

**The Ontario Securities Commission**

# **OSC Bulletin**

April 13, 2001

Volume 24, Issue 15

(2001), 24 OSCB

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

**The Ontario Securities Commission**  
Cadillac Fairview Tower  
Suite 800, Box 55  
20 Queen Street West  
Toronto, Ontario  
M5H 3S8

Published under the authority of the Commission by:  
**IHS/Micromedia Limited**  
20 Victoria Street  
Toronto, Ontario  
M5C 2N8

416-593-8314 or Toll Free 1-877-785-1555

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

Contact Centre - Inquiries, Complaints:	Fax: 593-8122
Capital Markets Branch:	Fax: 593-3651
Capital Markets - Registration:	Fax: 593-8283
Corporate Finance - Filings Team 1:	Fax: 593-8244
Corporate Finance - Filings Team 2:	Fax: 593-3683
Corporate Finance - Continuous Disclosure (Insider Reporting):	Fax: 593-3666
Corporate Finance - Take-Over Bids / Advisory Services:	Fax: 593-8177
Enforcement Branch:	Fax: 593-8321
Executive Offices:	Fax: 593-8241
General Counsel's Office:	Fax: 593-3681
Office of the Secretary:	Fax: 593-2318

The OSC Bulletin is published weekly by Micromedia, a division of IHS Canada, under the authority of the Ontario Securities Commission.

Subscriptions are available from Micromedia limited at the price of \$520 per year. Alternatively, weekly issues are available in microfiche form at a price of \$385 per year. Back volumes are also available on microfiche:

2000	\$475
1999	\$450
1997-98	\$400/yr
1995-1996	\$385/yr
1994:	\$370
1993:	\$275
1992:	\$250
1981-1991:	\$175/yr

Subscription prices include first class postage to Canadian addresses. Outside Canada, these airmail postage charges apply on a current subscription:

U.S.	\$110
Outside North America	\$220

Single issues of the printed Bulletin are available at \$33.00 per copy as long as supplies are available. OSC Bulletin Plus, a full text searchable CD-ROM containing OSC Bulletin material from January 1994 is available from Micromedia Limited. The sample issue of the OSC Bulletin is available on the internet at:

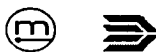
*"<http://www.micromedia.on.ca/>"*

Claims from bona fide subscribers for missing issues will be honoured by Micromedia up to one month from publication date. After that period back issues will be available on microfiche only.

Full copies of both Insider Reports and Public Filings listed in Chapters 7 and 10 respectively are available from: Demand Documents Department, Micromedia, 20 Victoria Street, Toronto, Ontario M5C 2N8 (416) 362-5211, extension 2211.

Space is available in the Ontario Securities Commission Bulletin for advertisements. The publisher will accept advertising aimed at the securities industry or financial community in Canada. Advertisements are limited to tombstone announcements and professional business card announcements by members of, and suppliers to, the financial services industry.

Copyright 2001 IHS/Micromedia Limited  
ISSN 0226-9325



# Table of Contents

<p><b>Chapter 1 Notices / News Releases .....2287</b></p> <p><b>1.1 Notices .....2287</b></p> <p>1.1.1 Current Proceedings Before The Ontario Securities Commission.....2287</p> <p>1.1.2 Amendments to the Securities Act &amp; Regulation 1015 - Take-Over &amp; Issuer Bids .....2289</p> <p>1.1.3 Final Rule 41-502 Prospectus Requirements for Mutual Funds &amp; Amendment to Reg. 1015 .....2289</p> <p>1.1.4 NI 81-102, 81-102CP Mutual Funds, NI 81-101 &amp; 81-101CP Mutual Fund Prospectus Disclosure ....2290</p> <p>1.1.5 Rule 31-506 SRO Membership - Mutual Fund Dealers .....2290</p> <p>1.1.6 Rule 44-801 Implementing NI 44-101 ..2291</p> <p><b>Chapter 2 Decisions, Orders and Rulings ..2293</b></p> <p><b>2.1 Decisions .....2293</b></p> <p>2.1.1 Retirement Residences Real Estate Investment Trust et al. MRRS Decision.....2293</p> <p>2.1.2 Oxus Resources Corporation - MRRS Decision .....2295</p> <p>2.1.3 PrimeWest Energy Trust et al. - MRRS Decision .....2297</p> <p>2.1.4 Photochannel Networks Inc. - MRRS Decision .....2301</p> <p>2.1.5 Algorithmics Incorporated et al. - MRRS Decision .....2304</p> <p>2.1.6 Spectrum Investment Management Limited &amp; Spectrum RRSP Tactonics Fund - MRRS Decision .....2306</p> <p>2.1.7 1423280 Ontario Inc. et al. - MRRS Decision .....2309</p> <p>2.1.8 Sherritt Coal Partnership et al. - MRRS Decision .....2313</p> <p>2.1.9 Cybersurf Corp. - MRRS Decision.....2315</p> <p>2.1.10 Apollo Gas Income Fund - MRRS Decision .....2317</p> <p><b>2.2 Orders .....2318</b></p> <p>2.2.1 Mackenzie Financial Corporation et al. - ss. 59(1).....2318</p> <p>2.2.2 Michael Omer Bourgon - s. 127 .....2319</p> <p>2.2.3 BioCapital Biotechnology and Healthcare Fund .....2320</p> <p>2.2.4 Goldie Enterprises Inc. &amp; MagiCorp. Inc. - s.147 .....2321</p>	<p><b>2.3 Rulings .....2323</b></p> <p>2.3.1 Hymas Investment Management Inc. - ss. 74(1).....2323</p> <p>2.3.2 SPX Corporation &amp; United Dominion Industries Ltd. - s. 3.1of 54-501 .....2325</p> <p>2.3.3 Catharine Bayles &amp; 1033764 Ontario Limited - ss. 74(1) .....2327</p> <p><b>Chapter 3 Reasons: Decisions, Orders and Rulings (nil).....2329</b></p> <p><b>Chapter 4 Cease Trading Orders .....2331</b></p> <p>4.1.1 Temporary and Cease Trading Orders 2331</p> <p><b>Chapter 5 Rules and Policies.....2333</b></p> <p>5.1.1 Rule 31-506 SRO Membership - Mutual Fund Dealers .....2333</p> <p>5.1.2 Rule 44-801 Implementing NI 44-101 ..2334</p> <p><b>Chapter 6 Request for Comments (nil) .....2335</b></p> <p><b>Chapter 7 Insider Reporting.....2337</b></p> <p><b>Chapter 8 Notice of Exempt Financings .....2383</b></p> <p>Reports of Trades Submitted on Form 45-501f1 .....2383</p> <p>Reports Made under Subsection 5 of Subsection 72 of the Act with Respect to Outstanding Securities of a Private Company That Has Ceased to Be a Private Company - (Form 22)) .....2384</p> <p>Notice of Intention to Distribute Securities Pursuant to Subsection 7 of Section 72 - (Form 23) .....2384</p> <p><b>Chapter 9 Legislation .....2385</b></p> <p>9.1.1 Regulation 1015 of the Revised Regulations of Ontario, 1990 made under the Securities Act.....2385</p> <p>9.1.2 Amendment to Reg. 1015 of the Revised Regulation of Ontario, 1990 Made under the Securities Act in connection with the OSC Rule 41-502.....2385</p> <p><b>Chapter 11 IPOs, New Issues and Secondary Financings .....2387</b></p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

# Table of Contents (cont'd)

---

<b>Chapter 12 Registrations .....</b>	<b>2393</b>
12.1.1 Securities .....	2393
<b>Chapter 13 SRO Notices and Disciplinary Proceedings (nil) .....</b>	<b>2395</b>
<b>Chapter 25 Other Information .....</b>	<b>2397</b>
25.1.1 Securities .....	2397
<b>Index .....</b>	<b>2399</b>

## Chapter 1

# Notices / News Releases

### 1.1 Notices

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

April 13, 2001

#### CURRENT PROCEEDINGS

#### BEFORE

#### ONTARIO SECURITIES COMMISSION

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

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

Telephone: 416-597-0681      Telecopiers: 416-593-8348

CDS

TDX 76

Late Mail depository on the 19th Floor until 6:00 p.m.

#### THE COMMISSIONERS

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

### SCHEDULED OSC HEARINGS

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

Mr. A. Graburn in attendance for staff.

Panel: TBA

May 3/2001      **Jack Banks a.k.a. Jacques Benquesus**  
10:00 a.m.      **and Larry Weltman**

s. 127

Ms. K. Wootton in attendance for staff.

Panel: TBA

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

s. 127

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

Panel: TBA

May 7/2001-      **YBM Magnex International Inc., Harry W.**  
May 18/2001      **Antes, Jacob G. Bogatin, Kenneth E.**  
10:00 a.m.      **Davies, Igor Fisherman, Daniel E. Gatti,**  
                         **Frank S. Greenwald, R. Owen Mitchell,**  
                         **David R. Peterson, Michael D. Schmidt,**  
                         **Lawrence D. Wilder, Griffiths Mcburney**  
                         **& Partners, National Bank Financial**  
                         **Corp., (formerly known as First**  
                         **Marathon Securities Limited)**

s. 127

Mr. I. Smith in attendance for staff.

Panel: HIW / DB / MPC

**ADJOURNED SINE DIE**

**PROVINCIAL DIVISION PROCEEDINGS**

**Michael Bourgon**

Date to be announced

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

**DJL Capital Corp. and Dennis John Little**

s. 122

Ms. M. Sopinka in attendance for staff.

Ottawa

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

Jan 29/2001 - Jun 22/2001

**John Bernard Felderhof**

Mssrs. J. Naster and I. Smith for staff.

**First Federal Capital (Canada) Corporation and Monter Morris Friesner**

Courtroom TBA, Provincial Offences Court

**Global Privacy Management Trust and Robert Cranston**

Old City Hall, Toronto

**Irvine James Dyck**

May 4, 2001 1:30 p.m. Courtroom N

**1173219 Ontario Limited c.o.b. as TAC (The Alternate Choice), TAC International Limited, Douglas R. Walker, David C. Drennan, Steven Peck, Don Gutoski, Ray Ricks, Al Johnson and Gerald McLeod**

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

s. 122

**Offshore Marketing Alliance and Warren English**

Mr. D. Ferris in attendance for staff. Provincial Offences Court Old City Hall, Toronto

**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**

Jan 29/2001 - Feb 2/2001  
Apr 30/2001 - May 7/2001  
9:00 a.m.

**Einar Bellfield**

s. 122

Ms. K. Manarin in attendance for staff.

Courtroom C, Provincial Offences Court Old City Hall, Toronto

**S. B. McLaughlin**

Reference:

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

**Southwest Securities**

**Terry G. Dodsley**

**Wayne Umetsu**

**1.1.2 Amendments to the Securities Act &  
Regulation 1015 - Take-Over & Issuer Bids**

**NOTICE OF AMENDMENTS TO THE SECURITIES ACT  
AND REGULATION 1015 MADE UNDER THE  
SECURITIES ACT RELATING TO TAKE-OVER AND  
ISSUER BIDS**

On March 21, 2001 the Lieutenant Governor issued a proclamation naming March 31, 2001 as the date for the coming into force of sections 211, 212 and 213 and subsection 220(6) of the *More Tax Cuts for Jobs, Growth and Prosperity Act, 1999* (the "Prosperity Act"). These sections of the Prosperity Act amended certain provisions of the *Securities Act* relating to the timing and delivery of take-over bids and issuer bids. These amendments were enacted on December 14, 1999 but their proclamation had been deferred pending legislative change in other Canadian jurisdictions. The text of the amendments was previously published in the Bulletin on December 24, 1999 (1999) 22 OSCB 8395 and can be viewed on the Commission's web site at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

Concurrently with proclaiming these sections of the Prosperity Act, the Lieutenant Governor made a regulation (the "Regulation") to amend Regulation 1015 of the Revised Regulations of Ontario, 1990 made under the Securities Act, which was filed as O. Reg. 67/01 on March 22, 2001, and will be published in the Ontario Gazette on April 7, 2001. The Regulation came into force on March 31, 2001, and is published in Chapter 9 of this Bulletin.

**1.1.3 Final Rule 41-502 Prospectus  
Requirements for Mutual Funds &  
Amendment to Reg. 1015**

**NOTICE OF MINISTER OF FINANCE APPROVAL OF  
FINAL RULE 41-502 PROSPECTUS REQUIREMENTS  
FOR MUTUAL FUNDS**

**AND**

**NOTICE OF AMENDMENT TO REGULATION 1015 OF  
THE REVISED REGULATIONS OF ONTARIO, 1990  
MADE UNDER THE SECURITIES ACT  
IN CONNECTION WITH OSC RULE 41-502**

On March 7, the Minister of Finance approved Rule 41-502 Prospectus Requirements for Mutual Funds (the "Rule"). Previously, materials related to the Rule and Companion Policy 41-502 CP (the "Companion Policy") were published in the Bulletin on June 27, 1997 and January 19, 2001. The Rule and Companion Policy came into effect on April 5, 2001.

The Commission is publishing in this issue of the OSC Bulletin, the final Rule and Companion Policy. The Rule will also be published in the Ontario Gazette on April 21, 2001.

The Minister of Finance has also approved a regulation to amend and revoke certain sections of Regulation 1015 of the Revised Regulation of Ontario, 1990 made under the Securities Act (the "Regulation") in connection with the Rule. The amendments and revocations to the Regulations came into force at the time that the Rule came into force and will be published in the Ontario Gazette on April 21, 2001. The Regulation is published in chapter 9 of this OSC Bulletin.

**1.1.4 NI 81-102, 81-102CP Mutual Funds, NI 81-101 & 81-101CP Mutual Fund Prospectus Disclosure**

**NOTICE OF MINISTER OF FINANCE  
APPROVAL OF  
AMENDMENTS TO NATIONAL INSTRUMENT 81-102  
AND COMPANION POLICY 81-102CP  
MUTUAL FUNDS  
AND TO  
NATIONAL INSTRUMENT 81-101  
AND COMPANION POLICY 81-101CP  
MUTUAL FUND PROSPECTUS DISCLOSURE  
AND TO  
FORM 81-101F1  
CONTENTS OF SIMPLIFIED PROSPECTUS  
AND TO  
FORM 81-101F2  
CONTENTS OF ANNUAL INFORMATION FORM**

On April 6, 2001, the Minister of Finance approved the rules (collectively, the "Rule Amendments") that amend the following instruments:

1. National Instrument 81-101 Mutual Fund Prospectus Disclosure (NI 81-101),
2. Form 81-101F1 Contents of Simplified Prospectus (Form 81-101F1),
3. Form 81-101F2 Contents of Annual Information Form (Form 81-101F2), and
4. National Instrument 81-102 Mutual Funds (NI 81-102).

Previously, materials related to the Rule Amendments were published in the Bulletin on January 28, 2000 and June 16, 2000. The purpose and substance of the Rule Amendments is to permit mutual funds to enter into securities lending, repurchase and reverse repurchase transactions, and to permit index mutual funds to better meet their investment objectives by allowing them to track their target indices without concentration limits, subject to enhanced disclosure requirements. The Rule Amendments were adopted by the Commission on February 14, 2001 and were published in final form on February 16, 2001. The Rule Amendments will come into force on May 2, 2001 and will be published in the Ontario Gazette on April 28, 2001.

April 12, 2001.

**1.1.5 Rule 31-506 SRO Membership - Mutual Fund Dealers**

**NOTICE OF MINISTER OF FINANCE APPROVAL OF  
FINAL RULE UNDER  
THE SECURITIES ACT  
RULE 31-506  
SRO MEMBERSHIP - MUTUAL FUND DEALERS**

On April 6, 2001 the Minister of Finance approved Rule 31-506 SRO Membership - Mutual Fund Dealers (The "Rule"). The Rule was published in the Bulletin for comment in October 1997, June 1998 and June 2000. The Commission first made the Rule on October 10, 2000. The Minister returned the Rule to the Commission for further consideration on December 11, 2000. After taking into account the additional factors requested by the Minister, the Commission made the Rule for a second time on February 6, 2001.

The Rule will come into force on **April 23, 2001** and will be published in the Ontario Gazette on April 21, 2001. This date is the "effective date" as defined in the Rule. As a result, the actions specified by Part 3 of the Rule to be taken by a date no later than the thirtieth day after the effective date must be taken by **May 23, 2001**.

The Rule is published in Chapter 5 of the Bulletin.

April 12, 2001.



### **1.1.6 Rule 44-801 Implementing NI 44-101**

#### **NOTICE OF MINISTER OF FINANCE APPROVAL OF RULE 44-801 IMPLEMENTING NATIONAL INSTRUMENT 44-101 SHORT FORM PROSPECTUS DISTRIBUTIONS**

On April 6, 2001, the Minister of Finance approved Rule 44-801 Implementing National Instrument 44-101 Short Form Prospectus Distributions (the "Rule"). Materials relating to the Rule were published in the Bulletin on February 9, 2001. The Rule will come into force on April 21, 2001.

The final Rule is published in chapter 5 of this Bulletin.

**This Page Intentionally left blank**

## Chapter 2

# Decisions, Orders and Rulings

## 2.1 Decisions

### 2.1.1 Retirement Residences Real Estate Investment Trust et al. - MRRS Decision

#### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - issuer is a connected, but not a related issuer, in respect of certain registrants underwriting a proposed distribution of trust units - underwriters exempt from the independent underwriter requirement in the legislation provided that the issuer not in financial difficulty or a related issuer at the time of the offering.

#### Applicable Ontario Regulations

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., s. 219, 224 and 233.

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

AND

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

AND

IN THE MATTER OF  
RETIREMENT RESIDENCES REAL ESTATE  
INVESTMENT TRUST

AND

IN THE MATTER OF  
CIBC WORLD MARKETS INC.  
HSBC SECURITIES (CANADA) INC.  
TD SECURITIES INC.  
RBC DOMINION SECURITIES INC.

#### MRRS DECISION DOCUMENT

**WHEREAS** the securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, British Columbia, Alberta, Québec and Newfoundland (the "Jurisdictions") has received an application from CIBC World Markets Inc. ("CIBCWM"), HSBC Securities (Canada) Inc. ("HSBC"), TD Securities Inc. ("TDSI"), and RBC Dominion Securities Inc. ("RBCDS"), (collectively, the "Filers") for a

decision, pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the Filers are exempt from the requirements (the "Independent Underwriter Requirement") contained in the Legislation which restricts a registrant in acting as an underwriter in connection with a distribution of securities of an issuer made by means of a prospectus where the issuer is a connected issuer (or the equivalent) of the registrants, shall not apply to the Filers in respect of the proposed initial public offering (the "Offering") of Units (the "Units") of Retirement Residences Real Estate Investment Trust (the "REIT") pursuant to a prospectus;

**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 Underwriters have represented to the Decision Makers that:

1. Each of the Filers is registered as a dealer under the Legislation of the Jurisdictions.
2. The REIT was created by declaration of trust under the laws of the Province of Ontario on December 28, 2000. The REIT will not carry on operations until the closing of the Offering which is expected to be on or about March 31, 2001.
3. The REIT's head office is located in Toronto, Ontario. An application will be filed with The Toronto Stock Exchange for the listing of the Units on that exchange.
4. The REIT currently has no material assets or liabilities. Upon the closing of the Offering, the REIT will own a number of retirement homes in Canada and the United States.
5. The REIT has never been a "reporting issuer" under to the Legislation, however, it is expected that the REIT will become a reporting issuer (of the equivalent) in the Jurisdictions prior to the closing of the Offering through the filing of a final prospectus in each of the provinces and territories in Canada.
6. The net proceeds of the Offering to be received by the REIT after deduction of the Underwriters' fee and the estimated expenses of the Offering payable by the Company will be used to pay a portion of the purchase price for the retirement homes and the retirement home business to be acquired by the REIT from Central Park Lodges Limited and/or its subsidiaries ("CPL").
7. The REIT is expected to enter into an underwriting agreement with the Filers and certain other underwriters (the "Independent Underwriters") with respect to the Offering. The proportionate share of the Offering

underwritten by each of the underwriters is expected to be as follows:

<u>Underwriter</u>	<u>Proportionate Share</u>
1. CIBCWM	25%
2. HSBC	23%
3. Merrill Lynch Canada Inc.	14%
4. RBCDS	14%
5. TDSI	14%
6. National Bank Financial Inc.	7%
7. Raymond James Ltd.	3%

8. The REIT filed a preliminary prospectus dated February 12, 2001 in each province and territory of Canada, and received a preliminary MRRS decision document therefore.
9. The preliminary prospectus contains and the final prospectus will contain, a certificate signed by each of the underwriters including the Filers.
10. On the closing of the Offering the REIT will assume mortgages on the retirement homes acquired by the REIT totalling about \$59.7 million and owing to Canadian Imperial Bank of Commerce, HSBC Bank Canada, The Toronto-Dominion Bank and the Royal Bank of Canada, or wholly-owned subsidiaries thereof, (the "Banks") in the respective amounts of about \$46.7 million, \$2.8 million, \$6.8 million and \$3.4 million. It is not intended that the proceeds of the Offering be used to repay any amounts owing under these mortgages. However, it is expected that proceeds of the Offering will be used to repay all or part of credit facilities owing by CPL to the Banks totalling about \$33.3 million as at January 31, 2001, which consisted of about \$8.8 million, \$10.5 million and \$14.0 million owing to, respectively, HSBC Bank Canada, The Toronto-Dominion Bank and the Royal Bank of Canada. In addition, Canadian Imperial Bank of Commerce, either on its own or as part of a group (which may include some or all of the other Banks) intends to directly or indirectly provide a revolving credit facility to the REIT to finance its acquisitions and for other purposes described in the preliminary prospectus. Each of the Filers is a direct or indirect subsidiary of one of the Banks.
11. CPL took the initiative in organizing the business of the REIT and as such may be considered to be a "promoter" of the REIT as that term is used in the Legislation. Each of CPL and the REIT is in good financial condition and is not under any immediate financial pressure to proceed with the Offering.
12. In light of the financing to be provided by the Banks to the REIT, the REIT may be considered a connected issuer (or the equivalent) under the Legislation in respect of the Filers.
13. The underwriters will not comply with the Independent Underwriter Requirement based on the proposed composition of the underwriting syndicate, since the

- portion underwritten by the Filers would exceed 50% of the amount of the Offering.
14. The REIT is not a related issuer (or the equivalent) of any underwriter and the REIT is not a "specified party" as defined in proposed Multi-jurisdictional Instrument 33-105 *Underwriting Conflicts* (the "Proposed Instrument").
15. The distribution will be made under a prospectus which contains the information required in Appendix C to the Proposed Instrument.
16. The prospectus will identify the Independent Underwriters and disclose the role of the Independent Underwriters in the structuring and pricing of the Offering and in the due diligence activities performed by the underwriters in connection with the Offering.
17. The Banks did not participate in the decision to make the Offering or in the determination of the terms of the distribution or the use of the proceeds.
18. The Filers will not benefit in any manner from the Offering other than by the payment of their fee in connection with the Offering.

