applicable, of such Units upon the attainment of Performance Goals (as defined in the Plans);
34. No Performance Award shall vest or be paid out except: (i) upon achievement of the applicable Performance Goals; (ii) upon the death or permanent disability of the Participant; or (iii) upon a Change of Control;
35. Pursuant to the Plans, the acquisition of Awards by the Company in the following circumstances may constitute an "issuer bid": Stock Swap Exercises, Share Withholding Exercises, Unit Forfeitures and Option Surrenders;
36. 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;
37. When the Agents sell Shares on behalf of Former Participants and Permitted Transferees, the Agents, Former Participants and Permitted Transferees may not be able to rely upon the exemptions from the Registration Requirement contained in the Legislation of the Jurisdictions;
38. 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 NYSE;

- (a) the Registration Requirement shall not apply to trades in Shares by Former Participants or Permitted Transferees, including trades effected through the Agent, provided that the conditions in subsection 2.14(1) of Multilateral Instrument 45-102 - *Resale of Securities* are satisfied; and
- (b) the Issuer Bid Requirements will not apply to the acquisition by Schering-Plough of Awards or Shares from Participants, Former Participants or Permitted Transferees provided such acquisitions are made in accordance with the terms of the Plans.

October 8, 2002.

"M. T. McLeod"

"R. L. Shirriff"

**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:

### 2.1.3 Centrinity Inc. - MRRS Decision

#### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - going private transaction - continuing employment agreements entered into between two senior officers and the corporations proposing an amalgamation - senior officers hold approximately 6% of the shares of the corporation being acquired under the amalgamation - employment agreements negotiated at arm's length - terms of employment agreements consistent with those of similarly situated directors and consultants of the parties to the amalgamation and relevant peers in the marketplace - terms of the agreements fully disclosed in the information circular provided to securityholders in connection with the amalgamation - shares owned by senior officers not to be counted toward compliance with minority approval requirement - relief granted from valuation requirements in connection with the amalgamation.

#### Applicable Ontario Rules

Rule 61-501 - Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions, ss. 4.4, 4.5(1) and 9.1.

**IN THE MATTER OF  
ONTARIO SECURITIES COMMISSION RULE 61-501,  
QUEBEC SECURITIES COMMISSION  
POLICY STATEMENT Q-27 AND  
SECTION 106.1 OF THE REGULATION  
RESPECTING SECURITIES (QUEBEC)**

**AND**

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

**AND**

**IN THE MATTER OF  
CENTRINITY INC.**

**MRRS DECISION DOCUMENT**

**WHEREAS** an application (the "Application") has been received by the securities regulatory authority or regulator (the "Decision Makers") in each of Ontario and Québec from Open Text Corporation ("Open Text"), Centrinity Inc. ("Centrinity") and 3801853 Canada Inc., a direct wholly-owned subsidiary of Open Text ("Subco"), for a decision pursuant to Ontario Securities Commission Rule 61-501 ("Rule 61-501"), Commission des valeurs mobilières du Québec Policy Q-27 ("Policy Q-27") and section 263 of the *Securities Act* (Québec) that, in connection with the proposed amalgamation (the "Amalgamation") of Centrinity and Subco pursuant to which Open Text would become the sole owner of all of the outstanding shares of the amalgamated corporation, the Amalgamation be exempt from the requirement to obtain a formal valuation under Rule 61-501, Policy Q-27 and

section 106.1 of the Regulation respecting securities (Québec) (the "Regulation" and together with Rule 61-501 and Policy Q-27, the "Legislation") (collectively, the "Valuation Requirement");

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

**AND WHEREAS** Open Text, Centrinity and Subco have represented to the Decision Makers that:

1. Open Text is a corporation amalgamated under the *Business Corporations Act* (Ontario). The common shares in the capital of Open Text are listed on the Toronto Stock Exchange (the "TSX") and the Nasdaq National Market. Open Text is a reporting issuer in each province of Canada.
2. Centrinity is a corporation continued under the *Canada Business Corporations Act* ("CBCA"). The Class A common shares in the capital of Centrinity (the "Centrinity Shares") are listed on the TSX. Centrinity is a reporting issuer in British Columbia, Alberta and Ontario. As at September 19, 2002, there were approximately 24,199,392 Centrinity Shares issued and outstanding.
3. Subco is a corporation incorporated under the CBCA and is a wholly-owned subsidiary of Open Text. Subco is not a reporting issuer in any province of Canada. Subco will be used for the sole purpose of effecting the Amalgamation.
4. Pursuant to a merger agreement dated as of September 19, 2002 (the "Merger Agreement") between Open Text, Subco and Centrinity, Open Text intends to acquire all of the issued and outstanding Centrinity Shares, including Centrinity Shares issuable upon the exercise of outstanding stock options, pursuant to the Amalgamation.
5. The Amalgamation will result in each holder of Centrinity Shares (a "Centrinity Shareholder") receiving one redeemable preferred share (the "Preferred Shares") in the capital of the corporation to be formed by the Amalgamation ("Amalco") for each Centrinity Share. Pursuant to the Amalgamation, Open Text will receive common shares in the capital of Amalco in exchange for its shares of Subco. On the second business day following completion of the Amalgamation, each Preferred Share will be redeemed for \$1.26 in cash (the "Redemption"). Upon completion of the Redemption, Open Text will own all of the shares of Amalco.
6. A special meeting (the "Special Meeting") of the Centrinity Shareholders to vote on the Amalgamation is expected to be held on November 1, 2002 in accordance with the terms of the Merger Agreement.

7. As a condition to entering into the Merger Agreement, Open Text has entered into employment agreements dated as of September 19, 2002 with certain employees of Centrinity that take effect upon completion of the Amalgamation. In particular, Open Text has entered into employment agreements (collectively, the "Employment Agreements") with two senior officers of Centrinity, Steven Asbury and John Myers (collectively, the "Key Employees").
8. Concurrent with the signing of the Merger Agreement, Open Text and Subco entered into a Supporting Shareholder Agreement (the "Support Agreement") with Centrinity Shareholders, including each of the Key Employees, holding in aggregate approximately 17.0% of the issued and outstanding Centrinity Shares (including Centrinity Shares issuable upon the exercise of vested outstanding stock options that have an exercise price of less than \$1.26 per share). Pursuant to the Support Agreement, these Centrinity Shareholders have agreed to vote their Centrinity Shares in favour of the Amalgamation at the Special Meeting unless, subject to the certain conditions, a superior competing transaction is proposed or announced.
9. As at September 19, 2002, the Key Employees have represented to Open Text that they collectively own, directly or indirectly, approximately 6.0% of the issued and outstanding Centrinity Shares (including Centrinity Shares issuable upon the exercise of outstanding vested stock options that have an exercise price of less than \$1.26 per share).
10. Steven Asbury owns, directly or indirectly, 1,301,091 Centrinity Shares and options to acquire an aggregate of 81,324 Centrinity Shares. Pursuant to the Support Agreement, Mr. Asbury has agreed to surrender these options to Centrinity for no consideration at the effective time of the Amalgamation.
11. John Myers owns, directly or indirectly, 10,000 Centrinity Shares and options to acquire an aggregate of 260,000 Centrinity Shares. Pursuant to the Support Agreement, Mr. Myers has agreed to exercise a portion of these options to acquire 182,500 Centrinity Shares before the effective time of the Amalgamation and to surrender the balance of these options to Centrinity for no consideration at the effective time of the Amalgamation.
12. Each Employment Agreement was negotiated on an arm's length basis, independent of the Merger Agreement and the Support Agreement.
13. Under his current terms of employment, Steven Asbury is entitled to an annual salary of \$140,535, long-term disability and life insurance, options to purchase up to an aggregate of 81,324 Centrinity Shares (which Mr. Asbury has agreed to cancel and not to exercise prior to completion of the Amalgamation) and may be entitled to a performance bonus of up to \$42,161.
14. Under his current terms of employment, John Myers is entitled to an annual salary of \$122,500, a performance bonus of up to \$150,000, long-term disability and life insurance and options to purchase up to an aggregate of 260,000 Centrinity Shares (of which options to purchase 72,500 Centrinity Shares have not vested and will not be exercisable prior to completion of the Amalgamation).
15. If the Amalgamation is completed, each Employment Agreement provides that the Key Employee is to receive compensation consisting of an annual base salary of \$180,000 in the case of Steven Asbury and \$200,000 in the case of John Myers (in each case reviewable annually), an annual payment of \$20,000 in the case of Steven Asbury in compensation for the loss of certain employment benefits that he is currently entitled to receive from Centrinity that will not continue after the Amalgamation, an annual bonus of up to \$150,000 based on meeting certain performance criteria, options to purchase up to 40,000 common shares of Open Text and such other benefits as are comparable to those provided by Open Text to other senior executives of Open Text.
16. The compensation to be paid under the Employment Agreements is consistent with that paid to similarly situated executives of Open Text and to relevant peers in the marketplace. Given that Centrinity's cash resources have been conserved by Centrinity, the cash compensation to be received by the Key Employees pursuant to the Employment Agreements exceeds that received pursuant to their current employment arrangements with Centrinity.
17. The Employment Agreements were entered into for reasons other than to increase the value of the consideration payable pursuant to the Amalgamation for the Centrinity Shares held by the Key Employees.
18. The purpose of the Employment Agreements is to assure the continued service of the Key Employees to Open Text in the event that the Amalgamation is completed. The expertise and ongoing services of the Key Employees, each of whom has played a key role in the development and/or management of Centrinity's business, will be of significant continuing value to Open Text should the Amalgamation be completed. Any benefits received by the Key Employees pursuant to the Employment Agreements will be in exchange for such expertise and services, not the

disposition of Centrinity Shares pursuant to the Amalgamation.

19. In connection with the Special Meeting, Centrinity will mail on or about October 7, 2002 to each Centrinity Shareholder (i) a notice of special meeting; (ii) a form of proxy; and (iii) a management proxy circular (the "Circular"). The Circular will be prepared in accordance with the CBCA and the Legislation, and will disclose the material terms of the proposed Amalgamation and the Employment Agreements as well as the fact that an exemption from the Valuation Requirement was obtained.
20. The Centrinity Shares that the Key Employees beneficially own or over which they exercise control or direction will not be counted toward the minority approval required under the Legislation (other than in the capacity of proxy holders having no discretion in respect of how the Centrinity Shares will be voted in connection with the Amalgamation).

**AND WHEREAS**, pursuant to the System, this MRRS Decision Document evidences the determination of the Decision Makers (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 Amalgamation, Centrinity shall be exempt from the Valuation Requirement, provided that Centrinity complies with the other applicable provisions of the Legislation.

October 4, 2002.

"Ralph Shay"

**2.1.4 Commonfund Asset Management Company, Inc. and James P. Feeney - 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  
COMMONFUND ASSET MANAGEMENT  
COMPANY, INC. AND  
JAMES P. FEENEY**

**DECISION  
(Rule 31-505)**

**UPON** the application of Commonfund Asset Management Company, Inc. (Comanco and, together with James P. Feeney, the **Applicant**) 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 Mr. Feeney 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 Mr. Feeney by the designated compliance officer of Comanco (the **Application**);

**AND UPON** considering the Application;

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

1. Comanco is registered with the Ontario Securities Commission as a non-Canadian adviser in the categories of investment counsel and portfolio manager.
2. Mr. Feeney is admitted to the practice of law in the states of Pennsylvania and New Jersey and is registered in the United States with the National

Association of Securities Dealers, Inc. (**NASD**) as a General Securities Representative (Series 7), General Securities Principal (Series 24) and Uniform Securities Agent State Law Exam (Series 63).

3. Mr. Feeney joined Comanco in 1999 and is Director of Compliance for Comanco and certain of its affiliate organizations (The Common Fund for Nonprofit Organizations, Commonfund Capital, Inc., Commonfund Realty, Inc. and Commonfund Securities, Inc.). Comanco is registered as an investment adviser with the U.S. Securities and Exchange Commission (**SEC**) (as are its affiliates, Commonfund Capital, Inc. and Commonfund Realty, Inc.). Commonfund Securities, Inc. is a broker-dealer that is registered with the SEC and is a member of the NASD.
4. In that capacity, Mr. Feeney is involved in the development and maintenance of the policies and procedures designed to ensure that Comanco's activities are compliant with applicable legislation.
5. Prior to joining Comanco, Mr. Feeney was for two years the Manager, Compliance Department of The Prudential Insurance Company of America.
6. Mr. Feeney 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 Comanco.
7. The designated compliance officer of Comanco will not delegate and Mr. Feeney 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 Applicant from the requirement of subsection 1.3(3) of the Registration Rule that Mr. Feeney meet the proficiency requirements of the Proficiency Rule in order for Mr. Feeney to be delegated supervisory functions by the designated compliance officer of Comanco;

**PROVIDED THAT:**

- (A) This order shall not take effect until such time as Mr. Feeney has completed the New Entrants Course prepared and conducted by the Canadian Securities Institute;
- (B) The designated compliance officer of Comanco shall not delegate and Mr. Feeney shall not assume the supervisory functions enumerated in subsection 1.3(2) of the Registration Rule; and

- (C) 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.

October 11, 2002.

"David M. Gilkes"

**2.1.5 National Bank Financial Inc. and National Bank Financial Ltd. - Decision**

**Headnote**

Decision pursuant to to section 3.1 of Rule 31-501 – Registrant Relationships (the Rule) and subsection 127(2)(h) of the Regulations under the Securities Act (Ontario) exempting salespersons, directors and officers of the applicants, which are affiliated companies, from certain of the dual registration restrictions out in the Rule and exempting their salespersons from the provisions of subsection 127(1) of the Regulations, to the extent that those provisions would prohibit salespersons of one applicant from also being salespersons of the other applicant.

**Statutes Cited**

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., ss.127(1), 127(2).

**Rules Cited**

Ontario Securities Commission Rule 31-501 ss. 1(1), 3.1.

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

**AND**

**ONTARIO REGULATION 1015,  
BEING THE GENERAL REGULATION  
MADE UNDER THE ACT  
(the “Regulation”)**

**AND**

**ONTARIO SECURITIES COMMISSION RULE 31-501  
REGISTRANT RELATIONSHIPS (the “Rule”)**

**AND**

**IN THE MATTER OF  
NATIONAL BANK FINANCIAL BANK INC. AND  
NATIONAL BANK FINANCIAL LTD.**

**DECISION  
(Section 127 (2)(h) of the Regulation and  
Section 3.1 of the Rule)**

**UPON** the Director (as defined in the Act) having received an application (the “**Application**”) from National Bank Financial Inc. (“**NBFI**”) and National Bank Financial Ltd. (“**NBFL**”) and, together with NBFI, the “**National Bank Registrants**”) for a decision (or its equivalent), pursuant to subsection 127 (2)(h) of the Regulation and Section 3.1 of the Rule, exempting the National Bank Registrants and their current and future salespersons, directors and officers from certain of the “dual” registration restrictions of subsection 127 (1) of the Regulation and the Rule;

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

**AND UPON** the National Bank Registrants having represented to the Director that:

1. Each of the National Bank Registrants is an indirectly wholly-owned subsidiary of the National Bank of Canada, a Schedule I Canadian chartered bank;
2. Each of the National Bank Registrants is (i) registered as a dealer under the Act in the categories of broker and investment dealer, (ii) a Member firm of the Investment Dealers Association of Canada (the “**IDA**”), (iii) a Participating Organization of The Toronto Stock Exchange and (iv) a member (or its equivalent) of each of the remaining exchanges (securities and commodity futures) in Canada (other than the Montreal Exchange, in respect of which only NBFI is a member firm);
3. For various business and other reasons, National Bank has historically caused, and continues to require, the securities brokerage businesses of its subsidiaries to be carried out through two registrants whereby, in certain Canadian provinces, retail brokerage business is carried out through one registrant and institutional brokerage business is carried out through a second registrant. Currently, this is reflected through the respective businesses of the National Bank Registrants as follows:
  - (a) all institutional brokerage business of the National Bank Registrants is carried out through NBFI;
  - (b) retail brokerage business in all provinces other than Quebec and New Brunswick (and one branch in Ottawa, Ontario) is carried out through NBFL; and
  - (c) retail brokerage business in the Provinces of Quebec and New Brunswick (and one branch in Ottawa, Ontario) is carried out through NBFI;
4. For purposes of discharging their obligations under applicable securities legislation, stock exchange requirements and IDA requirements, the National Bank Registrants are considered in all material respects as a combined entity, including:
  - (a) for reporting purposes and regulatory capital adequacy purposes, the National Bank Registrants prepare a single monthly financial report in which their net capital is computed on a joint basis;

- (b) a single statement of policies governs each of the National Bank Registrants; and
- (c) in compliance with IDA requirements, the respective obligations of the National Bank Registrants are cross-guaranteed;
5. Each of the National Bank Registrants carries on business under the name "National Bank Financial" and it is on this basis that clients deal with each of the National Bank Registrants;
6. A fully harmonized compliance organization has been established for the National Bank Registrants;
7. National Bank Financial's compliance structure has been in place for a significant period and, accordingly, the persons responsible for compliance for the National Bank Registrants are particularly sensitive to, and well structured to effectively monitor and address, the respective compliance obligations of the National Bank Registrants relating to institutional client trading on the one hand and retail client trading on the other hand. In addition, the persons responsible for overseeing compliance in respect of client trading are already required, in certain provinces, including Ontario, to monitor the conduct of both institutional client trading through NBFi and retail client trading through NBFL;
8. The National Bank Registrants have determined that certain of their salespersons could, as a practical matter, successfully establish accounts for both retail and institutional clients (and, in certain cases, have done so during their tenure as salespersons of other registrants) and have requested the right to do so;
9. In most provinces, including Ontario, such individuals could only do so through being a registered salesperson with both NBFi (through which institutional brokerage business is carried out) and NBFL (through which retail brokerage business is carried out);
10. Section 127(1) of the Regulation provides that (subject to subsection (2) of such section) no individual may be registered as a salesperson unless he or she is employed full-time as a salesperson (emphasis added). Although not explicit, it may well be implicit that such subsection is intended to require such full-time employment with one registrant;
11. Section 127(2) of the Regulation permits the Director to exempt a person from the full-time requirement under subsection 127(1) of the Regulation where the other activities of the subject salesperson will not interfere with his or her duties and responsibilities as a salesperson and there is no conflict of interest arising from his or her duties as a salesperson and his or her outside activity;
12. Section 1(1) of the Rule provides that no person registered as a salesperson of a registrant may act or be registered as a director, partner or officer of the registrant or as a salesperson, officer, partner or director of another registrant;
13. Section 3.1 of the Rule provides that the Director may grant an exemption from the Rule, in whole or in part;
14. Section 1.1 of the Companion Policy to the Rule (the "**Companion Policy**") provides that the Director will consider granting an exemption from Section 1.1 of the Rule to salespersons, officers or directors registered in the United States and employed by a United States registered broker-dealer to trade through an Ontario registered broker or investment dealer that is affiliated with the United States broker-dealer;
15. Section 1.2 of the Companion Policy provides that the Director will not provide an exemption from the "Related Registrant" restrictions under Section 2.1 of the Rule unless the Director is satisfied that the applicant or registrant has adopted or proposes to adopt policies and procedures to minimize the potential for conflict of interest; and
16. The by-laws of the IDA have recently been amended so as to permit dual employment of registered representatives (being salespersons for the purposes of the Act, the Regulation and the Rule) and trading officers of affiliated registrants, provided that any potential conflicts of interest are addressed and such affiliates have cross-guaranteed their obligations;
- AND UPON** the Director being satisfied, based on the representations set forth in paragraphs 4 through 7 above, that there is no potential conflict of interest in the conduct of brokerage business as between the National Bank Registrants;
- AND UPON** the Director being satisfied that registration of individuals as salespersons of both of the National Bank Registrants would not result in interference with their duties to either of the National Bank Registrants and that there is no conflict of interest which would arise from such dual registration;
- AND UPON** the Director being satisfied that to do so would not be prejudicial to the public interest;
- IT IS THE DECISION** of the Director, pursuant to subsection 127 (1) (h) of the Regulation and Section 3.1 of the Rule, that, effective the date of this Decision:
- (a) the National Bank Registrants and their respective salespersons, officers and directors are exempt from those

provisions of the Rule which would prohibit individuals who are salespersons, officers and/or directors of one of the National Bank Registrants from also being salespersons, officers and/or directors of the other National Bank Registrant; and

- (b) the National Bank Registrants and their respective salespersons are exempt from the provisions of subsection 127 (1) of the Regulation to the extent that such provisions would prohibit salespersons of one of the National Bank Registrants from also being salespersons of the other National Bank Registrant,

provided that (i) the circumstances described in paragraphs 4, 5 and 6 above remain in place and (ii) the National Bank Registrants comply with all requirements of the IDA from time to time for permitting such dual registration.

October 11, 2002.

“David M. Gilkes”



2.2 Orders

2.2.1 John Douglas Kirby - ss 127(1) and s. 127.1

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

**AND**

**IN THE MATTER OF  
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**

**ORDER  
(Subsection 127(1) and section 127.1)**

**WHEREAS** on September 24, 1998, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") respecting John Douglas Kirby ("Kirby") and others;

**AND WHEREAS** on September 24, 1998, the Commission made a Temporary Order as against Kirby and others, such Temporary Order which was extended by Commission Orders dated October 9, 1998 and February 5, 1999 (the "Temporary Order");

**AND WHEREAS** Kirby entered into a Settlement Agreement executed September 30, 2002 and October 4, 2002 (the "Settlement Agreement") in which he agreed to a proposed settlement of the proceedings, subject to the approval of the Commission;

**AND UPON** reviewing the Settlement Agreement and the Statement of Allegations of Staff of the Commission and upon hearing submissions from Kirby and from Staff of the Commission;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this Order pursuant to subsection 127(1) and section 127.1 of the Act;

**IT IS ORDERED THAT:**

1. the attached Settlement Agreement is approved;
2. pursuant to subsection 127(1), paragraph 2, trading in any securities by Kirby cease for twelve years commencing on the date of this Order except that, after three years, Kirby may trade securities for his own account and the account of

his registered retirement savings plan (as defined in the *Income Tax Act (Canada)*);

3. pursuant to subsection 127(1), paragraph 8, Kirby is prohibited from becoming or acting as a director or officer of any issuer for twelve years commencing on the date of this Order;

4. pursuant to subsection 127(1), paragraph 6, Kirby is reprimanded; and

5. the Temporary Order as against Kirby no longer has any force or effect.

October 9, 2002.

"H. Lorne Morphy"

"Robert L. Shirriff"

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

**AND**

**IN THE MATTER OF  
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**

**SETTLEMENT AGREEMENT BETWEEN  
STAFF OF THE ONTARIO SECURITIES COMMISSION  
AND JOHN DOUGLAS KIRBY**

**I. INTRODUCTION**

1. By Notice of Hearing dated September 24, 1998 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider, among other things:
  - (a) whether, pursuant to subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act"), it is in the public interest for the Commission to make an order that the exemptions contained in Ontario securities law do not apply to the respondent John Douglas Kirby ("Kirby") permanently or for such time as the Commission may direct; and
  - (b) such other orders as the Commission deems appropriate.
2. By Temporary Order dated September 24, 1998, the Commission ordered that trading in securities by Kirby cease immediately except for trades in mutual fund securities and trades for his personal account (the "Temporary Order"). The Temporary Order was extended by Commission Orders dated October 9, 1998 and February 4, 1999.

**II. JOINT SETTLEMENT RECOMMENDATION**

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

**III. STATEMENT OF FACTS**

**Acknowledgement**

4. Solely for the purposes of this proceeding, and of any other proceeding commenced by a securities regulatory agency, Staff and Kirby agree with the facts set out in paragraphs 5 through 20 of this Settlement Agreement.

**Facts**

5. Saxton Investment Ltd. ("Saxton") was incorporated on January 13, 1995. The respondent Allan Eizenga ("Eizenga") was Saxton's registered director. Saxton and Eizenga established numerous offering corporations, as listed below (the "Offering Corporations").

The Saxton Trading Corp.  
The Saxton Export Corp.  
The Saxton Export (II) Corp.  
The Saxton Export (III) Corp.  
The Saxton Export (IV) Corp.  
The Saxton Export (V) Corp.  
The Saxton Export (VI) Corp.  
The Saxton Export (VII) Corp.  
The Saxton Export (VIII) Corp.  
The Saxton Export (IX) Corp.  
The Saxton Export (X) Corp.  
The Saxton Export (XI) Corp.  
The Saxton Export (XII) Corp.  
The Saxton Export (XIII) Corp.  
The Saxton Export (XIV) Corp.  
The Saxton Export (XV) Corp.  
The Saxton Export (XVI) Corp.  
The Saxton Export (XVII) Corp.  
The Saxton Export (XVIII) Corp.  
The Saxton Export (XIX) Corp.  
The Saxton Export (XX) Corp.  
The Saxton Export (XXI) Corp.  
The Saxton Export (XXII) Corp.  
The Saxton Export (XXIII) Corp.  
The Saxton Export (XXIV) Corp.  
The Saxton Export (XXV) Corp.  
The Saxton Export (XXVI) Corp.  
The Saxton Export (XXVII) Corp.  
The Saxton Export (XXVIII) Corp.  
The Saxton Export (XXIX) Corp.  
The Saxton Export (XXX) Corp.  
The Saxton Export (XXXI) Corp.  
The Saxton Export (XXXII) Corp.  
The Saxton Export (XXXIII) Corp.  
The Saxton Export (XXXIV) Corp.  
The Saxton Export (XXXV) Corp.  
The Saxton Export (XXXVI) Corp.  
The Saxton Export (XXXVII) Corp.  
The Saxton Export (XXXVIII) Corp.

6. Saxton and the Offering Corporations represented to the public that they were investing in businesses in Cuba and other Caribbean companies.

7. On or about October 7, 1998, the Court appointed KPMG Inc. ("KPMG") as the custodian of Saxton's assets. In early 1999, KPMG reported that the Offering Corporations had raised approximately \$37 million from investors. All funds invested in the Offering Corporations had been transferred to Saxton. At that time, KPMG held the view that the value of the Saxton assets, at its highest (as reported by related companies), was approximately \$5.5 million.
  8. Kirby became registered with the Commission in October 1986. During the material time, Kirby was registered to sell mutual fund securities between January 1995 and May 1, 1997. Kirby could sell mutual fund securities and limited market products between May 15, 1997 and the end of 1998. Kirby has not been registered with the Commission since January 1, 2000.
  9. Between 1996 and 1998, Kirby sold to Ontario investors securities of one or more of the Offering Corporations (the "Saxton Securities"). Kirby sold the Saxton Securities to approximately 140 Ontario investors for a total amount sold of approximately \$7,000,000.
  10. The Offering Corporations were incorporated pursuant to the laws of Ontario. Kirby's sales of the Saxton Securities constituted trades in securities of an issuer that had not been previously issued.
  11. None of the Offering Corporations filed a prospectus with the Commission. By selling the Saxton Securities to his clients, Kirby traded in securities, which trades were distributions, without a prospectus being filed or receipted by the Commission and with no available exemption from the prospectus requirements of Ontario securities law.
  12. Kirby failed to provide his clients with access to substantially the same information concerning the Saxton Securities that a prospectus filed under the Act would provide. Kirby never reviewed an Offering Memorandum or financial statements respecting the Saxton Securities. None of Kirby's clients received an Offering Memorandum prior to purchasing the Saxton Securities. The only documentation provided to clients by Kirby was vague promotional material prepared by Saxton.
  13. Kirby misrepresented to his clients the nature and quality of the Saxton Securities. Kirby marketed the Saxton Securities to his clients as a GIC-like product.
  14. Kirby engaged in an advertising campaign to sell the Saxton Securities. Kirby advertised the Saxton Securities in *Maturity* magazine. This magazine is directed at seniors. Kirby's advertisement introduced "the perfect alternative to Canada Savings Bonds and Bank GIC's" and offered a "10 ¼% FIXED DIVIDEND ACCOUNT for a three (3) year term". The advertisement provided a toll free number by which prospective clients could contact Kirby. Approximately 60 potential investors contacted Kirby through the advertised toll free number.
  15. Kirby failed to adequately assess the suitability of his clients' investments in the Saxton Securities. Certain elderly clients transferred existing RRIF's or redeemed mutual funds to purchase the Saxton Securities.
  16. Kirby failed to inform his sponsoring firm that he was selling the Saxton Securities.
  17. Kirby received commissions of approximately \$350,000 on the sales described in paragraph 9 above.
  18. Kirby failed to diligently respond to concerns from Staff of the Commission that he was selling exempt securities without being registered to do so.
  19. Kirby's conduct in selling the Saxton Securities was contrary to Ontario securities law and the public interest.
  20. Kirby co-operated with the Commission's investigation respecting the sale of Saxton Securities.
- IV. TERMS OF SETTLEMENT**
21. Kirby agrees to the following terms of settlement:
    - (a) the making of an order:
      - (i) approving this settlement;
      - (ii) that trading in any securities by Kirby cease for twelve years with the exception that, after three years from the date of the approval of this settlement, Kirby is permitted to trade securities for his own account and the account of his registered retirement savings plan (as defined in the *Income Tax Act (Canada)*);
      - (iii) that Kirby is prohibited from becoming or acting as a director or officer of any issuer for twelve years;
      - (iv) reprimanding Kirby;

- (v) that the Temporary Order no longer has any force or effect; and
- (b) Kirby will undertake to the Commission that he will not apply to the Commission for registration for twelve years; and
- (c) within one year prior to applying to the Commission for registration, Kirby will successfully complete the Canadian Securities Course and Conduct and Practices Handbook Course.

**V. STAFF COMMITMENT**

- 22. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Kirby in relation to the facts set out in Part III of this Settlement Agreement.

**VI. APPROVAL OF SETTLEMENT**

- 23. Approval of the settlement set out in this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for October 9, 2002, or such other date as may be agreed to by Staff and Kirby (the "Settlement Hearing"). Kirby will attend in person at the Settlement Hearing.
- 24. Counsel for Staff or Kirby may refer to any part, or all, of this Settlement Agreement at the Settlement Hearing. Staff and Kirby agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.
- 25. If this settlement is approved by the Commission, Kirby agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.
- 26. Staff and Kirby agree that if this settlement is approved by the Commission, they will not make any public statement inconsistent with this Settlement Agreement.
- 27. If, for any reason whatsoever, this settlement is not approved by the Commission, or an order in the form attached as Schedule "A" is not made by the Commission:
  - (a) this Settlement Agreement and its terms, including all discussions and negotiations between Staff and Kirby leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Kirby;
  - (b) Staff and Kirby shall be entitled to all available proceedings, remedies and challenges, including proceeding to a

hearing of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by this Agreement or the settlement discussions/negotiations;

- (c) the terms of this Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person, except with the written consent of Staff and Kirby or as may be required by law; and
- (d) Kirby agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement, the settlement discussions/negotiations or the process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

**VII. DISCLOSURE OF SETTLEMENT AGREEMENT**

- 28. Except as permitted under paragraph 24 above, this Settlement Agreement and its terms will be treated as confidential by Staff and Kirby until approved by the Commission, and forever, if for any reason whatsoever this settlement is not approved by the Commission, except with the consent of Staff and Kirby, or as may be required by law.
- 29. Any obligations of confidentiality shall terminate upon approval of this settlement by the Commission.

**VIII. EXECUTION OF SETTLEMENT AGREEMENT**

- 30. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.
- 31. A facsimile copy of any signature shall be as effective as an original signature.

September 30, 2002.

"John Douglas Kirby"  
John Douglas Kirby

October 4, 2002.

"Michael Watson"  
Staff of the Ontario Securities Commission  
(Per) Michael Watson

**SCHEDULE "A"**

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

**AND**

**IN THE MATTER OF  
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**

**ORDER**

**(Subsection 127(1) and section 127.1)**

**WHEREAS** on September 24, 1998, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") respecting John Douglas Kirby ("Kirby") and others;

**AND WHEREAS** on September 24, 1998, the Commission made a Temporary Order as against Kirby and others, such Temporary Order which was extended by Commission Orders dated October 9, 1998 and February 5, 1999 (the "Temporary Order");

**AND WHEREAS** Kirby entered into a Settlement Agreement dated • (the "Settlement Agreement") in which he agreed to a proposed settlement of the proceedings, subject to the approval of the Commission;

**AND UPON** reviewing the Settlement Agreement and the Statement of Allegations of Staff of the Commission and upon hearing submissions from Kirby and from Staff of the Commission;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this Order pursuant to subsection 127(1) and section 127.1 of the Act;

**IT IS ORDERED THAT:**

1. the attached Settlement Agreement is approved;
2. pursuant to subsection 127(1), paragraph 2, trading in any securities by Kirby cease for twelve years commencing on the date of this Order except that, after three years, Kirby may trade securities for his own account and the account of his registered retirement savings plan (as defined in the *Income Tax Act (Canada)*);

3. pursuant to subsection 127(1), paragraph 8, Kirby is prohibited from becoming or acting as a director or officer of any issuer for twelve years commencing on the date of this Order;
4. pursuant to subsection 127(1), paragraph 6, Kirby is reprimanded; and
5. the Temporary Order as against Kirby no longer has any force or effect.

October 9, 2002.

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2.2.2 Michael Thomas Peter Kennelly - ss. 127(1) and s. 127.1

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

**AND**

**IN THE MATTER OF  
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**

**ORDER  
(Subsection 127(1) and section 127.1)**

**WHEREAS** on September 24, 1998, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") respecting Michael Thomas Peter Kennelly ("Kennelly") and others;

**AND WHEREAS** on September 24, 1998, the Commission made a Temporary Order as against Kennelly and others, such Temporary Order which was extended by Commission Orders dated October 9, 1998 and February 5, 1999 (the "Temporary Order");

**AND WHEREAS** Kennelly entered into a Settlement Agreement executed October 3 and 8, 2002 (the "Settlement Agreement") in which he agreed to a proposed settlement of the proceedings, subject to the approval of the Commission;

**AND UPON** reviewing the Settlement Agreement and the Statement of Allegations of Staff of the Commission and upon hearing submissions from Cross and from Staff of the Commission;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this Order pursuant to subsection 127(1) and section 127.1 of the Act;

**IT IS ORDERED THAT:**

1. the attached Settlement Agreement is approved;
2. pursuant to subsection 127(1), paragraph 2, trading in any securities by Kennelly cease for eight years commencing on the date of this Order except that, after two years, Kennelly may trade securities for the account of his registered

retirement savings plan (as defined in the *Income Tax Act (Canada)*);

3. pursuant to subsection 127(1), paragraph 8, Kennelly is prohibited from becoming or acting as a director or officer of any issuer for eight years commencing on the date of this Order;
4. pursuant to subsection 127(1), paragraph 6, Kennelly is reprimanded;
5. the Temporary Order as against Kennelly no longer has any force or effect; and
6. pursuant to section 127.1, Kennelly will pay costs to the Commission in the amount of \$2,500.

October 9, 2002.

"H. Lorne Morphy"

"Robert L. Shirriff"

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

**AND**

**IN THE MATTER OF  
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**

**SETTLEMENT AGREEMENT BETWEEN  
STAFF OF THE ONTARIO SECURITIES COMMISSION  
AND MICHAEL THOMAS PETER KENNELLY**

**I. INTRODUCTION**

1. By Notice of Hearing dated September 24, 1998 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider, among other things:
  - (a) whether, pursuant to subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act"), it is in the public interest for the Commission to make an order that the exemptions contained in Ontario securities law do not apply to the respondent Michael Thomas Peter Kennelly ("Kennelly") permanently or for such time as the Commission may direct; and
  - (c) such other orders as the Commission deems appropriate.
2. By Temporary Order dated September 24, 1998, the Commission ordered that trading in securities by Kennelly cease immediately except for trades in mutual fund securities and trades for his personal account (the "Temporary Order"). The Temporary Order was extended by Commission Orders dated October 9, 1998 and February 4, 1999.

**II. JOINT SETTLEMENT RECOMMENDATION**

3. Staff of the Commission ("Staff") agrees to recommend settlement of the proceeding respecting Kennelly initiated by the Notice of Hearing in accordance with the terms and conditions set out below. Kennelly consents to the making of an order against him in the form

attached as Schedule "A" based on the facts set out in Part III of this Settlement Agreement.

**III. STATEMENT OF FACTS**

**Acknowledgement**

4. Solely for the purposes of this proceeding, and of any other proceeding commenced by a securities regulatory agency, Staff and Kennelly agree with the facts set out in paragraphs 5 through 18 of this Settlement Agreement.

**Facts**

5. Saxton Investment Ltd. ("Saxton") was incorporated on January 13, 1995. The respondent Allan Eizenga ("Eizenga") was Saxton's registered director. Saxton and Eizenga established numerous offering corporations, as listed below (the "Offering Corporations").

The Saxton Trading Corp.  
The Saxton Export Corp.  
The Saxton Export (II) Corp.  
The Saxton Export (III) Corp.  
The Saxton Export (IV) Corp.  
The Saxton Export (V) Corp.  
The Saxton Export (VI) Corp.  
The Saxton Export (VII) Corp.  
The Saxton Export (VIII) Corp.  
The Saxton Export (IX) Corp.  
The Saxton Export (X) Corp.  
The Saxton Export (XI) Corp.  
The Saxton Export (XII) Corp.  
The Saxton Export (XIII) Corp.  
The Saxton Export (XIV) Corp.  
The Saxton Export (XV) Corp.  
The Saxton Export (XVI) Corp.  
The Saxton Export (XVII) Corp.  
The Saxton Export (XVIII) Corp.  
The Saxton Export (XIX) Corp.  
The Saxton Export (XX) Corp.  
The Saxton Export (XXI) Corp.  
The Saxton Export (XXII) Corp.  
The Saxton Export (XXIII) Corp.  
The Saxton Export (XXIV) Corp.  
The Saxton Export (XXV) Corp.  
The Saxton Export (XXVI) Corp.  
The Saxton Export (XXVII) Corp.  
The Saxton Export (XXVIII) Corp.  
The Saxton Export (XXIX) Corp.  
The Saxton Export (XXX) Corp.  
The Saxton Export (XXXI) Corp.  
The Saxton Export (XXXII) Corp.  
The Saxton Export (XXXIII) Corp.  
The Saxton Export (XXXIV) Corp.  
The Saxton Export (XXXV) Corp.  
The Saxton Export (XXXVI) Corp.  
The Saxton Export (XXXVII) Corp.  
The Saxton Export (XXXVIII) Corp.

6. Saxton and the Offering Corporations represented to the public that they were investing in businesses in Cuba and other Caribbean companies.
  7. On or about October 7, 1998, the Court appointed KPMG Inc. ("KPMG") as the custodian of Saxton's assets. In early 1999, KPMG reported that the Offering Corporations had raised approximately \$37 million from investors. All funds invested in the Offering Corporations had been transferred to Saxton. At that time, KPMG held the view that the value of the Saxton assets, at its highest (as reported by related companies), was approximately \$5.5 million.
  8. Kennelly became registered with the Commission under the Act to sell mutual fund securities and limited market products in late July 1993. Kennelly has not been registered with the Commission since mid-October 1998.
  9. Between 1996 and 1998, Kennelly sold to Ontario investors securities of one or more of the Offering Corporations (the "Saxton Securities"). Kennelly sold the Saxton Securities to approximately 48 Ontario investors for a total amount sold of approximately \$2,500,000.
  10. The Offering Corporations were incorporated pursuant to the laws of Ontario. Kennelly's sales of the Saxton Securities constituted trades in securities of an issuer that had not been previously issued.
  11. None of the Offering Corporations filed a prospectus with the Commission. By selling the Saxton Securities to his clients, Kennelly traded in securities, which trades were distributions, without a prospectus being filed or receipted by the Commission and with no available exemption from the prospectus requirements of Ontario securities law.
  12. Kennelly failed to provide his clients with access to substantially the same information concerning the Saxton Securities that a prospectus filed under the Act would provide. Kennelly never reviewed an Offering Memorandum or financial statements respecting the Saxton Securities. None of Kennelly's clients received an Offering Memorandum prior to purchasing the Saxton Securities. The only documentation provided to clients by Kennelly was vague promotional material prepared by Saxton.
  13. Kennelly misrepresented to his clients the nature and the quality of the Saxton Securities. Kennelly told certain clients that they were purchasing a "GIC" from Saxton. Kennelly misrepresented to certain clients that up to \$60,000 invested in Saxton was protected by deposit insurance.
  14. Kennelly failed to inform his sponsoring firm that he was selling the Saxton Securities.
  15. Kennelly failed to adequately assess the suitability of his clients' investments in the Saxton Securities. Kennelly actively solicited certain clients to move money out of secure investments into Saxton. One elderly client was advised by Kennelly to move money out of a bank term investment to purchase Saxton Securities. Another client invested \$800,000 in Saxton Securities from her late husband's \$1 million life insurance.
  16. Kennelly told certain clients that he had personally invested in Saxton. This was not true. Kennelly informs Staff that his wife purchased approximately \$20,000 worth of the Saxton Securities.
  17. Kennelly received commissions of approximately \$125,000 on the sales described in paragraph 9 above.
  18. Kennelly's conduct in selling the Saxton Securities was contrary to Ontario securities law and the public interest.
- IV. TERMS OF SETTLEMENT**
19. Kennelly agrees to the following terms of settlement:
    - (a) the making of an order:
      - (i) approving this settlement;
      - (ii) that trading in any securities by Kennelly cease for eight years with the exception that, after two years from the date of the approval of this settlement, Kennelly is permitted to trade securities for the account of his registered retirement savings plan (as defined in the *Income Tax Act (Canada)*);
      - (iii) that Kennelly is prohibited from becoming or acting as a director or officer of any issuer for eight years;
      - (iv) reprimanding Kennelly;
      - (v) that the Temporary Order no longer has any force or effect; and
      - (vi) that Kennelly will pay costs to the Commission in the amount of \$2,500;



- (b) Kennelly will undertake to the Commission that he will not apply to the Commission for registration for eight years; and
- (c) within one year prior to applying to the Commission for registration, Kennelly will successfully complete the Canadian Securities Course and Conduct and Practices Handbook Course.

**V. STAFF COMMITMENT**

- 20. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Kennelly in relation to the facts set out in Part III of this Settlement Agreement.

**VI. APPROVAL OF SETTLEMENT**

- 21. Approval of the settlement set out in this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for October 9, 2002, or such other date as may be agreed to by Staff and Kennelly (the "Settlement Hearing"). Kennelly will attend in person at the Settlement Hearing.
- 22. Counsel for Staff or Kennelly may refer to any part, or all, of this Settlement Agreement at the Settlement Hearing. Staff and Kennelly agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.
- 23. If this settlement is approved by the Commission, Kennelly agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.
- 24. Staff and Kennelly agree that if this settlement is approved by the Commission, they will not make any public statement inconsistent with this Settlement Agreement.
- 25. If, for any reason whatsoever, this settlement is not approved by the Commission, or an order in the form attached as Schedule "A" is not made by the Commission:

- (a) this Settlement Agreement and its terms, including all discussions and negotiations between Staff and Kennelly leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Kennelly;
- (b) Staff and Kennelly shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Statement of Allegations of

Staff, unaffected by this Agreement or the settlement discussions/negotiations;

- (c) the terms of this Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person, except with the written consent of Staff and Kennelly or as may be required by law; and
- (d) Kennelly agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement, the settlement discussions/negotiations or the process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

**VII. DISCLOSURE OF SETTLEMENT AGREEMENT**

- 26. Except as permitted under paragraph 22 above, this Settlement Agreement and its terms will be treated as confidential by Staff and Kennelly until approved by the Commission, and forever, if for any reason whatsoever this settlement is not approved by the Commission, except with the consent of Staff and Kennelly, or as may be required by law.
- 27. Any obligations of confidentiality shall terminate upon approval of this settlement by the Commission.