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

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

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the Independent Underwriter Requirement shall not apply to the Filers in connection with the Offering provided the Issuer is not a related issuer, as defined in the Proposed Instrument, to the Filers at the time of the Offering and is not a specified party, as defined in the Proposed Instrument, at the time of the Offering.

March 30, 2001.

"J.A. Geller"

" R. Stephen Paddon"

## 2.1.2 Oxus Resources Corporation - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptions Relief Applications - issuer exempted from issuer bid provisions where indirect issuer bid completed in the course of material reorganization where shareholders received securities economically equivalent to existing ordinary shares - new ordinary shares will have rights and benefits equal to or greater than existing ordinary shares - no adverse economic impact or any prejudice to public shareholder - certain trades in connection with issuer bid exempt from prospectus and registration requirements - first trades in securities acquired pursuant to issuer bid being a distribution unless executed through facilities of the Alternative Investment Market of the London Stock Exchange.

### Applicable Ontario Statutory Provisions

Securities Act R.S.O. 1990, c.S.5, as am., ss. 35(1)17, 72(1)K, 74(1), 89(1), 104(2).

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

**AND**

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

**AND**

**IN THE MATTER OF  
OXUS RESOURCES CORPORATION**

**MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta and Ontario (the "Jurisdictions") has received an application from Oxus Resources Corporation ("Oxus") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that:

- (i) the requirements contained in the Legislation relating to delivery of an offer and issuer bid circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up and payment for securities tendered to an issuer bid, disclosure, restrictions upon purchases of securities, financing, identical consideration and collateral benefits (the "Issuer Bid Requirements") not apply to an offer (the "Offer") to acquire all the outstanding ordinary shares and warrants of Oxus,
- (ii) the registration and prospectus requirements contained in the Legislation not apply in respect of certain trades in securities of Oxus Mining plc ("Oxus UK"), a wholly-owned subsidiary of Oxus, in connection with a

reorganization transaction involving Oxus (the "Reorganization") pursuant to which, among other things, Oxus UK will make the Offer, and

- (iii) the prospectus requirements contained in the Legislation not apply in respect of the first trades in securities of Oxus UK acquired by residents of the Jurisdictions in connection with the Offer over the Alternative Investment Market of the London Stock Exchange (the "AIM");

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

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

1. Oxus is a corporation existing under the laws of the British Virgin Islands with its registered and principal office located in the British Virgin Islands.
2. The authorized capital of Oxus consists of 100,000,000 ordinary shares ("Ordinary Shares"), of which there are currently 51,807,805 Ordinary Shares outstanding. In addition, there are currently outstanding warrants ("Warrants") to acquire an aggregate of 15,511,151 Ordinary Shares and options to acquire an aggregate of 5,700,000 Ordinary Shares.
3. Oxus is not a reporting issuer under the Legislation of any of the Jurisdictions. None of the outstanding securities of Oxus are listed or quoted on any stock exchange or quotation system in Canada or elsewhere.
4. There are 235 registered holders of Ordinary Shares. Twelve registered holders of Ordinary Shares holding an aggregate of 1,855,975 Ordinary Shares (representing approximately 3.58 per cent of the outstanding Ordinary Shares) are resident in the Jurisdictions, of which approximately ten registered holders (holding approximately 3.29% of the outstanding Ordinary Shares) are resident in Ontario, one registered holder (holding approximately 0.21% of the outstanding Ordinary Shares) is resident in British Columbia, and one registered holder (holding approximately 0.08% of the outstanding Ordinary Shares) is resident in Alberta. In addition, two holders of record with addresses located in Ontario hold Warrants to acquire an aggregate of 694,445 Ordinary Shares.
5. Oxus UK is a corporation existing under the laws of the United Kingdom with its registered and principal office located in England. Oxus UK was incorporated for the sole purpose of completing the Reorganization and carries on no other business.
6. The authorized capital of Oxus UK consists of 10,000 ordinary shares ("New Ordinary Shares"), of which there are currently 1,000 New Ordinary Shares outstanding. All of the outstanding New Ordinary Shares are currently owned by Oxus. In connection with the Reorganization, it is anticipated that the

- authorized capital of Oxus UK will be increased to 200,000,000 New Ordinary Shares.
7. Oxus UK is not a reporting issuer under the Legislation of any of the Jurisdictions. None of the outstanding securities of Oxus UK are listed or quoted on any stock exchange or quotation system in Canada or elsewhere. However, as described in paragraph 8 below, it is proposed that the New Ordinary Shares be quoted on the AIM following the completion of the Reorganization.
  8. Oxus is proposing to complete an equity and debt financing in the United Kingdom (the "UK Financing") and to concurrently become a "public" company with securities quoted on the AIM. In connection with the UK Financing and the quotation of securities on the AIM, it is considered desirable that Oxus effect the Reorganization.
  9. The principal purpose of the Reorganization is to allow security holders of Oxus to become security holders of a corporation having its corporate domicile located in the United Kingdom rather than in the British Virgin Islands. The Reorganization will result in the security holders of Oxus becoming security holders of Oxus UK and Oxus becoming a wholly-owned subsidiary of Oxus UK. Upon the completion of the Reorganization, it is intended that the UK Financing will be completed by Oxus UK and the New Ordinary Shares will become quoted on the AIM.
  10. At an extraordinary general meeting of the shareholders held on December 20, 2000 at which shareholders of Oxus representing 81% of the outstanding Ordinary Shares were present, an amendment to the articles of association of Oxus to provide for a right of redemption in respect of Ordinary Shares was unanimously approved. Such right of redemption will allow the Ordinary Shares outstanding upon the completion of the Offer to be redeemed by Oxus, without the consent of the holder thereof, for the fair market value thereof, provided that not less than 99.9 per cent of the Ordinary Shares, or such lesser percentage of the Ordinary Shares as the directors may resolve, have been exchanged or agreed to be exchanged for New Ordinary Shares under the Offer. For the purposes of the foregoing, the "fair market value" of the Ordinary Shares will be not less than the price at which New Ordinary Shares are offered to the public pursuant to the UK Financing.
  11. As part of the Reorganization, Oxus UK will make the Offer to acquire all of the outstanding Ordinary Shares and Warrants of Oxus in exchange for (i) in respect of Ordinary Shares, that number of New Ordinary Shares as are required to be issued to each holder of Ordinary Shares such that the holder's current percentage interest in Oxus will be maintained in Oxus UK, prior to taking into account the UK Financing, and (ii) in respect of the Warrants, warrants ("New Warrants") to purchase, on substantially the same terms as those in respect of the Warrants, that number of New Ordinary Shares as would have been issued to each holder of Warrants pursuant to the Offer if the Ordinary Shares issuable upon the exercise of Warrants were outstanding at the time of, and were acquired by Oxus UK pursuant to, the Offer.
  12. The Offer is conditional upon, among other things, Oxus UK entering into a placing agreement with the underwriters for the UK Financing and the determination by the directors of Oxus UK, in consultation with such underwriters, that admission of the New Ordinary Shares on the AIM will occur. It is the intention of the parties to complete the Offer sufficiently close in time to the completion of the UK Financing such that the former will not proceed in the absence of the latter.
  13. The New Ordinary Shares will provide holders of Ordinary Shares with a security of a U.K. company that is the economic equivalent of the Ordinary Shares. The rights attaching to the New Ordinary Shares will be the equivalent of, or superior to, the rights attaching to the Ordinary Shares. Immediately following the Reorganization, and prior to taking into account the UK Financing, neither the nature and extent of the equity participation of the holders of New Ordinary Shares in Oxus UK nor the value of their equity participation will be less than the value of their interest in Oxus prior to the Reorganization.
  14. In connection with the Offer, an offer document and a form of acceptance (collectively, the "Offer Document") containing full, true and plain disclosure about the securities of Oxus UK will be mailed to Oxus security holders. All material relating to the Offer and any amendment thereto, including the Offer Document, that is sent generally to other holders of Ordinary Shares or Warrants by or on behalf of Oxus or Oxus UK will concurrently be sent to all Oxus securityholders resident in the Jurisdiction and filed with each of the Decision Makers.
  15. The Offer will be made in compliance with the applicable securities laws of the British Virgin Islands. Oxus cannot rely upon the exemptions from the Issuer Bid Requirements contained in the Legislation because the British Virgin Islands is not recognized for the purposes of the Legislation by the Decision Makers.
- AND WHEREAS** pursuant to the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively the "Decision");
- AND WHEREAS** each of the Decision Makers is satisfied that the test contained in the Legislation that provides that Decision Maker with the jurisdiction to make the Decision has been met;
- THE DECISION** of the Decision Makers under the Legislation is that:
1. the Issuer Bid Requirements shall not apply in respect of the Offer, provided, however, that all material related to the Issuer Bid and any amendment thereto that is sent generally to other holders of Ordinary Shares or Warrants by or on behalf of Oxus are concurrently sent to security holders whose last address, as shown on the books of Oxus, is in the Jurisdictions and such

material is filed with each of the Decision Makers in the Jurisdictions; and

2. the registration and prospectus requirements contained in the Legislation shall not apply in respect of trades by Oxus UK in New Ordinary Shares and New Warrants to existing security holders of Oxus pursuant to the Offer, provided, however, that (a) the first trade in New Ordinary Shares and New Warrants acquired pursuant to the Reorganization and (b) the first trade in New Ordinary Shares acquired upon the exercise of the New Warrants shall be a distribution unless such first trades are executed through the facilities of the AIM in accordance with the rules of such market.

April 4, 2001.

"J.A. Geller"

"K.D. Adams"

### **2.1.3 PrimeWest Energy Trust et al. - MRRS Decision**

#### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Relief from the registration and prospectus requirements in respect of trades made in connection with an indirect take over bid where statutory exemptions are not available due to the use of exchangeable shares for tax reasons. Relief also granted from the continuous disclosure requirements, the proxy solicitation requirements, the insider reporting requirements, and take over bid form requirements, subject to certain conditions, because the disclosure required to be provided regarding the issuer of the exchangeable shares would not be meaningful to shareholders.

#### **Applicable Ontario Statutes**

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 25, 53, 72(5), 74(1)75, 77, 78, 79, 80(b)(iii), 81, 107, 108, 109 and 121(2).

#### **Applicable Ontario Rules**

Rule 45-501 Exempt Distributions, (1998) 21 OSCB 6548.

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

**AND**

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

**AND**

**IN THE MATTER OF  
PRIMEWEST ENERGY TRUST,  
PRIMEWEST ENERGY INC.  
AND CYPRESS ENERGY INC.**

#### **MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador (the "Jurisdictions") has received an application from PrimeWest Energy Trust ("PWT"), PrimeWest Energy Inc. ("PWE") and a wholly owned subsidiary of PWE (the "Offeror", and collectively, the "Filer"), for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation:

1. Except in Quebec, to be registered to trade in a security (the ARegistration Requirement@), to file a preliminary prospectus and a prospectus and to obtain receipts therefor (the "Prospectus Requirement") shall not apply

to certain trades in securities to be made in connection with the offer (the "Offer") to purchase all of the issued and outstanding Class A shares (the "Cypress A Shares") and Class B shares (the "Cypress B Shares") (collectively, the "Cypress Shares") of Cypress Energy Inc. ("Cypress"), including any trades in connection with the use of applicable statutory compulsory acquisition provisions following the Offer under which the Offeror acquires Cypress Shares (a "Subsequent Acquisition Transaction").

2. With respect to the Offeror in those Jurisdictions in which it becomes a reporting issuer or the equivalent under the Legislation, to issue a press release and file a report upon the occurrence of a material change, file interim financial statements and audited financial statements and deliver such statements to the security holders of the Offeror, file an information circular or make an annual filing in lieu of filing an information circular, where applicable, file an annual information form and provide management's discussion and analysis of financial condition and results of operations (the "Continuous Disclosure Requirements"), shall not apply to the Offeror.
3. In those Jurisdictions in which the Offeror becomes a reporting issuer or the equivalent under the Legislation, that the insider reporting requirement shall not apply to an insider of the Offeror who is not also an insider of PWT.
4. Except in Quebec, to comply with the take-over bid circular form requirements of the Legislation, insofar as such form requirements require prospectus-level disclosure with respect to the Offeror (the "Take Over Bid Circular Form Requirements") in the take-over bid circular to be mailed to the holders of Cypress Shares (the "Take-Over Bid Circular"), shall not apply to the Offeror.

**AN WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Executive Director of the British Columbia Securities Commission is the principal regulator for this application;

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

1. Cypress is incorporated under the laws of Alberta, is a reporting issuer under the Legislation and is not in default of the Legislation.
2. The authorized capital of Cypress consists of an unlimited number of the Cypress A Shares and Cypress B Shares of which there were 40,801,453 Cypress A Shares and 558,000 Cypress B Shares issued and outstanding as of February 16, 2001.
3. The Cypress A Shares are listed on The Toronto Stock Exchange Inc. (the "TSE") and the Cypress B Shares are listed on the Canadian Venture Exchange Inc. ("CDNX").
4. PWT is an open-end investment trust established under the laws of Alberta under a Declaration of Trust dated

August 2, 1996, is a reporting issuer or the equivalent under the Legislation and is not in default of the requirements of the Legislation; The Trust Company of Bank of Montreal is the trustee of PWT.

5. PWT's most substantial asset is a royalty in certain petroleum and natural gas properties owned by PWE and certain subsidiaries of PWE that entitles PWT to receive 99% of the net cash flow generated by those properties, after certain costs and deductions.
6. PWT is authorized to issue an unlimited number of transferable, redeemable trust units (the "PrimeWest Units"), of which there were 51,626,297 PrimeWest Units outstanding as at February 12, 2001.
7. The PrimeWest Units are listed on the TSE.
8. The Offeror is incorporated under the laws of Alberta and is a wholly owned subsidiary of PWE; PWE is a wholly owned subsidiary of PrimeWest Management Inc.
9. The authorized capital of the Offeror consists of an unlimited number of common shares and prior to the closing of the Offer, will consist of an unlimited number of Exchangeable Shares; the principal rights, privileges, restrictions and conditions attached to the Exchangeable Shares are described in the Take-Over Bid Circular mailed to the holders of the Cypress Shares.
10. PWT and Cypress have entered into an agreement (the "Pre-Offer Agreement") under which PWT agreed to make the Offer and Cypress agreed to support the Offer;
11. Under the Offer, each holder of Cypress Shares may elect to receive any one of (a) \$1.29 in cash and 1.3164 PrimeWest Units, (b) a cash maximized combination of cash and PrimeWest Units, (c) 1.45 PrimeWest Units, or (d) 1.45 Exchangeable Shares for each Cypress Share.
12. A maximum of 5,440,000 Exchangeable Shares may be issued under the Offer.
13. Each Exchangeable Share entitles the holder to receive one PrimeWest Unit and an additional number of PrimeWest Units calculated based on the amount of any intervening distribution in respect of the PrimeWest Units.
14. Upon completion of the Offer, PWT will issue and deposit with the trustee, appointed under the Voting and Exchange Trust Agreement, a special voting unit which will effectively provide the holders of Exchangeable Shares with voting rights equivalent to those attached to the PrimeWest Units.
15. Upon completion of the Offer and any Subsequent Acquisition Transaction, Cypress will be wholly owned by the Offeror, and all former shareholders of Cypress will hold either PrimeWest Units or Exchangeable Shares.



16. The Offer is conditional upon, among other things:
- (a) there being validly deposited under the Offer and not withdrawn prior to the expiry of the Offer that number of Cypress Shares which represents not less than 66 2/3% of the number of Cypress Shares outstanding (on a fully diluted basis) as of the time the Offer expires; and
  - (b) all requisite regulatory approvals having been obtained;
17. The business and operations of the Offeror are not material in relation to the business and operations of PWT, on a consolidated basis and the Exchangeable Shares are in substance a proxy for the PrimeWest Units that is designed to provide an opportunity for the holders of Cypress Shares to defer the tax consequences of disposing of their Cypress Shares under the Offer.
18. The Offeror has agreed under the Pre-Offer Agreement to mail the Take Over Bid Circular to each holder of Cypress Shares and each holder of options to purchase Cypress Shares; the Take-Over Bid Circular will contain or incorporate by reference prospectus-level disclosure concerning the business and operations of PWT and a detailed description of the rights, privileges, obligations and restrictions respecting the Exchangeable Shares and the PrimeWest Units.
19. The Offeror will become a reporting issuer under the Legislation in British Columbia, Saskatchewan, Quebec, Nova Scotia and Newfoundland upon the filing of the Take-Over Bid Circular, and in British Columbia, the take up and payment of the Cypress Shares, and will be subject to the Continuous Disclosure Requirements in such Jurisdictions, and insiders of the Offeror will be subject to the Insider Reporting Requirements in such Jurisdictions.
20. Pending completion of the Offer:
- (a) the Offeror will have no material assets or liabilities, and all information material to the business of PWT (and relevant to persons considering an investment in PrimeWest Units or Exchangeable Shares) will be contained in the Take-Over Bid Circular and in continuous disclosure filings made by PWT under the Legislation; and
  - (b) PWT will be subject to Continuous Disclosure Requirements under the Legislation and the requirements of the TSE in respect of making public disclosure of material information on a timely basis.
21. Following the completion of the Offer;
- (a) the Offeror's principal assets will consist primarily of the Cypress Shares that are purchased by it under the Offer; by virtue of the attributes of the Exchangeable Shares and the rights established for the benefit of holders of Exchangeable Shares under the Support Agreement and the Voting and Exchange Trust Agreement, an investment in Exchangeable Shares will be, in effect (other than the fact that the holders of Exchangeable Shares will have no voting rights except those required by law), an investment in PrimeWest Units; and
  - (b) the Offeror will have no material liabilities and no material assets other than the assets constituted by the Cypress Shares purchased by it under the Offer.
22. Holders of Exchangeable Shares would not derive any material benefit from the Offeror being subject to the Continuous Disclosure Requirements.
23. PWT will agree in the Support Agreement to provide to holders of Exchangeable Shares the same documents and information (including, but not limited to, its annual report and all proxy solicitation materials) that it will provide to holders of PrimeWest Units under the Legislation, and to comply with the requirements of the Legislation and the TSE in respect of making public disclosure of material information on a timely basis.
24. The steps involved in the completion of the Offer, any Subsequent Acquisition Transaction, and the creation and exercise of the exchange rights attaching to the Exchangeable Shares, the redemption and retraction of Exchangeable Shares in connection therewith and on the liquidation, dissolution or winding-up of the Offeror or PWT involve or may involve a number of trades and distributions of securities (collectively, the "Trades").
25. The filing of the Take-Over Bid Circular by the Offeror under the Legislation in British Columbia, Saskatchewan, Quebec, Nova Scotia and Newfoundland shall constitute the filing of a securities exchange take-over bid circular under the Legislation for purposes of the definition of reporting issuer under such Legislation.
26. The Exchangeable Shares will be the economic equivalent of PrimeWest Units and will have the attributes more particularly described in the Take-Over Bid Circular.
27. Holders of Cypress Shares will make one investment decision when deciding whether to tender their Cypress Shares to the Offer and when voting to approve any Subsequent Acquisition Transaction, and the subsequent trades of Exchangeable Shares will arise directly out of the collection of rights acquired by holders of Cypress Shares who receive Exchangeable Shares in connection with the Offer.
28. If not for income tax considerations, holders of Cypress Shares could have received PrimeWest Units directly without receiving Exchangeable Shares; the Exchangeable Shares will be issued to provide holders of Cypress Shares on a tax-deferred basis to preserve the tax attributes applicable to holders of Cypress Shares.

29. Holders of Exchangeable Shares in essence (other than the fact that the holders of Exchangeable Shares will have no voting rights except those required by law) have a participatory interest in PWT rather than in the Offeror and, therefore, certain disclosure required to be provided as a reporting issuer or the equivalent under the Legislation would not be meaningful to the holders of Exchangeable Shares.
30. The Take-Over Bid Circular will disclose that, in connection with the Offer, the Filer has applied for relief from applicable registration and prospectus requirements, the Continuous Disclosure Requirements and the Insider Reporting Requirements and will disclose the limitations imposed on any resale of securities acquired under this Decision; the Take-Over Bid Circular will also specify the disclosure requirements from which the Offeror has applied to be exempted and will identify the disclosure that will be made in substitution therefor if such exemptions are granted.
31. PWT and PWE will be required to purchase Exchangeable Shares from other holders of such shares pursuant to the exercise of certain exchange rights.