**VIII. EXECUTION OF SETTLEMENT AGREEMENT**

- 28. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.
- 29. A facsimile copy of any signature shall be as effective as an original signature.

October 3, 2002.

"Michael Thomas Peter Kennelly"  
Michael Thomas Peter Kennelly

October 8, 2002.

"Michael Watson"  
Staff of the Ontario Securities Commission  
(Per) Michael Watson

**SCHEDULE "A"**

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

**AND**

**IN THE MATTER OF  
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**

**ORDER**

**(Subsection 127(1) and section 127.1)**

**WHEREAS** on September 24, 1998, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") respecting Michael Thomas Peter Kennelly ("Kennelly") and others;

**AND WHEREAS** on September 24, 1998, the Commission made a Temporary Order as against Kennelly and others, such Temporary Order which was extended by Commission Orders dated October 9, 1998 and February 5, 1999 (the "Temporary Order");

**AND WHEREAS** Kennelly entered into a Settlement Agreement dated • (the "Settlement Agreement") in which he agreed to a proposed settlement of the proceedings, subject to the approval of the Commission;

**AND UPON** reviewing the Settlement Agreement and the Statement of Allegations of Staff of the Commission and upon hearing submissions from Cross and from Staff of the Commission;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this Order pursuant to subsection 127(1) and section 127.1 of the Act;

**IT IS ORDERED THAT:**

1. the attached Settlement Agreement is approved;
2. pursuant to subsection 127(1), paragraph 2, trading in any securities by Kennelly cease for eight years commencing on the date of this Order except that, after two years, Kennelly may trade securities for the account of his registered retirement savings plan (as defined in the *Income Tax Act (Canada)*);

3. pursuant to subsection 127(1), paragraph 8, Kennelly is prohibited from becoming or acting as a director or officer of any issuer for eight years commencing on the date of this Order;
4. pursuant to subsection 127(1), paragraph 6, Kennelly is reprimanded;
5. the Temporary Order as against Kennelly no longer has any force or effect; and
6. pursuant to section 127.1, Kennelly will pay costs to the Commission in the amount of \$2,500.

October 9, 2002.

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2.2.3 Allan Joseph Dorsey - ss. 127(1) and s. 127.1

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

**AND**

**IN THE MATTER OF  
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**

**ORDER  
(Subsection 127(1) and section 127.1)**

**WHEREAS** on September 24, 1998, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") respecting Allan Joseph Dorsey ("Dorsey") and others;

**AND WHEREAS** on September 24, 1998, the Commission made a Temporary Order as against Dorsey and others, such Temporary Order which was extended by Commission Orders dated October 9, 1998 and February 5, 1999 (the "Temporary Order");

**AND WHEREAS** Dorsey entered into a Settlement Agreement executed September 26, 2002 and October 4, 2002 (the "Settlement Agreement") in which he agreed to a proposed settlement of the proceedings, subject to the approval of the Commission;

**AND UPON** reviewing the Settlement Agreement and the Statement of Allegations of Staff of the Commission and upon hearing submissions from Dorsey and from Staff of the Commission;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this Order pursuant to subsection 127(1) and section 127.1 of the Act;

**IT IS ORDERED THAT:**

1. the attached Settlement Agreement is approved;
2. pursuant to subsection 127(1), paragraph 1, Dorsey's registration with the Commission is suspended for 10 months commencing on the date of this Order;

3. pursuant to subsection 127(1), paragraph 2, trading in any securities by Dorsey cease for 10 months commencing on the date of this Order;
4. pursuant to subsection 127(1), paragraph 2, Dorsey must successfully complete the Canadian Securities Course in order for his registration to be reinstated following the suspension;
5. pursuant to subsection 127(1), paragraph 6, Dorsey is reprimanded;
6. the Temporary Order as against Dorsey no longer has any force or effect; and
7. pursuant to section 127.1, Dorsey will pay costs to the Commission in the amount of \$1,500.

October 9, 2002.

"H. Lorne Morphy"

"Robert L. Shirriff"

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

**AND**

**IN THE MATTER OF  
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**

**SETTLEMENT AGREEMENT BETWEEN STAFF OF THE  
ONTARIO SECURITIES COMMISSION  
AND ALLAN JOSEPH DORSEY**

**I. INTRODUCTION**

1. By Notice of Hearing dated September 24, 1998 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider, among other things:

(a) whether, pursuant to subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act"), it is in the public interest for the Commission to make an order that the exemptions contained in Ontario securities law do not apply to the respondent Allan Joseph Dorsey ("Dorsey") permanently or for such time as the Commission may direct; and

(b) such other orders as the Commission deems appropriate.

2. By Temporary Order dated September 24, 1998, the Commission ordered that trading in securities by Dorsey cease immediately except for trades in mutual fund securities and trades for his personal account (the "Temporary Order"). The Temporary Order was extended by Commission Orders dated October 9, 1998 and February 4, 1999.

**II. JOINT SETTLEMENT RECOMMENDATION**

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

**III. STATEMENT OF FACTS**

**Acknowledgement**

4. Solely for the purposes of this proceeding, and of any other proceeding commenced by a securities regulatory agency, Staff and Dorsey agree with the facts set out in paragraphs 5 through 20 of this Settlement Agreement.

**Facts**

5. Saxton Investment Ltd. ("Saxton") was incorporated on January 13, 1995. The respondent Allan Eizenga ("Eizenga") was Saxton's registered director. Saxton and Eizenga established numerous offering corporations, as listed below (the "Offering Corporations").

The Saxton Trading Corp.  
The Saxton Export Corp.  
The Saxton Export (II) Corp.  
The Saxton Export (III) Corp.  
The Saxton Export (IV) Corp.  
The Saxton Export (V) Corp.  
The Saxton Export (VI) Corp.  
The Saxton Export (VII) Corp.  
The Saxton Export (VIII) Corp.  
The Saxton Export (IX) Corp.  
The Saxton Export (X) Corp.  
The Saxton Export (XI) Corp.  
The Saxton Export (XII) Corp.  
The Saxton Export (XIII) Corp.  
The Saxton Export (XIV) Corp.  
The Saxton Export (XV) Corp.  
The Saxton Export (XVI) Corp.  
The Saxton Export (XVII) Corp.  
The Saxton Export (XVIII) Corp.  
The Saxton Export (XIX) Corp.  
The Saxton Export (XX) Corp.  
The Saxton Export (XXI) Corp.  
The Saxton Export (XXII) Corp.  
The Saxton Export (XXIII) Corp.  
The Saxton Export (XXIV) Corp.  
The Saxton Export (XXV) Corp.  
The Saxton Export (XXVI) Corp.  
The Saxton Export (XXVII) Corp.  
The Saxton Export (XXVIII) Corp.  
The Saxton Export (XXIX) Corp.  
The Saxton Export (XXX) Corp.  
The Saxton Export (XXXI) Corp.  
The Saxton Export (XXXII) Corp.  
The Saxton Export (XXXIII) Corp.  
The Saxton Export (XXXIV) Corp.  
The Saxton Export (XXXV) Corp.  
The Saxton Export (XXXVI) Corp.  
The Saxton Export (XXXVII) Corp.  
The Saxton Export (XXXVIII) Corp.

6. Saxton and the Offering Corporations represented to the public that they were investing in businesses in Cuba and other Caribbean companies.

7. On or about October 7, 1998, the Court appointed KPMG Inc. ("KPMG") as the custodian of Saxton's assets. In early 1999, KPMG reported that the Offering Corporations had raised approximately \$37 million from investors. All funds invested in the Offering Corporations had been transferred to Saxton. At that time, KPMG held the view that the value of the Saxton assets, at its highest (as reported by related companies), was approximately \$5.5 million.
  8. Dorsey became registered with the Commission under the Act to sell mutual fund securities and limited market products in September 1995.
  9. Between May 1997 and June 1998, Dorsey sold the Saxton Securities to 15 Ontario investors for a total amount sold of approximately \$548,000.
  10. All of the Offering Corporations were incorporated pursuant to the laws of Ontario. Dorsey's sales of the Saxton Securities constituted trades in securities of an issuer that had not been previously issued.
  11. None of the Offering Corporations filed a prospectus with the Commission. By selling the Saxton Securities to his clients, Dorsey traded in securities, which trades were distributions, without a prospectus being filed or receipted by the Commission and with no available exemption from the prospectus requirements of Ontario securities law.
  12. Dorsey failed to provide his clients with access to substantially the same information concerning the Saxton Securities that a prospectus filed under the Act would provide. None of his clients received an Offering Memorandum prior to purchasing the Saxton Securities. The only documentation provided to clients by Dorsey was vague promotional material prepared by Saxton.
  13. Dorsey failed to inform his sponsoring firm that he was selling the Saxton Securities.
  14. Dorsey failed to adequately assess the suitability of his clients' investments in the Saxton Securities. Among other things, he did not have a sufficient understanding of the Saxton investment products to evaluate effectively the risk to his clients in purchasing the Saxton Securities.
  15. Moreover, Dorsey allowed one client to use borrowed funds (\$50,000) secured by the client's home to invest further in the Saxton Securities.
  16. Dorsey received commissions of approximately \$27,300 on the sales described in paragraph 9 above. He was promised by Saxton, and expected to receive, on-going trailer fees on such sales.
  17. Dorsey's conduct was contrary to Ontario securities law and the public interest.
  18. Dorsey informs Staff that:
    - (a) prior to selling the Saxton Securities, he met with the respondent Luke McGee ("McGee"). McGee was part of the Saxton management and a lawyer by training. McGee represented to Dorsey that the investment products offered by Saxton were exempt from the prospectus and registration requirements under the Act;
    - (b) he believed Saxton operated a legitimate, profitable business. In this regard, Dorsey relied on the representations of McGee and other Saxton principals concerning the nature and financial stability of Saxton's business and the nature and quality of the investment products offered by Saxton; and
    - (c) he invested approximately \$47,000 in the Saxton Securities and his immediate family invested in excess of \$100,000.
  19. Notwithstanding paragraph 18(b) above, Dorsey neither reviewed any Saxton financial statements nor made inquiries of any one independent of Saxton.
  20. Dorsey co-operated with the Commission's investigation respecting the sale of the Saxton Securities.
- IV. TERMS OF SETTLEMENT**
21. Dorsey agrees to the following terms of settlement:
    - (a) the making of an order:
      - (i) approving this settlement;
      - (ii) suspending Dorsey's registration with the Commission for ten months;
      - (iii) that trading in any securities by Dorsey cease for ten months;
      - (iv) that Dorsey must successfully complete the Canadian Securities Course in order for his registration to be reinstated following the suspension;
      - (v) reprimanding Dorsey;

- (vi) that the Temporary Order no longer has any force or effect; and
- (vii) that Dorsey will pay costs to the Commission in the amount of \$1,500.

**V. STAFF COMMITMENT**

22. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Dorsey in relation to the facts set out in Part III of this Settlement Agreement.

**VI. APPROVAL OF SETTLEMENT**

23. Approval of the settlement set out in this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for October 9, 2002, or such other date as may be agreed to by Staff and Dorsey (the "Settlement Hearing"). Dorsey will attend in person at the Settlement Hearing.

24. Counsel for Staff or Dorsey may refer to any part, or all, of this Settlement Agreement at the Settlement Hearing. Staff and Dorsey agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.

25. If this settlement is approved by the Commission, Dorsey agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.

26. Staff and Dorsey agree that if this settlement is approved by the Commission, they will not make any public statement inconsistent with this Settlement Agreement.

27. If, for any reason whatsoever, this settlement is not approved by the Commission, or an order in the form attached as Schedule "A" is not made by the Commission:

- (a) this Settlement Agreement and its terms, including all discussions and negotiations between Staff and Dorsey leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Dorsey;
- (b) Staff and Dorsey shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by this Agreement or the settlement discussions/negotiations;

(c) the terms of this Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person, except with the written consent of Staff and Dorsey or as may be required by law; and

(d) Dorsey agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement, the settlement discussions/negotiations or the process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

**VII. DISCLOSURE OF SETTLEMENT AGREEMENT**

28. Except as permitted under paragraph 24 above, this Settlement Agreement and its terms will be treated as confidential by Staff and Dorsey until approved by the Commission, and forever, if for any reason whatsoever this settlement is not approved by the Commission, except with the consent of Staff and Dorsey, or as may be required by law.

29. Any obligations of confidentiality shall terminate upon approval of this settlement by the Commission.

**VIII. EXECUTION OF SETTLEMENT AGREEMENT**

30. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

31. A facsimile copy of any signature shall be as effective as an original signature.

September 26, 2002.

"Allan Joseph Dorsey"  
Allan Joseph Dorsey

October 4, 2002.

"Michael Watson"  
Staff of the Ontario Securities Commission  
(Per) Michael Watson

**SCHEDULE "A"**

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

**AND**

**IN THE MATTER OF  
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**

**ORDER**

**(Subsection 127(1) and section 127.1)**

**WHEREAS** on September 24, 1998, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") respecting Allan Joseph Dorsey ("Dorsey") and others;

**AND WHEREAS** on September 24, 1998, the Commission made a Temporary Order as against Dorsey and others, such Temporary Order which was extended by Commission Orders dated October 9, 1998 and February 5, 1999 (the "Temporary Order");

**AND WHEREAS** Dorsey entered into a Settlement Agreement dated • (the "Settlement Agreement") in which he agreed to a proposed settlement of the proceedings, subject to the approval of the Commission;

**AND UPON** reviewing the Settlement Agreement and the Statement of Allegations of Staff of the Commission and upon hearing submissions from Dorsey and from Staff of the Commission;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this Order pursuant to subsection 127(1) and section 127.1 of the Act;

**IT IS ORDERED THAT:**

1. the attached Settlement Agreement is approved;
2. pursuant to subsection 127(1), paragraph 1, Dorsey's registration with the Commission is suspended for 10 months commencing on the date of this Order;

3. pursuant to subsection 127(1), paragraph 2, trading in any securities by Dorsey cease for 10 months commencing on the date of this Order;
4. pursuant to subsection 127(1), paragraph 2, Dorsey must successfully complete the Canadian Securities Course in order for his registration to be reinstated following the suspension;
5. pursuant to subsection 127(1), paragraph 6, Dorsey is reprimanded;
6. the Temporary Order as against Dorsey no longer has any force or effect; and
7. pursuant to section 127.1, Dorsey will pay costs to the Commission in the amount of \$1,500.

October 9, 2002.

\_\_\_\_\_  
\_\_\_\_\_

2.2.4 David Arthur Bending - ss. 127(1) and s. 127.1

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

AND

IN THE MATTER OF  
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

ORDER  
(Subsection 127(1) and section 127.1)

**WHEREAS** on September 24, 1998, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") respecting David Arthur Bending ("Bending") and others;

**AND WHEREAS** on September 24, 1998, the Commission made a Temporary Order as against Bending and others, such Temporary Order which was extended by Commission Orders dated October 9, 1998 and February 5, 1999 (the "Temporary Order");

**AND WHEREAS** Bending entered into a Settlement Agreement executed October 1 and 4, 2002 (the "Settlement Agreement") in which he agreed to a proposed settlement of the proceedings, subject to the approval of the Commission;

**AND UPON** reviewing the Settlement Agreement and the Statement of Allegations of Staff of the Commission and upon hearing submissions from Bending and from Staff of the Commission;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this Order pursuant to subsection 127(1) and section 127.1 of the Act;

**IT IS ORDERED THAT:**

1. the attached Settlement Agreement is approved;
2. pursuant to subsection 127(1), paragraph 1, Bending's registration with the Commission is suspended for eight months commencing on the date of this Order;
3. pursuant to subsection 127(1), paragraph 2, trading in any securities by Bending cease for

eight months commencing on the date of this Order;

4. pursuant to subsection 127(1), paragraph 2, Bending must successfully complete the Canadian Securities Course in order for his registration to be reinstated following the suspension;
5. pursuant to subsection 127(1), paragraph 6, Bending is reprimanded;
6. the Temporary Order as against Bending no longer has any force or effect; and
7. pursuant to section 127.1, Bending will pay costs to the Commission in the amount of \$2,000.

October 9, 2002.

"H. Lorne Morphy"

"Robert L. Shirriff"



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

**AND**

**IN THE MATTER OF  
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**

**SETTLEMENT AGREEMENT BETWEEN STAFF OF THE  
ONTARIO SECURITIES COMMISSION  
AND DAVID ARTHUR BENDING**

**I. INTRODUCTION**

1. By Notice of Hearing dated September 24, 1998 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider, among other things:

(a) whether, pursuant to subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act"), it is in the public interest for the Commission to make an order that the exemptions contained in Ontario securities law do not apply to the respondent David Arthur Bending ("Bending") permanently or for such time as the Commission may direct; and

(b) such other orders as the Commission deems appropriate.

2. By Temporary Order dated September 24, 1998, the Commission ordered that trading in securities by Bending cease immediately except for trades in mutual fund securities and trades for his personal account (the "Temporary Order"). The Temporary Order was extended by Commission Orders dated October 9, 1998 and February 4, 1999.

**II. JOINT SETTLEMENT RECOMMENDATION**

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

**III. STATEMENT OF FACTS**

**Acknowledgement**

4. Solely for the purposes of this proceeding, Staff and Bending agree with the facts set out in paragraphs 5 through 19 of this Settlement Agreement.

**Facts**

5. Saxton Investment Ltd. ("Saxton") was incorporated on January 13, 1995. The respondent Allan Eizenga ("Eizenga") was Saxton's registered director. Saxton and Eizenga established numerous offering corporations, as listed below (the "Offering Corporations").

The Saxton Trading Corp.  
The Saxton Export Corp.  
The Saxton Export (II) Corp.  
The Saxton Export (III) Corp.  
The Saxton Export (IV) Corp.  
The Saxton Export (V) Corp.  
The Saxton Export (VI) Corp.  
The Saxton Export (VII) Corp.  
The Saxton Export (VIII) Corp.  
The Saxton Export (IX) Corp.  
The Saxton Export (X) Corp.  
The Saxton Export (XI) Corp.  
The Saxton Export (XII) Corp.  
The Saxton Export (XIII) Corp.  
The Saxton Export (XIV) Corp.  
The Saxton Export (XV) Corp.  
The Saxton Export (XVI) Corp.  
The Saxton Export (XVII) Corp.  
The Saxton Export (XVIII) Corp.  
The Saxton Export (XIX) Corp.  
The Saxton Export (XX) Corp.  
The Saxton Export (XXI) Corp.  
The Saxton Export (XXII) Corp.  
The Saxton Export (XXIII) Corp.  
The Saxton Export (XXIV) Corp.  
The Saxton Export (XXV) Corp.  
The Saxton Export (XXVI) Corp.  
The Saxton Export (XXVII) Corp.  
The Saxton Export (XXVIII) Corp.  
The Saxton Export (XXIX) Corp.  
The Saxton Export (XXX) Corp.  
The Saxton Export (XXXI) Corp.  
The Saxton Export (XXXII) Corp.  
The Saxton Export (XXXIII) Corp.  
The Saxton Export (XXXIV) Corp.  
The Saxton Export (XXXV) Corp.  
The Saxton Export (XXXVI) Corp.  
The Saxton Export (XXXVII) Corp.  
The Saxton Export (XXXVIII) Corp.

6. Saxton and the Offering Corporations represented to the public that they were investing in businesses in Cuba and other Caribbean companies.

7. On or about October 7, 1998, the Court appointed KPMG Inc. ("KPMG") as the custodian of Saxton's assets. In early 1999, KPMG reported that the Offering Corporations had raised approximately \$37 million from investors. All funds invested in the Offering Corporations had been transferred to Saxton. At that time, KPMG held the view that the value of the Saxton assets, at its highest (as reported by related companies), was approximately \$5.5 million.
  8. Bending became registered with the Commission under the Act to sell mutual fund securities and limited market products on January 25, 1994.
  9. Between October 1996 and November 1996, Bending sold to Ontario investors securities of one or more of the Offering Corporations (the "Saxton Securities"). Bending sold the Saxton Securities to 9 Ontario investors for a total amount sold of approximately \$847,000.
  10. All of the Offering Corporations were incorporated pursuant to the laws of Ontario. Bending's sales of the Saxton Securities constituted trades in securities of an issuer that had not been previously issued.
  11. None of the Offering Corporations filed a prospectus with the Commission. By selling the Saxton Securities to his clients, Bending traded in securities, which trades were distributions, without a prospectus being filed or receipted by the Commission and with no exemption from the prospectus requirements of Ontario securities law being available.
  12. Bending failed to provide his clients with access to substantially the same information concerning the Saxton Securities that a prospectus filed under the Act would provide. Bending had in his possession a copy of one of the Offering Memoranda respecting the Saxton Securities. He did not provide any of his clients with this Offering Memorandum prior to their purchase of the Saxton Securities. Saxton also provided to Bending vague promotional material which he, in turn, provided to clients without any supplemental information.
  13. Bending received commissions and trailer fees of approximately \$63,500 on the sales described in paragraph 9 above.
  14. Bending failed to adequately assess the suitability of his clients' investments in the Saxton Securities. One client of Bending's invested approximately 90% of his portfolio (approximately \$250,000) in the Saxton Securities.
  15. Bending failed to inform his sponsoring firm that he was selling the Saxton Securities.
  16. Bending's conduct in selling the Saxton Securities was contrary to Ontario securities law and the public interest.
  17. Bending informs Staff that, prior to trading in the Saxton Securities, he was advised by the respondents Richard Fangeat and Luke McGee, the latter of whom represented himself to be a Vice-President of Saxton and a lawyer, that Bending did not need to be registered with the Commission in order to trade in the Saxton Securities. Bending did not make any inquiries of his sponsor, or any one independent of Saxton, to verify this information.
  18. Bending co-operated with the Commission's investigation respecting the sale of Saxton Securities.
  19. Bending has been subject to close supervision by his sponsor since February 2001.
- IV. TERMS OF SETTLEMENT**
20. Bending agrees to the following terms of settlement:
    - (a) the making of an order:
      - (i) approving this settlement;
      - (ii) suspending Bending's registration with the Commission for eight months;
      - (iii) that trading in any securities by Bending cease for eight months;
      - (iv) that Bending must successfully complete the Canadian Securities Course in order for his registration to be reinstated following the suspension;
      - (v) reprimanding Bending;
      - (vi) that the Temporary Order no longer has any force or effect; and
      - (vii) that Bending will pay costs to the Commission in the amount of \$2,000.
- V. STAFF COMMITMENT**
21. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Bending in relation to the facts set out in Part III of this Settlement Agreement.