**AND WHEREAS** under the System, this MRRS Decision Document evidences the decision 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:

1. Except in Quebec, the Registration and Prospectus Requirements shall not apply to the Trades.
2. Except in Quebec, the first trade in Exchangeable Shares or PrimeWest Units, as the case may be, in a Jurisdiction shall be a distribution, or primary distribution to the public, under the Legislation of such Jurisdiction (the "Applicable Legislation") unless:
  - (a) at the time of the first trade, the issuer is a reporting issuer or equivalent under the Applicable Legislation, or, in the case of the Offeror, if it is not a reporting issuer or the equivalent in a Jurisdiction, PWT, has complied with the requirements under paragraph 3 below in that Jurisdiction;
  - (b) if the seller is an insider or officer of the issuer, the seller has no reasonable grounds to believe that the issuer is in default of any requirement of the Applicable Legislation;
  - (c) no unusual effort is made to prepare the market or create a demand for the Exchangeable Shares or the PrimeWest Units;

- (d) no extraordinary commission or other consideration is paid in respect of the trade; and
- (e) the trade is not a distribution from the holdings of a person or company, or combination of persons and companies, acting in concert or by virtue of an agreement, arrangement, commitment or understanding, which holds in total a sufficient number of any voting securities of PWT to affect materially the control of PWT, and if a person or company or combination of persons and companies holds more than 20% of the voting rights attached to all outstanding voting securities of PWT, the person or company or combination of persons and companies is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of PWT (and for the purposes of this MRRS Decision Document, Exchangeable Shares shall be counted as voting shares of PWT).

3. In the Jurisdictions where the Offeror becomes a reporting issuer under the Legislation, the Continuous Disclosure Requirements shall not apply to the Offeror, provided that at the time that any such requirement would otherwise apply:

- (a) PWT is a reporting issuer under the Legislation of the Jurisdiction;
- (b) PWT shall concurrently send to all holders of Exchangeable Shares resident in the Jurisdictions all disclosure material furnished to holders of PrimeWest Units under the Continuous Disclosure Requirements, including, but not limited to, copies of its annual report and all proxy solicitation materials;
- (c) PWT shall comply with the requirements of the TSE (or such other principal stock exchange on which the PrimeWest Units are then listed) in respect of making public disclosure of material information on a timely basis and forthwith issue in the Jurisdictions and file with the Decision Maker any press release that discloses a material change in PWT's affairs;
- (d) the Offeror shall provide each recipient or proposed recipient of Exchangeable Shares resident in the Jurisdictions with a statement that, as a consequence of this Decision, the Offeror and its insiders will be exempt from certain disclosure requirements applicable to reporting issuers and insiders, and specifying those requirements the Offeror and its insiders have been exempted from and identifying the disclosure that will be made in substitution therefor;
- (e) the Offeror shall issue a press release and file a report with the Decision Makers upon the occurrence of a material change in respect of the affairs of the Offeror that are not material changes in the affairs of PWT;

- (f) PWE shall remain the direct or indirect beneficial owner of all of the issued and outstanding voting securities of the Offeror; and
  - (g) the Offeror does not issue any securities to the public other than the Exchangeable Shares;
4. In the Jurisdictions where the Offeror becomes a reporting issuer under the Legislation, the Insider Reporting Requirements shall not apply to any insider of the Offeror who is not also an insider of PWT.
5. Except in Quebec, the Take-Over Bid Circular Form Requirements contained in the Legislation shall not apply to the Offeror, provided that the Take-Over Bid Circular contains prospectus-level disclosure in respect of PWT and a complete description of the rights, privileges, obligations and restrictions in respect of the Exchangeable Shares.

March 27, 2001.

"Brenda Leong"

## 2.1.4 Photochannel Networks Inc. - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from registration and prospectus requirements in respect of distributions of securities by investors in connection with a private placement - relief from trades in securities of an issuer on exercise of various rights attached to securities - relief for first trade in exchange shares, subject to conditions, including a four-month hold period - relief from takeover bid requirements in respect of acquisitions of securities on exercise of various rights attached to the securities.

### Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as amended, ss. 25(1), 53(1), 74(1), 95 to 100 and 104(1)(c).

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

AND

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

AND

IN THE MATTER OF  
PHOTOCHANNEL NETWORKS INC.

### MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Newfoundland and Prince Edward Island (the "Jurisdictions") has received an application from PhotoChannel Networks Inc. ("PhotoChannel") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that:

1. the requirements contained in the Legislation to be registered to trade in a security and to file and obtain a receipt for a preliminary prospectus and a prospectus (the "Registration and Prospectus Requirements") do not apply to:
  - (a) the distribution of the Call Option (defined below) by the limited partners (the "Partners") of PhotoChannel.Com Limited Partnership (the "Partnership") to PhotoChannel;

- (b) the distribution of Exchanged Shares (defined below) as consideration or partial consideration for the acquisition of Units (defined below) of the Partnership on the exercise of the Call Option; or
- (c) the distribution of Units by the Partners to PhotoChannel on the exercise of the Call Option by PhotoChannel;

(collectively, the "Non-Exempt Trades");

2. the take-over bid requirements in the Legislation (collectively the "Take-Over Bid Requirements") shall not apply to the acquisition of Units by PhotoChannel on the exercise of the Call Option; and

3. the first trade in Exchanged Shares acquired by the Partners on the exercise of the Call Option will be deemed to be a distribution or, where applicable, a primary distribution to the public under the Legislation of the Jurisdiction where such first trade takes place (the "Applicable Legislation") unless:

- (a) PhotoChannel is a reporting issuer or the equivalent under the Applicable Legislation and was a reporting issuer or the equivalent under the Applicable Legislation at the time of the grant of the Call Option;

(b) either:

- (i) at the date of the distribution of the Call Option, PhotoChannel (i) complies with BC Instrument 45-506 *In the Matter of the System for Shorter Hold Periods with an Annual Information Form* ("BCI 45-506") and, if the trade occurs in Alberta, Alberta Rule 45-501 *System for Shorter Hold Period for Issuers Filing an AIF* ("Rule 45-501"), except for the condition requiring PhotoChannel to distribute a security of its own issue and, (ii) signs certificates as required under BCI 45-506 and, if the trade occurs in Alberta, Rule 45-501, including that PhotoChannel is a "qualifying issuer" as defined in BCI 45-506 and Rule 45-501 (if applicable), provided that such certificates need not state that the Call Option is a security of PhotoChannel's own issue; and a 4 month period has elapsed from the date of the grant of the Call Option by the Partners; or

- (ii) 12 month period has elapsed from the date of the grant of the Call Option by the Partners

- (c) if the seller of the securities is an insider or officer of PhotoChannel, the seller has no reasonable grounds to believe that PhotoChannel is in default of any requirement of the Applicable Legislation;

- (d) except in Québec, the first trade is not from the holdings of a person or company who holds a sufficient number of the voting rights attached to all outstanding voting securities of the issuer to affect materially the control of the issuer or each person or company in a combination of persons or companies, acting in concert by virtue of an agreement, arrangement, commitment or understanding, which holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and, if a person or company or combination of persons or companies holds more than 20% of the voting rights attached to all outstanding voting securities of the issuer, the person or company or combination of persons or companies is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer;

- (e) no unusual effort is made to prepare the market or create a demand for the Exchanged Shares; and

- (f) no extraordinary commission or other consideration is paid in respect of the trade;

(collectively, the "First Trade Conditions");

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

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

1. PhotoChannel is a corporation incorporated under the laws of British Columbia and is in the business of providing online photo print services;
2. the authorized capital of PhotoChannel consists of an unlimited number of common shares, of which 28,773,537 common shares were issued and outstanding as at June 6, 2000;
3. PhotoChannel is a "reporting issuer" within the meaning of the Legislation in British Columbia, Ontario, and Quebec and is not in default of any of the reporting requirements under such Legislation;
4. the common shares of PhotoChannel are listed on the Montreal Exchange (the "ME");
5. the Partnership is a limited partnership created on January 31, 2000 under the laws of British Columbia and was formed to carry on an online photo print service business at an Internet website and to develop, manufacture and distribute related customized USB Card Readers;
6. PhotoChannel Management Inc. (the "General Partner"), an indirect wholly-owned subsidiary of

- PhotoChannel incorporated on January 25, 2000 under the laws of British Columbia, is the general partner of the Partnership;
7. the General Partner will not engage in any business other than acting as a general partner of the Partnership and the Board of Directors of the General Partner consists of five members, three appointed by PhotoChannel and two independents;
  8. the Partnership is authorized to issue an unlimited number of limited partnership units ("Units"), of which one unit is issued and outstanding;
  9. each Unit represents an equal interest in the Partnership, and is transferable only with the approval of the General Partner and in accordance with the Legislation;
  10. the Partnership has been registered as a tax shelter investment under the Canada Income Tax Act and it is expected that Partners will be able to realize certain income tax deductions as a result of operating losses expected to be incurred by the Partnership during the development of the Partnership's e-commerce business;
  11. the Partnership is not, and has no current intention to become, a reporting issuer or the equivalent under the Legislation in any of the Jurisdictions;
  12. the Partnership intends to offer a maximum of 2,500,000 and a minimum of 750,000 Units (the "Offering") at a price of \$10.00 per Unit under exemptions from the Registration and Prospectus Requirements in each of the Jurisdictions, with the proceeds of the Offering to be used to develop and operate the Partnership's e-commerce business;
  13. all subscribers for Units will purchase under the registration and prospectus exemptions contained in the Legislation applicable to purchases of securities with an aggregate acquisition cost of not less than \$25,000 in British Columbia and \$97,000 (or \$150,000) in the other Jurisdictions and, prior to the purchase of Units, will receive an offering memorandum containing prospectus-level disclosure regarding the Partnership and its business;
  14. prior to the distribution of any Units in a Jurisdiction, PhotoChannel will become a reporting issuer, or the equivalent, under the Legislation of such Jurisdiction;
  15. in connection with each subscription agreement for Units and as confirmed under the partnership agreement establishing the Partnership, each Partner will grant to PhotoChannel an option (the "Call Option") to purchase all, but not less than all, of the Units;
  16. PhotoChannel will have the right, but not the obligation, to exercise the Call Option at any time during the period commencing on February 28, 2001 and ending April 30, 2001 (the "First Call Period") or during the period commencing on January 1, 2002 and ending February 28, 2002 (the "Second Call Period"); in the event PhotoChannel undergoes a "change of control" prior to the commencement of the First Call Period or after the expiry of the First Call Period but prior to the commencement of the Second Call Period, PhotoChannel may exercise the Call Option during the period commencing on the occurrence of such change of control and ending 45 days thereafter (an "Accelerated Call Period");
  17. the purchase price payable for the Units on the exercise of the Call Option by PhotoChannel will be as follows:
    - (a) if the Call Option is exercised during the First Call Period, that number of freely-tradable common shares of PhotoChannel (the "Exchanged Shares") determined by dividing \$10.00 by the "current market price" of PhotoChannel's common shares, with "current market price" being calculated as 95% of the weighted average trading price of PhotoChannel's common shares on the ME for the 20 consecutive trading days ending five trading days before the date fixed for completion under the Call Option, subject to certain deemed maximum and minimum values;
    - (b) if the Call Option is exercised during the Second Call Period, the Exchanged Shares as calculated in clause 17(a) together with a call payment per Unit of the greater of (i) \$20.00 per Unit and (ii) eight times the earnings before interest, taxes, depreciation and amortization for the Partnership for the 12 month period ending December 31, 2001 divided by the number of Units then outstanding, less \$10.00; and
    - (c) if the Call Option is exercised during an Accelerated Call Period that occurs (i) prior to the commencement of the First Call Period, \$12.50 per Unit, or (ii) after the expiry of the First Call Period but before the commencement of the Second Call Period, \$20.00 per Unit;
  18. until the Call Options are exercised or expire, PhotoChannel will send each Partner all disclosure material furnished to holders of PhotoChannel common shares, including but not limited to, copies of its annual report, interim financial statements and all proxy solicitation materials;
  19. the registration and prospectus exemptions contained in the Legislation relating to trades in securities issued by "private issuers" or "private companies" cannot be relied on in relation to the grant of the Call Options by the Partners to PhotoChannel because in order to rely on such exemptions PhotoChannel would be required to undertake a significant review of the business and affairs of each subscriber for Units sufficient to satisfy itself that such subscriber in fact meets the definition of "private issuer" or "private company" under the Legislation;
  20. the registration and prospectus exemptions contained in the Legislation relating to the issuance of securities on the exercise of a right to purchase or otherwise

acquire securities in accordance with the terms and conditions of a previously issued security of the issuer are not available for the issuance of the Exchanged Shares to the Partners on the exercise of the Call Option because none of the Units or the Call Option are securities of PhotoChannel's own issue;

21. if the Partnership is not a reporting issuer or the equivalent under the Legislation and has not been a reporting issuer or the equivalent for the 12 months preceding the trade of the Units, the trade by the Partners of the Units to PhotoChannel on the exercise of the Call Option will be a distribution under the Legislation; and
22. in the event that PhotoChannel exercises the Call Option and offers to acquire at least 20% of the outstanding Units or where the number of Units to be acquired by PhotoChannel on the exercise of the Call Option when combined with the number of Units then held by PhotoChannel would represent at least 20% of the outstanding Units, such exercise of the Call Option would constitute a take-over bid for the Units for the purposes of the Legislation requiring compliance with the Take-Over Bid Requirements;

**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:

1. the Registration and Prospectus Requirements do not apply to the Non-Exempt Trades provided that, prior to the distribution of any Units in a Jurisdiction, PhotoChannel is a reporting issuer, or the equivalent, under the Legislation of such Jurisdiction;
2. the Take-Over Bid Requirements do not apply to the acquisition of Units by PhotoChannel on the exercise of the Call Option; and
3. the first trade in Exchanged Shares acquired by the Partners on the exercise of the Call Option will be deemed to be a distribution or, where applicable, a primary distribution to the public under the Applicable Legislation, unless the First Trade Conditions are satisfied;

**PROVIDED THAT** until the Call Options are exercised or expire, PhotoChannel will send to each Partner all disclosure material furnished to holders of PhotoChannel common shares, including but not limited to, copies of its annual report, interim financial statements and all proxy solicitation materials.

January 24, 2001.

"Brenda Leong"

## 2.1.5 Algorithmics Incorporated et al. - MRRS Decision

### Headnote

MRRS - Issuer is a connected issuer, but not a related issuer, in respect of registrants that are underwriters in proposed distribution of units by the issuer - Underwriters exempt from the independent underwriter requirement in the legislation provided that issuer not in financial difficulty.

### Applicable Ontario Regulations

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

### Applicable Ontario Rules

Proposed Multi-Jurisdictional Instrument 33-105 *Underwriting Conflicts* (published for comment February 6, 1998).

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

AND

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

AND

**IN THE MATTER OF  
CIBC WORLD MARKETS INC.,  
RBC DOMINION SECURITIES INC. AND  
ALGORITHMICS INCORPORATED**

**MRRS DECISION DOCUMENT**

**WHEREAS** the securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Newfoundland, Ontario and Québec (the "Jurisdictions") has received an application from CIBC World Markets Inc. and RBC Dominion Securities Inc. (the "Filers"), for a decision under the securities legislation of the Jurisdictions (the "Legislation"), that the requirement (the "Independent Underwriter Requirement") contained in the Legislation which restricts a registrant from acting as an underwriter in connection with a distribution of securities of an issuer made by means of a prospectus, where the issuer is a connected issuer (or the equivalent) of the registrant unless a portion of the distribution at least equal to that portion underwritten by non-independent underwriters is underwritten by an independent underwriter, shall not apply to the Filers in connection with a proposed initial public (and secondary) offering (the "IPO") of common shares ("Common Shares") of Algorithmics Incorporated ("Algorithmics") by means of a long form prospectus (the "Prospectus");

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

**AND WHEREAS** the Filers have represented to the Decision Makers that:

1. Algorithmics is a private company incorporated under the laws of the Province of Ontario, and is not presently a reporting issuer in any province or territory of Canada or any other jurisdiction.
2. Algorithmics and certain selling securityholders are proposing to offer common shares of Algorithmics in Canada by way of a long form prospectus in accordance with applicable securities laws, and in the United States, under available exemptions from the prospectus requirements of that jurisdiction.
3. It is anticipated that the common shares will be offered by an underwriting syndicate comprised of the Filers and other dealers including J.P. Morgan Securities Canada Inc. ("JPM") and TD Securities Inc. ("TDSI") (collectively, the "Underwriters").
4. The Underwriters and Algorithmics will enter into an underwriting agreement in connection with the IPO to conduct the IPO on a firm commitment basis.
5. Forty percent (40%) of the IPO will be underwritten by CIBC World Markets Inc., thirty percent (30%) by RBC Dominion Securities Inc., twenty percent (20%) by JPM, and ten percent (10%) by TDSI.
6. In September 2000, CIBC Capital Partners, a division of the Canadian Imperial Bank of Commerce ("CIBC") and Royal Bank of Canada ("RBC") completed a transaction with Algorithmics whereby these two entities each acquired US\$15,000,000 in principal amount of a debt security known as "Series 1 Convertible Notes", convertible into Series B Shares of Algorithmics which are, in turn, convertible into common shares of Algorithmics, and in some cases, convertible directly into common shares. In addition, RBC has provided a credit facility to Algorithmics and each of CIBC, RBC or their respective affiliates (which include the Filers) are customers of Algorithmics.
7. Each Filer is a wholly-owned subsidiary of either CIBC or RBC. The head office of each Filer is located in Ontario.
8. Each Filer is a registrant in good standing under the securities legislation of each province and territory of Canada.
9. By virtue of their relationships with CIBC and RBC, and by virtue of the convertible debt of Algorithmics held by CIBC and RBC, Algorithmics may be considered a "connected issuer", or equivalent, of the Filers under the Legislation and proposed Multi-Jurisdictional Instrument 33-105 ("MI 33-105"), but not a "related issuer" or equivalent.

10. Algorithmics is not a "related issuer", or equivalent, or a "connected issuer", or equivalent, to any of the other Underwriters for the purposes of the Legislation or MI 33-105.
11. None of the selling securityholders is a "related issuer" or "connected issuer" to any of the Underwriters for purposes of the Legislation or MI 33-105.
12. The Underwriters will receive no benefit pursuant to the IPO, other than payment of their fees in connection therewith.
13. The determination to proceed with the IPO, including the determination of the terms of the IPO, will be made through negotiation between Algorithmics and the Underwriters, and neither CIBC nor RBC has had, or will have, any involvement in such decision or determination.
14. Algorithmics is in good financial condition, is not a "specified party" as defined in MI 33-105, and is not under any financial pressure to undertake the IPO.
15. All the Underwriters have signed or will sign the underwriter's certificate in the preliminary prospectus and will sign the underwriter's certificate in the final prospectus.
16. The preliminary prospectus and the prospectus will, to the extent applicable, contain the disclosure set forth in Appendix "C" to MI 33-105 and will describe the relationships between Algorithmics and the Filers.

**AND WHEREAS** under 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 under the Legislation is that, the Independent Underwriter Requirement shall not apply to the Filers in connection with the IPO provided Algorithmics is not a related issuer, as defined in MI 33-105, to the Filers at the time of the IPO and is not a specified party as defined in the MI-33-105 at the time of the IPO.

April 3, 2001.

"J. A. Geller"

"R. Stephen Paddon"

**2.1.6 Spectrum Investment Management Limited  
& Spectrum RRSP Tactonics Fund - MRRS  
Decision**

**Headnote**

Investment for specified purpose by mutual funds in securities of another mutual fund that is under common management exempted from the requirements of clauses 111(2)(b), 111(2)(c) subsection 111(3), clauses 117(1)(a), 117(1)(d) and 118(2)(a) subject to certain specified conditions.

**Statutes Cited**

Securities Act (Ontario), R.S.O. 1990 c.S.5, as am. ss. 111(2)(b), 111(2)(c), 111(3), 113, 117(1)(a), 117(1)(d), 117(2), 118(2)(a) and 121(2)(a)(ii).

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

**AND**

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

**AND**

**IN THE MATTER OF  
SPECTRUM INVESTMENT MANAGEMENT LIMITED  
AND SPECTRUM RRSP TACTONICS FUND**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application (the "Application") from Spectrum Investment Management Limited ("Spectrum Investments") in its own capacity and on behalf of Spectrum RRSP TACTONICS Fund (the "RRSP TACTONICS Fund"), a mutual fund having an investment objective or strategy that is linked to the returns or portfolio of the Spectrum TACTONICS Fund (the "TACTONICS Fund") while remaining 100% eligible for registered plans for a decision by each Decision Maker (collectively, the "Decision") pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the following prohibitions or requirements under the Legislation (the "Requirements") shall not apply in respect of certain investments made by the RRSP TACTONICS Fund in the TACTONICS Fund:

1. the restrictions contained in the Legislation prohibiting a mutual fund from knowingly making or holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial securityholder;
2. the restrictions contained in the Legislation prohibiting a mutual fund from knowingly making or holding an

investment in an issuer in which a person or company who is a substantial security holder of the mutual fund or its management company has a significant interest;

3. the requirements contained in the Legislation requiring the management company or, in British Columbia, a mutual fund manager, to file a report relating to a purchase or sale of securities between the mutual fund and any related person or company, or any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is a joint participant with one or more of its related persons or companies; and
4. the requirements contained in the Legislation prohibiting the portfolio manager or, in British Columbia, the mutual fund, from knowingly causing an investment portfolio managed by it to invest in the securities of an issuer in which a "responsible person" (as that term is defined in the Legislation) is an officer or director unless the specific fact is disclosed to the client and, if applicable, the written consent of the client to the investment is obtained before the purchase.