**VI. APPROVAL OF SETTLEMENT**

22. Approval of the settlement set out in this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for October 9, 2002, or such other date as may be agreed to by Staff and Bending (the "Settlement Hearing"). Bending will attend in person at the Settlement Hearing.
23. Counsel for Staff or Bending may refer to any part, or all, of this Settlement Agreement at the Settlement Hearing. Staff and Bending agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.
24. If this settlement is approved by the Commission, Bending agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.
25. Staff and Bending agree that if this settlement is approved by the Commission, they will not make any public statement inconsistent with this Settlement Agreement.
26. If, for any reason whatsoever, this settlement is not approved by the Commission, or an order in the form attached as Schedule "A" is not made by the Commission:
- (a) this Settlement Agreement and its terms, including all discussions and negotiations between Staff and Bending leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Bending;
  - (b) Staff and Bending shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by this Agreement or the settlement discussions/negotiations;
  - (c) the terms of this Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person, except with the written consent of Staff and Bending or as may be required by law; and
  - (d) Bending agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement, the settlement discussions/negotiations or the process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or

any other remedies or challenges that may otherwise be available.

**VII. DISCLOSURE OF SETTLEMENT AGREEMENT**

27. Except as permitted under paragraph 23 above, this Settlement Agreement and its terms will be treated as confidential by Staff and Bending until approved by the Commission, and forever, if for any reason whatsoever this settlement is not approved by the Commission, except with the consent of Staff and Bending, or as may be required by law.
28. Any obligations of confidentiality shall terminate upon approval of this settlement by the Commission.

**VIII. EXECUTION OF SETTLEMENT AGREEMENT**

29. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.
30. A facsimile copy of any signature shall be as effective as an original signature.

October 1, 2002.

"David Arthur Bending"  
David Arthur Bending

October 4, 2002.

"Michael Watson"  
Staff of the Ontario Securities Commission  
(Per) Michael Watson

**SCHEDULE "A"**

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

**AND**

**IN THE MATTER OF  
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**

**ORDER**

**(Subsection 127(1) and section 127.1)**

**WHEREAS** on September 24, 1998, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") respecting David Arthur Bending ("Bending") and others;

**AND WHEREAS** on September 24, 1998, the Commission made a Temporary Order as against Bending and others, such Temporary Order which was extended by Commission Orders dated October 9, 1998 and February 5, 1999 (the "Temporary Order");

**AND WHEREAS** Bending entered into a Settlement Agreement dated • (the "Settlement Agreement") in which he agreed to a proposed settlement of the proceedings, subject to the approval of the Commission;

**AND UPON** reviewing the Settlement Agreement and the Statement of Allegations of Staff of the Commission and upon hearing submissions from Bending and from Staff of the Commission;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this Order pursuant to subsection 127(1) and section 127.1 of the Act;

**IT IS ORDERED THAT:**

1. the attached Settlement Agreement is approved;
2. pursuant to subsection 127(1), paragraph 1, Bending's registration with the Commission is suspended for eight months commencing on the date of this Order;
3. pursuant to subsection 127(1), paragraph 2, trading in any securities by Bending cease for

eight months commencing on the date of this Order;

4. pursuant to subsection 127(1), paragraph 2, Bending must successfully complete the Canadian Securities Course in order for his registration to be reinstated following the suspension;
5. pursuant to subsection 127(1), paragraph 6, Bending is reprimanded;
6. the Temporary Order as against Bending no longer has any force or effect; and
7. pursuant to section 127.1, Bending will pay costs to the Commission in the amount of \$2,000.

October 9, 2002.

\_\_\_\_\_  
\_\_\_\_\_

**2.2.5 Foundation Equity Corporation - s. 127**

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

**AND**

**IN THE MATTER OF  
FOUNDATION EQUITY CORPORATION**

**ORDER  
(Section 127)**

**WHEREAS** on September 27, 2002, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act* (the "Act"), in respect of Foundation Equity Corporation ("Foundation");

**AND WHEREAS** Foundation entered into a settlement agreement dated September 30, 2002 (the "Settlement Agreement") in which it agreed to a proposed settlement of the proceeding, subject to the approval of the Commission;

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

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

**IT IS HEREBY ORDERED THAT:**

- (1) the Settlement Agreement, dated September 30, 2002, attached to this Order, is approved as amended by the parties as set out in 2(b) below;
- (2) pursuant to clause 4 of subsection 127(1) of the Act, Foundation shall institute the following changes to its practices and procedures effective as of the date of this Order:
  - (a) Foundation will retain and instruct counsel in Ontario to effect all filings required to be made by Foundation with the TSE, the Commission, or any other securities regulatory body in Ontario;
  - (b) Foundation will complete and deliver, on an annual basis within two weeks of the anniversary of the date of this Order, an up-to-date "Know Your Client" form to all brokers through which it effects trades through a recognized exchange in Ontario and to the Ontario counsel retained by Foundation in accordance with (a) above. Foundation will also deliver a schedule listing, by issuer, all of Foundation's shareholdings and identifying those issuers in which

Foundation owns or controls more than 20% of the outstanding voting securities of the issuer, or no longer owns or controls more than 20% of the outstanding voting securities of the issuer, within ten days of Foundation acquiring or ceasing to hold more than 20% of the outstanding voting securities of the issuer.

- (c) commencing 6 months after the date of this Order, at least one director of Foundation at any given time will have completed and passed the Partners, Directors and Officers course of the Canadian Securities Institute.
- (3) pursuant to clause 6 of subsection 127(1) of the Act, Foundation is reprimanded; and
- (4) pursuant to section 127.1 of the Act, Foundation shall pay \$2000 in satisfaction of the Commission's costs of its investigation and this settlement hearing.

October 7, 2002.

"H. Lorne Morphy" "Robert L. Shirriff" "Harold P. Hands"

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

**AND**

**IN THE MATTER OF  
FOUNDATION EQUITY CORPORATION**

**SETTLEMENT AGREEMENT**

**I. INTRODUCTION**

1. By Notice of Hearing dated September 27, 2002 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider whether, pursuant to sections 127(1) and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), it is in the public interest for the Commission to make an order that the Respondent submit to a review of its practices and procedures and institute such changes as may be ordered by the Commission, be reprimanded, and pay the Commission's costs of its investigation and hearing into this matter.

**II. JOINT SETTLEMENT RECOMMENDATION**

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding initiated in respect of the Respondent by the Notice of Hearing in accordance with the terms and conditions set out in this settlement agreement (the "Settlement Agreement"). The Respondent consents to the making of an order against it in the form attached as Schedule "A" on the basis of the facts set out below in Part III.

**III. AGREED STATEMENT OF FACTS**

3. The Respondent agrees, for the purposes of this proceeding, with the following facts:
4. The Respondent, Foundation Equity Corporation ("Foundation") is a private company which was incorporated pursuant to the laws of Alberta on May 24, 1990. Foundation is a venture capital company which invests in other companies. Currently, its shareholders consist of approximately 20 individuals, each of whom has contributed varying amounts of capital. Foundation has a trading account at CIBC Wood Gundy Inc. ("Wood Gundy").
5. At the material time, Kerry Brown ("Brown"), who resides in St. Albert, Alberta, was a shareholder in Foundation and its President, CEO and Chairman.
6. Global Thermoelectric Inc. ("GLE") is a company which was initially incorporated, under a different name, in Alberta in 1975 and is currently situated

in Calgary. GLE's primary line of business is designing and manufacturing fuel cells intended to supplement or replace gasoline engines. At the material time, Brown was a director of GLE, in addition to being an officer and director of Foundation.

7. GLE was one of the ventures in which Foundation invested. As of the close of business on April 15, 1999, Foundation owned 6,019,151 (or 37%) of the 16,173,184 common shares of GLE then issued and outstanding.

**Reporting Issuer Status of GLE**

8. GLE became a reporting issuer in Alberta on August 3, 1994 and obtained a listing on the Alberta Stock Exchange on September 30, 1996.
9. GLE became a reporting issuer in Ontario on October 8, 1998, the date on which GLE obtained a listing on the Toronto Stock Exchange ("TSE").
10. In addition to Alberta and Ontario, GLE also has reporting issuer status in British Columbia and Manitoba.

**Improper Distribution from Control Block**

11. Between October 8, 1998, the date on which GLE obtained reporting issuer status in Ontario, and April 7, 1999, the shares of GLE traded on the TSE at prices ranging from \$.86 to \$1.20.
12. On April 8, 1999, GLE issued a press release in which it announced that "it has achieved record power output in the first test of a new proprietary design solid oxide fuel cell".
13. On Friday, April 16, 1999, the opening price of GLE shares on the TSE was \$3.60. At approximately 10:44 a.m., trading in the shares of GLE was halted at the request of GLE pending a further announcement. At approximately 11:20 a.m., GLE issued a news release announcing a major contract. At approximately 12:30 p.m., trading in the shares of GLE resumed at a price of \$9 per share. Over the remainder of April 16, 1999, the shares of GLE traded as high as \$16 per share and closed the day at a price of \$10.70 per share.
14. On the morning of Friday, April 16, 1999, Brown, on behalf of Foundation's board of directors, instructed Foundation's broker at the Edmonton branch office of Wood Gundy to sell one million shares of GLE from Foundation's account. The Edmonton office relayed the order to Wood Gundy's office in Toronto, which placed the order with its retail block desk. The retail block desk in Toronto began placing the shares for sale after trading resumed at 12:30 p.m. The entire block of

one million GLE shares was sold on April 16, 1999 at an average price of \$11.83 per share.

15. On Monday, April 19, 1999, Brown instructed Foundation's broker at the Edmonton office of Wood Gundy to sell an additional one million shares of GLE from the account of Foundation at an average price of \$10.42. The retail block desk in Toronto began placing the shares for sale at approximately 9:50 a.m. A total of 226,200 shares of GLE were sold that day before Brown gave instructions to cancel the order at approximately 3:00 p.m.
16. Brown states that he cancelled the order because, during the course of the day on Monday, April 19, 1999, he learned, as a result of discussions with a representative of Sprott Securities in Toronto with whom he was dealing, that Foundation should have filed a Form 23 with the Commission prior to selling its shares of GLE. Brown states that upon being so advised, he immediately contacted Foundation's counsel, Parlee McLaws located in Edmonton, Alberta, which subsequently resulted in Brown instructing Wood Gundy to cancel the order he had given earlier that morning to sell additional shares of GLE.
17. By way of letter dated April 20, 1999, transmitted by fax on that date, Foundation filed a Form 23 ("Notice of Intention to Sell") with the Commission, as contemplated by section 72(7) of the Act. The Form 23 was signed by Brown and filed on behalf of Foundation by its counsel, Parlee McLaws. The Form 23 and attached covering letter acknowledged that 1,226,000 shares of GLE had already been sold by Foundation on April 16 and 19, 1999.
18. Item #2 of Form 23 under the Act required Foundation to certify the "Date issuer became a reporting issuer:". Although Form 23 is promulgated pursuant to the (Ontario) Act and is required to be filed only by reporting issuers in Ontario, Item #2 does not specifically state the jurisdiction in respect of which that information is required. The Form 23 filed by Foundation incorrectly stated that: "Global Thermolectric Inc. became a reporting issuer on August 3, 1994"- the date on which GLE became a reporting issuer in Alberta. As set out above, GLE did not become a reporting issuer in Ontario until October 8, 1998.
19. Brown states that he understood Item #2 on Form 23 to refer to the date on which GLE *first* became a reporting issuer in Alberta, as distinct from the date on which GLE became a reporting issuer in Ontario. Brown states that he relied upon Parlee McLaws, Foundation's corporate counsel, to prepare the Form 23.
20. Under cover of a separate letter dated April 20, 1999, Foundation filed a second Form 23 with the

Commission in respect of the proposed sale on or about April 30, 1999 of a further two million shares of GLE through the facilities of the TSE. Thereafter, Brown states that Foundation sought further clarification of its position, as a result of which Foundation advised the Commission on or about July 12, 1999 that it did not intend to pursue its plans to sell the additional two million shares of GLE.

#### The Relevant Provisions of the Act

21. Clause (c) of section 1(1) of the Act defines a "distribution", where used in relation to trading in securities, to mean:
  - (c) a trade in previously issued securities of an issuer from the holdings of any person, company or combination of persons or companies holding a sufficient number of any securities of that issuer to affect materially the control of that issuer, but any holding of any person, company or combination of persons or companies holding more than 20% of the outstanding voting securities of an issuer shall, in the absence of evidence to the contrary, be deemed to affect materially the control of that issuer.
22. Section 53(1) of the Act provides that:
  - (1) No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company where such trade would be a distribution of such security, unless a preliminary prospectus and a prospectus have been filed and receipts therefor obtained from the Director.
23. Section 72(7) of the Act provides an exemption from the prospectus requirements of section 53 of the Act with respect to a "distribution" within the meaning of clause (c) of the definition of "distribution" in subsection 1(1) of the Act (emphasis added),
  - (b) the issuer of the security is a reporting issuer and has been a reporting issuer for at least 18 months and is not in default of any requirement of this Act or the regulations and the seller, unless exempted by the regulations,
    - (i) files with the Commission and any stock exchange recognized by the Commission for this purpose on which the securities are listed at least seven days and not more than 14 days prior to the first trade made to carry out the distribution,

- (A) a notice of intention to sell in the form prescribed by the regulations [Form 23] disclosing particulars of the control position known to the seller, the number of securities to be sold and the method of distribution, and
- (B) a declaration signed by each seller as at a date not more than 24 hours prior to filing and prepared and executed in accordance with the regulations.
24. On April 16, 1999, the first date on which Foundation sold shares of GLE, Foundation owned 37% of the issued and outstanding shares of GLE and therefore was in a position to affect materially the control of GLE within the meaning of clause (c) of section 1(1) of the Act. The sale of shares from Foundation's "control block" in GLE therefore constituted a "distribution" as that term is defined in the Act.
25. As a result, Foundation was not permitted to sell its shares of GLE unless it had first: (i) complied with the prospectus requirements of section 53 of the Act; or (ii) qualified for and relied upon an exemption specified under the Act, such as the exemption provided for in section 72(7) of the Act; or (iii) presented evidence to the Commission establishing that the sale from Foundation's control block was not a "distribution" within the meaning of clause (c) of section 1(1) of the Act; or (iv) applied for and obtained an exemption order from the Commission.
26. The Form 23 "Notice of Intention to Sell" filed by Foundation after it had already sold approximately 1.2 million shares of GLE from its control block was invalid for two reasons:
- (i) Foundation did not qualify for the exemption under section 72(7) of the Act in the first place since GLE, the issuer of the securities which were the subject of the sale, had not been a reporting issuer in Ontario for at least 18 months. At the time of Foundation's sale of the GLE shares on April 16 and 19, 1999, GLE had only been a reporting in Ontario for approximately six months (since October 8, 1998).
- (ii) even assuming that Foundation qualified for the exemption under section 72(7) of the Act, which it did not, Foundation

failed to comply with the timing requirements prescribed under section 72(7) of the Act, which requires a Form 23 to be filed "at least seven days, and not more than 14 days" in advance of the first trade commencing the distribution.

27. Foundation's sale of its shares of GLE therefore constituted an unlawful distribution which resulted in approximately 1.2 million shares of GLE being sold through the TSE without notice to the market that the 1.2 million shares were in fact from a control block.
28. By engaging in the conduct set out above, Foundation admits that it contravened the Act.

#### Representations by Foundation

29. Brown states that he was not aware that Foundation's holdings of GLE constituted a "control block" and that, as such, those shares were subject to certain restrictions under the Act, including specifically the 18 month hold period with respect to their sale through the TSE. Brown also states that he was not aware that a Form 23 was required to be filed in respect of sales from a control block. Brown states that he relied on Foundation's broker, Wood Gundy, to carry out the sale of the GLE shares in a lawful manner. Brown states that he immediately cancelled the outstanding order at Wood Gundy once the issue of the control block was brought to his attention and attempted to rectify the situation by filing the Form 23.

#### Related Proceedings

30. David Arthur Jones ("Jones") was the registered representative in the Edmonton office of CIBC Wood Gundy responsible for Foundation's account. Jones was one of the approximately twenty investors in Foundation.
31. By Settlement Agreement, dated March 7, 2000, the TSE found that Jones had engaged in conduct unbecoming an Approved Person by acting as the agent for the seller of shares (Foundation) from a control block through the TSE, contrary to applicable securities laws and the policies of the TSE. The TSE found that Jones had failed to exercise sufficient due diligence to determine whether the sale by Foundation of the GLE sales constituted a sale from a control block. Under the terms of the settlement, Jones paid a fine of \$15,000, disgorged the commissions he had earned on the unlawful sales in the amount of \$27,589 and paid \$3000 in satisfaction of the TSE's costs of its investigation.
32. By Settlement Agreement, dated December 18, 1999, with the Alberta Securities Commission, Foundation and Brown jointly agreed to pay an



administrative penalty of \$28,000, as well as \$2000 in satisfaction of the ASC's costs of its investigation.

**IV. TERMS OF SETTLEMENT**

33. Foundation agrees to the following terms of settlement:
- (a) effective from the date the settlement is approved, Foundation will retain and instruct counsel in Ontario to effect all filings required to be made by Foundation with the TSE, the Commission, or any other securities regulatory body in Ontario;
  - (b) effective from the date the settlement is approved, Foundation will complete and deliver, on an annual basis within two weeks of the anniversary of the approval of this settlement, an up-to-date "Know Your Client" form to all brokers through which it effects trades through a recognized exchange in Ontario and to all Ontario counsel retained by Foundation in accordance with (a) above. Foundation will prepare and attach a schedule to this "Know Your Client" form listing, by issuer, all of Foundation's shareholdings and identifying those issuers in which Foundation owns or controls more than 20% of the outstanding voting securities of the issuer;
  - (c) commencing 6 months from the date the settlement is approved and continuing thereafter, Foundation agrees that at least one of its directors at any given time will have completed and passed the Partners, Directors and Officers course of the Canadian Securities Institute;
  - (d) Foundation will be reprimanded;
  - (e) Foundation will pay \$2000 in satisfaction of the costs of the Commission's investigation and hearing in this matter.

**V. PROCEDURE FOR APPROVAL OF SETTLEMENT**

34. Staff and Foundation shall seek approval of the Settlement Agreement at a public hearing of the Commission (the "Hearing") scheduled for such date as may be agreed to by Staff and Foundation, in accordance with the procedures described in this Settlement Agreement.
35. Staff and Foundation may refer to any part, or all, of the Settlement Agreement at the Hearing. Staff and Foundation agree that the Settlement

Agreement will constitute the entirety of the evidence to be submitted at the Hearing.

**VI. COMMITMENTS BY STAFF AND FOUNDATION**

36. If the Settlement Agreement is approved by the Commission, then Staff will not:
- i) initiate any complaint to the Commission concerning Foundation;
  - ii) request that the Commission hold a hearing or issue any other order against Foundation; or
  - iii) initiate any other proceeding against Foundation;
- in relation to the facts set out in Part III of the Settlement Agreement.
37. If the Settlement Agreement is approved by the Commission, then Foundation agrees to waive its right to a full hearing, judicial review and appeal of this matter under the Act.
38. If the Settlement Agreement is approved by the Commission, then neither Staff nor Foundation will make any public statement inconsistent with the Settlement Agreement.
39. If, at the conclusion of the settlement hearing, and for any reason whatsoever, the Settlement Agreement is not approved by the Commission, or an order in the form attached as Schedule "A" is not made by the Commission, then:
- (a) the Settlement Agreement, including all discussions and negotiations leading up to its presentation at the settlement hearing, and all negotiations between Staff and counsel for Foundation concerning the matter of the sanctions proposed for Foundation, shall be without prejudice to Staff and to Foundation. Staff and Foundation will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Statement of Allegations, unaffected by the Settlement Agreement and the settlement negotiations;
  - (b) the terms of the Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person, except with the written consent of Staff and Foundation, or as may be required by law; and
  - (c) Foundation agrees that it will not, in any proceeding, refer to or rely upon the Settlement Agreement or the negotiation

or process of approval of the Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

**VII. DISCLOSURE OF AGREEMENT**

40. Staff and Foundation may refer to any part or all of the Settlement Agreement in the course of the Hearing. Otherwise, the Settlement Agreement and its terms shall be treated as confidential by Staff and Foundation until approved by the Commission, and forever if, for any reason whatsoever, the Settlement Agreement is not approved by the Commission, except with the written consent of both Staff and Foundation or as may be required by law.

41. Any obligations of confidentiality concerning the terms of the Settlement Agreement shall terminate upon approval of the Settlement Agreement by the Commission.

**III. EXECUTION OF AGREEMENT**

42. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile copy of any signature shall be as effective as an original signature.

September 30, 2002.

"Kerry Brown"  
Foundation Equity Corporation  
(Per) Kerry Brown

"Michael Watson"  
Staff of the Ontario Securities Commission  
(Per) Michael Watson

**2.3 Rulings**

**2.3.1 The Private Residences at Horseshoe Resort Inc. - ss. 74(1)**

**Headnote**

Trades by a developer or licensed real estate agents in Residential Units that have a right (but not an obligation) to participate in a rental pool program not subject to section 25 or 53 provided that purchasers receive certain disclosure prior to entering into an agreement of purchase and sale.