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

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

1. Each of the TACTONICS Fund and the RRSP TACTONICS Fund is an open-ended mutual fund trust established under the laws of the Province of Ontario. Spectrum Investments is a corporation established under the laws of Canada and for each of the TACTONICS Fund and the RRSP TACTONICS Fund is the manager and promoter. The head office of Spectrum Investments is in Toronto, Ontario.
2. Certain officers and/or directors of Spectrum Investments are also officers of the TACTONICS Fund and the RRSP TACTONICS Fund.
3. The TACTONICS Fund and the RRSP TACTONICS Fund are reporting issuers. The securities of the TACTONICS Fund and the RRSP TACTONICS Fund are qualified under a simplified prospectus and annual information form filed in all provinces and territories. Neither the TACTONICS Fund nor the RRSP TACTONICS Fund is in default of any requirements of the Legislation.
4. The simplified prospectus will disclose the investment objectives, investment strategies, risks and restrictions of the TACTONICS Fund and the RRSP TACTONICS Fund. The investment objective of the RRSP TACTONICS Fund will include disclosure of the name of the TACTONICS Fund.
5. The investment objectives of the TACTONICS Fund are achieved through investment primarily in foreign securities.



6. To achieve its investment objective, the RRSP TACTONICS Fund invests its assets such that the securities of the RRSP TACTONICS Fund will, in the opinion of tax counsel to the RRSP TACTONICS Fund, be "qualified investments" for registered retirement savings plans, registered retirement income funds, and deferred profit sharing plans (collectively, "Registered Plans") and will not constitute "foreign property" under the *Income Tax Act* (Canada). This will primarily be achieved through the implementation of a derivative strategy that provides a return linked to the returns of the TACTONICS Fund. The RRSP TACTONICS Fund will also invest a portion of its assets directly in securities of the TACTONICS Fund. This investment will at all times be below the maximum foreign property limit prescribed for Registered Plans (the "Permitted Limit").
7. The amount of direct investments by the RRSP TACTONICS Fund in the TACTONICS Fund will be adjusted from time to time so that, except for transitional cash (ie. cash from purchases not yet invested or cash held to satisfy redemptions), the aggregate of derivative exposure to, and direct investment in, the TACTONICS Fund will equal 100% of the assets of each of the RRSP TACTONICS Fund.
8. Spectrum Investments is a wholly-owned subsidiary of Sun Life Assurance Company of Canada ("Sun Life"). As a life insurance company, Sun Life makes a large number of investments in various capacities (principal and agent), and those investments include various Spectrum mutual funds. Sun Life may hold and/or acquire units of the TACTONICS Fund and/or the RRSP TACTONICS Fund, and may increase or decrease any such holdings from time to time based in part upon the investment needs and/or instructions of clients. As a result, Sun Life may from time to time hold more than 20% of the outstanding units of the RRSP TACTONICS Fund at the same time that it holds more than 10% of the outstanding units of the TACTONICS Fund.
9. Except to the extent evidenced by this Decision and specific approvals granted by the Canadian securities administrators pursuant to National Instrument 81-102 Mutual Funds ("NI 81-102"), the investments by the RRSP TACTONICS Fund in the TACTONICS Fund have been structured to comply with the investment restrictions of the Legislation and NI 81-102.
10. In the absence of the Decision, pursuant to the Legislation, the RRSP TACTONICS Fund is prohibited from (a) knowingly making an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial securityholder; (b) knowingly making an investment in an issuer in which a person or company who is a substantial security holder of the mutual fund or its management company has a significant interest; and (c) knowingly holding an investment referred to in subsections (a) or (b) hereof. As a result, in the absence of this Decision, the RRSP TACTONICS Fund would be required to divest itself of any investments referred to in subsection (a) or (b) hereof.

11. In the absence of this Decision, the Legislation requires Spectrum Investments to file a report on every investment of securities of the TACTONICS Fund by the RRSP TACTONICS Fund.
12. In the absence of this Decision, Spectrum Investments is prohibited from causing the RRSP TACTONICS Fund to invest in the TACTONICS Fund unless the specific fact that certain officers and/or directors of Spectrum Investments are also officers of the TACTONICS Fund is disclosed to securityholders of the RRSP TACTONICS Fund and the written consent of securityholders of the RRSP TACTONICS Fund is obtained before the purchase.
13. The investments by the RRSP TACTONICS Fund in securities of the TACTONICS Fund will represent the business judgment of "responsible persons" (as defined in the Legislation) uninfluenced by considerations other than the best interests of the RRSP TACTONICS Fund.

**AND WHEREAS** pursuant to the System this MRRS Decision Document evidences 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 the Requirements do not apply to the RRSP TACTONICS Fund or Spectrum Investments, as the case may be, in respect of investments to be made by the RRSP TACTONICS Fund in securities of the TACTONICS Fund.

**PROVIDED IN EACH CASE THAT:**

1. the Decision, as it relates to the jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation or rule of that Decision Maker dealing with the matters in section 2.5 of NI 81-102.
2. the Decision shall only apply if, at the time the RRSP TACTONICS Fund makes or holds an investment in the TACTONICS Fund, the following conditions are satisfied:
  - a. the securities of both the RRSP TACTONICS Fund and the TACTONICS Fund are being offered for sale in the jurisdiction of the Decision Maker pursuant to a simplified prospectus and annual information form which has been filed with and accepted by the Decision Maker;
  - b. the investment by the RRSP TACTONICS Fund in the TACTONICS Fund is compatible with the fundamental investment objectives of the RRSP TACTONICS Fund;
  - c. the investment objective of the RRSP TACTONICS Fund discloses that the RRSP TACTONICS Fund invests directly and indirectly (through derivative exposure) in the TACTONICS Fund, the name of the

TACTONICS Fund and that the RRSP TACTONICS Fund is fully eligible for registered plans;

- d. the simplified prospectus of the RRSP TACTONICS Fund discloses the structure of the RRSP TACTONICS Fund and the risks related to the structure;
- e. the TACTONICS Fund is not a mutual fund whose investment objective includes investing directly or indirectly in other mutual funds, unless those mutual funds are index participation units, as defined in NI 81-102;
- f. the RRSP TACTONICS Fund restricts its direct investment in the TACTONICS Fund to a percentage of its assets that is within the Permitted Limit;
- g. there are compatible dates for the calculation of the net asset value of the RRSP TACTONICS Fund and the TACTONICS Fund for the purpose of the issue and redemption of securities of such mutual funds;
- h. no sales charges are payable by the RRSP TACTONICS Fund in relation to its purchases of securities of the TACTONICS Fund;
- i. no redemption fees or other charges are charged by the TACTONICS Fund in respect of the redemption by the RRSP TACTONICS Fund of securities of the TACTONICS Fund owned by the RRSP TACTONICS Fund;
- j. no fees and charges of any sort are paid by the RRSP TACTONICS Fund and the TACTONICS Fund, by their respective managers or principal distributors, or by any affiliate or associate of any of the foregoing entities to anyone in respect of the RRSP TACTONICS Fund's purchase, holding or redemption of the securities of the TACTONICS Fund;
- k. the arrangements between or in respect of the RRSP TACTONICS Fund and the TACTONICS Fund are such as to avoid the duplication of management fees;
- l. any notice provided to securityholders of the TACTONICS Fund, as required by applicable laws or the constating documents of the TACTONICS Fund, has been delivered by the RRSP TACTONICS Fund to its securityholders;
- m. all of the disclosure and notice material prepared in connection with a meeting of securityholders of the TACTONICS Fund and received by the RRSP TACTONICS Fund has been provided to its securityholders, the securityholders have been permitted to direct a representative of the RRSP TACTONICS Fund to vote its holdings in the TACTONICS Fund in accordance with their direction, and the representative of the RRSP

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

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

April 4, 2001.

"Howard I. Wetston"

"Paul Moore"

2.1.7 1423280 Ontario Inc. et al. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Relief granted from the registration and prospectus requirements in respect of trades made in connection with the exchange of exchangeable shares.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5, as am. ss. 25, 53, 74(1).

IN THE MATTER OF  
THE SECURITIES LEGISLATION  
OF ONTARIO AND QUEBEC

AND

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

AND

IN THE MATTER OF  
1423280 ONTARIO INC.,  
3045207 NOVA SCOTIA COMPANY AND  
FUTURELINK CORP.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of Ontario and Quebec (together, the "Jurisdictions") has received an application from 1423280 Ontario Inc. ("Exchangeco"), 3045207 Nova Scotia Company ("Nova Scotia Co.") and FutureLink Corp. ("FutureLink", together with Exchangeco and Nova Scotia Co., the "Filer") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the requirement contained in the Legislation to file and obtain a receipt for a preliminary prospectus and a prospectus (the "Prospectus Requirement") and the requirement to be registered to trade in a security (the "Registration Requirement") shall not apply to certain trades in FutureLink Common Shares (as defined below) received upon the exchange of exchangeable shares of Exchangeco.

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. FutureLink is a public company incorporated under the laws of the State of Delaware, is subject to the reporting requirements of the United States *Securities Exchange Act of 1934* (the "Exchange Act"), as amended and is not a "reporting issuer" or the equivalent concept in any of the Jurisdictions.

2. The authorized capital of FutureLink consists of 300,000,000 common shares without par value (the "FutureLink Common Shares") and 20,000,000 preferred shares without par value, of which 68,104,791 FutureLink Common Shares and 1,428,571 shares of preferred stock were outstanding as of March 12, 2001.
3. The outstanding FutureLink Common Shares are quoted on the Nasdaq National Market ("Nasdaq").
4. Nova Scotia Co. is an unlimited liability company incorporated under the laws of the Province of Nova Scotia and is not a "reporting issuer" or the equivalent concept in either of the Jurisdictions.
5. The authorized capital of Nova Scotia Co. consists of 100,000,000 common shares without par value, of which 7,500,100 common shares were issued and outstanding as of March 12, 2001.
6. FutureLink is the registered owner of all of the outstanding common shares of Nova Scotia Co.
7. Exchangeco is a corporation incorporated under the laws of the Province of Ontario and is not a "reporting issuer" or the equivalent concept in any of the Jurisdictions. Exchangeco is a "private company" within the meaning of that term in the Legislation.
8. The authorized capital of Exchangeco consists of an unlimited number of common shares, an unlimited number of Class B non-voting common shares, an unlimited number of Class A non-voting preference shares, an unlimited number of Class C voting preference shares and an unlimited number of exchangeable shares (the "Exchangeable Shares"), of which 2,426,291.387 common shares, no Class B non-voting common shares, 35,000 Class A non-voting preference shares, 7,500,000 Class C voting preference shares and 2,199,965 Exchangeable Shares were issued and outstanding as of March 12, 2001.
9. Nova Scotia Co. is the registered holder of 100 common shares and all of the issued and outstanding Class C voting preference shares; FutureLink is the registered holder of the remaining 2,426,191.387 issued and outstanding common shares; and Glen Holmes, FutureLink's former president, is the registered holder of all of the issued and outstanding Class A non-voting preference shares.
10. Prior to June 19, 2000, Charon Systems Inc. ("Predecessor Charon") was a corporation incorporated under the laws of the Province of Ontario and was not a "reporting issuer" or the equivalent concept in either of the Jurisdictions. Predecessor Charon was a private company within the meaning of that term in the Legislation.
11. The authorized capital of Predecessor Charon consisted of an unlimited number of common voting shares, an unlimited number of non-voting common shares and 7,500,000 preferred class II shares, of which 988,897 common shares, 70,004 non-voting

- common shares and 7,500,000 preferred class II shares were issued and outstanding as of June 19, 2000.
12. The registered holders of all of the issued and outstanding shares in the capital of Predecessor Charon, as of June 19, 2000, were, collectively, Allan Sherk, Edward Matthewson, Joe DaSilva, Layne Harris, Jason Yetman, David Fung, Blair Collins, Aaron Fu, Mark Palangio, Ho Wai Fung, Edward Chi Wai Fung and Malcolm Robins (the "Individual Charon Shareholders"), DataSpec Telecom Multimedia Inc. and Aaron Fu, David Fung and Mark Palangio as trustees on behalf of the Charon Employee Trust (together with the Individual Charon Shareholders, the "Charon Shareholders"). Each of the Individual Charon Shareholders was an employee of Predecessor Charon and is resident in Ontario. All of the issued and outstanding shares of DataSpec Telecom Multimedia Inc. are owned by Diane Laverdiere and Pierre Levesque, each of whom was an employee of Predecessor Charon and is resident in Quebec. The Charon Employee Trust is a trust formed under the laws of Ontario, all of the beneficiaries of which were employees of Predecessor Charon and resident in Ontario except for Diane Laverdiere, Jean-Pierre Levesque, Jean-Steve Shaker, Karine Desrosieres, Pierre Charbonneau, Sylvain Dallaire and Brent McCoubrey who are residents of Quebec.
13. As contemplated by an acquisition and amalgamation agreement (the "Acquisition Agreement") dated as of June 16, 2000 among FutureLink, Nova Scotia Co., Exchangeco, 1423281 Ontario Inc. ("FL Acquisition Co."), FutureLink Distribution Corp. ("FLD"), Predecessor Charon and the Charon Shareholders, on June 19, 2000, Exchangeco acquired all of the issued and outstanding shares of Predecessor Charon pursuant to an amalgamation between Charon and FL Acquisition Co., a wholly-owned subsidiary of Exchangeco.
14. Pursuant to the terms of the amalgamation, each outstanding common share of Charon was converted into 2.0776 Class B non-voting common shares of Exchangeco; each outstanding preferred class II share of Charon was converted into one Class C voting preference share of Exchangeco; and each outstanding common share in the capital of FL Acquisition Co. was converted into one fully paid and non-assessable common share in the capital of the amalgamated entity ("Amalco").
15. Immediately following the amalgamation, the holders of the Class C voting preference shares sold and FutureLink caused Nova Scotia Co. to purchase such shares in consideration for \$7,500,000, which purchase price was satisfied by the payment of \$1,000,000 in cash and the issuance of a promissory note (the "Promissory Note") in the amount of \$6,500,000 to the holders of such shares. Payment of the Promissory Note was secured by a pledge of the Class C voting preference shares (the "Pledged Shares") owned by Nova Scotia Co. in favour of the Charon Shareholders.
16. As a result of the amalgamation, all employees of Predecessor Charon, including the Individual Charon Shareholders, Diane Laverdiere, Pierre Levesque and the beneficiaries of the Charon Employee Trust became employees of Amalco.
17. On July 18, 2000, all amounts owing under the Promissory Note were repaid. On July 28, 2000, Amalco was continued under the *Business Corporations Act* (Alberta).
18. As further contemplated by the Acquisition Agreement, FLD, a corporation incorporated under the laws of the Province of Alberta and a wholly-owned subsidiary of FutureLink and Amalco amalgamated under the laws of Alberta effective August 1, 2000. Upon the amalgamation, each outstanding Class A common share of FLD became 0.7305 common shares of Exchangeco, and each outstanding common share of Amalco became one common share of the amalgamated entity, Futurelink Canada Corp.
19. The authorized capital of Futurelink Canada Corp. consists of an unlimited number of common shares, an unlimited number of Class B common shares and an unlimited number of preference shares, of which 100 common shares were issued and outstanding as of March 12, 2001. Exchangeco is the registered holder of the 100 common shares of FutureLink Canada Corp.
20. As further contemplated by the Acquisition Agreement, on August 16, 2000 the shareholders of Exchangeco authorized and approved a reorganization of capital, to be effected by the filing of articles of amendment.
21. In connection with the reorganization of capital of Exchangeco, the relevant parties to the Acquisition Agreement executed and delivered the following agreements, among others:
- (a) an exchange agreement (the "Exchange Agreement") dated as of August 16, 2000 between FutureLink, Exchangeco, Nova Scotia Co. and the Charon Shareholders;
  - (b) a call rights agreement (the "Call Rights Agreement") dated as of August 16, 2000 between FutureLink, Exchangeco, Nova Scotia Co. and the Charon Shareholders; and
  - (c) a support agreement (the "Support Agreement") dated as of August 16, 2000 between FutureLink, Nova Scotia Co. and Exchangeco.
22. Pursuant to the Acquisition Agreement, the Charon Shareholders agreed not to exercise any right (i) to require Nova Scotia Co. or Exchangeco to retract, exchange or redeem the Exchangeable Shares, or (ii) which would result in the issuance of FutureLink Common Shares into the Participating Jurisdictions or any other province of Canada, until the date upon which this ruling is obtained or unless such exercise is permissible under applicable securities laws.

23. On September 8, 2000, Exchangeco filed articles of amendment under the laws of Ontario giving effect to its reorganization of capital.
24. On November 17, 2000, FutureLink Canada Corp. was continued under the *Business Corporations Act* (Ontario).
25. The share provisions of the Exchangeable Shares are structured so that the Exchangeable Shares are at all times, as nearly as possible, the economic equivalent of FutureLink Common Shares.
26. The holders of Exchangeable Shares are entitled to dividends from Exchangeco payable at the same time as, and in the Canadian dollar equivalent of, each dividend paid by FutureLink on a FutureLink Common Share. Subject to the overriding call right of Nova Scotia Co. referred to below in this paragraph, the holders of Exchangeable Shares are entitled, at any time, to require Exchangeco to redeem any or all of the Exchangeable Shares held by them and to receive, for each Exchangeable Share, an amount equal to the current market price of one FutureLink Common Share (the "Retraction Price"), which shall be satisfied by Exchangeco delivering to such holder one FutureLink Common Share for each Exchangeable Share held and paying to the holder an additional amount equivalent to all declared and unpaid dividends on each such Exchangeable Share (the "Dividend Amount"). Nova Scotia Co. has a right (the "Retraction Call Right") to purchase the Exchangeable Shares that are the subject of such proposed retraction at a price per share equal to the Retraction Price per share, which shall be satisfied by the delivery of one FutureLink Common Share for each such Exchangeable Share together with, to the extent not paid by Exchangeco, the Dividend Amount.
27. Subject to the overriding call right of Nova Scotia Co. referred to below in this paragraph, Exchangeco is entitled to redeem all of the Exchangeable Shares on a date (the "Redemption Date"), determined by the board of directors of Exchangeco, but which shall not be earlier than December 15, 2007 except in limited circumstances, for an amount per share equal to the current market price of a FutureLink Common Share, which shall be satisfied in full by Exchangeco causing to be delivered to each holder of Exchangeable Shares one FutureLink Common Share for each Exchangeable Share held, plus the Dividend Amount. Pursuant to the terms of the Call Rights Agreement, each of FutureLink and Nova Scotia Co. has the overriding right (the "Redemption Call Right") to purchase from all of the holders of Exchangeable Shares (other than FutureLink or any subsidiary thereof) on the Redemption Date all of the shares held by such holders on payment by FutureLink or Nova Scotia Co., as applicable, of an amount per Exchangeable Share equal to the current market price of a FutureLink Common Share, to be satisfied by FutureLink or Nova Scotia Co., as applicable, causing to be delivered to such holder one FutureLink Common Share, plus, to the extent not paid by Exchangeco, the Dividend Amount.
28. In the event of the liquidation, dissolution or winding up of Exchangeco, and subject to the exercise by Nova Scotia Co. of the Liquidation Call Right (as defined below), a holder of Exchangeable Shares shall be entitled to receive an amount per share equal to the current market price of one FutureLink Common Share which shall be satisfied in full by Exchangeco causing to be delivered to such holder one FutureLink Common Share plus the Dividend Amount.
29. The holders of Exchangeable Shares are not entitled to vote, except as required by law.
30. The Exchangeable Shares rank prior to all shares of Exchangeco with respect to the payment of dividends and the distribution of assets in the event of the liquidation, dissolution or winding-up of Exchangeco.
31. Pursuant to the Exchange Agreement, FutureLink granted to each of the Charon Shareholders the right, in the event of a proposed liquidation, dissolution or winding-up of Exchangeco, to require FutureLink to purchase from each Charon Shareholder all of the Exchangeable Shares held by each Charon Shareholder in exchange for an equivalent number of FutureLink Common Shares.
32. The Exchange Agreement further provides that if a holder of Exchangeable Shares exercises its right to require Exchangeco to redeem any of the Exchangeable Shares held by such holder, and Exchangeco is not permitted as a result of solvency requirements to redeem such shares, and provided that Nova Scotia Co. has not exercised the Retraction Call Right, FutureLink will purchase such shares and satisfy the purchase price by issuing such number of FutureLink Common Shares as is equal to the number of Exchangeable Shares being purchased, plus the Dividend Amount.
33. Pursuant to the Call Rights Agreement, each of FutureLink and Nova Scotia Co. has the overriding right (the "Liquidation Call Right"), in the event of a proposed liquidation, dissolution or winding-up of Exchangeco, to purchase from all of the holders of Exchangeable Shares (other than FutureLink or any subsidiary thereof) all of the shares held by such holders on payment by FutureLink or Nova Scotia Co., as applicable, of an amount per Exchangeable Share equal to the current market price of a FutureLink Common Share, to be satisfied by FutureLink or Nova Scotia Co., as applicable, causing to be delivered to such holder one FutureLink Common Share, plus, to the extent not paid by Exchangeco, the Dividend Amount.
34. The Exchange Agreement further provides that in the event of the liquidation, dissolution or winding-up of FutureLink, FutureLink will purchase all of the then outstanding Exchangeable Shares in exchange for an equivalent number of FutureLink Common Shares (the "Automatic Exchange Right").
35. Pursuant to the Support Agreement, for so long as any Exchangeable Shares not owned by FutureLink or its

affiliates are outstanding, FutureLink has agreed, among other things:

- (a) not to declare or pay any dividend on the FutureLink Common Shares unless Exchangeco is able to and promptly pays an equivalent dividend on the Exchangeable Shares;
  - (b) to do all things that are reasonably necessary to enable and permit Exchangeco to pay and otherwise perform its obligations with respect to the satisfaction of the liquidation amount, retraction price or redemption price, as the case may be, in respect of the Exchangeable Shares upon the liquidation, dissolution or winding-up of Exchangeco, the delivery of a retraction request by a holder of any Exchangeable Share or a redemption of Exchangeable Shares by Exchangeco, as the case may be; and
  - (c) to do all things that are reasonably necessary to enable and permit Nova Scotia Co. to perform its obligations arising upon the exercise by it of the Liquidation Call Right, the Retraction Call Right or the Redemption Call Right.
36. The Support Agreement also provides that FutureLink, upon notice from Exchangeco or Nova Scotia Co. of any event that requires Exchangeco or Nova Scotia Co. to cause FutureLink Common Shares to be delivered to any holder of Exchangeable Shares, FutureLink shall forthwith issue and deliver or cause to be delivered to Exchangeco or Nova Scotia Co. the requisite number of FutureLink Common Shares to be received by and issued to or to the order of the former holder of the surrendered Exchangeable Shares.
37. The Support Agreement also provides that in the event a tender offer, share exchange offer, issuer bid, take-over bid or similar transaction (an "Offer") with respect to the FutureLink Common Shares is proposed by FutureLink or to FutureLink and the Exchangeable Shares are not redeemed by Exchangeco or purchased by Nova Scotia Co., FutureLink will do all things as are necessary to permit the holders of Exchangeable Shares to participate in such Offer to the same extent and on an economically equivalent basis as the holders of FutureLink Common Shares.
38. There are several potential trades (collectively, the "Trades") in FutureLink Common Shares which arise based on the provisions of the Exchangeable Shares or in connection with the Exchange Agreement and Call Rights Agreement, and which do not fit within existing statutory registration and prospectus exemptions, including:
- (a) the issuance of FutureLink Common Shares to holders of Exchangeable Shares upon the retraction of Exchangeable Shares by the holders thereof;
  - (b) the issuance of FutureLink Common Shares to holders of Exchangeable Shares upon the

exercise by Nova Scotia Co. of the Retraction Call Right;

- (c) the issuance of FutureLink Common Shares to holders of Exchangeable Shares upon the redemption of the Exchangeable Shares;
  - (d) the issuance of FutureLink Common Shares to holders of Exchangeable Shares upon the exercise by Nova Scotia Co. or FutureLink of its Redemption Call Right on the Redemption Date;
  - (e) the issuance of FutureLink Common Shares to holders of Exchangeable Shares upon the liquidation, dissolution or winding-up of Exchangeco;
  - (f) the issuance of FutureLink Common Shares to holders of Exchangeable Shares upon the exercise by Nova Scotia Co. of its call right upon notice of any proposed liquidation, dissolution or winding-up of Exchangeco;
  - (g) the issuance of FutureLink Common Shares to holders of Exchangeable Shares upon the exercise by FutureLink of its call right upon notice of any proposed liquidation, dissolution or winding-up of Exchangeco;
  - (h) the issuance of FutureLink Common Shares to holders of Exchangeable Shares upon the liquidation, dissolution or winding-up of FutureLink; and
  - (i) the first trade of FutureLink Common Shares acquired by former holders of Exchangeable Shares.
39. There may be no registration or prospectus exemptions available under the Legislation for certain of the Trades.
40. If the holders of Exchangeable Shares acquired the maximum number of FutureLink Common Shares to which they are entitled pursuant to the provisions of those shares or the exercise by Nova Scotia Co. or FutureLink of the various call rights described above then, as at March 12, 2001, persons or companies whose last address as shown on the books of FutureLink in the Jurisdictions and who held FutureLink Common Shares would not hold more than 10% of the outstanding FutureLink Common Shares and would not represent in number more than 10% of the total number of holders of FutureLink Common Shares.
41. There is no organized market for FutureLink Common Shares in the Jurisdictions and none is expected to develop.

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

**AND WHEREAS** each of the Decision Makers is satisfied that the test contained in the Legislation that provides

the Decision Maker with the jurisdiction to make the Decision has been met;

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the Registration Requirement and the Prospectus Requirement shall not apply to the Trades provided that the first trade in FutureLink Common Shares issued upon the exchange of Exchangeable Shares in a Jurisdiction shall be deemed a distribution under the Legislation of such Jurisdiction unless such trade is executed through the facilities of a stock exchange outside of the Jurisdictions or through Nasdaq.

April 6, 2001.

"John Geller"

"K.D. Adams"

## 2.1.8 Sherritt Coal Partnership et al. - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Offeror proposes to make a take-over bid for all of the outstanding trust units of the offeree in exchange for, at the holder's option, cash or a combination of cash and restricted voting shares of a partner of the offeror ("S") - S does not carry on business in the United States and does not propose to qualify shares for distribution in the US - Unitholder list discloses seven US unitholders holding less than 0.04% of the outstanding units - Offeror proposes that US unitholders who elect to receive cash and shares will receive the cash proceeds from the sale by a depository of shares of S, rather than receiving shares of S - Relief granted from the requirement that identical consideration be offered to all shareholders of the same class insofar as US unitholders will receive the cash proceeds from the sale of shares of S, rather than the shares themselves.

### Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as amended, ss. 97(1) and 104(2)(c).

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

AND

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

AND

IN THE MATTER OF  
SHERRITT COAL PARTNERSHIP,  
SHERRITT INTERNATIONAL CORPORATION AND  
LUSCAR COAL INCOME FUND

MRRS DECISION DOCUMENT

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application from Sherritt Coal Partnership (the "Partnership") and Sherritt International Corporation ("Sherritt" and collectively with the Partnership, the "Applicants") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that, in connection with the offer (the "Unit Offer") by the Applicants to purchase all of the issued and outstanding trust units (the "Units") of Luscar Coal Income Fund (the "Fund"), the Applicants shall be exempt from the requirement in the Legislation to offer all holders of the same class of securities identical consideration (the "Identical Consideration Requirement"), insofar as certain holders of

Units who accept the Offer will receive the cash proceeds from the sale of restricted voting shares of Sherritt (the "Sherritt Shares") in accordance with the procedure described in paragraph 16 below, instead of receiving Sherritt Shares;

**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 Applicants have represented to the Decision Makers as follows:

1. The Partnership was formed under the laws of Ontario solely for the purpose of making the Unit Offer. Its head office is located in Toronto, Ontario. The partners of the Partnership are Sherritt and OTPPB SCP Inc., a subsidiary of the Ontario Teachers Pension Plan Board ("OTPPB").
2. Sherritt is a corporation incorporated under the laws of the Province of New Brunswick. Its head office is located in Toronto, Ontario.
3. Sherritt is a reporting issuer or the equivalent in each of the Jurisdictions and is not in default of any requirement of the Legislation.
4. Sherritt's authorized capital consists of an unlimited number of Sherritt Shares and 100 multiple voting shares (the "Sherritt MVS"). As at December 31, 2000, there were 72,496,036 Sherritt Shares and 100 Sherritt MVS issued and outstanding. The Sherritt Shares are listed and posted for trading on The Toronto Stock Exchange (the "TSE").
5. The Fund is an open-ended trust established under the laws of the Province of Alberta. Its head office is located in Edmonton, Alberta.
6. The Fund is a reporting issuer or the equivalent in each of the Jurisdictions.
7. According to publicly available information, the Fund's authorized capital consists of an unlimited number of Units, which are listed and posted for trading on the TSE. As at February 27, 2001, there were 90.7 million Units issued and outstanding. In addition, the Fund has issued and outstanding \$100,000,000 principal amount of 10% convertible unsecured senior subordinated debentures (the "Debentures").
8. As at March 8, 2001, the Partnership owned 5,701,500 Units, representing approximately 6.3% of the outstanding Units, and OTPPB owned \$10,543,000 principal amount of the Debentures, representing approximately 10.5% of the outstanding principal amount of the Debentures. The Debentures owned by OTPPB are convertible into approximately 1,561,924 Units representing approximately 1.7% of the outstanding Units (including those issued upon conversion of the Debentures held by OTPPB).
9. On March 6, 2001, the Fund delivered to the Applicants a list (the "Unitholder List") of the registered Unitholders. The Unitholder List disclosed that there were seven Unitholders who were citizens or residents of the United States ("US Unitholders") holding, in the aggregate, less than 0.04% of the outstanding Units. The Fund, however, has advised the Applicants that more than 10% of the Units are held by US Unitholders.
10. On March 8, 2001, the Applicants made the Unit Offer by means of a formal take-over bid. On the same date, the Applicants made an offer to acquire all of the outstanding Debentures (the "Debenture Offer") for consideration consisting of \$1,050 cash for each \$1,000 principal amount of Debentures accepted for purchase under the Debenture Offer.
11. The Unit Offer is being made in accordance with the Legislation of the Jurisdictions, except to the extent the exemptive relief from the Identical Consideration Requirement is granted hereby. The Debenture Offer does not constitute a take-over bid within the meaning of the Legislation.
12. Pursuant to the Unit Offer, holders of Units (the "Unitholders") may elect to receive for each Unit accepted under the Unit Offer:
  - (a) \$3.50 in cash (the "All Cash Option") for each Unit; or
  - (b) \$2.38 in cash and 0.265 of a Sherritt Share (the "Cash and Share Option") for each Unit; or
  - (c) a combination thereof.
13. The Applicants have extended the Unit Offer to Unitholders in Canada and any jurisdiction outside Canada in which the making and accepting of the Unit Offer would not be illegal.
14. Sherritt indirectly holds interests in businesses in Cuba and, accordingly, does not carry on any business in the United States of America, which maintains an embargo against Cuba. Although Sherritt is eligible to use the multi-jurisdictional disclosure system (the "MJDS") to register Sherritt Shares for distribution under the securities legislation of the United States (an "MJDS Registration"), it has determined that an MJDS Registration is not feasible in the circumstances for the reason, among others, that Sherritt attempts to avoid any requirement to make a filing in the United States which could give rise to an allegation that it has any business in the United States.
15. Accordingly, the Sherritt Shares that may be issued under the Unit Offer have not been and will not be registered or otherwise qualified for distribution under the securities legislation of the United States. The delivery of Sherritt Shares to US Unitholders may constitute a violation of the laws of the United States.
16. To the extent that US Unitholders who accept the Unit Offer are entitled to receive Sherritt Shares, Sherritt proposes to deliver Sherritt Shares to CIBC Mellon Trust Company (the "Depositary") substantially simultaneously with payment for Units tendered under



the Unit Offer. As soon as reasonably possible after such delivery, the Depositary will sell the Sherritt Shares on the US Unitholders' behalf and hold the aggregate net proceeds after expenses of such sale in trust for such US Unitholders. All Sherritt Shares that the Depositary is required to sell will be pooled and sold through the TSE's facilities in a manner that is intended to minimize any adverse effect such a sale might have on the market price of Sherritt Shares. As soon as reasonably possible after completion of such sale, and in any event no later than four business days after completion of such sale, the Depositary will send to each US Unitholder whose Sherritt Shares have been sold by the Depositary a cheque in Canadian funds in an amount equal to such US Unitholder's *pro rata* share of the net proceeds of sale, less any applicable withholding taxes.

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

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

**THE DECISION** of the Decision Makers under the Legislation is that, in connection with the Unit Offer, the Applicants are exempt from the Identical Consideration Requirement insofar as US Unitholders who accept the Cash and Share Option may receive cash proceeds from the Depositary's sale of Sherritt Shares in accordance with the procedure set out in paragraph 16 above instead of Sherritt Shares.

March 28, 2001.

"J. A. Geller"

"R. W. Davis"

## 2.1.9 Cybersurf Corp. - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Relief granted to directors and senior officers of the issuer from the requirement to file insider reports (subject to certain conditions) for common shares of the Issuer acquired through the Issuer's employee share purchase plan.

### Applicable Ontario Statutory Provisions

Securities Act, R.S.O., 1990, c.S.5, as am. ss. 121(2)(a)(ii), 107, 109, 109.

### Rules Cited

Proposed National Instrument 55-101 - Exemption from Certain Insider Reporting Requirements (2000), 23 OSCB 4221.

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

**AND**

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

**AND**

**IN THE MATTER OF  
CYBERSURF CORP.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, and Ontario (the "Jurisdictions") received an application from Cybersurf Corp. (the "Corporation") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation for an insider of a reporting issuer or the equivalent thereof to file insider reports disclosing the insider's direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer (the "Insider Reporting Requirement") shall not apply to the acquisition by senior officers of the Corporation and its subsidiaries ("Senior Officers") of certain securities of the Corporation pursuant to the Corporation's employee share purchase plan (the "Share Purchase Plan") under certain conditions;

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

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

1. the Corporation is incorporated pursuant to the provisions of the Business Corporations Act (Alberta) and its head office is located in Calgary, Alberta;
2. the Corporation is a reporting issuer or the equivalent in British Columbia, Alberta and Ontario and is not in default of any of the requirements of the Legislation;
3. the Corporation is authorized to issue an unlimited number of Common shares ("Common Shares") and an unlimited number of preferred shares. As of March 19, 2001 the corporation has 32,120,413 common shares issued and outstanding. The Common Shares are listed for trading on The Canadian Venture Exchange Inc.;
4. Cybersurf Technologies Corp. and 3web Corp. are subsidiaries of the Corporation;
5. securities of the Corporation are purchased on behalf of the Senior Officers by an arm's length, third party administrator of the Share Purchase Plan (the "Administrator");
6. purchases by the Administrator are made in accordance with the terms of the Share Purchase Plan and not as a result of instructions received by the Administrator directly from the Senior Officers;
7. except for making elections with respect to contributions to the Share Purchase Plan, a Senior Officer has no authority to determine the prices or times at which Common Shares are purchased on his or her behalf under the Share Purchase Plan; and
8. the Share Purchase Plan is an "automatic securities purchase plan" as defined in the proposed National Instrument 55-101 of the Canadian Securities Administrators;

**AND WHEREAS** pursuant to the MRRS 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 Makers with the jurisdiction to make the Decision has been met;

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the insider reporting requirements in the Legislation shall not apply to the acquisition by a Senior Officer of Common Shares pursuant to the Share Purchase Plan, provided that:

1. Each Senior Officer who is a participant in the Share Purchase Plan (a "Participant") shall file, in the form prescribed for the insider reporting requirements in the Legislation, a report disclosing all acquisitions of Common Shares under the Share Purchase Plan that have not been previously reported by or on behalf of the Participant:
  - (a) for any Common Shares acquired under the Share Purchase Plan which have been disposed of or transferred, within the time

required by the Legislation for reporting the disposition or transfer; and

- (b) for any Common Shares acquired under the Share Purchase Plan during a calendar year which have not been disposed of or transferred, within 90 days of the end of the calendar year.

2. Such exemption shall not apply to the acquisition of securities of the corporation pursuant to a lump sum provision of the Share Purchase Plan.
3. Such exemption is not available to a Participant who beneficially owns, directly or indirectly, voting securities of the Corporation, or exercises control or direction over voting securities of the Corporation, or a combination of both, that carry more than 10% of the voting rights attaching to all of the Corporation's outstanding voting securities.
4. The Decision shall terminate on the effective date of the proposed National Instrument 55-101 or any legislation or rule dealing with similar exemptions from insider reporting requirements.

**DATED** at Edmonton, Alberta on April 2, 2001.

"Agnes Lau"

## 2.1.10 Apollo Gas Income Fund - MRRS Decision

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - issuer is a single purpose trust being wound up pursuant to trust indenture - issuer has only one security holder - issuer deemed to have ceased being a reporting issuer.

### Applicable Ontario Statutory Provisions

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

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

AND

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

AND

IN THE MATTER OF  
APOLLO GAS INCOME FUND

MRRS DECISION DOCUMENT

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

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

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

1. the Filer is a single purpose trust established under the laws of the Province of Ontario by declaration of trust dated February 26, 1998, is a reporting issuer in each of the Jurisdictions and is not in default of any of the requirements of the Legislation;
2. the Filer's head office is located in Toronto, Ontario;
3. the Filer is being wound up pursuant to the terms of its trust indenture;
4. the units of the Filer (the "Units") were delisted from the Toronto Stock Exchange on February 1, 2001 and no

securities of the Filer are listed or quoted on any other exchange or market;

5. the registers of the Filer are not open for the transfer of its Units;
6. as of the date hereof, the Filer has only one security holder.
7. other than the Units, the Filer has no securities, including debt securities, outstanding; and
8. 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 of the opinion 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.

April 4, 2001.

"John Hughes"

## 2.2 Orders

### 2.2.1 Mackenzie Financial Corporation et al. - ss. 59(1)

#### Headnote

Exemption for the fees payable by two mutual funds pursuant to subsection 14(2) of Schedule 1 of the Regulation to the *Securities Act* with respect to the distribution of securities of such funds to be based on the rate applicable to money market mutual funds, and further, that the filing fees payable by such funds on each renewal pursuant to subsection 13(3) of Schedule 1 of the Regulation to be the fees applicable to money market mutual funds, subject to certain conditions.

#### Regulations Cited

Regulation made under the *Securities Act*, R.R.O. 1990, Reg. 1015, as am., Schedule 1, ss. 13(3), 14(2).

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

AND

IN THE MATTER OF  
MACKENZIE FINANCIAL CORPORATION AND  
MACKENZIE CANADIAN MANAGED YIELD CAPITAL  
CLASS AND  
MACKENZIE U.S. MANAGED YIELD CAPITAL CLASS

ORDER

Subsection 59(1) of Schedule I of the Regulation  
under the Act (the "Regulation")

UPON the application of Mackenzie Financial Corporation ("Mackenzie"), the manager of Mackenzie Canadian Managed Yield Capital Class (the "Canadian Managed Yield Fund") and Mackenzie U.S. Managed Yield Capital Class (the "U.S. Managed Yield Fund") of Mackenzie Financial Corporation ("MFCC"), for an order pursuant to subsection 59(1) of Schedule I to the Regulation that the fees paid by these two mutual funds pursuant to subsection 14(2) of Schedule I to the Regulation with respect to the distribution of securities of such funds be based on the applicable percentage of the net sales in Ontario from the distribution of securities of such funds, being the rate applicable to money market mutual funds, rather than based on the applicable percentage of the aggregate gross proceeds realized in Ontario from the distribution of securities of such funds;

AND UPON considering the application and the recommendations of the staff of the Ontario Securities Commission (the "Commission");

AND UPON Mackenzie having represented to the Commission as follows:

1. The Canadian Managed Yield Fund and the U.S. Managed Yield Fund (collectively the "Managed Yield

Funds") are two of the 32 classes of mutual fund shares of MFCC called the Mackenzie Capital Class Funds, established under the laws of Ontario. Mackenzie is a corporation established under the laws of Ontario and is the manager of the Managed Yield Funds.

2. The Managed Yield Funds, as well as the other Mackenzie Capital Class Funds, are reporting issuers and are not in default of any requirement of the securities acts or regulations applicable in each of the provinces and territories of Canada. The securities of the Managed Yield Funds are qualified for distribution in the jurisdictions pursuant to a preliminary simplified prospectus and annual information form (the "Preliminary Prospectus") and a final simplified prospectus and annual information form dated October 26, 2000 (the "Prospectus").
3. The Mackenzie Capital Class Funds have paid the filing fees relating to the Preliminary Prospectus that are applicable to issuers other than money market mutual funds under section 13 of Schedule I of the Regulation. Because the Mackenzie Capital Class Funds are in their first year of distribution, such funds have not yet paid any fees relating to distribution under section 14 of Schedule I of the Regulation.
4. The Managed Yield Funds are structured to provide returns that are similar to money market mutual funds. As part of their investment objective each of these funds uses options to hedge a portfolio of Canadian equities in order to approximate the rate of return provided by, in the case of the Canadian Managed Yield Fund, bankers' acceptances, or in the case of the U.S. Managed Yield Fund, the London Interbank Offered Rate.
5. The investment strategy of each of the Managed Yield Funds indicates that each fund's return will be more like a money market fund's return than an equity fund's return. The Prospectus disclosure for each of the funds further indicates that each fund is suitable as a cash component equivalent.
6. The Managed Yield Funds are generally being used by investors as equivalents to money market funds. This is evidenced by the fact that some investors who decide to purchase the Mackenzie Capital Class Funds are placing money into the Managed Yield Funds as a short-term "parking spot" for cash while determining which of the other Mackenzie Capital Class Funds the investor wishes to acquire. This also is evidenced by the fact that some investors are purchasing the Managed Yield Funds primarily to obtain the rate of return set out in the investment objectives sections of Prospectus for such funds.
7. The Managed Yield Funds are not money market funds within the meaning of section 1.1 of National Instrument 81-102 Mutual Funds ("NI 81-102") because the funds invest in synthetic cash. Accordingly, pursuant to section 14 of Schedule I of the Regulation, the Managed Yield Funds will be required to pay annual fees based on a percentage of the aggregate gross proceeds realized in Ontario from the distribution of securities of such funds (rather than based on a

percentage of the net sales in Ontario from the distribution of securities of such funds, if such funds were treated as money market mutual funds).

8. If the Managed Yield Funds are required to pay fees based on gross proceeds rather than on net sales, these funds will be paying higher fees than money market mutual funds that fit within the definition of money market funds in NI 81-102.

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

**IT IS ORDERED** pursuant to subsection 59(1) of Schedule I to the Regulation that the fees paid by the Canadian Managed Yield Fund and the U.S. Managed Yield Fund pursuant to subsection 14(2) of Schedule I of the Regulation with respect to the distribution of securities of these two mutual funds be based on the applicable percentage of the net sales in Ontario from the distribution of securities of such funds, being the rate applicable to money market mutual funds, rather than based on the applicable percentage of the aggregate gross proceeds realized in Ontario from the distribution of securities of such funds.

**AND IT IS FURTHER ORDERED** pursuant to subsection 59(1) of Schedule I to the Regulation that the fees paid by the Canadian Managed Yield Fund and the U.S. Managed Yield Fund pursuant to subsection 13(3) of Schedule I of the Regulation with respect to the filing fees of these two mutual funds on each renewal are the fees applicable to money market mutual funds.

**PROVIDED** that the Canadian Managed Yield Fund and the U.S. Managed Yield Fund each pay the difference owing between the fees paid under clause 13(3)(a) of Schedule I of the Regulation at the time of the filing of the Preliminary Prospectus, and the fees which would have been applicable under clause 13(3)(b) of Schedule I of the Regulation within 10 business days of the date of this Order.