**Statutes Cited**

Securities Act, R.S.O. 1990, as am., 25, 53, 74(1).  
Condominium Act, R.S.O. 1990, as am.  
Real Estate and Business Brokers Act, R.S.O. 1990, as am.  
Securities Act (British Columbia), R.S.B.C. 1996, as am.

**Rules Cited**

Rule 14-501 Definitions.

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

**AND**

**IN THE MATTER OF  
THE PRIVATE RESIDENCES AT  
HORSESHOE RESORT INC.**

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

**UPON** the application (the "**Application**") of The Private Residences at Horseshoe Resort Inc. (the "**Developer**") and Horseshoe Valley Resort Ltd. ("**HVRL**") and together with the Developer, the "**Applicants**") to the Ontario Securities Commission (the "**Commission**") for a ruling ("**Ruling**") pursuant to subsection 74(1) of the Act that the sale by the Developer of residential condominium units (the "**Residential Units**") within a certain 77 unit condominium building that is to be built by the Developer on a site (the "**Site**") in the Horseshoe Valley Resort (the "**Resort**"), near Barrie, Ontario and adjacent to a 102 room hotel known as the Inn at Horseshoe Resort (the "**Inn**"), will not be subject to sections 25 and 53 of the Act;

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

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

1. HVRL owns and operates the Resort, including the Inn and the Resort's recreational facilities and amenities.

2. The Developer is a wholly-owned subsidiary of HVRL.
3. The Developer has agreed to develop the Site by constructing a condominium building (the "**Development**") which will consist of 76 Residential Units, one unit comprising a separate area to be used for conference and/or convention facilities and other various common areas and common facilities, including a fitness centre, that will be available for use by owners and other occupants of Residential Units. The Development is intended to both support and enhance the Resort by establishing larger suites that will be attractive to conference and convention participants and to both frequent and infrequent users of the Resort's recreational facilities and amenities.
4. Each Residential Unit will be sold fully furnished and will be comprised of a living/dining area, a kitchenette, one bedroom and two bathrooms. Access to Residential Units will be provided by private entrances opening into a common hallway located inside the Development.
5. In addition to his, her or its own Residential Unit, each owner of a Residential Unit will be entitled to a proportionate share of the common property and the common facilities and other assets of the condominium corporation (the "**Condominium Corporation**") that will be created pursuant to the *Condominium Act*, R.S.O. 1998, S.O. 1998, c.19 (the "**Condominium Act**"). The common property and common facilities of the Development will generally consist of central interior hallways, one or more lounge areas, a central lobby area which will include check-in facilities, a fitness centre and other additional space that may be required to support the Rental Pool Program described in paragraph 9 below.
6. In accordance with the Condominium Act, each owner of a Residential Unit will be responsible for expenses, such as real property taxes, that are directly attributable to the Residential Unit and will also be responsible for his, her or its proportionate share of certain utilities and other expenses related to the common property of the Condominium Corporation.
7. The Applicants will cause the Condominium Corporation to enter into a property management agreement with HVRL. The property manager will manage and administer the Condominium Corporation's common property and will be paid a management fee for its services. The property management agreement will be terminable on 60 days prior notice by the board of directors of the Condominium Corporation. The board of directors of the Condominium Corporation will be elected by the owners of the Residential Units.

8. Each owner of a Residential Unit will be entitled, but not obligated, to enter into a rental management and pooling agreement (the "**Rental Pooling Agreement**") with HVRL (in such capacity, the "**Rental Pool Manager**"). The entering into of Rental Pooling Agreements with owners of Residential Units will permit the Rental Pool Manager to (i) establish and operate a rental pool program (the "**Rental Pool Program**"); and (ii) ensure compliance with the terms of this Ruling. It is anticipated that most owners of Residential Units will participate in the Rental Pool Program.
9. By entering into a Rental Pooling Agreement, owners of Residential Units will become entitled to participate in the Rental Pool Program. The Rental Pool Program is an arrangement where revenues derived from, and/or expenses relating to, the rental of an owner's Residential Unit by the Rental Pool Manager are pooled with the revenues derived from, and/or expenses relating to, the rental of all other Residential Units located in the Development and that are participating in the Rental Pool Program. All such pooled revenues and expenses are then shared by the owners of Residential Units participating in the Rental Pool Program on a *pro rata* basis.
10. The Rental Pool Manager will be entitled to receive a fee for managing the Rental Pool Program that is based upon the rental revenue generated by the Rental Pool Program.
11. Each Rental Pooling Agreement will have an initial term of 5 years, which term will be renewable for 4 subsequent terms of 5 years each. The term of the Rental Pooling Agreement will renew automatically unless notice to terminate such agreement is delivered by an owner of a Residential Unit to the Rental Pool Manager no less than 90 days prior to the end of the relevant term. Subject to certain rights to suspend the participation of a Residential Unit in the Rental Pool Program, the Rental Pool Manager will have no right to terminate a Rental Pool Agreement.
12. Residential Unit owners participating in the Rental Pool Program will be provided with the right to occupy their Residential Units for no more, and no less, than 72 days per calendar year without restriction, except for restrictions on use that are reasonably required to facilitate the orderly management and administration of the Rental Pool Program by the Rental Pool Manager. There is no limitation on the number of days per calendar year that an owner can occupy his, her or its Residential Unit if such owner's Residential Unit is not participating in the Rental Pool Program. No owner of any Residential Unit, however, will be entitled to rent his, her or its Residential Unit directly to the general public.
13. Each owner of a Residential Unit that agrees to participate in the Rental Pool Program will be entitled to access the Resort's recreational facilities and amenities at a discounted rate.
14. Residential Units will be offered for sale in Ontario through the Applicants and/or agents of the Applicants licensed under the *Real Estate and Business Brokers Act*, R.S.O. 1990, Chapter R.4 ("**Licensed Agents**").
15. The offering of Residential Units will be made in compliance with the Condominium Act.
16. The Applicants will deliver to an initial purchaser of a Residential Unit, before an agreement of purchase and sale is entered into, an offering memorandum (the "**Disclosure Document**") that complies with the form of disclosure statement required under the Condominium Act. The Disclosure Document will also include additional information relating to the real estate securities aspects of the offering prepared substantially in accordance with the form and content requirements of Form 45-906F of the *Securities Act* (British Columbia), R.S.B.C. 1996, c.418, as amended ("**Form 45-906F**"), including, but not limited to:
  - (a) a description of the Development and the offering of Residential Units;
  - (b) a summary of the material features of the Rental Pooling Agreement;
  - (c) a description of the continuous reporting obligations of the Rental Pool Manager, as the case may be, to owners of Residential Units participating in the Rental Pool Program as more particularly described in paragraph 21 below;
  - (d) a description of the risk factors that make the offering of Residential Units a risk or speculation;
  - (e) a description of the contractual right of action available to both initial and subsequent purchasers of Residential Units as more particularly described in paragraph 18 below; and
  - (f) a certificate signed by the president or chief executive officer and chief financial officer of the Applicants in the form of the certificate required pursuant to item 19 of Form 45-906F.
17. An initial purchaser of a Residential Unit will have a statutory right under the Condominium Act to rescind an agreement to purchase a Residential Unit within 10 days of receiving the Disclosure

- Document or a material amendment to the Disclosure Document.
18. Initial purchasers of Residential Units and each subsequent purchaser of Residential Units will be provided with a contractual right of action as defined in Commission Rule 14-501 *Definitions*. The Disclosure Document will describe the contractual right of action, including any defences available to the Applicants, the limitation periods applicable to the exercise of the contractual right of action, and will indicate that the contractual right of action is in addition to any other right or remedy available to the purchaser.
19. No purchaser of a Residential Unit will be obligated to participate in the Rental Pool Program. No purchaser of a Residential Unit will be provided with rental or cash flow guarantees or any other form of financial projection or commitment on the part of the Applicants or any related entity, save and except for the budget that must be delivered to an initial purchaser of a Residential Unit pursuant to the Condominium Act.
20. The economic value of the Development will be attributable primarily to its real estate component because Residential Units will be marketed as resort properties and will not be offered and sold with an emphasis on the expected economic benefits of the Rental Pool Program.
21. A Rental Pooling Agreement will impose an irrevocable obligation on the Rental Pool Manager to send to each owner of a Residential Unit participating in the Rental Pool Program:
- (a) audited annual financial statements for the Rental Pool Program that have been prepared in accordance with generally accepted accounting principles and otherwise made up, certified and delivered in accordance with the applicable provisions of the Act as if the Rental Pool Program was a reporting issuer for purposes of the Act; and
  - (b) interim unaudited financial statements for the Rental Pool Program that have been prepared in accordance with generally accepted accounting principles and otherwise made up, certified and delivered in accordance with the applicable provisions of the Act as if the Rental Pool Program was a reporting issuer for purposes of the Act.
22. A Rental Pooling Agreement will impose an irrevocable obligation on the Rental Pool Manager to deliver to a subsequent prospective purchaser, upon reasonable notice of an intended sale by the owner of a Residential Unit participating in the Rental Pool Program, and before an agreement of purchase and sale is entered into:
- (a) the most recent audited annual financial statements (which include financial statements for the prior comparative year) and, if applicable, the then most recent interim unaudited financial statements for the Rental Pool Program (the “**Financial Information**”); and
  - (b) the Disclosure Document, if the proposed sale of the Residential Unit is to take place either prior to or within 12 months of the date on which permission to occupy the relevant Residential Unit is issued or the purchase of the Residential Unit by the initial purchaser is completed, whichever is later; or
  - (c) a summary of the Disclosure Document (the “**Disclosure Document Summary**”), if the proposed sale of the Residential Unit is to take place any time following the expiration of a period of 12 months from the date on which permission to occupy the relevant Residential Unit is issued or the purchase of the Residential Unit by the initial purchaser is completed, whichever is later.
23. A Disclosure Document Summary that is delivered to a prospective purchaser of a Residential Unit which is subject to a Rental Pooling Agreement will include:
- (a) items 1, 3(1), 6, 7, 9(1), (2), (3) and (4), 10(b) and 16 of Form 45-906F with respect to the proposed sale, modified as necessary to reflect the operation of the Rental Pool Program;
  - (b) items 12(2), (3) and (4) of Form 45-906F with respect to the Rental Pool Manager under the Rental Pooling Agreement, modified so that the period of disclosure runs from the date of the certificate attached to the Disclosure Document Summary; and
  - (c) a certificate signed by the president or chief executive officer and chief financial officer of the Rental Pool Manager in the form of the certificate required pursuant to item 19 of Form 45-906F.
24. A Rental Pooling Agreement will impose an irrevocable obligation on each owner of a Residential Unit participating in the Rental Pool Program to provide:

- (a) the Rental Pool Manager with reasonable notice of a proposed sale of the Residential Unit; and
- (b) a subsequent prospective purchaser of a Residential Unit with notice of his, her or its right to obtain from the Rental Pool Manager, the Financial Information and either the Disclosure Document or Disclosure Document Summary, as the case may be.

- (iv) the seller, or an agent acting on the seller's behalf, does not advertise, market, promise or otherwise represent any projected economic benefits of the Rental Pool Program to the prospective purchaser.

October 11, 2002.

"Robert W. Korthals"

"H. Lorne Morphy"

25. A Rental Pooling Agreement will not require an owner of a Residential Unit to give any person any assignment of his, her or its right to vote in accordance with the Condominium Act or Condominium Corporation by-laws, or to waive notice of meetings of the Condominium Corporation.

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

**IT IS RULED**, pursuant to subsection 74(1) of the Act, that the distribution of a Residential Unit by the Applicants or a Licensed Agent is exempt from sections 25 and 53 of the Act, provided that:

- (a) every purchaser of a Residential Unit receives, prior to the completion of the purchase transaction, a copy of the Disclosure Document and a copy of this Ruling; and
- (b) any subsequent sale of a Residential Unit acquired pursuant to this Ruling and that has participated in the Rental Pool Program shall be a distribution unless:
  - (i) the seller of the Residential Unit is not a developer or an agent acting on a developer's behalf;
  - (ii) notice is given by the seller to the Rental Pool Manager of the seller's intent to sell his, her or its Residential Unit;
  - (iii) the prospective purchaser of the Residential Unit receives, prior to the completion of the transaction, all of the documents and information referred to in paragraphs 22 above; and

## Chapter 4

# Cease Trading Orders

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

<b>Company Name</b>	<b>Date of Order or Temporary Order</b>	<b>Date of Hearing</b>	<b>Date of Extending Order</b>	<b>Date of Lapse/Expire</b>
White Rose Crafts and Nursery Sales Limited	15 Oct 02	25 Oct 02		

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## Chapter 5

# Rules and Policies

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### 5.1.1 Notice of Amendments to National Instrument 14-101 Definitions

#### NOTICE OF AMENDMENTS TO NATIONAL INSTRUMENT 14-101 DEFINITIONS

##### Notice of Amendments

The Commission, together with the other members of the Canadian Securities Administrators (“CSA”), has amended National Instrument 14-101, *Definitions*. (the “National Instrument”). The amendments to the National Instrument (the “Amendments”) will come into force on December 31, 2002.

##### Substance and Purpose of Amendments

The National Instrument came into force on April 1, 1997. It was intended to assist in a consistent approach to the interpretation and application of national and multilateral instruments by providing a framework of defined terms that the CSA have agreed upon for use in national and multilateral instruments, and definitions of commonly used terms, such as “Canadian GAAP”.

The National Instrument is amended from time to time to add new definitions. The Amendments add, clarify and delete defined terms in the National Instrument.

##### Summary of Amendments

The Amendments add a reference to Nunavut in the Appendices to the National Instrument and clarify the definitions of “insider reporting requirement” and “jurisdiction”. The Amendments also delete the terms “multilateral instrument” and “national instrument” as they are unnecessary.

The Amendments add the terms “provincial and territorial securities directions”, “provincial and territorial securities legislation” and “provincial and territorial securities regulatory authorities”. These terms have the same definitions as “Canadian securities directions”, “Canadian securities legislation” and “Canadian securities regulatory authorities”, and will be the terms used in future national and multilateral instruments and policies in the same context. Because the terms “Canadian securities directions”, “Canadian securities legislation” and “Canadian securities regulatory authorities” are already used in existing national and multilateral instruments and policies, they have not been deleted from the National Instrument.

The proposed amendments to the National Instrument suggested the addition of new terms presently used in national and multilateral instruments. These new terms are IDA, MFDA, MRRS and SEDAR. The CSA is of the view that terms that are not often used and that are already defined in an instrument should not be defined in the National Instrument. Consequently, the Amendments will not include these terms.

##### Summary of Written Comments

There were no written comments received on the Amendments.

##### Text of Amendments

The text of the Amendments follows.

October 18, 2002.

5.1.2 Amendments to National Instrument 14-101 Definitions

**AMENDMENTS TO  
NATIONAL INSTRUMENT 14-101  
DEFINITIONS**

1. National Instrument 14-101 Definitions is amended in section 1.1 (3) by
  - (a) repealing the definition of “insider reporting requirement” and substituting the following:

“insider reporting requirement” means the requirement in securities legislation for an insider of a reporting issuer to file reports disclosing:

    - (a) the insider’s direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer, or
    - (b) any change or changes to such ownership of, or control or direction over, securities of the reporting issuer;
  - (b) in the definition of “jurisdiction”, adding “or “jurisdiction of Canada”” before “means a province”;
  - (c) repealing the definitions of “multilateral instrument” and “national instrument” ;
  - (d) adding the following definitions after the definition of “prospectus requirement” :

“provincial and territorial securities directions” means the instruments listed in Appendix A;

“provincial and territorial securities legislation” means the statutes and the other instruments listed in Appendix B;

“provincial and territorial securities regulatory authorities” means the securities commissions and similar regulatory authorities listed in Appendix C;
2. National Instrument 14-101 Definitions is amended in Appendix A by
  - (a) repealing the title to Appendix A and substituting the following title:

PROVINCIAL AND TERRITORIAL SECURITIES DIRECTIONS/  
CANADIAN SECURITIES DIRECTIONS;
  - (b) adding the following entry:

Nunavut	The policy statements and the written interpretations issued by the securities regulatory authority.
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3. National Instrument 14-101 Definitions is amended in Appendix B by:
  - (a) repealing the title and substituting the following:

PROVINCIAL AND TERRITORIAL SECURITIES LEGISLATION/  
CANADIAN SECURITIES LEGISLATION;
  - (b) adding the following entry :

Nunavut	<i>Securities Act</i> and the regulations under that Act and the blanket rulings and orders issued by the securities regulatory authority.
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4. National Instrument 14-101 Definitions is amended in Appendix C by;

(a) repealing the title and substituting the following:

PROVINCIAL AND TERRITORIAL SECURITIES REGULATORY AUTHORITIES/  
CANADIAN SECURITIES REGULATORY AUTHORITIES;

(b) adding the following entry:

Nunavut	Registrar of Securities, Nunavut
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5. National Instrument 14-101 Definitions is amended in Appendix D by adding the following entry:

Nunavut	Registrar, as defined under section 1 of the <i>Securities Act</i> (Nunavut)
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6. These amendments shall come into force on December 31, 2002.

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## Chapter 7

# Insider Reporting

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

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

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

## Chapter 8

# Notice of Exempt Financings

### 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>
27-Sep-2002	3 Purchasers	1539747 Ontario Limited - Common Shares	1,000,001.00	3.00
27-Sep-2002	3 Purchasers	1539747 Ontario Limited - Shares	1,000,001.00	3.00
01-Sep-2002	Harvey Naglie	ABC American -Value Fund - Units	150,000.00	23,810.00
01-Sep-2002	3 Purchasers	ABC Fundamental - Value Fund - Units	479,947.06	33,750.00
01-Oct-2002	3 Purchasers	ABC Fundamental - Value Fund - Units	614,158.34	44,778.00
26-Aug-2002	Francis Chan;Kitty S.M. Sit	Access International Education Ltd - Units	80,000.00	800,000.00
15-Sep-2002	112 Purchasers	Advanced Laser Health, Corp. - Common Shares	189,045.00	8,536,100.00
30-Jun-2002	3 Purchasers	AGII RRSP Growth Fund - Trust Units	404,117.30	64,274,241.00
30-Sep-2002	3 Purchasers	Alternum Capital - Global Health Sciences Hedge Fund - Limited Partnership Units	11,384.00	45.00
30-Sep-2002	7 Purchasers	Alternum Capital - Global Health Sciences Hedge Fund - Limited Partnership Units	22,679.42	3,540.00
01-Oct-2002	MRF 2002 Limited Partnership	American Leduc Petroleums Limited - Flow-Through Shares	750,000.00	1,785,715.00
20-Sep-2002 9/27/02	5 Purchasers	Arrow Ascendant Arbitrage Fund - Trust Units	135,000.00	13,207.00
27-Sep-2002	685109 Ontario Limited;Hillholm Holdings Limited	Arrow Elkhorn US Long/Short Fund - Trust Units	474,378.44	51,451.00

**Notice of Exempt Financings**

20-Sep-2002 9/27/02	3 Purchasers	Arrow Epic Capital Fund - Trust Units	96,000.00	8,654.00
27-Sep-2002 10/04/02	5 Purchasers	Arrow Global Multi-Strategy Fund - Trust Units	624,706.08	18,418.00
27-Sep-2002 10/04/02	4 Purchasers	Arrow Global Multimanager Fund - Trust Units	543,063.87	3,004,928.00
20-Sep-2002 9/27/02	5 Purchasers	Arrow Milford Capital Fund - Trust Units	337,000.00	34,202.00
30-Sep-2002	Primaxis Technology Ventures; Business Development Bank of Canada	Atsana Semiconductor Corp. - Notes	558,566.33	2.00
01-Oct-2002	3 Purchasers	Avenue Financial Corporation - Common Shares	90,000.00	3,000,000.00
02-Oct-2002	3061925 Nova Scotia Limited	Balsam Canadian Hedge Fund Limited Partnership - Limited Partnership Units	100,000.00	9,679.00
20-Sep-2002	3 Purchasers	BelAir Energy Corporation - Flow-Through Shares	3,200,000.00	3,200,000.00
16-Sep-2002	P.M. Capital Inc.	BMG Luxembourg Investment LLC - Limited Liability Interest	3,078,300.00	17.00
30-Sep-2002	Canada Pension Plan Investment Board	Borealis (QLP) Private Equity Limited Partnership - Limited Partnership Units	75,000,000.00	75,000.00
30-Sep-2002	3 Purchasers	Borealis (QLP) Private Equity Limited Partnership - Limited Partnership Units	3,500,000.00	3,500.00
04-Oct-2002	Elliot & Page	Brand Services, Inc. - Notes	4,646,411.71	3,000,000.00
01-Oct-2002	Mel Steinke	Burntsand Inc. - Common Shares	165,000.00	550,000.00
25-Sep-2002	8 Purchasers	Canadian Everock Explorations Inc. - Common Shares	17,000.00	170,000,000.00
01-Oct-2002	Royal Bank of Canada	Clinton Global Investment Fund, Ltd. - Shares	3,850,000.00	3,850.00
27-Jul-2002	Cinnamon Investments	CP Ships Limited - Notes	49,650.00	5,000.00
30-Aug-2002	5 Purchasers	Cranston, Gaskin, O'Reilly & Vernon - Special Warrants	82,900.00	7,133.00
30-Aug-2002	Michael Hawke	Cranston, Gaskin, O'Reilly & Vernon - Special Warrants	10,020.00	3,021.00
30-Aug-2002	7 Purchasers	Cranston, Gaskin, O'Reilly & Vernon - Special Warrants	42,017.73	3,529.00
30-Aug-2002	3 Purchasers	Cranston, Gaskin, O'Reilly & Vernon - Special Warrants	65,060.00	5,555.00
27-Sep-2002	RoyNat Capital Inc.	CTF Supply Ltd. - Common Shares	2,000,002.00	283,064.00