April 3, 2001.

"Paul M. Moore"

"Howard I. Wetston"

## 2.2.2 Michael Omer Bourgon - s. 127

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

**AND**

**IN THE MATTER OF  
MICHAEL OMER BOURGON**

**ORDER  
(Section 127)**

**WHEREAS** on January 15, 2001, the Ontario Securities Commission (the "Commission") issued a notice of hearing pursuant to subsection 127(1) of the *Securities Act*, R.S.O. 1990, Chap. S.5, as amended (the "Act"), in respect of Michael Omer Bourgon ("Bourgon");

**AND WHEREAS** on March 8, 2001, counsel for Staff of the Commission and Bourgon, acting on his own behalf, appeared before the Commission and requested on consent that this proceeding be adjourned to Wednesday, April 4, 2001, for the purpose of permitting the parties to consider a settlement of these proceedings or, failing which, to set a date for the hearing of these proceedings;

**AND WHEREAS ON** April 4, 2001, counsel for Staff of the Commission appeared before the Commission, neither Bourgon nor anyone on his behalf appearing, and requested that this proceeding be adjourned sine die returnable on five business days notice;

**AND UPON** reviewing the Statement of Allegations of Staff of the Commission and on hearing the submissions of Staff;

**AND WHEREAS** by Commission order made March 9, 2001, pursuant to section 3.5(3) of the Act, any one of David A. Brown, Howard I. Wetston and Paul M. Moore, acting alone, is authorized to grant adjournments and set dates for hearings;

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

**IT IS HEREBY ORDERED THAT** this proceeding is adjourned sine die returnable on five business days notice.

April 4, 2001.

"Paul Moore"

**2.2.3 BioCapital Biotechnology and Healthcare Fund**

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

**AND**

**IN THE MATTER OF  
BIOCAPITAL BIOTECHNOLOGY AND  
HEALTHCARE FUND  
AND  
BIOCAPITAL MUTUAL FUND MANAGEMENT INC.**

**ORDER**

**WHEREAS** on February 19, 2001, BioCapital Mutual Fund Management Inc. ("BioCapital"), the manager, promoter and trustee of BioCapital BioTechnology and Healthcare Fund ("the Fund") applied for an exemption from the concentration restriction in section 2.1 of National Instrument 81-102 Mutual Funds ("NI 81-102") for a period of 180 days in that the securities of two issuers proposed to be transferred to the Fund would contravene the aforementioned section:

**AND WHEREAS** BioCapital requested the exemption on the grounds that the securities of the two subject issuers are thinly traded and an exemption period of 180 days would permit BioCapital to ensure compliance with section 2.1 of NI 81-102 in an orderly fashion;

**AND WHEREAS** on March 23, 2001, the Director of the Ontario Securities Commission decided that it was not in the public interest to exempt the Fund from the concentration restrictions in section 2.1 of NI 81-102;

**AND WHEREAS** on March 28, 2001, BioCapital requested a hearing and review of the decision of the Director of the Ontario Securities Commission pursuant to section 8 of the Act;

**AND WHEREAS** by the date of the hearing on April 2, 2001, the only exemptive relief that was being requested by BioCapital was in respect of one issuer to be transferred to the Fund, namely ConjuChem Inc.,

**IT IS HEREBY ORDERED THAT:**

1. BioCapital's application for exemption from the concentration restrictions in section 2.1 of NI 81-102 with respect to the securities of ConjuChem Inc. to be transferred to the Fund is hereby granted provided that:
  - (i) the Fund shall as quickly as is commercially reasonable, and in any event no later than 180 days after the date of the (final) simplified prospectus of the Fund to be filed under SEDAR project number 333312 (the "Simplified Prospectus"), reduce its holdings of the shares of ConjuChem so that such holding shall not at that time constitute more than 10% of the net assets of the Fund; and

- (ii) the Simplified Prospectus of the Fund shall contain adequate and complete disclosure concerning this Order which is satisfactory to Staff of the Ontario Securities Commission.

April 2, 2001.

"Paul Moore"

"John A. Geller"

"Stephen Paddon"

**2.2.4 Goldie Enterprises Inc. & MagiCorp Inc. - s.147**

**Headnote**

Section 83.1 - Order deeming an Issuer to be a reporting issuer in Ontario - issuer CDNX listed.

**Statutes Cited**

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

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

**AND**

**IN THE MATTER OF  
GOLDIE ENTERPRISES INC. AND  
MAGICORP INC.**

**ORDER  
(Section 147)**

**WHEREAS** Goldie Enterprises Inc. ("Goldie") and MagiCorp Inc. ("MagiCorp") have applied to the Ontario Securities Commission (the "Commission") for an order pursuant to Section 147 of the Act exempting Goldie from certain requirements of Item 15 of Form 32 of Ontario Regulation 1015 - General Regulation, R.R.O. 1990, as amended (the "Regulation") insofar as such requirements prescribe the inclusion of certain financial statements in the take-over bid circular prepared by Goldie in connection with its acquisition of all of the shares of MagiCorp;

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

**AND UPON** Goldie and MagiCorp having represented to the Commission as follows:

1. Goldie is a company incorporated under the laws of British Columbia and its principal and registered offices are located in Vancouver.
2. Goldie has been a reporting issuer under the *Securities Act* (British Columbia) for more than twelve months.
3. Goldie became a reporting issuer under the *Securities Act* (Alberta) in November 1999 as a result of the merger of the Vancouver Stock Exchange and the Alberta Stock Exchange to form the Canadian Venture Exchange Inc. ("CDNX").
4. Goldie was deemed to be a reporting issuer under the Act pursuant to an order of the Commission dated February 13, 2001 under subsection 83.1(1) of the Act.
5. MagiCorp is a corporation incorporated under the laws of Ontario and its principal and registered offices are located in Toronto.

6. MagiCorp is not a reporting issuer under the securities laws of any jurisdiction in Canada. MagiCorp has 29 registered common shareholders (of whom 10 are current or former employees) and 16 special warrant holders. Out of the 45 MagiCorp shareholders (including the special warrant holders), 15 reside outside Ontario.
7. Goldie and MagiCorp have entered into a letter agreement dated June 30, 2000 (as amended) pursuant to which Goldie has agreed to acquire (the "Acquisition") all of the issued and outstanding shares of MagiCorp in consideration for 39,331,678 common shares of Goldie. After giving effect to the Acquisition, the shareholders of MagiCorp will hold approximately 93% of the shares of Goldie.
8. Goldie obtained shareholder approval for the Acquisition and a number of related matters at its shareholders' meeting held in Vancouver on March 5, 2001.
9. Goldie's common shares are listed for trading on CDNX. Goldie has made application to list the common shares to be issued to shareholders of MagiCorp on CDNX.
10. As Goldie has only become a reporting issuer in Ontario on February 13, 2001, the shares of Goldie issued to the shareholders of MagiCorp will be subject to resale restrictions until February 14, 2002 in accordance with the requirements of subsection 72(5) of the Act. Accordingly, Goldie proposes to file with the Ontario Securities Commission a securities exchange take-over bid circular in connection with the Acquisition (the "Take-over Bid Circular") with the result that the first trade of the shares of Goldie issued to Ontario shareholders of MagiCorp in respect of the Acquisition will be subject to section 2.14 of Ontario Securities Commission Rule 45-501 - *Prospectus Exempt Distributions*.
11. The Acquisition will be a take-over bid which is exempt from the requirements of Part XX of the *Securities Act* pursuant to clause 93(1)(d).
12. Goldie proposes to include the following financial statements in the Take-over Bid Circular:
  - (i) *for MagiCorp:*
    - a) Balance sheets as at September 30, 2000 (unaudited), December 31, 1999 (audited), and December 31, 1998 (audited).
    - b) Consolidated statements of income and consolidated statements of retained earnings and consolidated statements of cash flows for the nine months ended September 30, 2000 and 1999 (unaudited) and the years ended December 31, 1999 (audited), December 31, 1998 (audited), December 31, 1997

(unaudited) and December 31, 1996 (unaudited).

(ii) *for Goldie:*

- a) Balance sheets as at November 30, 2000 (audited), February 29, 2000 (audited) and February 28, 1999 (audited).
- b) Statements of loss and deficit and statements of cash flows for the nine months ended November 30, 2000 (unaudited) and November 30, 1999 (unaudited) and the years ended February 29, 2000 (audited) and February 28, 1999 (audited).

(iii) *Pro forma:*

- a) Consolidated balance sheet as at November 30, 2000 (unaudited).
- b) Consolidated statements of income and retained earnings for nine months ended November 30, 2000 (which combine the results of operations of MagiCorp for the nine-month period ended September 30, 2000) and for the year ended February 29, 2000 (which combine the result of operations of MagiCorp for the year ended December 31, 1999).

- 13. The audit report dated August 20, 1999 with respect to the 1998 financial statements of MagiCorp includes two reservations as to scope.
- 14. Item 15 of Form 32 of the Regulation provides that, in respect of a securities exchange take-over bid, the "information prescribed by the form of prospectus" must be included in the Take-Over Bid Circular. Moreover, Item 15 of Form 32 provides that "where the form of prospectus so requires, include the financial statements of the offeror or other issuer required to be included in the such prospectus".
- 15. The Acquisition is a significant probable acquisition within the meaning of Rule 41-501 of the Ontario Securities Commission (the "Rule") which meets the three tests referred to in clause 6.6(3) of the Rule. Accordingly, in addition to financial statements referred to in paragraph 12 above, the Rule requires the inclusion in the Take-Over Bid Circular of an audited income statement and statement of retained earnings and cash flows of MagiCorp for the year ended 1997 (the "Excluded Statements"). Moreover, the Rule does not permit the inclusion of reservations in an audit report in respect of financial statements which must be audited.

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

**IT IS ORDERED** pursuant to Section 147 of the Act that Goldie is exempt from the requirements of Item 15 of Form 32 of the Regulation in respect of the Take-Over Bid Circular insofar as such requirements require the inclusion of (i) the Excluded Statements, and (ii) an audit report without reservations in respect of the 1998 financial statements of MagiCorp.

March 28, 2001.

"Paul Moore"

"Howard I. Wetston"



## 2.3 Rulings

### 2.3.1 Hymas Investment Management Inc. - ss. 74(1)

#### Headnote

Subsection 74(1) - Certain trades in units that constitute an initial investment in a pooled fund, and subscriptions for additional units of such fund, exempt from section 25 and 53 of the Act subject to certain conditions.

Section 147 - Trades in units of pooled funds not subject to subsection 72(3) of the Act provided a Form 45-501F1 filed and required fees paid annually.

Section 233 of the Regulation - Relief granted from sections 223, 226, 227 and 228 of the Regulation with respect to the distribution of units of the funds subject to certain conditions.

#### Statutes Cited

Securities Act, R.S.O. 1990, c.S.5, as am. ss. 25, 35(1)5, 53, 72(1)(d), 72(3), 74(1), 77(2), 78, 79, 147.

#### Regulations Cited

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., ss. 223, 226, 227, 228, 233.

#### Rules Cited

Ontario Securities Commission Rule 45-501 *Exempt Distributions*.

Ontario Securities Commission Rule 81-501 *Mutual Fund Reinvestment Plans*.

Ontario Securities Commission Rule 33-501 *Conflict Rules in the Sale of Mutual Fund Securities*.

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

AND IN THE MATTER OF  
THE REGULATION MADE UNDER THE ACT, R.R.O.  
1990, REGULATION 1015, AS AMENDED (THE  
"Regulation")

AND

IN THE MATTER OF  
HYMAS INVESTMENT MANAGEMENT INC.

RULING AND ORDER  
(Subsection 74(1) and Section 147 of the Act and  
Section 233 of the Regulation)

UPON the application of Hymas Investment Management Inc. (the "Applicant") to the Ontario Securities Commission (the "Commission") for: (i) a ruling pursuant to subsection 74(1) of the Act that certain trades in units ("Units")

of pooled investment trusts to be established and managed by the Applicant are not subject to sections 25 or 53 of the Act; (ii) an order of the Commission pursuant to section 147 of the Act that the trades in Units are not subject to subsection 72(3) of the Act and Rule 45-501 Exempt Distribution ("Rule 45-501") with respect to the filing of a Form 45-501 F1 in respect of trades in Units of such pooled investment trusts, provided a Form 45-501F1 and the prescribed fee are filed within 30 days of the financial year end of each pooled investment trust and (iii) an order pursuant to section 233 of the Regulation exempting the Applicant from sections 223, 226, 227 and 228 of the Regulation in respect of the distribution of the Units;

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is a corporation incorporated under the laws of the Province of Ontario and is registered under the Act as an adviser in the categories of investment counsel and portfolio manager and as a dealer in the category of limited market dealer.
2. In order to service its present and future private and institutional clients, the Applicant intends to establish two pooled investment trusts and it may establish additional investment trusts from time to time (individually, a "Fund" and collectively, the "Funds").
3. Each Fund will be established pursuant to a Master Declaration of Trust and a separate Regulation thereto (collectively, in respect of each Fund, a "Trust Agreement") pursuant to which the Applicant will be appointed as the trustee of the Funds.
4. The Commission has approved the proposal that the Applicant act as the trustee of the Funds pursuant to the authority conferred upon the Commission in clause 213(3)(b) of the *Loan and Trust Corporation Act* (Ontario).
5. Each Fund will be a "mutual fund in Ontario" as defined in subsection 1(1) of the Act and, as such, is required to comply with the requirements of subsection 77(2) and sections 78 and 79 of the Act with respect to the preparation, mailing to securityholders and filing with the Commission of interim and annual financial statements.
6. The assets of each of the Funds will be invested from time to time upon the advice of the Applicant based on the objectives, policies and restrictions set out in each Fund's respective Trust Agreement.
7. Units of the Fund will be issued on a continuous basis at the net asset value per Unit on each valuation date set out in each Fund's respective Trust Agreement. No sales charges or deferred sales charges are charged when an investor buys Units of a Fund.
8. Units of the Funds will be redeemable without charge upon the request of a holder of Units of a Fund at the net asset value per Unit on the Fund's valuation date,

provided that a redemption fee of 1% will be charged on redemptions of Units held for less than one year. The redemption fee will not be charged on Units acquired on automatic reinvestment of dividends.

9. Units of the Funds will be non-transferable.
10. None of the Funds is expected to become a reporting issuer under the Act.
11. The fiscal year end of each Fund will be December 31.
12. Investors are not permitted to subscribe for Units of a Fund unless such investor makes, or has made, an initial purchase of Units of such Fund (an "Initial Investment") at a subscription price of not less than \$150,000. The Applicant proposes that, for the purposes of calculating an investor's Initial Investment in a Fund, an investor may aggregate purchases made by the investor, his or her registered retirement savings plan or registered retirement income fund, and his or her wholly-owned companies, or any combination of the foregoing (a "Unitholder").
13. Without the relief granted herein, an Initial Investment in a Fund may not be made in reliance upon the registration and prospectus exemptions contained in paragraph 35(1)5 and clause 72(1)(d) of the Act, as amended by section 3.1 of Rule 45-501, where an investor calculates his or her Initial Investment in a Fund as described in paragraph 12 above.
14. Following an Initial Investment in a Fund, it is proposed that a Unitholder be permitted to subscribe for additional units of such Fund (the "Additional Units") by:
  - (a) automatically reinvesting distributions otherwise receivable by the Unitholder which are attributable to outstanding units, unless otherwise requested by a Unitholder; or
  - (b) subscribing and paying for Additional Units.
15. The issuance of Additional Units to Unitholders pursuant to the reinvestment as contemplated in paragraph 14(a) above will be made by the Fund in reliance upon the registration and prospectus exemptions contained in Rule 81-501 Mutual Fund Reinvestment Plans.
16. It is proposed that Unitholders be permitted to purchase Additional Units of a Fund in increments of less than \$150,000, as contemplated in paragraph 14(b) above, provided that at the time of such subsequent acquisition, the Unitholder holds Units of the same Fund having either an aggregate acquisition cost or an aggregate net asset value of at least \$150,000.
17. The Applicant is subject to the provisions of Part XIII of the Regulation with respect to the Funds, including sections 223 to 228 of the Regulation.
18. The Applicant acts in a similar capacity with respect to the Units of the Funds as a mutual fund dealer, or as a fully registered dealer in respect of "associated mutual fund

securities", as such term is defined in Rule 33-502 Exceptions to Conflict Rules in the Sale of Mutual Fund Securities.

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

**IT IS RULED** pursuant to subsection 74(1) of the Act that trades by the Applicant of Units or Additional Units of a Fund to a Unitholder as described in paragraphs 12 and 16 of this ruling and order will not be subject to sections 25 and 53 of the Act, provided that:

- A. the aggregate acquisition cost of the Initial Investment to the Unitholder is not less than \$150,000;
- B. at the time of the acquisition of Additional Units of a Fund, the Unitholder then owns Units of that Fund having either an aggregate acquisition cost or net asset value of not less than \$150,000;
- C. at the time of the acquisition of Units or Additional Units of a Fund, the Applicant is registered under the Act as an adviser in the categories of investment counsel and portfolio manager and as a dealer in the category of limited market dealer and such registrations are in good standing; and
- D. this ruling will terminate 90 days after the publication in final form by the Commission of any rule regarding trades in securities of pooled funds;

**AND IT IS ORDERED** pursuant to section 147 of the Act that trades in Units and Additional Units of a Fund are not subject to subsection 72(3) of the Act and Rule 45-501 provided that within 30 days after the financial year of such Fund, the Fund files a report in accordance with Form 45-501F1 in respect of all trades in Units and Additional Units of the Fund during such financial year and pays the fee prescribed by section 7.3 of Rule 45-501;

**AND IT IS FURTHER ORDERED** pursuant to section 233 of the Regulation that the Applicant is exempt from the requirements of sections 223, 226 and 228 of the Regulation in respect of distributions of Units and Additional Units of the Funds;

**AND IT IS FURTHER ORDERED** pursuant to section 233 of the Regulation that the Applicant is exempt from the requirements of section 227 of the Regulation in respect of distributions of Units and Additional Units of the Funds, provided that the Applicant, before acquiring discretionary authority, secures the specific and informed written consent of the client to the exercise of the discretionary authority in respect of the Units of the Funds.

March 13, 2001.

"J. A. Geller"

"Robert W. Davis"

**2.3.2 SPX Corporation & United Dominion Industries Ltd. - s. 3.1 of 54-501**

**Headnote**

Rule 54-501 - Request for relief from the requirement to reconcile to Canadian GAAP financial statements included in an Information Circular which are prepared in accordance with U.S. GAAP.

**Ontario Rule Cited**

Rule 54-501, Prospectus Disclosure in Certain Information Circulars, s. 3.1.

Rule 41-501, General Prospectus Requirements, s. 9.1.

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

**AND**

**IN THE MATTER OF  
SPX CORPORATION**

**AND**

**IN THE MATTER OF  
UNITED DOMINION INDUSTRIES LIMITED**

**RULING  
(Section 3.1 of Rule 54-501)**

UPON the application of SPX Corporation ("SPX") and United Dominion Industries Limited ("UDI") (collectively, the "Applicant") to the Ontario Securities Commission (the "Commission") for an order pursuant to Section 3.1 of Rule 54-501 that UDI be exempt from any requirement to provide the following with respect to SPX in the management information circular (the "Circular") to be sent to UDI Shareholders (as defined below):

- (a) the requirement set forth in Section 9.1 of the General Prospectus Requirements of Rule 41-501 and Item 8.4 of Form 41-501F1 that historical and *pro forma* financial statements of SPX prepared in accordance with United States generally accepted accounting principles ("U.S. GAAP") be accompanied by a note to explain and quantify the effect of material differences between Canadian generally accepted accounting principles ("Canadian GAAP") and U.S. GAAP that relate to measurements and provide a reconciliation of such financial statements to Canadian GAAP;
- (b) the requirement set forth in Section 9.4 of the General Prospectus Requirements of Rule 41-501 that the SPX auditor's report disclose any material differences in the form and content of its auditor's report as compared to a Canadian auditor's report and confirming that the auditing

standards applied are substantially equivalent to Canadian generally accepted auditing standards; and

- (c) the requirement of Section 8.5(2) of Form 41-501F1 that the SPX MD&A provide a restatement of those parts of the SPX MD&A that would read differently if the SPX MD&A were based on statements prepared in accordance with Canadian GAAP and the requirement of Section 8.5(4) of Form 41-501F1 that the SPX MD&A provide a cross-reference to the notes in the financial statements that reconcile the differences between U.S. GAAP and Canadian GAAP.

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

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

1. Pursuant to a merger agreement dated as of March 10, 2001 between SPX and UDI, SPX intends to acquire all of the outstanding common shares of UDI (the "UDI Common Shares") in a transaction (the "Transaction") to be effected pursuant to plan of arrangement (the "Arrangement"). The Arrangement will be carried out under section 192 of the *Canada Business Corporations Act* (the "CBCA"). The effect of the Arrangement will be to provide shareholders of UDI ("UDI Shareholders") (other than dissenting shareholders) with common shares of SPX, together with the associated preference stock purchase rights (collectively, the "SPX Transaction Shares") in exchange for their UDI Common Shares, based on the Exchange Ratio of 0.2353 SPX Transaction Shares for each UDI Common Share (the "Exchange Ratio"), and for UDI to amalgamate (the "Amalgamation") with an indirect wholly-owned subsidiary of SPX ("Mergeco") such that, upon completion of the Transaction, SPX will indirectly beneficially own all of the common shares of the amalgamated company ("Amalco").
2. SPX is a company incorporated under the laws of Delaware. SPX Common Shares are listed on the New York Stock Exchange (the "NYSE") and the Pacific Stock Exchange under the symbol "SPW". SPX is currently subject to the *United States Exchange Act* of 1934, as amended (the "*Exchange Act*"). SPX is not a "reporting issuer" or the equivalent in any province or territory of Canada and has no intention of becoming one in the future.
3. As of March 20, 2001 there were 68 shareholders in Canada holding 3,596 SPX Common Shares, representing approximately .0001% of the total number of issued and outstanding SPX Common Shares. As of March 20, 2001, of all of the options outstanding under the SPX stock option plans ("SPX Options") there were 14 persons in Canada holding options to purchase an aggregate 24,250 SPX Common Shares, representing approximately .0029% of the SPX Options.
4. UDI is a company incorporated under the CBCA. The UDI Common Shares are listed on The Toronto Stock

Exchange (the "TSE") and the NYSE under the symbol "UDI". UDI is a "reporting issuer" or the equivalent in all provinces of Canada. To the best of the knowledge of SPX and UDI, UDI is not in default of any of the requirements of the securities legislation of Ontario. UDI is also currently subject to the reporting requirements applicable to foreign private issuers under the *Exchange Act*.

5. As of February 28, 2001, there were 884 shareholders in Canada holding 24,634,830 UDI Common Shares, representing approximately 63% of the total number of issued and outstanding UDI Common Shares. As of March 21, 2001, of all of the options outstanding under the UDI stock option plans ("UDI Options") approximately 126,000 UDI Options were held by residents in Canada, representing approximately 4.1% of the total number of outstanding UDI Options.
6. UDI is currently eligible to file under National Instrument 44-101 – "Short Form Prospectus Distributions".
7. A special meeting (the "Special Meeting") of the UDI Shareholders will be held on or about May 18, 2001 at which UDI will seek the requisite shareholder approval (of 66 2/3% of the votes attached to the UDI Common Shares represented at the Special Meeting) for the special resolution approving the Arrangement.
8. In connection with the Special Meeting, UDI will mail on or about April 17, 2001 to each UDI Shareholder (i) a notice of annual and special meeting, (ii) a form of proxy, and (iii) the Circular. The Circular will be prepared in accordance with OSC Rule 54-501, except with respect to any relief granted therefrom, and will contain disclosure of the Transaction and the business and affairs of each of SPX and UDI.
9. The Circular will contain the following financial statements:
  - (a) unaudited *pro forma* consolidated balance sheet of SPX as of December 31, 2000 as if the Arrangement had occurred on that date and unaudited *pro forma* consolidated profit and loss account for the year ended December 31, 2000 as if the Arrangement had occurred on January 1, 2000 and the compilation report thereon, all in accordance with U.S. GAAP;
  - (b) audited annual financial statements of SPX for each of the three fiscal years ended December 31, 2000, December 31, 1999 and December 31, 1998 together with balance sheets as at the end of such periods and the auditor's reports thereon, all in accordance with U.S. GAAP; and
  - (c) audited annual financial statements of UDI for each of the three fiscal years ended December 31, 2000, December 31, 1999 and December 31, 1998 together with balance sheets as at the end of such periods and the auditors reports thereon, all in accordance with Canadian GAAP.
10. SPX is making an application to the NYSE in order that the SPX Transaction Shares issued pursuant to the Arrangement, and the SPX Common Shares issuable

on exercise of options issued in connection with the Arrangement to replace UDI Options, be listed for trading on the NYSE.

11. SPX intends to have Amalco delisted from the TSE and the NYSE and intends to file an application with the applicable Canadian securities regulators to have Amalco deemed to cease to be a reporting issuer upon the consummation of the Arrangement or shortly thereafter.
12. Upon the completion of the Arrangement, assuming that all of the UDI Shareholders elect to exchange their UDI Common Shares for SPX Transaction Shares, it is expected that the beneficial holders of SPX Common Shares resident in Canada will hold approximately 14.3% of the issued and outstanding shares of SPX. That percentage would increase to approximately 14.7% if it is assumed that all of the UDI Options held by Canadian residents will be exercised prior to the Effective Time and that only the SPX Options held by Canadian residents will have been so exercised.

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

THE DECISION of the Director is that, pursuant to Section 3.1 of Rule 54-501, UDI shall be exempt from any requirement to provide the following in the Circular with respect to SPX:

- (a) the requirement set forth in Section 9.1 of the General Prospectus Requirements of Rule 41-501 and Item 8.4 of Form 41-501F1 that historical and *pro forma* financial statements of SPX prepared in accordance with U.S. GAAP be accompanied by a note to explain and quantify the effect of material differences between Canadian GAAP and U.S. GAAP that relate to measurements and provide a reconciliation of such financial statements to Canadian GAAP;
- (b) the requirement set forth in Section 9.4 of the General Prospectus Requirements of Rule 41-501 that the SPX auditor's report disclose any material differences in the form and content of its auditor's report as compared to a Canadian auditor's report and confirming that the auditing standards applied are substantially equivalent to Canadian generally accepted auditing standards; and
- (c) the requirement of Section 8.5(2) of Form 41-501F1 that the SPX MD&A provide a restatement of those parts of the SPX MD&A that would read differently if the SPX MD&A were based on statements prepared in accordance with Canadian GAAP and the requirement of Section 8.5(4) of Form 41-501F1 that the SPX MD&A provide a cross-reference to the notes in the financial statements that reconcile the differences between U.S. GAAP and Canadian GAAP.

April 6, 2001.

"Kathryn Soden"

**2.3.3 Catharine Bayles & 1033764 Ontario Limited - ss. 74(1)**

**Headnote**

Subsection 74(1) - Registration and prospectus relief granted in respect of trade of common shares of The Toronto Stock Exchange Inc. from former member corporation to former principal of former member corporation - former principal a sophisticated investor - trade approved by board of directors of issuer

**Statute Cited**

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 25, 53, 72(4) and 74(1).

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

**AND**

**IN THE MATTER OF  
CATHARINE BAYLES AND 1033764 ONTARIO LIMITED**

**RULING  
(Subsection 74(1) of the Act)**

**UPON** the application (the "Application") of Catharine Bayles ("Bayles") and 1033764 Ontario Limited ("Ontarioco") (collectively, the "Applicant") to the Ontario Securities Commission (the "Commission") for a ruling pursuant to subsection 74(1) of the Act that certain trades in common shares ("Shares") in the capital of The Toronto Stock Exchange Inc. (the "Issuer") by MMI Group Inc. ("MMI") to the Applicant shall not be subject to sections 25 or 53 of the Act;

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

**AND UPON** the Applicant representing to the Commission that:

1. The Issuer was continued under the laws of the province of Ontario on April 3, 2000 (the "Demutualization").
2. The Issuer is not a reporting issuer under the Act.
3. On Demutualization, member firms of the Issuer, which term includes the predecessor entity of the Issuer, exchanged each seat that they held for 20 Shares of the Issuer to become its initial shareholders.
4. MMI is a member of the Investment Dealers Association of Canada ("IDA") and is registered in the category of broker/investment dealer – equities, options, managed accounts.
5. MMI was a member corporation of the Issuer that, on Demutualization, exchanged the seat it held for 20 Shares of the Issuer.

6. Bayles is a former principal of MMI who held shares in MMI through Ontarioco, a private company incorporated under the laws of the province of Ontario and wholly-owned by Bayles.
7. Bayles is a sophisticated investor whose investment qualifications and activities have been reviewed by the IDA in connection with her work at MMI.
8. The Applicant sold its interest in MMI to the two remaining principals on November 21, 2000 (the "Share Sale"). Bayles remains as a Vice President and an employee of MMI.
9. In connection with the Share Sale, the three principals of MMI wish to transfer six of MMI's 20 Shares of the Issuer obtained on Demutualization directly to Ontarioco (the "Proposed Transfer").
10. Share ownership in the Issuer is constrained in that no person or persons acting jointly or in concert are permitted to beneficially own or control more than 5% of the outstanding Shares unless the prior consent of the Commission is obtained.
11. The Issuer currently has 2,660 Shares outstanding.
12. The Proposed Transfer would result in the Applicant owning approximately 0.23% of the outstanding Shares of the Issuer.
13. The Articles of Continuance of the Issuer provide that for two years after the date of continuance Shares of the Issuer cannot be transferred unless the consent of the board of directors of the Issuer or the consent of a majority of the Issuer's shareholders is obtained.
14. The board of directors of the Issuer approved the Proposed Transfer on December 12, 2000.

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

- (a) **IT IS RULED**, pursuant to section 74(1) of the Act that the Proposed Transfer is not subject to section 25 or 53 of the Act, provided that the first trade of such Shares is made in accordance with the provisions of subsection 72(4) of the Act, as if such Shares had been acquired pursuant to an exemption referred to in subsection 72(4) of the Act.

April 6, 2001.

"H.I. Wetston"

"D. Brown"

**This Page Intentionally left blank**

## Chapter 3

# Reasons: Decisions, Orders and Rulings

---

THERE IS NO MATERIAL FOR THIS CHAPTER  
IN THIS ISSUE

**This Page Intentionally left blank**



## Chapter 4

# Cease Trading Orders

---

---

### 4.1.1 Temporary and Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Extending Order	Date of Rescinding Order
Re-Con Building Products Inc.	01 Mar 01	-	-	10 Apr 01

**This Page Intentionally left blank**

## Chapter 5

# Rules and Policies

### 5.1.1 Rule 31-506 SRO Membership - Mutual Fund Dealers

#### ONTARIO SECURITIES COMMISSION RULE 31-506 SRO MEMBERSHIP - MUTUAL FUND DEALERS

#### PART 1 DEFINITIONS

##### 1.1 Definitions - In this Rule

"effective date" means the date that this Rule comes into force under section 4.1.

"MFDA" means the Mutual Fund Dealers Association of Canada, a self-regulatory organization for mutual fund dealers.

#### PART 2 MEMBERSHIP REQUIRED

2.1 **Membership Required** - From and after July 2, 2002, a mutual fund dealer shall be a member of the MFDA.

#### PART 3 APPLICATION FOR MEMBERSHIP

3.1 **Mutual Fund Dealers on Effective Date** - A mutual fund dealer which is a mutual fund dealer on the effective date shall file with the MFDA, no later than the thirtieth day after the effective date:

- (a) an application for membership in the form prescribed by the MFDA; and
- (b) the fees prescribed by the MFDA for the application for membership.

3.2 **New Applicants for Registration as Mutual Fund Dealers Before the Effective Date** - A person or company that has applied to the Commission for registration as a mutual fund dealer before the effective date and that is not registered as a mutual fund dealer on the effective date shall file with the MFDA, no later than the thirtieth day after the effective date, the application for membership and fees referred to in section 3.1.

3.3 **New Applicants for Registration as Mutual Fund Dealers After the Effective Date**

- (1) Subject to subsection (2), a person or company that applies to the Commission for registration as a mutual fund dealer after the effective date shall file with the MFDA:

- (a) an application for membership in the form prescribed by the MFDA; and
- (b) the fees prescribed by the MFDA for the application for membership

on the same date as it files its application for registration with the Commission as a mutual fund dealer.

- (2) If a person or company applies to the Commission for registration as a mutual fund dealer after the effective date, but before the end of the thirtieth day after the effective date, then it shall file the application and fees referred to in subsection (1) with the MFDA by the end of the thirtieth day after the effective date, and it is not required to file the specified documents on the same date as it files its application for registration with the Commission.

#### PART 4 EFFECTIVE DATE

4.1 **Effective Date for Rule** - This Rule shall come into force on:

- (a) the later of
  - (i) March 30, 2001, and
  - (ii) that day which is 15 days after the Rule is approved by the Minister of Finance

if the Minister of Finance approves the Rule;

or

- (b) April 30, 2001, if the Minister of Finance does not approve the Rule, reject it or return it for further consideration.

#### PART 5 EXEMPTION

5.1 **Exemption** - The Director may grant an exemption to this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

## 5.1.2 Rule 44-801 Implementing NI 44-101

### ONTARIO SECURITIES COMMISSION RULES RULE 44-801 IMPLEMENTING NATIONAL INSTRUMENT 44-101 SHORT FORM PROSPECTUS DISTRIBUTIONS

#### 1.1 Short Form of Prospectus for Purposes of Section 63 of the Act

A preliminary short form prospectus and a short form prospectus prepared and certified in accordance with National Instrument 44-101 is a short form of preliminary prospectus and a short form of prospectus in the prescribed form, respectively, for the purposes of section 63 of the Act.

#### 1.2 Exemption from Certain Requirements of the Act and Rules

- (1) Despite subsection 65(1) of the Act, the waiting period between the issuance by the Director of a receipt for a preliminary short form prospectus or an amendment to a preliminary short form prospectus and the issuance by the Director of a receipt for a short form prospectus may be less than ten days.
- (2) National Instrument 41-101 Prospectus Disclosure Requirements does not apply to a preliminary short form prospectus or a short form prospectus certified, filed and receipted in accordance with National Instrument 44-101.
- (3) Subject to subsection (4), Rule 41-501 General Prospectus Requirements does not apply to a preliminary short form prospectus or a short form prospectus certified, filed and receipted in accordance with National Instrument 44-101.
- (4) Notwithstanding subsection (3) and section 11.6 of National Instrument 44-101, the provisions of subsection 13.9 of Rule 41-501 General Prospectus Requirements shall apply to a preliminary short form prospectus or a short form prospectus certified, filed and receipted in accordance with National Instrument 44-101.
- (5) Section 79 of the Act does not apply insofar as it requires issuers to send financial statements filed under section 78 of the Act to each holder of its securities concurrently with their filing, if
  - (a) the issuer files those financial statements earlier than 140 days from the end of its last financial year because it is required to do so by National Instrument 44-101; and
  - (b) the financial statements are sent within the time period specified in the Act for filing.

## Chapter 6

# Request for Comments

---

THERE IS NO MATERIAL FOR THIS CHAPTER  
IN THIS ISSUE

**This Page Intentionally left blank**

## Chapter 7

# Insider Reporting

---

---

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

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

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

## Chapter 8

# Notice of Exempt Financings

### Exempt Financings

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

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

<u>Trans. Date</u>	<u>Security</u>	<u>Price (\$)</u>	<u>Amount</u>
03Apr01	3D Visit Inc. - Special Shares	150,000	250,000
01Apr01	ABC Fully-Managed Fund - Units	150,000	20,644
30Mar01	ADA Three Limited Partnership - Units	20,000	1,364
04Apr01	AGII Growth Fund, The - Trust Units	496,017	65,480
16Mar01	BPI American Opportunities Fund - Units	43,125	342
16Mar01	BPI Global Opportunities III Fund - Units	2,230,322	21,993
09Mar01	BPI Global Opportunities III Fund - Units	609,300	6,011
26Mar01	Burgundy Japan Fund - Units	150,000	9,023
30Mar01	Canadian Golden Dragon Resources Ltd. - Common Shares	4,500	25,000
26Mar01	Castek Software Factory Inc. - Units	1,500,000	877,193
16Mar01	CMS Structured Products Fund III (Cayman) Ltd. - Limited Partnership Unit	382,500	.25
Mar01	Connor Clark Private Trust - Units	14,050,408	14,050,408
26Mar01	Cymat Corp. - Special Warrants	17,865,250	3,250,000
02Apr01	Giuskini Sheff Fund, The - Units in Limited Partnership	473,970	5,959
29Mar01	GM Capital Partners I, L.P. - Limited Partnership Interests	5,642,723	5,642,723
01Apr01	Greenwood Plaza (Denver) Associates Limited Partnership - Limited Partnership Units	4,945	65,000
01Jan00 to 31Dec00	GS Private Equity Partners 2000 Offshore, L.P. - Limited Partnership Interests	3,026,200	2,000,000
01Jan00 to 31Dec00	GS PEP Technology Fund 2000 Offshore, L.P. - Limited Partnership Interest	5,292,850	3,500,000
01Apr01	Highway 9 (Spartanburg) Associates Limited Partnership - Limited Partnership Units	2,282	30,000
28Feb01 to 30Mar01	Hillsdale Canadian Aggressive Hedged Equity Fund - Units	2,416,890	199,486
30Jan01	Icor Brokerage Holdings Inc. - Units	7,732	1,250
30Mar01	INVESCO International Equity Fund - Units	3,140,000	314,000
29Dec00	Jack Astor's (Newmarket) Limited - Units	450,000	5,000
27Mar01	Joseph Littlejohn & Levy Fund IV, L.P. - Capital Commitment	27,527,065	27,527,065
16Mar01	Megawheels.com Inc. - Special Warrants	261,000	261,000
01Apr01	N.W. Crossing (Houston) Associates Limited Partnership - Limited Partnership Units	14,837	65,000
22Nov00	Naturalhealthlink.com, Inc. - Series B Preferred Stock	4,524,870	2,551,871



**Notice of Exempt Financings**

<u>Trans. Date</u>	<u>Security</u>	<u>Price (\$)</u>	<u>Amount</u>
30Mar01	Oxford CTX Inc. - 7.19% First Mortgage Bonds due March 30, 2011	18,333,334	18,333,334
30Mar01	Oxford CTX Inc. - 7.19% First Mortgage Bonds, due March 30, 2011	18,333,333	18,333,333
15Mar01	Points.com Inc. - Class C Retractable Convertible Preferred Shares	4,000,000	1,066,667
23Mar01	QuestAir Technologies Inc. - Class B Preferred Shares	8,500,007	988,373
30Mar01	Rampart Mercantile Inc. - Convertible Debentures	2,000,000	2,000,000
06Mar01	StreetViews Inc. - Units	250,000	250,000
09Mar01	Twenty-First Century Canadian Equity Fund - Units	1,500,000	229,322
31Mar01	Twenty-First Century International Equity Fund - Units	1,500,000	201,147
09Mar01	Twenty-First Century American Equity Fund - Units	1,500,000	252,321
08Feb01	Waterfall Networks Corporation - Series 2 Preferred Shares	1,133,400	234,375
16Feb01	Waterfall Networks Corporation - Series 2 Preferred Shares	768,400	156,250
19Sep00	Waterfall Networks Corporation - Series 1 Preferred Shares	2,260,500	3,000,000
23Mar01	Waterfall Networks Corporation - Series 2 Preferred Shares	391,600	78,125

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

<u>Name of Company</u>	<u>Date the Company Ceased to be a Private Company</u>
Tempus Corp.	23Mar01

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

<u>Seller</u>	<u>Security</u>	<u>Amount</u>
Melnick, Larry	Champion Natural Health.com Inc. - Subordinate Voting Shares and Multiple Voting Shares	19,765, 100,000 Resp.
Estill, James A.	EMJ Data Systems Ltd. - Common Shares	21,900
Estill, Glen R.	EMJ Data Systems Ltd. - Common Shares	39,000
Estill Holdings Limited	EMJ Data Systems Ltd. - Common Shares	1,244,700
Southwestern Gold Corporation	Global-Pacific Minerals Inc. - Common Shares	2,000,000
963037 Ontario Limited	Jetcom Inc. - Common Shares	600,000
Xenolith Gold Limited	Kookaburra Resources Ltd. - Common Shares	1,893,700
Schwartz, Gerald	Onex Corporation - Subordinate Voting Shares	998,900
Faye, Michael R.	Spectra Inc. - Common Shares	219,000
Malion, Andrew J.	Spectra Inc. - Common Shares	217,000

## Chapter 9

# Legislation

### 9.1.1 Regulation 1015 of the Revised Regulations of Ontario, 1990 made under the Securities Act

#### REGULATION TO AMEND REGULATION 1015 OF THE REVISED REGULATIONS OF ONTARIO, 1990 MADE UNDER THE SECURITIES ACT

Note: Regulation 1015 has previously been amended. Those amendments are listed in the Table of Regulations published in *The Ontario Gazette* dated January 21, 2001.

1. **Clause 203.1 (1) (a) of Regulation 1015 of the Revised Regulations of Ontario, 1990 is revoked and the following substituted:**
  - (a) when mailing or delivering a copy of the take-over bid circular or issuer bid circular to all or substantially all of the persons and companies entitled to receive it; or
2. **This Regulation comes into force on March 31, 2001.**

### 9.1.2 Amendment to Reg. 1015 of the Revised Regulation of Ontario, 1990 Made under the Securities Act in connection with the OSC Rule 41-502

#### ONTARIO REGULATION MADE UNDER THE SECURITIES ACT

#### AMENDING REG. 1015 OF R.R.O. 1990 (GENERAL)

Note: Regulation 1015 has previously been amended. Those amendments are listed in the Table of Regulations published in *The Ontario Gazette* dated January 20, 2001.

1. **Section 33 of Regulation 1015 of the Revised Regulations of Ontario, 1990 is revoked.**
2. **Section 44 of the Regulation is revoked and the following substituted:**
  44. The prospectus of a commodity pool, as defined in National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, or of a scholarship plan shall be prepared in accordance with Form 15.
3. **Section 51 of the Regulation is amended by striking out "preliminary prospectus, prospectus or summary statement" and substituting "preliminary prospectus or prospectus".**
4. **(1) Subsection 54 (1) of the Regulation is amended by striking out "and every summary statement of a mutual fund" in the portion before clause (a).**
  - (2) **Subsections 54 (2) and (3) of the Regulation are revoked and the following substituted:**
    - (2) The financial statements described in subsection (1) may be omitted from the prospectus of the mutual fund if a copy of the financial statements that are otherwise required by subsection (1) is filed concurrently with the filing of the prospectus or if a copy of them has previously been filed under section 78 of the Act.
    - (3) If, under subsection (2), a prospectus of a mutual fund does not contain the

financial statements described in subsection (1), a prospectus that is sent or delivered to a purchaser of securities under section 71 or under subsection 63 (5) of the Act shall be accompanied by,

- (a) a copy of the financial statements that are otherwise required by subsection (1); and
- (b) if one or more financial statements for periods subsequent to those covered by the financial statements referred to in clause (a) have been filed under section 77 or 78 of the Act, a copy of the financial statements most recently filed before the day on which the prospectus is sent or delivered to the purchaser.