**Notice of Exempt Financings**

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27-Sep-2002	RoyNat Capital Inc.	CTF Supply Ltd. - Common Shares	525,000.00	66,938.00
01-Oct-2002	Gordon R.P. Bongard	Darnley Bay Resources Limited - Units	21,000.00	140,000.00
27-Aug-2002	Edgstone Capital Fund Nominee Inc.	Datawire Communication Networks Inc. - Units	1,555,700.00	1.00
01-Oct-2002	Gord McFarlane	Dynamic Fuel Systems Inc. - Common Shares	10,000.00	13,333.00
01-Oct-2002	GlenDower Investments Inc.	Dynamic Fuel Systems Inc. - Common Shares	10,000.00	133,333.00
01-Oct-2002	Victor Bonnici	Dynamic Fuel Systems Inc. - Common Shares	32,250.00	43,000.00
01-Oct-2002	Tim Appelton	Dynamic Fuel Systems Inc. - Common Shares	45,000.00	60,000.00
01-Oct-2002	frank Dallison	Dynamic Fuel Systems Inc. - Common Shares	15,000.00	20,000.00
01-Oct-2002	Jim Withington	Dynamic Fuel Systems Inc. - Common Shares	15,000.00	20,000.00
01-Oct-2002	Synergic Distribution Inc.	Dynamic Fuel Systems Inc. - Common Shares	30,000.00	40,000.00
01-Oct-2002	Edward Roberts	Dynamic Fuel Systems Inc. - Common Shares	10,125.00	13,500.00
01-Oct-2002	Gary Close	Dynamic Fuel Systems Inc. - Common Shares	15,000.00	20,000.00
06-Sep-2002	Ray Campbell	Dynamic Fuel Systems Inc. - Common Shares	3,000.00	4,000.00
06-Sep-2002	Edward Huffman	Dynamic Fuel Systems Inc. - Common Shares	7,500.00	10,000.00
01-Oct-2002	John Kingston	Dynamic Fuel Systems Inc. - Common Shares	10,000.00	13,333.00
06-Sep-2002	Gary Beck	Dynamic Fuel Systems Inc. - Common Shares	18,750.00	25,000.00
06-Sep-2002	Karl Bruernfreund	Dynamic Fuel Systems Inc. - Common Shares	20,000.00	26,666.00
06-Sep-2002	Frank Callaas	Dynamic Fuel Systems Inc. - Common Shares	7,500.00	10,000.00
06-Sep-2002	Jennifer Bartok	Dynamic Fuel Systems Inc. - Common Shares	21,000.00	28,000.00
06-Sep-2002	Rick Murray	Dynamic Fuel Systems Inc. - Common Shares	5,000.00	6,667.00
06-Sep-2002	Charlie Roach	Dynamic Fuel Systems Inc. - Common Shares	5,000.00	6,667.00

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**Notice of Exempt Financings**

06-Sep-2002	Ron Simmons	Dynamic Fuel Systems Inc. - Common Shares	7,500.00	10,000.00
06-Sep-2002	Deolan Pooransigh	Dynamic Fuel Systems Inc. - Common Shares	1,500.00	2,000.00
06-Sep-2002	Paul McLaughlin	Dynamic Fuel Systems Inc. - Common Shares	10,000.00	13,333.00
06-Sep-2002	Doug Bumstead	Dynamic Fuel Systems Inc. - Common Shares	1,500.00	2,000.00
06-Sep-2002	Edward Walker	Dynamic Fuel Systems Inc. - Common Shares	8,250.00	11,000.00
02-Oct-2002	Anne D. Rubin	Ellipsis Biotherapeutics Corporation - Notes	199,138.80	1.00
30-Sep-2002	Shiplake Investments Ltd.;Investor Company	Falls Management Company - Notes	43,000,000.00	43,000,000.00
30-Aug-2002	Ralph M. Isaacs	Formation Capital Corporation - Units	1,500.00	6,000.00
05-Sep-2002	33 Purchasers	Glencairn Explorations Ltd. - Units	790,000.00	1,580,000.00
03-Oct-2002	Ridge Trust;BMO Nesbitt Burns Inc.	Gloucester Credit Card Trust - Notes	250,000,000.00	6.00
28-Feb-2002	Sonlab Holdings Corp	Goldman Sachs Mutual Funds - N/A	1,000,000.00	8,872.00
28-Mar-2002	Sonlab Holdings Corp	Goldman Sachs Mutual Funds - N/A	750,000.00	4,999.00
30-Apr-2002	Tatham Family Holdings II Ltd.	Goldman Sachs Mutual Funds - N/A	3,000,000.00	20,941.00
04-Sep-2002 10/29/02	Chrysalia Its Inc.	Goldman Sachs Mutual Funds - N/A	3,963.03	173.00
28-Feb-2002	A G Edwards & Sons	Goldman Sachs Mutual Funds - N/A	2,000.00	82.00
28-Feb-2002 4/19/02	MJMB Investments Inc.	Goldman Sachs Mutual Funds - N/A	314,079.81	10,448.00
04-Sep-2002 10/29/02	Chrysalia Its Inc.	Goldman Sachs Mutual Funds - N/A	537.98	37.00
25-Sep-2002	1208934 Ontario Limited	HarbourVest Partners VII-Venture Partnership Fund L.P. - Limited Partnership Interest	39,545,833.00	1.00
25-Sep-2002	The Trustees of the Labourers Pension Fund	HIPEP IV-European Buyout Partnership Fund L.P. - Units	10,842,251.00	1.00
27-Sep-2002	Oliver Murray;Captaur Investments Limited	i3Dimensions Inc. - Common Shares	250,000.50	166,667.00
26-Sep-2002	Robert Dorrance	Ice Energy Limited - Common Shares	28,553.36	20,108.00

**Notice of Exempt Financings**

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26-Jan-2002	7 Purchasers	Jaldi Semiconductor Corp. - Notes	1,023,739.00	7.00
31-Jul-2002	3 Purchasers	Jefferson Partners Fund IV, L.P. - Limited Partnership Units	15,200,000.00	6.00
30-Aug-2002	George Flanigan	KBSH - Canadian Bond Fund - Units	479,600.00	20,295.00
29-Aug-2002	Carol Fanigan	KBSH - Money Market - Units	73,400.00	7,340.00
29-Aug-2002	George Flanigan	KBSH - Money Market - Units	479,600.00	47,960.00
30-Sep-2002	Noni Holdings Ltd.	KBSH - Money Market - Units	186,800.00	18,680.00
25-Jul-2002	Carol Flanigan	KBSH Private - Balanced Fund - Units	92,000.00	1.00
31-Jul-2002	Neil Cameron & Susan MacDonald	KBSH Private - Balanced Fund - Units	150,600.00	1.00
30-Aug-2002	Carol Flanigan	KBSH Private - Balanced Registered Fund - Units	73,400.00	8,900.00
06-Sep-2002	Wayne J. Brost	KBSH Private - Balanced Registered Fund - Units	119,247.77	14,657.00
06-Sep-2002	Teresa G. Brost	KBSH Private - Balanced Registered Fund - Units	92,117.10	11,322.00
26-Aug-2002	Neil Cameron	KBSH Private - Balanced Registered Fund - Units	162,294.22	19,439.00
04-Sep-2002	Decay Holdings Inc.	KBSH Private - Global Leading Companies Fund - Units	100,000.00	12,614.00
20-Aug-2002	John Lien Medical Corp.	KBSH Private - Global Leading Company - Units	150,000.00	17,525.00
23-Aug-2002	411597 Alberta Ltd.	KBSH Private - Global Leading Company - Units	300,000.00	35,795.00
30-Aug-2002	Noni Holdings Ltd.	KBSH Private - International Fund - Units	93,400.00	11,066.00
20-Aug-2002	John Lien Medical Corp.	KBSH Private - International Fund - Units	100,000.00	11,582.00
16-Sep-2002	599916 Alberta Ltd.	KBSH Private - Money Market - Units	157,551.41	15,755.00
23-Aug-2002	411597 Alberta Ltd.	KBSH Private - Special Equity Fund - Units	100,000.00	7,499,625.00
30-Aug-2002	Noni Holdings Ltd.	KBSH Private - U.S. Equity - Units	93,400.00	7,055.00
25-Sep-2002	Jehad Chedrawy	Legal Services Plan Inc. - Common Shares	15,000.00	15,000.00
25-Sep-2002	Jerome Harrilal	Legal Services Plan Inc. - Common Shares	10,000.00	10,000.00

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**Notice of Exempt Financings**

01-Oct-2002	Royal Bank of Canada	LRL International Fund, Ltd. - Shares	3,000,000.00	3,000.00
09-Jul-2002	David William Luton	Maverick Minerals Corporation - Units	30,900.00	100,000.00
01-Oct-2002	S.T.A.R.T Holdings	MCAN Performance Strategies - Limited Partnership Units	1,120,000.00	7,054.00
20-Aug-2002	Abgenix	MDS Proteomics Inc. - Special Warrants	19,640,173.00	681,818.00
20-Sep-2002	3 Purchasers	METCONNEX INC. - Convertible Debentures	432,891.23	1,372,550.00
25-Sep-2002	EMC Corporation of Canada	NetDriven Solutions Inc. - Common Shares	150,000.00	300,000.00
17-Dec-2001 8/15/02	27 Purchasers	New Solutions Financial (IV) Corporation - Debentures	3,020,000.00	0.00
04-Oct-2002	22 Purchasers	New Solutions Financial (IV) Corporation - Debentures	1,478,000.00	22.00
08-Oct-2002	13 Purchasers	New Solutions Financial (IV) Corporation - Debentures	1,235,000.00	13.00
07-Aug-2002	4 Purchasers	Nightingale Corp. - Warrants	44.83	0.00
01-Oct-2002	ProAm Explorations Corporation	Pacific North West Capital Corp. - Shares	3,780.00	7,000.00
18-Sep-2002	Alliance Capital Management	Plastipak Holdings, Inc. - Notes	106,500.00	100,000.00
24-Jul-2002	Kensington Capital Partners;Kensington Securities Inc.	Points International Ltd. - Common Shares	145,000.00	630,000.00
28-Oct-2002	3 Purchasers	Potentia Power Systems, Inc. - Shares	6,939,775.00	40,235,082.00
03-Sep-2002	Potentia Power Systems;Inc.	Potentia Telecom Power Inc. - Preferred Shares	12,671,046.00	8,152,253.00
27-May-2002	Potentia Power Systems Inc.	Potentia Telecom Power Inc. - Preferred Shares	1,983,032.20	1,282,354.00
01-Aug-2002	Potentia Power Systems;Inc.	Potentia Telecom Power Inc. - Preferred Shares	947,531.68	595,258.00
28-Aug-2002	The VenGrowth II Investment Fund Inc.	Potentia Telecom Power Inc. - Preferred Shares	5,926,100.00	34,358,048.00
01-Oct-2002	31 Purchasers	Progress Energy Ltd. - Common Shares	18,844,000.00	3,365,000.00
01-Oct-2002	Canadian Friends of the Hebrew University	Quellos Strategic Partners II, Ltd. - Shares	1,268,800.00	800.00
03-Sep-2002	Canadian Friends of the Hebrew University	Quellos Strategic Partners II, Ltd. - Shares	1,242,400.00	800.00

**Notice of Exempt Financings**

30-Aug-2002	3 Purchasers	Qwest Energy Income Development Limited Partnership - Limited Partnership Units	150,000.00	6,000.00
30-Sep-2002	26 Purchasers	RBC Global Investment Management Inc. - Units	91,615,245.99	91,615,246.00
30-Aug-2002	5 Purchasers	Rival Energy Inc. - Special Warrants	972,500.00	884,091.00
27-Sep-2002	Tuscarora Investment	Rival Energy Inc. - Special Warrants	999,900.00	909,000.00
30-Sep-2002	Halliburton Company	ShawCor Ltd. - Shares	138,388,261.00	7,723,997.00
01-Oct-2002	534266 Ontario Limited	Stacey Investment Limited Partnership - Limited Partnership Units	100,004.30	4,367.00
26-Sep-2002	Andrew Skerlec	Stikine Gold Corporation - Special Warrants	5,000.00	50,000.00
06-May-2002 5/31/02	23 Purchasers	Stonestreet Limited Partnership - Limited Partnership Units	3,573,386.94	562,882.00
11-Sep-2002	Robert Atton;Rosemary Coburn	Stroud Resources Ltd. - Common Shares	0.00	500,000.00
18-Jul-2002	1462888 Ontario Inc.	STEERS Credit Linked Trust - Trust certificates	34,650,000.00	1.00
18-Jul-2002	1462888 Ontario Inc.	STEERS Credit Linked Trust - Trust certificates	76,230,000.00	1.00
30-Sep-2002	5 Purchasers	TD Harbour Balanced Fund - Trust Units	2,321,597.17	23,216.00
30-Sep-2002	Joanne Kenny	TD Harbour Capital Canadian Balanced Fund - Trust Units	431,483.78	3,462,952.00
05-Jun-2002	Bank of Montreal	The Kansas City Southern Railway Company - Notes	500,000.00	500,000.00
30-Sep-2002	Hugh Segal;J. Michael McElhone	The McElvaine Investment Trust - Units	185,000.00	11,171.00
09-Sep-2002	GE Capital	Torquest Partners Value Fund, L.P. - Units	10,000,000.00	100.00
27-Sep-2002	Inter-Canadian Capital sStrategies Ltd.	Tournigan Ventures Corporation - Special Warrants	15,000.00	100,000.00
10-Sep-2002	5 Purchasers	Tricor Pacific Capital Partner (Fund III), Limited Partnership - Membership Interests	120,000,000.00	50.00
26-Sep-2002	Lawvest Company Ltd.	Trimeris, Inc. - Common Shares	1,131,250.00	25,000.00
06-Sep-2002	3 Purchasers	Ursa Major International Inc. - Special Warrants	100,000.00	500,000.00

**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>
01-May-2002	Dynamis Incorporated	Algonquin Power Income Fund - Trust Units	248,667.00	

**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
Beva Holdings Inc.	Brampton Brick Limited - Shares	33,100.00
Glenn J. Mullan	Canadian Royalties Inc. - Shares	500,000.00
John Jalovec	Carma Financial Services Corporation - Common Shares	250,000.00
Larry Melnick	Champion Natural Health.com Inc. - Shares	29,900.00
Viceroy Resource Corporation	Channel Resources Ltd. - Common Shares	7,076,850.00
Viceroy Resource Corporation	Channel Resources Ltd. - Common Shares	7,076,850.00
Geostar Corp.	Gastar Explorations Ltd. - Common Shares	7,325,824.26
Conrad M. Black	Hollinger Inc. - Preferred Shares	1,611,039.00
Xenolith Gold Limited	Kookaburra Resources Ltd. - Common Shares	1,499,700.00
Stephen Sham	MedMira Inc. - Common Shares	300,000.00
William J. Gastle	Microbix Biosystems Inc. - Common Shares	495,000.00
Susan M. S. Gastle	Microbix Biosystems Inc. - Common Shares	235,000.00
Targa Group Inc.	Plaintree Systems Inc. - Common Shares	11,988,665.00
Western Quebec Mines Inc.	River Gold Mines Ltd. - Common Shares	1,500,000.00
Premiere Capital Inc.	World Wise Technologies Inc. - Common Shares	500,000.00

## Chapter 11

# IPOs, New Issues and Secondary Financings

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**Issuer Name:**

Clean Power Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated October 10th, 2002  
Mutual Reliance Review System Receipt dated October 15th, 2002

**Offering Price and Description:**

\$\* - \* Subscription Receipts, each representing the right to receive one Trust Unit

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

Scotia Capital Inc.

**Promoter(s):**

Clean Power Inc.

**Project #486215**

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**Issuer Name:**

HSBC Japan Fund  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Simplified Prospectus dated October 9th, 2002  
Mutual Reliance Review System Receipt dated October 9th, 2002

**Offering Price and Description:**

Investor Series, Advisor Series, Manager Series and Institutional Series Units

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

HSBC Investments Funds (Canada) Inc.

**Promoter(s):**

HSBC Investments Funds (Canada) Inc.

**Project #485616**

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**Issuer Name:**

Gateway Casinos Income Fund  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Prospectus dated October 11th, 2002  
Mutual Reliance Review System Receipt dated October 11th, 2002

**Offering Price and Description:**

\$\* - \* Units @ \$10.00 per Unit

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

Scotia Capital Inc.

BMO Nesbitt Burns Inc.

RBC Dominion Securities Inc.

National Bank Financial Inc.

**Promoter(s):**

Gateway Casinos Inc.

**Project #486111**

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**Issuer Name:**

Mega Bloks Inc.  
Principal Regulator - Quebec

**Type and Date:**

Preliminary Prospectus dated October 11th, 2002  
Mutual Reliance Review System Receipt dated October 15th, 2002

**Offering Price and Description:**

CDN \$\* - \* Common Shares

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

Merrill Lynch Canada Inc.

**Promoter(s):**

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**Project #486110**

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**Issuer Name:**

Horizons Tactical Hedge Fund  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Prospectus dated October 11th, 2002  
Mutual Reliance Review System Receipt dated October 15<sup>th</sup>, 2002

**Offering Price and Description:**

Initial Offering Price: \$10.00 per Unit

Continuous Offering Price: Series Net Asset Value per Unit

Minimum Purchase : \$5,000.00

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

-

**Promoter(s):**

First Horizon Capital Corporation

**Project #486264**

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**Issuer Name:**

NCE Flow-Through (2002-2) Limited Partnership  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated October 8th, 2002  
Mutual Reliance Review System Receipt dated October 9th, 2002

**Offering Price and Description:**

\$5,000,000 to \$20,000,000 - 200,000 to 800,000 Limited Partnership Units @ \$25.00 per Unit.

Minimum Subscription: 100 Units

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

National Bank Financial Inc.  
CIBC World Markets Inc.  
BMO Nesbitt Burns Inc.  
TD Securities Inc.  
Canaccord Capital Corporation  
Dundee Securities Corporation  
HSBC Securities (Canada) Inc.  
Raymond James Ltd.  
Yorkton Securities Inc.  
FirstEnergy Capital Corp.  
Griffiths McBurney & Partners  
Jory Capital Corporation  
Wellington West Capital Inc.

**Promoter(s):**

Petro Assets Inc.

**Project #485490**

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**Issuer Name:**

Newfoundland Power Inc.  
Principal Regulator - Quebec

**Type and Date:**

Preliminary Short Form Prospectus dated October 16th, 2002  
Mutual Reliance Review System Receipt dated October 16th, 2002

**Offering Price and Description:**

\$75,000,000 - \*% First Mortgage Sinking Fund Bonds, Series AJ (redeemable)

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

Scotia Capital Inc.  
BMO Nesbitt Burns Inc.

**Promoter(s):**

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**Project #486435**

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**Issuer Name:**

Roca Mines Inc.  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Prospectus dated October 11th, 2002  
Mutual Reliance Review System Receipt dated October 15th, 2002

**Offering Price and Description:**

Up to 2,220,000 Common Shares and up to 2,700,000 Flow-Through Common Shares  
Minimum Offering of \$1,000,000  
Maximum Offering of \$1,500,000

and 2,667,000 Common Shares to be issued on the exercise of 2,667,000 previously issued Special Warrants

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

Union Securities Ltd.

**Promoter(s):**

Scott E. Broughton

John M. Mirko

**Project #486143**

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**Issuer Name:**

Social Housing Canadian Equity Fund  
Social Housing Canadian Bond Fund  
Social Housing Canadian Short-Term Bond Fund  
Social Housing Canadian Money Market Fund

**Type and Date:**

Preliminary Simplified Prospectus dated October 7th, 2002  
Receipt dated October 9th, 2002

**Offering Price and Description:**

Series A Units

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

Phillips, Hager & North Investment Funds Ltd.

**Promoter(s):**

SHSC Financial Inc.

**Project #485483**

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**Issuer Name:**

TSX Group Inc.  
Principal Regulator - Ontario

**Type and Date:**

Amended and Restated Preliminary Prospectus dated October 10<sup>th</sup>, 2002  
Mutual Reliance Review System Receipt dated October 11<sup>th</sup>, 2002

**Offering Price and Description:**

\$ \* - 18,978,238 Common Shares @ \$ \* per Common Share

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

Scotia Capital Inc.  
Goldman Sachs Canada Inc.  
BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
National Bank Financial Inc.  
RBC Dominion Securities Inc.  
TD Securities Inc.  
Merrill Lynch Canada Inc.  
Canaccord Capital Corporation  
Dundee Securities Corporation  
Griffiths McBurney & Partners  
Raymond James Ltd.  
Yorkton Securities Inc.

**Promoter(s):**

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**Project #480106**

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**Issuer Name:**

U.S. Equity Fund  
Money Market Fund  
Global Healthcare Fund  
Global Financial Services Fund  
Global Equity Fund  
Euro Fund  
Convertible Growth & Income Fund  
Canadian Income Fund  
Canadian Equity Fund  
Canadian Bond Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectus dated October 8<sup>th</sup>, 2002  
Mutual Reliance Review System Receipt dated October 10<sup>th</sup>, 2002

**Offering Price and Description:**

Class A, F, and I Units

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

CL Capital Management (Canada) Inc.

**Promoter(s):**

CL Capital Management (Canada) Inc.

**Project #485756**

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**Issuer Name:**

Windsor Trust 2002-B  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated October 15<sup>th</sup>, 2002  
Mutual Reliance Review System Receipt dated October 15<sup>th</sup>, 2002

**Offering Price and Description:**

\$ \* - \* % Auto Loan Receivables-Backed Class A-1 Pay-Through Notes  
Scheduled Final Payment Date of \*, 2006

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

RBC Dominion Securities Inc.  
BMO Nesbitt Burns Inc.  
Scotia Capital Inc.  
TD Securities Inc.