(3) **Subsection 54 (4) of the Regulation is amended by striking out the portion before the statement and substituting the following:**

(4) If, under subsection (2), a prospectus of a mutual fund does not contain the financial statements described in subsection (1), the following statement shall be printed on the outside cover page of the prospectus:

.....

5. **Section 237 of the Regulation is revoked and the following substituted:**

237. A prospectus of a labour sponsored investment fund corporation shall be in Form 45.

6. **Form 16 of the Regulation is revoked.**

7. **This Regulation comes into force on the day the rule made by the Ontario Securities Commission on January 16, 2001 entitled "Ontario Securities Commission Rule 41-502 Prospectus Requirements for Mutual Funds" comes into force.**

ONTARIO SECURITIES COMMISSION:

"H. I. Wetston"

"Paul M. Moore"

March 22, 2001.

**Note: The rule made by the Ontario Securities Commission on January 16, 2001 entitled "Ontario Securities Commission Rule 41-502 Prospectus Requirements for Mutual Funds" comes into force on April 5, 2001.**

The attached Regulation made by the Ontario Securities Commission under the Securities Act on March 22, 2001 is approved.

"James M. Flaherty"

March 30, 2001.

## Chapter 11

# IPOs, New Issues and Secondary Financings

---

**Issuer Name:**

AGF International Group Limited - AGF U.S. Value Class  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectus dated April 5th, 2001  
Mutual Reliance Review System Receipt dated April 6th, 2001

**Offering Price and Description:**

Mutual Fund Securities - Net Asset Value

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

AGF Funds Inc.

**Promoter(s):**

-

Project #344879

---

**Issuer Name:**

Aliant Inc.  
Principal Regulator - Nova Scotia

**Type and Date:**

Preliminary Short Form Prospectus dated April 6th, 2001  
Mutual Reliance Review System Receipt dated April 6th, 2001

**Offering Price and Description:**

\$150,000,000 - 6,000,000 Shares Cumulative Redeemable  
Preference Shares, Series 2 @ \$25.00  
per Share to yield initially 5.45% per annum

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

RBC Dominion Securities Inc.

Scotia Capital Inc.

CIBC World Markets Inc.

TD Securities Inc.

BMO Nesbitt Burns Inc.

National Bank Financial Inc.

**Promoter(s):**

-

Project #345098

---

**Issuer Name:**

Bell Canada  
Principal Regulator - Quebec

**Type and Date:**

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

**Offering Price and Description:**

\$3,000,000,000 Debt Securities (Unsecured)

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

-

**Promoter(s):**

-

Project #344715

---

**Issuer Name:**

Borealis Infrastructure Trust  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Shelf Prospectus dated April 4th, 2001  
Mutual Reliance Review System Receipt dated April 6th, 2001

**Offering Price and Description:**

\$500,000,000 - Borealis - Enersource Series Bonds

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

TD Securities Inc.

Scotia Capital Inc.

**Promoter(s):**

Borealis Funds Management Ltd.

Project #344438

---

**Issuer Name:**

Canadian Small Company Equity Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectus dated April 3rd, 2001  
Mutual Reliance Review System Receipt dated April 6th, 2001

**Offering Price and Description:**

Class O, I, and P Units

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

-

**Promoter(s):**

-

Project #341304

---

**Issuer Name:**

Core Balanced Fund  
Balanced Growth Fund  
Balanced Income Fund  
Balanced Growth Plus Fund  
Diversified Equity Fund  
Global Equity Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectus dated April 3rd, 2001  
Mutual Reliance Review System Receipt dated April 6th, 2001

**Offering Price and Description:**

Class O, I and P Units

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

-

**Promoter(s):**

-

Project #341277

**Issuer Name:**

Counsel Select Canada Portfolio  
Counsel Select Value Portfolio  
Counsel Focus Value Portfolio  
Counsel Fixed Income Portfolio  
Counsel Managed Style Portfolio  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectus dated April 5th, 2001  
Mutual Reliance Review System Receipt dated April 5th, 2001

**Offering Price and Description:**

Mutual Fund Securities - Net Asset Value

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

-

**Promoter(s):**

-

Project #344712

**Issuer Name:**

Cymat Corp  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated April 4th, 2001  
Mutual Reliance Review System Receipt dated April 5th, 2001

**Offering Price and Description:**

\$ \* - \* Common Shares @ \$ \* per Share

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

CIBC World Markets Inc.  
First Associates Investments Inc.  
Robert Caldwell Capital Corporation  
Yorkton Securities Inc.

**Promoter(s):**

-

Project #344657

**Issuer Name:**

First Quantum Minerals Ltd  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Prospectus dated April 6th, 2001  
Mutual Reliance Review System Receipt dated April 9th, 2001

**Offering Price and Description:**

US\$10,000,000 to US\$15,000,000 - Minimum of \* Common Shares and Maximum of \* Common Shares

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

Canaccord Capital (Europe) Limited

**Promoter(s):**

-

Project #345269

**Issuer Name:**

iUnits S&P 500 Index RSP Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated April 6th, 2001  
Mutual Reliance Review System Receipt dated April 9th, 2001

**Offering Price and Description:**

Mutual Fund Securities - Net Asset Value

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

Barclays Global Investors Canada Limited

**Promoter(s):**

-

Project #345116

**Issuer Name:**

Luxell Technologies Inc  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Prospectus dated April 6th, 2001  
Mutual Reliance Review System Receipt dated April 9th, 2001

**Offering Price and Description:**

\$7,544,624 - 2,155,607 Units (each consisting of one Common Share

and one Common Share Purchase Warrants) Issuable on the exercise of Special Warrants

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

Canaccord Capital Corporation

**Promoter(s):**

-

Project #345310

**Issuer Name:**

Odyssey Re Holdings Corp.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary PREP Prospectus dated March 30th, 2001  
Mutual Reliance Review System Receipt dated April 6th, 2001

**Offering Price and Description:**

US\$ \* - \* Common Stock @ \$US\$ \* per Common Shares

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

Banc of America Securities Canada Co.  
CIBC World Markets Inc.

**Promoter(s):**

-

Project #343275

**Issuer Name:**

Riphean Platinum Corporation

**Type and Date:**

Preliminary Prospectus dated March 30th, 2001  
Receipted dated April 5th, 2001

**Offering Price and Description:**

Rights to purchase up to \* Units and each Unit to consist of 1 Common Share, 1/2 Series A Warrant and 1/2 Series B Warrant at a price of \$ \* per Unit

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

-

**Promoter(s):**

-

Project #344654

---

**Issuer Name:**

Credential Balanced Portfolio  
Credential Growth Portfolio  
Credential Equity Portfolio  
Principal Regulator - British Columbia

**Type and Date:**

Amendment #1 dated March 30<sup>th</sup>, 2001 to the Simplified Prospectus and Annual Information Form dated June 28<sup>th</sup>, 2000

Mutual Reliance Review System Receipt dated 3<sup>rd</sup> day of April, 2001

**Offering Price and Description:**

-

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

**Promoter(s):**

Project #263096

---

**Issuer Name:**

IVRnet Inc. (Formerly Entrepex Technology Corporation)  
Principal Regulator - Alberta

**Type and Date:**

Amendment dated April 4<sup>th</sup>, 2001 to Prospectus dated March 22<sup>nd</sup>, 2001.

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

**Offering Price and Description:**

-

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

Canaccord Capital Corporation

**Promoter(s):**

Robert A. Blackshaw  
Jon G. Constable  
Project #323140

---

**Issuer Name:**

National Bank Money Market Fund  
National Bank Treasury Bill Plus Fund  
National Bank U.S. Money Market Fund  
National Bank Mortgage Fund  
National Bank Bond Fund  
National Bank Dividend Fund  
National Bank Global RSP Bond Fund  
National Bank Retirement Balanced Fund  
National Bank Canadian Equity Fund  
National Bank Canadian Index Fund  
National Bank Canadian Index Plus Fund  
National Bank Small Capitalization Fund  
National Bank Global Equity Fund  
National Bank Global Equity RSP Fund  
National Bank International RSP Index Fund  
National Bank American RSP Index Fund  
National Bank American Index Plus Fund  
National Bank European Equity Fund  
National Bank European Small Capitalization Fund  
National Bank Pacific-Asia Fund  
National Bank Emerging Markets Fund  
National Bank Quebec Growth Fund  
National Bank Natural Resources Fund  
National Bank Sector Rotation Fund  
National Bank Future Economy Fund  
National Bank Future Economy RSP Fund  
National Bank Global Technologies Fund

National Bank Global Technologies RSP Fund

Principal Regulator - Quebec

**Type and Date:**

Amendment #1 dated March 28<sup>th</sup>, 2001 to the Annual Information form dated September 21<sup>st</sup>, 2000

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

**Offering Price and Description:**

-

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

**Promoter(s):**

Project #278611

---

**Issuer Name:**

BFI Commodity Fund Limited Partnership  
Principal Regulator - Manitoba

**Type and Date:**

Final Prospectus dated April 5<sup>th</sup>, 2001

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

**Offering Price and Description:**

-

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

**Promoter(s):**

-

Project #326621

---

**Issuer Name:**

DYNASTY MOTORCAR CORPORATION  
Principal Regulator - British Columbia

**Type and Date:**

Final Prospectus dated March 15<sup>th</sup>, 2001

Mutual Reliance Review System Receipt dated 19<sup>th</sup> day of March, 2001

**Offering Price and Description:**

-

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

**Promoter(s):**

Project #308918

---

**Issuer Name:**

Merctor Minerals Ltd.  
(formerly SILVER EAGLE RESOURCES LTD.)  
Principal Regulator - British Columbia

**Type and Date:**

Final Prospectus dated March 30<sup>th</sup>, 2001

Mutual Reliance Review System Receipt dated 2<sup>nd</sup> day of April, 2001

**Offering Price and Description:**

-

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

**Promoter(s):**

Project #301332

**Issuer Name:**

Coca-Cola Enterprises (Canada) Bottling Finance Company  
Principal Regulator - Nova Scotia

**Type and Date:**

Final Short Form Base Shelf Prospectus dated April 2nd, 2001  
Mutual Reliance Review System Receipt dated 4<sup>th</sup> day of April, 2001

**Offering Price and Description:**

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

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

**Promoter(s):**

Project #339011

**Issuer Name:**

AGF International Group Limited - AGF Global Health Sciences Class  
AGF RSP MultiManager Fund  
AGF International Group Limited - AGF Global Resources Class  
AGF International Group Limited - AGF Global Financial Services Class  
AGF International Group Limited - AGF Aggressive Japan Class  
AGF International Group Limited - AGF Global Technology Class  
AGF International Group Limited - AGF MultiManager Class  
Global Strategy Canadian Companies Fund  
Global Strategy Growth & Income Fund  
AGF RSP International Value Fund  
AGF RSP American Tactical Asset Allocation Fund  
Global Strategy World Companies RSP Fund  
Global Strategy World Balanced RSP Fund  
AGF RSP American Growth Fund  
AGF RSP Japan Fund  
AGF RSP European Growth Fund  
AGF U.S. Short-Term High Yield Fund  
AGF Canadian Stock Fund  
AGF International Group Limited - AGF Global Real Estate Equity Class  
Global Strategy World Opportunities Fund  
AGF Canadian Aggressive All-Cap Fund  
AGF Latin America Fund  
AGF Emerging Markets Value Fund  
AGF International Group Limited - AGF International Stock Class  
AGF International Group Limited - AGF Canada Class  
AGF Aggressive Global Stock Fund  
Global Strategy Japan Plus RSP Fund  
AGF Canadian Aggressive Equity Fund  
AGF India Fund  
Global Strategy Europe Plus RSP Fund  
Global Strategy Canadian Small Cap Fund  
Global Strategy Canada Growth Fund  
AGF Aggressive Growth Fund  
Global Strategy World Equity Fund  
Global Strategy World Companies Fund  
Global Strategy Bond Fund  
Global Strategy World Bond RSP Fund  
Global Strategy World Bond Fund

Global Strategy World Balanced Fund  
AGF RSP International Equity Allocation Fund  
AGF International Value Fund  
Global Strategy U.S. Equity Fund  
Global Strategy Money Market Fund  
Global Strategy Income Plus Fund  
AGF Canadian Dividend Fund  
AGF World Balanced Fund  
AGF U.S. Dollar Money Market Account  
Global Strategy Gold Plus Fund  
Global Strategy Europe Plus Fund  
AGF RSP Global Bond Fund  
AGF Canadian Money Market Fund  
Global Strategy World Equity RSP Fund  
Global Strategy Canadian Opportunities Fund  
AGF Canadian High Income Fund  
AGF European Asset Allocation Fund  
AGF Canadian Tactical Asset Allocation Fund  
AGF American Tactical Asset Allocation Fund  
AGF U.S. Income Fund  
AGF Canadian Balanced Fund  
AGF Global Government Bond Fund  
AGF Canadian Bond Fund  
AGF Canadian Resources Fund Limited  
AGF International Group Limited - AGF World Equity Class  
AGF International Group Limited - AGF International Short-Term Income Class  
AGF International Group Limited - AGF Germany Class  
AGF International Group Limited - AGF European Growth Class  
AGF International Group Limited - AGF China Focus Class  
AGF International Group Limited - AGF Asian Growth Class  
AGF International Group Limited - AGF Japan Class  
AGF International Group Limited - AGF Special U.S. Class  
AGF International Group Limited - AGF American Growth Class  
AGF Canadian Growth Equity Fund Limited  
(Mutual Fund Series)

Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form dated March 26th, 2001  
Mutual Reliance Review System Receipt dated 5<sup>th</sup> day of April, 2001

**Offering Price and Description:**

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

AGF Funds Inc.

**Promoter(s):**

Project #332119

**Issuer Name:**

Global Strategy Growth & Income Fund  
Global Strategy Canadian Companies Fund  
Global Strategy World Companies RSP Fund  
Global Strategy World Balanced RSP Fund  
Global Strategy World Opportunities Fund  
Global Strategy World Equity Fund  
Global Strategy World Companies Fund  
Global Strategy World Bond Fund  
Global Strategy World Balanced Fund  
Global Strategy U.S. Equity Fund  
Global Strategy Money Market Fund  
Global Strategy Income Plus Fund  
Global Strategy Gold Plus Fund  
Global Strategy Europe Plus Fund  
Global Strategy World Equity RSP Fund  
Global Strategy Japan Plus RSP Fund  
Global Strategy Europe Plus RSP Fund  
Global Strategy Canadian Small Cap Fund  
Global Strategy Canadian Opportunities Fund  
Global Strategy Canada Growth Fund  
Global Strategy Bond Fund  
Global Strategy World Bond RSP Fund  
(Series P Units)

Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form  
dated March 26th, 2001

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

**Offering Price and Description:**

-

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

AGF Funds Inc.

**Promoter(s):**

-

**Project #332133**

---

**Issuer Name:**

Sentry Select Canadian Resource Fund Ltd.  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form  
dated March 26th, 2001

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

**Offering Price and Description:**

Mutual Fund Securities - Net Asset Value

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

Sentry Select Capital Corp.

**Promoter(s):**

-

**Project #337976**

---

**Issuer Name:**

Spectrum TACTONICS Fund  
Spectrum RRSP TACTONICS Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus and Annual Information Form  
dated April 4th, 2001

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

**Offering Price and Description:**

Mutual Fund Securities - Net Asset Value

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

-

**Promoter(s):**

**Project #331181**



**This Page Intentionally left blank**

## Chapter 12

# Registrations

### 12.1.1 Securities

Type	Company	Category of Registration	Effective Date
Change of Name	ALPS Distributors, Inc. Attention: Russell C. Burk 370 17 <sup>th</sup> Street, Suite 3100 Denver CO 80202 USA	From: ALPS Mutual Funds Services, Inc.  To: ALPS Distributors, Inc.	Jan 05/01
Change of Name	Gen Re Securities (Canada) Corporation Attention: Sandra Taube Godard 1 First Canadian Place Suite 5705 PO Box 471 Toronto ON M5X 1E4	From: General Re Securities (Canada) Corporation  To: Gen Re Securities (Canada) Corporation	Jan 31/01
Change of Name	Genus Capital Management Inc. Attention: Jeffrey O. Palmer Davies, Ward & Beck 1 First Canadian Place PO Box 63 Suite 4400 Toronto ON M5X 1B1	From: GCM Genus Capital Management Inc.  To: Genus Capital Management Inc.	Oct 30/00
New Registration	Barclays Global Investors Services Attention: David Rothenberg 45 Fremont Street PO Box 7101 San Francisco CA 94105 USA	International Dealer	Apr 05/01

**This Page Intentionally left blank**

Chapter 13

**SRO Notices and Disciplinary Proceedings**

---

---

THERE IS NO MATERIAL FOR THIS CHAPTER  
IN THIS ISSUE

**This Page Intentionally left blank**

## Chapter 25

# Other Information

---

### 25.1.1 Securities

---

#### RELEASE FROM ESCROW

---

<u>COMPANY NAME</u>	<u>DATE</u>	<u>NUMBER AND TYPE OF SHARES</u>	<u>ADDITIONAL INFORMATION</u>
CrossKeys Systems Corporation	April 5, 2001	4,170,719 common shares	concurrent with effectiveness of arrangement involving CrossKeys Systems Corporation and Orchestream Canada Inc., a wholly-owned subsidiary of Orchestream Holdings plc

**This Page Intentionally left blank**

# Index

<b>Spectrum RRSP Tactonics Fund</b>		<b>Gen Re Securities (Canada) Corporation</b>	
MRRS Decision .....	2306	Change of Name .....	2393
<b>1033764 Ontario Limited</b>		<b>General Re Securities (Canada)</b>	
Ruling - ss. 74(1) .....	2327	<b>Corporation</b>	
<b>1423280 Ontario Inc.</b>		Change of Name .....	2393
MRRS Decision .....	2309	<b>Genus Capital Management Inc.</b>	
<b>3045207 Nova Scotia Company</b>		Change of Name .....	2393
MRRS Decision .....	2309	<b>Goldie Enterprises Inc.</b>	
<b>Algorithmics Incorporated</b>		Order - s. 147 .....	2321
MRRS Decision .....	2304	<b>Hymas Investment Management Inc.</b>	
<b>ALPS Distributors, Inc.</b>		Ruling - ss. 74(1) .....	2323
Change of Name .....	2393	<b>Luscar Coal Income Fund</b>	
<b>ALPS Mutual Funds Services, Inc.</b>		MRRS Decision .....	2313
Change of Name .....	2393	<b>Mackenzie Canadian Managed Yield Capital</b>	
<b>Amendments to the Securities Act &amp;</b>		<b>Class</b>	
<b>Regulation 1015</b>		Order - ss. 59(1) .....	2318
Legislation .....	2385	<b>Mackenzie Financial Corporation</b>	
Notice .....	2289	Order - ss. 59(1) .....	2318
<b>Apollo Gas Income Fund</b>		<b>Mackenzie U.S. Managed Yield Capital</b>	
MRRS Decision .....	2317	<b>Class</b>	
<b>Barclays Global Investors Services</b>		Order - ss. 59(1) .....	2318
New Registration .....	2393	<b>MagiCorp. Inc.</b>	
<b>Bayles, Catharine</b>		Order - s. 147 .....	2321
Ruling - ss. 74(1) .....	2327	<b>Mutual Fund Prospectus Disclosure</b>	
<b>BioCapital Biotechnology</b>		Notice .....	2290
Order .....	2320	Legislation .....	2385
<b>Biocapital Biotechnology and Healthcare</b>		<b>NI 81-102 - Mutual Fund Prospectus</b>	
<b>Fund</b>		<b>Disclosure</b>	
Order .....	2320	Legislation .....	2385
<b>Biocapital Mutual Fund Management Inc.</b>		Notice .....	2290
Order .....	2320	<b>OSC Rule 31-506 SRO Membership - Mutual</b>	
<b>Bourgon, Michael Omer</b>		<b>Fund Dealers</b>	
Order - s. 127 .....	2319	Notice .....	2290
<b>CrossKeys Systems Corporation</b>		Rules and Policies .....	2333
Release from Escrow .....	2397	<b>OSC Rule 41-502 Prospectus Requirements</b>	
<b>Current Proceedings Before The Ontario</b>		<b>for Mutual Funds</b>	
<b>Securities Commission</b>		Notice .....	2289
Notice .....	2287	Legislation .....	2385
<b>Cybersurf Corp.</b>		<b>OSC Rule 44-801 Implementing NI 44-101</b>	
MRRS Decision .....	2315	Notice .....	2291
<b>Cypress Energy Inc.</b>		Rules and Policies .....	2334
MRRS Decision .....	2297	<b>Oxus Resources Corporation</b>	
<b>Futurelink Corp.</b>		MRRS Decision .....	2295
MRRS Decision .....	2309	<b>Photochannel Networks Inc.</b>	
<b>GCM Genus Capital Management Inc.</b>		MRRS Decision .....	2301
Change of Name .....	2393	<b>PrimeWest Energy Inc.</b>	
		MRRS Decision .....	2297
		<b>Prospectus Requirements for Mutual Funds</b>	
		Notice .....	2289



<b>Re-Con Building Products Inc.</b>	
Cease Trading Orders .....	2331
<b>Retirement Residences Real Estate</b>	
<b>Investment Trust</b>	
MRRS Decision .....	2293
<b>Sherritt Coal Partnership</b>	
MRRS Decision .....	2313
<b>Sherritt International Corporation</b>	
MRRS Decision .....	2313
<b>Spectrum Investment Management Limited</b>	
MRRS Decision .....	2306
<b>Spectrum RRSP Tactonics Fund</b>	
MRRS Decision .....	2306
<b>SRO Membership - Mutual Fund Dealers</b>	
Notice .....	2290
Rules and Policies .....	2333
<b>Take-Over &amp; Issuer Bids</b>	
Notice .....	2289
<b>United Dominion Industries Ltd.</b>	
Ruling - s. 3.1 of 54-501 .....	2325