**Promoter(s):**

DaimlerChrysler Financial Services (debis) Canada Inc.  
**Project #486251**

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**Issuer Name:**

Cheyenne Energy Inc.  
Principal Regulator - Alberta

**Type and Date:**

Amendment #2 dated October 8<sup>th</sup>, 2002 to Prospectus dated June 18<sup>th</sup>, 2002  
Mutual Reliance Review System Receipt dated 11<sup>th</sup> day of October, 2002

**Offering Price and Description:**

Reduce the Minimum Offering from 6,000,000 Units (\$1,500,000) to 4,000,000 Units (\$1,000,000)

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

Union Securities Ltd.

**Promoter(s):**

Timothy M. Cooney  
Charles M. Baumgart  
**Project #441948**

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**Issuer Name:**

Capital International - International Equity  
Capital International - U.S. Equity  
Capital International - Global Small Cap  
Capital International - Global Discovery  
(Class A, D, F and I Units)  
Principal Regulator - Ontario

**Type and Date:**

Amended and Restated Simplified Prospectus and Annual Information dated October 4<sup>th</sup>, 2002, amending and restating

Simplified Prospectus and Annual Information Form dated December 3<sup>rd</sup>, 2001

Mutual Reliance Review System Receipt dated 9<sup>th</sup> day of October, 2002

**Offering Price and Description:**

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

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**Promoter(s):**

Capital International Asset Management (Canada), Inc.  
**Project #397643**



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**Issuer Name:**

Desjardins Global Science and Technology Fund  
Desjardins International RSP Funds  
Desjardins Ethical North American Fund  
Desjardins Ethical Income Fund  
Desjardins Ethical Balanced Fund  
Desjardins Select Balanced Fund  
Desjardins Select Canadian Fund  
Desjardins Select Global Fund  
Desjardins Select American Fund  
Desjardins Asia/Pacific Fund  
Desjardins Europe Fund  
Desjardins High Potential Sectors Fund  
Desjardins Quebec Fund  
Desjardins Diversified Secure Fund  
Desjardins Diversified Moderate Fund  
Desjardins Diversified Audacious Fund  
Desjardins Diversified Ambitious Fund  
Desjardins Bond Fund  
Desjardins Worldwide Balanced Fund  
Desjardins Money Market Fund  
Desjardins American Market Fund  
Desjardins International Fund  
Desjardins Mortgage Fund  
Desjardins Balanced Fund  
Desjardins Environment Fund  
Desjardins Dividend Fund  
Desjardins Growth Fund  
Desjardins Equity Fund  
Principal Regulator - Quebec

**Type and Date:**

Amendment #2 dated October 3rd, 2002 to Simplified Prospectus and Annual Information Form dated January 21st, 2002  
Mutual Reliance Review System Receipt dated 15<sup>th</sup> day of October, 2002

**Offering Price and Description:**

Mutual Funds Net Asset Value

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

Desjardins Trust Investment Services Inc.

**Promoter(s):**

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**Project #408943**

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**Issuer Name:**

NORTHWEST INTERNATIONAL FUND  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated October 7th, 2002 to Simplified Prospectus and Annual Information Form dated April 12th, 2002  
Mutual Reliance Review System Receipt dated 11<sup>th</sup> day of October, 2002

**Offering Price and Description:**

(Series A and Series F Units)

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

Northwest Mutual Funds Inc.

**Promoter(s):**

Northwest Mutual Funds Inc.

**Project #426816**

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**Issuer Name:**

Metalcorp Limited (formerly Redbird Gold Corp.)  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated October 8th, 2002  
Mutual Reliance Review System Receipt dated 9<sup>th</sup> day of October, 2002

**Offering Price and Description:**

\$1,568,467.20 - Rights to Subscribe for up to 13,070,560 Common Shares and Flow-Through Common Shares@\$.12 per Flow-Through Share and \$.10 per Common Share

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

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**Promoter(s):**

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**Project #469178**

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**Issuer Name:**

Phoenix Matachewan Mines Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Prospectus dated October 8th, 2002  
Mutual Reliance Review System Receipt dated 15<sup>th</sup> day of October, 2002

**Offering Price and Description:**

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

Union Securities Ltd.  
Jones, Gable & Company Limited

**Promoter(s):**

Robin B. Dow  
**Project #461440**

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**Issuer Name:**

Advantage Energy Income Fund  
Principal Regulator - Alberta

**Type and Date:**

Final Short Form Prospectus dated October 8th, 2002  
Mutual Reliance Review System Receipt dated 9<sup>th</sup> day of October, 2002

**Offering Price and Description:**

-

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

Scotia Capital Inc.  
BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
National Bank Financial Inc.  
Raymond James Ltd.  
TD Securities Inc.

**Promoter(s):**

Advantage Investment Management Ltd.  
**Project #484265**

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**Issuer Name:**

Algonquin Power Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated October 9th, 2002  
Mutual Reliance Review System Receipt dated 10<sup>th</sup> day of  
October, 2002

**Offering Price and Description:**

\$85,140,000.00 - 8,600,000 Trust Units @\$9.90 per Trust  
Unit

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

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

**Promoter(s):**

-

**Project #483794**

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**Issuer Name:**

Atlas Cold Storage Income Trust  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated October 15th, 2002  
Mutual Reliance Review System Receipt dated 15<sup>th</sup> day of  
October, 2002

**Offering Price and Description:**

-

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

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

**Promoter(s):**

-

**Project #485109**

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**Issuer Name:**

Canadian 88 Energy Corp.  
Principal Regulator - Alberta

**Type and Date:**

Final Short Form Prospectus dated October 10th, 2002  
Mutual Reliance Review System Receipt dated 11<sup>th</sup> day of  
October, 2002

**Offering Price and Description:**

\$55,002,600.00 - 16,530,000 Common Shares and  
5,000,000 Flow-Through Common Shares @\$2.42 per  
Common Share and \$3.00 per Flow-Through Common  
Share

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

CIBC World Markets Inc.  
Scotia Capital Inc.  
National Bank Financial Inc.  
FirstEnergy Capital Corp.  
TD Securities Inc.

**Promoter(s):**

-

**Project #484707**

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**Issuer Name:**

Solar Trust  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated October 11th, 2002  
Mutual Reliance Review System Receipt dated 11<sup>th</sup> day of  
October, 2002

**Offering Price and Description:**

\$255,510,000.00 - Commercial Mortgage Pass-Through  
Certificates, Series 2002-1

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

TD Securities Inc.

**Promoter(s):**

The Toronto Dominion Bank

**Project #483973**

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**Issuer Name:**

Capital International - Global Equity  
(Class A, D, F and I Units)  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form  
dated October 4th, 2002  
Mutual Reliance Review System Receipt dated 9<sup>th</sup> day of  
October, 2002

**Offering Price and Description:**

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

-

**Promoter(s):**

Capital International Asset Management (Canada) Inc.

**Project #472147**

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**Issuer Name:**

Chou RRSP Fund  
Chou Associates Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated October 8th, 2002  
Mutual Reliance Review System Receipt dated 10<sup>th</sup> day of October, 2002

**Offering Price and Description:**

-

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

Chou Associates Management Inc.  
Chou Associates Management Funds

**Promoter(s):**

Chou Associates Management Inc.

**Project #481686**

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**Issuer Name:**

Croft Enhanced Income Fund  
(Retail Class Units)  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated October 11th, 2002  
Mutual Reliance Review System Receipt dated 15<sup>th</sup> day of October, 2002

**Offering Price and Description:**

-

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

-

**Promoter(s):**

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**Project #477942**

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**Issuer Name:**

Croft Enhanced Income Fund  
(F Class Units)  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated October 11th, 2002  
Mutual Reliance Review System Receipt dated 15<sup>th</sup> day of October, 2002

**Offering Price and Description:**

-

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

-

**Promoter(s):**

-

**Project #477948**

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**Issuer Name:**

Croft Select Securities Fund  
Croft Enhanced Income Fund  
(Class A Units)  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated October 11th, 2002  
Mutual Reliance Review System Receipt dated 15<sup>th</sup> day of October, 2002

**Offering Price and Description:**

-

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

-

**Promoter(s):**

-

**Project #477956**

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**Issuer Name:**

Fidelity Global Disciplined Equity Fund  
Fidelity RSP Global Disciplined Equity Fund  
Fidelity RSP Small Cap America Fund  
Fidelity RSP American Disciplined Equity Fund  
Fidelity American Disciplined Equity Fund  
Fidelity RSP Global Opportunities Fund  
Fidelity Global Opportunities Fund  
Fidelity RSP Focus Telecommunications Fund  
Fidelity RSP American Opportunities Fund  
Fidelity American Opportunities Fund  
Fidelity Canadian Opportunities Fund  
Fidelity Focus Telecommunications Fund  
Fidelity RSP Focus Financial Services Fund  
Fidelity RSP Focus Health Care Fund  
Fidelity RSP Focus Technology Fund  
Fidelity RSP Overseas Fund  
Fidelity RSP Far East Fund  
Fidelity RSP Japan Fund  
Fidelity RSP Europe Fund  
Fidelity RSP Growth America Fund  
Fidelity RSP International Portfolio Fund  
Fidelity RSP Global Asset Allocation Fund  
Fidelity Overseas Fund  
Fidelity Canadian Balanced Fund  
Fidelity Canadian Disciplined Equity Fund  
Fidelity Focus Technology Fund  
Fidelity Focus Natural Resources Fund  
Fidelity Focus Health Care Fund  
Fidelity Focus Financial Services Fund  
Fidelity Focus Consumer Industries Fund  
Fidelity Canadian Asset Allocation Fund  
Fidelity Canadian Bond Fund  
Fidelity Canadian Growth Company Fund  
Fidelity Canadian Short Term Bond Fund  
Fidelity Canadian Money Market Fund  
Fidelity Canadian Large Cap Fund  
Fidelity True North Fund  
Fidelity Growth America Fund  
Fidelity Small Cap America Fund  
Fidelity U.S. Money Market Fund  
Fidelity Europe Fund  
Fidelity Far East Fund  
Fidelity Japan Fund  
Fidelity Global Asset Allocation Fund  
Fidelity American High Yield Fund  
Fidelity Emerging Markets Fund  
Fidelity International Portfolio Fund  
Fidelity Latin America Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated October 8th, 2002  
Mutual Reliance Review System Receipt dated 9<sup>th</sup> day of October, 2002

**Offering Price and Description:**

Mutual Fund Securities Net Asset Value

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

Fidelity Investments Canada Limited

**Promoter(s):**

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**Project #475446**

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**Issuer Name:**

Fidelity NorthStar Class of Fidelity Capital Structure Corp. (Formerly Fidelity North American Equity Class of Fidelity Capital Structure Corp.)  
(Series A and Series F shares)  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated October 8th, 2002  
Mutual Reliance Review System Receipt dated 9<sup>th</sup> day of October, 2002

**Offering Price and Description:**

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

Fidelity Investments Canada Limited

**Promoter(s):**

Fidelity Investments Canada Limited

**Project #480682**

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**Issuer Name:**

Fidelity RSP NorthStar Fund  
Fidelity NorthStar Fund  
Fidelity American Value Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated October 8th, 2002  
Mutual Reliance Review System Receipt dated 9<sup>th</sup> day of October, 2002

**Offering Price and Description:**

Mutual Fund Securities Net Asset Value

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

Fidelity Investments Canada Limited

**Promoter(s):**

Fidelity Investments Canada Limited

**Project #480429**

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**Issuer Name:**

GGOF Monthly High Income Fund II  
(Mutual Fund Units and F Class Units)  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated October 10th, 2002  
Mutual Reliance Review System Receipt dated 15<sup>th</sup> day of October, 2002

**Offering Price and Description:**

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

Guardian Group of Funds Ltd.

**Promoter(s):**

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**Project #480032**

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## Chapter 12

# Registrations

### 12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Mirabaud Asset Management (Canada) Inc. Attention: David John Kennedy, Chief Compliance Officer 161 Bay Street Room 2706 Toronto ON M5J 2S1	Investment Dealer Equities Managed Accounts	Oct 11/02
Change in Category (Categories)	Bick Financial Security Corporation Attention: Leonard John Bick 241 Wilson Street East Ancaster ON L9G 2B8	From: Mutual Fund Dealer  To: Mutual Fund Dealer Limited Market Dealer	Oct 09/02
Change in Category (Categories)	Status Financial Inc. Attention: Gianpiero Dicecco 253 Jevlan Drive Suite 6 Woodbridge ON L4L 7Z6	From: Mutual Fund Dealer  To: Mutual Fund dealer Limited Market Dealer	Oct 03/02
Change in Category (Categories)	Progressive Financial Strategy Capital Group Corp. Attention: Pamela Dharna 5170 Dixie Road Suite 203 Mississauga ON L4W 1E3	From: Mutual Fund Dealer  To: Mutual Fund Dealer Limited Market Dealer Scholarship Plan Dealer	Oct 15/02
Change in Category (Categories)	Frank Russell Canada Limited Attention: Edith Ricky Cassels 100 King Street West One First Canadian Place Suite 5900 PO Box 476 Toronto ON M5X 1E4	From: Mutual Fund Dealer Investment Counsel & Portfolio Manager  To: Mutual Fund Dealer Limited Market Dealer Investment Counsel & Portfolio Manager	Oct 11/02
Suspension of Registration	HSBC Asset Management (Hong Kong) Limited	International Adviser	Oct 09/02
Suspension of Registration	Houlihan Lokey Howard & Zukin Canada Inc.	Limited Market Dealer	Oct 09/02

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## Chapter 13

# SRO Notices and Disciplinary Proceedings

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### 13.1.1 IDA Penalty Hearing Notice - Dimitrios Boulieris

#### NEWS RELEASE For immediate release

#### NOTICE TO PUBLIC: PENALTY HEARING

#### IN THE MATTER OF DIMITRIOS BOULIERIS

**October 15, 2002** (Toronto, Ontario) – The Investment Dealers Association of Canada announced today that a hearing date has been set before a panel of the Ontario District Council of the Association to consider sanctions to be imposed on Dimitrios Boulieris for misconduct while he was employed as a Registered Representative with First Delta Securities Inc.

The hearing is scheduled to commence at 9:00 a.m. on October 24, 2002, at Atchison & Denman Court Reporting Services, located at 155 University Ave, 3<sup>rd</sup> Floor, Toronto, Ontario. The hearing is open to the public except as may be required for the protection of confidential matters. Copies of the Decision of the District Council will be made available.

The Investment Dealers Association of Canada is the national self-regulatory organization and representative of the securities industry. The Association's role is to foster fair, efficient and competitive capital markets by encouraging participation in the savings and investment process and by ensuring the integrity of the marketplace. The IDA enforces rules and regulations regarding the sales, business and financial practices of its Member firms. Investigating complaints and disciplining Members are part of the IDA's regulatory role.

*For further information, please contact:*

Alex Popovic  
Vice President, Enforcement  
(416) 943-6904 or [apopovic@ida.ca](mailto:apopovic@ida.ca)

Jeff Kehoe  
Director, Enforcement Litigation  
(416) 943-6996 or [jkehoe@ida.ca](mailto:jkehoe@ida.ca)

### 13.1.2 Market Regulation Services Inc. Sets Hearing Date in the Matter of Robert Bastianon to Consider an Offer of Settlement

#### NOTICE TO PUBLIC

**Subject: Market Regulation Services Inc. sets hearing date *In the Matter of Robert Bastianon* to consider an Offer of Settlement**

Market Regulation Services Inc. ("RS") will hold a Hearing before a Panel of the Hearing Committee (the "Hearing Panel") of RS on October 30, 2002 commencing at 10:00 a.m., or as soon thereafter as the Hearing can be held, at the offices of RS, 145 King Street West, 9th floor, Toronto, Ontario. The Hearing is open to the public.

The purpose of the hearing is to consider an Offer of Settlement entered into between RS and Robert Bastianon ("Bastianon"), an Approved Person employed by Yorkton Securities Inc.

It is alleged that Bastianon breached Rule 4-502(2) of the Rules of the Toronto Stock Exchange, which relates to client-principal trading.

The Hearing Panel may accept or reject an Offer of Settlement pursuant to Part 3.4 of Policy 10.8 of the Universal Market Integrity Rules governing the practice and procedure of hearings. In the event the Offer of Settlement is accepted, the matter becomes final and there can be no appeal of the matter. In the event the Offer of Settlement is rejected, RS may proceed with a hearing of the matter before a differently constituted Hearing Panel.

The terms of the settlement, if accepted and approved by the Hearing Panel, and the disposition of this matter by the Hearing Panel will be published by RS as a Disciplinary Notice.

Reference: Jane P. Ratchford  
Chief Counsel  
Investigations and Enforcement  
Market Regulation Services Inc.

Telephone: 416-646-7229



**13.1.3 Market Regulation Services Inc. Sets Hearing Date in the Matter of David William Trim to Consider an Offer of Settlement**

**NOTICE TO PUBLIC**

**Subject: Market Regulation Services Inc. sets hearing date *In the Matter of David William Trim* to consider an Offer of Settlement**

Market Regulation Services Inc. ("RS") will convene a Hearing before a Panel of the Hearing Committee (the "Hearing Panel") of RS on October 30, 2002 commencing at 10:00 a.m., or as soon thereafter as the Hearing can be held, at the offices of RS, 145 King Street West, 9th floor, Toronto, Ontario. The Hearing is open to the public.

The purpose of the Hearing is to consider an Offer of Settlement entered into between RS and David William Trim ("Trim"), an Approved Person employed by BMO Nesbitt Burns Inc.

It is alleged that Trim breached Rule 7-106(b) of the Rules of the Toronto Stock Exchange, which relates to conduct unbecoming.

The Hearing Panel may accept or reject an Offer of Settlement pursuant to Part 3.4 of Policy 10.8 of the Universal Market Integrity Rules governing the practice and procedure of hearings. In the event the Offer of Settlement is accepted, the matter becomes final and there can be no appeal of the matter. In the event the Offer of Settlement is rejected, RS may proceed with a hearing of the matter before a differently constituted Hearing Panel.

The terms of the settlement, if accepted and approved by the Hearing Panel, and the disposition of this matter by the Hearing Panel will be published by RS as a Disciplinary Notice.

Reference: Jane P. Ratchford  
Chief Counsel  
Investigations and Enforcement  
Market Regulation Services Inc.

Telephone: 416-646-7229

**13.1.4 Notice of Commission Approval - Amendments to IDA Policy No. 7 - Partners, Directors and Officers**

**AMENDMENTS TO IDA POLICY NO. 7 - PARTNERS, DIRECTORS AND OFFICERS**

**NOTICE OF COMMISSION APPROVAL**

IDA Policy No.7 Partners, Directors and Officers has been approved by the Ontario Securities Commission. In addition, the Saskatchewan Securities Commission approved, the Alberta Securities Commission did not disapprove and the British Columbia Securities Commission did not object to these amendments. The amendments were published on February 8, 2002 at (2002) 25 OSCB 878.

**13.1.5 Notice of Commission Approval - Amendments  
to IDA Regulation 2100.6 - Inter-Dealer  
Brokerage Systems**

**AMENDMENTS TO IDA REGULATION 2100.6 - INTER-  
DEALER BROKERAGE SYSTEMS**

**NOTICE OF COMMISSION APPROVAL**

IDA Regulation 2100.6 Inter-dealer Brokerage Systems has been approved by the Ontario Securities Commission. In addition, the Saskatchewan Securities Commission approved, the Alberta Securities Commission did not disapprove and the British Columbia Securities Commission did not object to these amendments. The amendments were published on July 12, 2002 at (2002) 25 OSCB 4601.

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## Other Information

### 25.1.1 Automation Review Program - For Market Infrastructure Entities in the Canadian Capital Markets

#### PART I. INTRODUCTION

This document has been prepared by Market Regulation (Capital Markets Branch) of the Ontario Securities Commission ("Commission" or "OSC") to address issues raised by the growing automation and integration of trading and clearing and settlement systems in the securities industry. It proposes the establishment of an Automation Review Program ("ARP" or "Program") for any specified market infrastructure entity ("Entity") that operates key technology systems and processes in the Canadian securities markets.

#### A. Management Summary

The Program has been developed because of the growing importance of automated systems in Canada's securities markets and global financial systems. A serious disruption could have an adverse impact on financial systems, the efficiency of the securities market and the public's confidence in the market.<sup>1</sup>

With the implementation of real-time systems and the move to straight-through-processing ("STP"), the securities industry becomes much more dependent upon the proper operation of automated systems. As manual processes are no longer able to address systemic deficiencies, reliability and capacity assessments of technology systems become more vital.

In December of 1999, just prior to the transition to Year 2000, certain regulated entities entered into arrangements with the Commission under which they would provide periodic reporting of technology plans and progress and immediate reporting of significant systems disruption or outages. This arrangement, called the Systems Reporting Protocol, was the first step in the process of developing a more comprehensive ARP.<sup>2</sup>

To supplement the reporting defined in the Systems Reporting Protocol, Commission staff ("Staff") believe that periodic independent reviews are required. Further, Staff should address follow-up issues and review major initiatives in a collaborative manner.

The Program is intended to provide Staff with essential background and current information relevant to regulatory oversight. In establishing the scope of the Program, Staff are mindful of maintaining a balance between minimizing the costs and disruption to the Entity in complying with the Program and ensuring that the OSC can effectively pursue its mandate.<sup>3</sup>

This paper discusses the Program. The ARP will be tailored to particular institutions and, over time, to changes in the industry.

There are three components to the ARP.

#### 1. Systems Reporting Procedure ("SRP")

Building on the Systems Reporting Protocol, the SRP provides the Commission with information on material production system outages and other problems, planned major production system changes and recent production system changes. The SRP calls for reporting significant incidents on a timely basis and for reporting other information on a periodic basis.<sup>4</sup>

#### 2. Independent System Review ("ISR")

The ISR will be completed by an independent auditor or consultant with appropriate qualifications or, with agreement from the Commission, by the Entity's internal audit group. The initial review will cover a set of general information system control areas. The scope of subsequent reviews will be established jointly in order to maximize the benefits to both the Entity and the Commission. The format of the report is subject to discussion and may take the form of an

<sup>1</sup> See Financial Crisis Management: Four Financial Crises in the 1980s (May 01, 1997, GAO/GGD-97-96). It provides a very clear impact analysis of the 1987 Market Break on the financial markets. The potential for financial disaster from the 1987 Market Break is clearly described. This GAO Staff study can be found on the GAO web site: [www.gao.gov](http://www.gao.gov).

<sup>2</sup> This ARP (Program) document considered the work of the U.S. Securities and Exchange Commission ("SEC") in its ARP (Policy) statements, published in response to severe operational difficulties experienced during the 1987 Market Break. The first being Securities Exchange Act Release No. 27445, Policy Statement: Automated

Systems of Self-regulatory Organizations, (November 16, 1989), 54 FR 48704 ("ARP Statement I") and the second being Securities Exchange Act Release No. 29185, Policy Statement: Automated Systems of Self-regulatory Organizations (II), (May 9, 1991), 56 FR 22489 ("ARP Statement II"). These are found on the SEC web site: [www.sec.gov](http://www.sec.gov).

<sup>3</sup> See discussion under "**Part I.C Constraints**".

<sup>4</sup> See "**PART II. SYSTEMS REPORTING PROCEDURE**" for an elaboration of this component.

internal management report or a formal opinion report.<sup>5</sup>

### 3. **System Examination Module**

The System Examination Module extends the general examination process performed by the Commission from time to time on Entities. It will involve an examination of the Entity's systems and procedures, with a focus on one or more particular systems-related issues for any given exam. Typically, a System Examination Module will include: i) the exploration of some specific operation of the Entity; ii) the review of any specific regulatory concerns or marketplace complaints; iii) the monitoring of ARP compliance; and iv) follow-up items (with questions and issues that have not been fully addressed) arising from the SRP or ISR components.<sup>6</sup>

Specific reporting, review and examination details are tailored to the nature of the Entity's business and reflect any known risks to trading, clearing and settlement and to the level of regulatory oversight provided by the Commission.

#### **B. Purpose of the Automation Review Program**

The Program provides Staff with essential information on an Entity's systems in terms of allowing Market Regulation to more effectively monitor serious incidents.<sup>7</sup> It provides a mechanism to encourage Entities to follow a formal methodology in identifying and managing IT risk. The goal is to encourage the use of industry "Best Practices".

Further, the Program provides the Commission with a mechanism to follow up on outstanding issues and to better understand the operation of the Entities while minimizing disruption to them.

The Program has been designed to address two additional objectives: i) to provide a framework for the regulatory oversight of systems capacity and reliability; and ii) to help strengthen the Entity's own internal processes through the benefits gained in responding to the ARP.<sup>8</sup>

#### **C. Constraints**

While the Commission has a regulatory oversight mandate, there are practical limits in the application of this mandate with respect to an Entity's operations. Some factors include:

1. The practical implementation of ARP must strike a balance between: i) minimizing the costs and disruption to the Entity in complying with the Program; and ii) ensuring that the OSC can effectively pursue its mandate.
2. The Entity is on the "front line", directly involved with providing a high quality service to market participants. While drafting the ARP, consideration has been given to ensuring that daily operations have priority over addressing routine reporting matters, with no material impediment to regulatory oversight.
3. Requiring information or processes without a clear and valid purpose serves to reduce the effectiveness of the ARP process.

To lessen the disruption to an Entity, the System Examination Module has been structured to enable Staff to assemble outstanding issues, so that such issues can be addressed together. The intent is to minimize disruption by consolidating various issues of regulatory interest into a single examination.

#### **D. Discussion**

##### **1. Regulated Entities**

For purposes of the ARP, Entities will include recognized stock exchanges, recognized commodity futures exchanges, recognized quotation and trade reporting systems, and recognized clearing and settlement systems.<sup>9</sup> In addition, certain Alternative Trading Systems ("ATSS") which meet the threshold tests discussed in National Instrument 21-101 Marketplace Operation and Companion Policy 21-101CP,<sup>10</sup> "Information Processors", "Market Integrators"<sup>11</sup> and other organizations may be considered Entities.

##### **2. Role of Market Regulation**

Market Regulation's role in the Ontario capital markets includes:

- supervising and monitoring the activities of the Entities (oversight);
- identifying the potential for systemic risk and emerging issues; and

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<sup>5</sup> See "**PART III. INDEPENDENT SYSTEM REVIEW**" for an elaboration of this component.

<sup>6</sup> See "**PART IV. SYSTEM EXAMINATION MODULE**" for an elaboration of this component.

<sup>7</sup> See "**Part I.D.2 Role of Market Regulation**".

<sup>8</sup> For example, the Entity can obtain significant benefit from the ISR by reducing its own risk and addressing opportunities for improvement. The real benefit of such reviews comes from the internalization by the Entity of review recommendations.

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<sup>9</sup> Through arrangements entered into with securities regulatory authorities in other jurisdictions, the ARP may be applicable to exchanges, quotation and trade reporting systems and clearing and settlement systems that are not necessarily recognized or formally regulated by the Commission.

<sup>10</sup> (2001) 24 OSCB 6591

<sup>11</sup> The terms "Information Processor" and "Market Integrator" are defined in National Instrument 21-101.

- identifying necessary regulatory responses to such risks and issues.

### 3. **Addressing Risk**

A hierarchy of risks, ranging from the impact of the failure of an individual dealer or trading or clearing and settlement system, to the failure of a whole market, whether domestic or global, must be addressed.<sup>12</sup> Because of the impact that significant systems failures may have on the investing public and financial markets, Staff believe that it is appropriate for the Entities to take certain steps to ensure that their automated systems have the capacity to accommodate current and reasonably anticipated future trading volumes and to respond to localized emergency conditions.

While on the whole, technology has been successfully used to mitigate a variety of risks arising from traditional market practices, a new type of risk arises due to the high level of integration of financial systems. This operational risk, a dependency on technology that may fail under stress, may increase with greater integration to come from initiatives such as STP. The risk is a concern because computer systems are less adaptive to unusual conditions than humans: an isolated problem not anticipated during one system component's design can result in the disruption of the entire automated process. It is Staff's view that good systems design and thorough testing are important risk-mitigating factors. These considerations are included in the ISR, and in the System Examination Module if appropriate.

To address risk as part of a plan, it is Staff's view that Entities should: i) establish reasonable current and future capacity estimates for each major system; ii) conduct periodic capacity stress tests with market participants; and iii) address potential market disruptions through appropriate contingency planning.<sup>13</sup>

#### **E. Confidentiality of Entity Material**

All materials provided under the ARP that the Entity considers as non-public and confidential should be clearly marked "Confidential". It is the intention of the Commission to treat such information as non-public and confidential.

#### **F. ARP Process Implementation Methodology**

A separate, tailored, document ("*ARP Implementation at [Entity-name]*") provides specific information on

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<sup>12</sup> The strong linkage between the securities industry and the financial systems was demonstrated by the market break of 1987.

<sup>13</sup> These topics are addressed in more detail in "*Part III.D.2 ISR Scope*".

implementation of the ARP for the Entity, including, for example, exact times frames of reports (reporting periods), report details and designated Staff contacts.

The implementation of the various reports, reviews and examinations will be phased in over time for each Entity new to the process. If appropriate, the Program will be customized for each Entity, through this separate document, to reflect the circumstances of the Entity.

## **PART II. SYSTEMS REPORTING PROCEDURE**

### **A. Introduction**

The SRP calls for two types of reports: "*Periodic Reports*" and "*Exception Reports*".

- Periodic Report.** These are regular reports that provide a summary of plans, changes and incidents.
- Exception Report.** These are incident reports that provide notification at the time of a material event or a serious outage or issue.

For certain incidents, an additional written, detailed follow-up report may be requested by Staff.

### **B. Purpose of the System Reporting Procedure**

The SRP is intended to support the OSC in its regulatory role. If a regulatory response to an emergency situation is required, Staff must have relevant information in order to fully assess the situation. In addition, Staff must be in a position to promptly respond to any public enquiry concerning the situation or provide any regulatory response required of the Commission.

### **C. Scope**

Under the SRP, the Entity will report on significant events and provide periodic summary reports. The scope of the reported information should be consistent with that normally available to the organization's senior management.

The reporting requirements should not cause any adverse impact on the Entity's business, as the SRP process can be readily incorporated into the Entity's internal management escalation procedures. Staff are prepared to accept the Entity's internal management reports.

### **D. SRP Periodic Report Description**

A Periodic Report is a written report for a given period that will include the following three components:

- a summary of planned major systems changes for the coming period;
- a summary of major systems changes during the reporting period; and

iii) a summary report of all systems incidents during the reporting period.

**1. Production Plan Summary**

This outlines management-level plans for major systems changes in the following period. This would include information on new or significantly changed production processes. This information can be part of the planning management information summary normally completed by the organization before production systems or processes are changed.

The scope would include planned material changes to production hardware/software/connectivity systems or processes. Also to be included is a discussion of any important risk factors, such as introduction of new technology or planned changes that would require formal industry testing for a new major initiative.

Staff may request additional information. For example, a summary of industry testing, implementation and fallback plans.

**2. Production Change Summary**

This outlines major systems changes in the reporting period. The scope would also include previously reported, planned material changes to production hardware/software/connectivity systems or processes.

**3. Production Outage Summary**

This part of the Periodic Report contains a list of all outages, material delays and slowdowns and other important systems events which occurred during the reporting period.

**4. Reporting Period**

The reporting period for the Periodic Report will vary with each Entity. Staff, in consultation with the Entity, will determine an appropriate reporting period. In determining an appropriate reporting period, Staff will have regard to a variety of factors, including (i) the extent to which the Entity's business or activity is critical to the efficiency and integrity of the Ontario capital markets and (ii) the complexity of the Entity's systems, networks and processes.

**E. SRP Exception Report Description**

A set of Exception Reports are expected for any significant event related to an Entity's production systems or networks. Exception Reports consist of:

i) Notification Report – to advise the Commission of a material event;

ii) Status Change Report – to advise of a significant change of status;

iii) Resumption of Service Report – to advise of a return to normal service;

iv) Final Summary Report – summary of the incident as of one day after resolution of the incident; and

v) Final Detailed Report - optionally requested by Staff for final resolution of problems or additional detailed information.

**1. Exception Report Submission**

If the event is a significant systems outage or other event described below, it should be reported promptly. (All events that occurred during a particular reporting period should be noted in the Periodic Report for that period.) As material changes in status occur, including return to normal service, these too should be promptly reported. A final written report will provide a summary of the incident.

All of the above reports, with the exception of the Final Summary Report and the Final Detailed Report, may be communicated orally to a designated Staff person or transmitted via email to the list of designated Staff persons.

**2. Exception Report Criteria**

An incident should be of a certain degree of severity for it to be reported through the exception reporting procedure. The determination of the severity of an event is made by the Entity and should relate to the impact that the loss of service will have on the Entity's members or users or on market participants generally. For example, users of online systems are more sensitive to outages and delays. However, it should be noted that some entities have batch processes which are time-critical. To be clear, an Entity should report to Staff any incident that has been reported, or is reasonably expected to be reported, to the press or to the Entity's members, users or participating organizations.

Conditions for which an incident should be reported include: delays and outages over a certain duration, serious security incidents or threats, or incidents causing the Entity to operate from a backup system or site.

**PART III. INDEPENDENT SYSTEM REVIEW**

**A. Introduction**

An Independent System Review should be performed by the Entity on a periodic basis. This review will typically be performed by an independent auditor or consultant with appropriate industry and technology expertise. The review

may, with the Director's<sup>14</sup> prior approval, be performed by the Entity's Internal Audit group. If the review is performed by Internal Audit, the Entity will need to engage an independent auditor to attest to the independence and skills of the audit team performing the work and to the quality and completeness of the review.

**B. Purpose of the Independent System Review**

The purpose of the Independent System Review is to provide the Commission with assurance that the Entity has:

- A system of internal controls in place that is consistent with best practices of the industry, and
- Procedures in place to appropriately identify and address risk issues as they relate to the Entity's technology environment.

**C. Type of Report**

The type of report to be issued will be discussed and jointly agreed to by Staff and the Entity. If the Entity already engages an auditor to perform an independent system review (such as a CICA Handbook Section 5900 review<sup>15</sup>), such review, as currently provided or with certain modifications, may meet the needs of the Commission.

When the Entity does not currently arrange for an independent system review, a 'management report' will typically be expected, at least for the initial review. A management report does not include an audit opinion. Rather, within the defined scope (discussed below), the report will identify the major internal controls in place, identify any control weaknesses or deficiencies, assess the risks and implications of each weakness, and provide a practical recommendation for correcting the weakness.

This report will provide the 'baseline' for future reviews. The Entity and Staff will jointly determine whether subsequent reviews will continue to use a management report format or take the form of an opinion report such as a Section 5900 or SysTrust<sup>16</sup> report.

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<sup>14</sup> "Director", as defined in the Ontario Securities Act.

<sup>15</sup> A Section 5900 Review is an examination performed by external auditors, usually once a year of an Entity's controls under Section 5900 of the *Canadian Institute of Chartered Accountants' Handbook, Opinions on Control Procedures at a Service Organization*.

<sup>16</sup> "The SysTrust<sup>sm</sup> service is an assurance service developed ... to increase the comfort of management, customers, and business partners with the systems that support a business or a particular activity. ... [by testing and evaluating] whether a service is reliable when measured against four essential principles: availability, security, integrity, and maintainability." AICPA/CICA SysTrust Principles and Criteria for Systems Reliability, Version 2.0, at page 3, published jointly by the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants.

**D. Scope**

The following matters relate to the scope and delivery of the review.

**1. ISR Methodology**

Independent auditors and consultants will likely have their own audit methodology to perform this type of review and Staff will not attempt to establish standards in this regard. When the review will be communicated as a management report, auditors are encouraged to structure the defined scope around a set of relevant control objectives such as those found in the Canadian Institute of Chartered Accountants publication, *Information Technology Control Guidelines*.

**2. ISR Scope**

The initial review and resulting management report will typically address each of the following areas:

- Operations and performance evaluation including the existence and adequacy of processes to establish, measure and assess acceptable computer and network operations performance;
- Capacity planning and measurement including a review of the processes in place to address the adequacy of current capacity, performance testing and future capacity requirements in light of changing market conditions;
- Change management including the adequacy of the controls in place to ensure sufficient design, planning and testing is carried out to minimize any unexpected impact of changes on operations and on other market participants;
- Problem management including processes in place to determine the nature and extent of problems, assess their impact on system and market performance, escalate issues to senior management, provide prompt and effective notification to market participants, implement necessary repairs quickly and determine necessary steps to prevent a future reoccurrence; and
- Contingency planning including plans and procedures in place for incident recovery, disaster recovery and business continuity planning, the adequacy of testing undertaken to ensure the



feasibility of these plans and the process for assessing contingency risks.

The review should also include the timeliness and effectiveness of procedures to notify market participants.

The scope of subsequent reviews will be determined in such a way as to maximize the benefits to both the Entity and the Commission. These reviews may focus on specific general control areas and may include an assessment of one or more systems. If a SysTrust report is planned, the scope will need to be consistent with that standard.

### 3. **Consultation with Market Participants**

As part of its independent review, the auditor may wish to consult with certain market participants such as users of the Entity's services, information vendors, service providers and clearing and settlement facilities. This may be appropriate in order to complete the assessment of the scope issues noted above that involve other market participants.

Two areas of communication with market participants for specific consideration are: i) communication of planned system changes; and ii) notification of availability of services.

The Entity should have plans and procedures for system changes that include: i) an analysis of the business and technological implications of the proposed changes on the market participants prior to approval and implementation; ii) coordinating the impact of the changes on the participants; and iii) obtaining, where possible, agreement from market participants on schedules for testing and implementation.

Since interruptions of service are risks with all technologically based systems, market participants need an effective mechanism for notification of a serious event and the corrective action being taken.<sup>17</sup> This notification should include a description of the impact on market participants. Since the Entity is more likely to be effective in communications with the larger participants, the Commission is particularly interested in the quality of communications provided to smaller participants.

### 4. **Scope Limitations**

It may be necessary for the auditor to consider any limitations in scope resulting from the decentralized environment within which the markets operate today. That is, some networks

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<sup>17</sup> For example, "all orders/trades from <time> must be re-entered".

and systems accessed or used by the Entity may not be proprietary. The auditor should not be limited in scope to those systems and processes that are within the exclusive "control" of the Entity. At the same time, any scope limitations due to lack of access or other reasons need to be clearly identified.

### 5. **Independent Attestation of Internal Review**

If an Entity has an Internal Audit group with the appropriate skills and experience, this group may undertake the review, with the Director's prior approval. In such case, the report must be accompanied by an "attestation" from an independent auditor. The attestation is an opinion of the independent auditor attesting to: i) the adequacy of the qualifications and objectivity of the internal reviewer to conduct the review; ii) the completeness of the review in addressing the agreed scope; and iii) the appropriateness of the review methodology for the subject matter.

### 6. **Entity Response Content**

When the results of the review are communicated as a "management report", the management of the Entity should consider the report and prepare a "response" that is either attached to the report or is incorporated into the body of the final report. For each deficiency identified and related recommendation, the response should include:

- The Entity's position on the deficiency and related recommendation (i.e., whether or not there is acceptance of the issue raised and the degree of acceptance of the respective recommendation);
- The Entity's response to the recommendation. If in agreement, the Entity should set out the action plan and the implementation timetable. If not in agreement, the Entity should include a short discussion of the impact (risk) of not implementing the recommendation, and how the impact of not implementing will be addressed (i.e., how the Entity will mitigate the potential impact).

## **PART IV. SYSTEM EXAMINATION MODULE**

### **A. Introduction**

The System Examination Module forms part of a compliance review or other examination of the Entity performed by Staff. It will involve an examination by Staff, or a consultant obtained by the Commission, of the Entity's systems and/or procedures with a focus on one or more particular systems-related issues for any given system examination.

During the ongoing operation of the Entity's operation, a variety of issues may arise. The important issues will be addressed immediately, but inevitably some issues will need follow-up.

Occasionally, an Entity will modify its systems and operations but will fail to provide necessary details to the Commission, the necessity of which will only become apparent later. Staff may also become aware of a potential regulatory concern.

A system examination may include any combination of the components outlined below.

**B. Purpose of the System Examination Module**

The System Examination Module provides the Commission with:

- The opportunity to ensure outstanding issues are systematically addressed while minimizing any disruption to the Entity's operations;
- The ability to obtain additional in-depth information regarding the Entity's operations and procedures; and
- The opportunity to follow up on outstanding issues.

**C. Scope**

A system examination in a given year may range from an in-depth review of one or more topics to a follow-up memorandum or meeting.

**1. Examination Strategy**

A system examination may include:

- A formal examination at the request of the Commission or Director;
- A presentation by the Entity to Staff on a particular topic;
- An informal meeting to discuss previously identified issues;
- An in-depth review of one or more specified issues; and
- A follow-up memorandum.

A system examination schedule will be determined by Staff in consultation with the Entity, to define the frequency of such examination. Serious outages, data integrity, security or regulatory issues may also trigger a system examination.

**2. Topics/Components**

The range of topics governing a system examination may include the following items:

**a) Follow-up items**

- Outstanding questions or issues on any serious incidents (reported under the SRP)
- Outstanding questions and issues based on Commission inquiries

**b) Exploration of some specific operation**

- Request for information on a new or changed function or feature
- Request for information on a function or feature where Staff require additional understanding of the operation
- Request for clarifying information where the Entity has requested a Commission response

**c) Review of any specific regulatory concerns**

- Questions or issues based on complaints from market participants
- Questions or issues where Staff or the Commission have identified possible regulatory concerns
- Conversely, the Entity may wish to use this process as an opportunity to informally discuss its own market integrity concerns with Staff

**d) Compliance with ARP**

- Outstanding questions or issues on the results of an Independent System Review
- Review of the Entity's performance of capacity planning, contingency planning or other ARP concern
- Review of incidents and system changes<sup>18</sup>

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<sup>18</sup> The intention is to confirm the level and appropriateness of SRP reporting.

**3. System Examination Report Description**

There is no formal report unless one is specifically requested by the Director.

**D. Process Outline**

**1. Planning**

The System Examination Module is intended to be coordinated with other OSC examinations being performed during a given year. Staff will determine specific examination objectives to apply to a particular system examination.

**2. Examination Process**

If some aspect of the examination is not fully understood or further issues arise, a follow-up examination may be scheduled. If a system examination detects serious discrepancies, Staff will meet with management of the Entity to review the issues and possible solutions. This may be followed by a re-examination once corrective action has been completed or additional material is available.

**25.2 Approvals**

**25.2.1 Alexander Gluskin Investment Inc. - Loan and Trust Corporations Act - cl. 213(3)(b)**

October 11, 2002

Goodman and Carr LLP

**Attention: Gary M. Litwack**

Dear Sirs/Mesdames:

**Re: Application by Alexander Gluskin Investment Inc. ("AGII" or the "Applicant") for approval for AGII to act as trustee of the AGII Growth Fund and AGII RRSP Growth Fund and also certain other mutual funds to be established by the Applicant from time to time and offered pursuant to prospectus exemption (collectively, the "Funds")**

Further to a letter dated September 5, 2002 and supplemented by a letter dated October 4, 2002 (together the "Application"), filed on behalf of the Applicant and based on the facts set out in the Application, pursuant to the authority conferred on the Ontario Securities Commission (the "Commission") in clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that the Applicant act as trustee of those Funds for which the Applicant also acts as manager (within the meaning of National Instrument 81-102).

"Robert W. Korthals"

"H. Lorne Morphy"

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