

How the Ontario Government Facilitated the Non Bank ABCP Fiasco in Canada

The Ontario Government went beyond benign neglect of its duty to enforce the Ontario Securities Act and its Regulations to being an accomplice enabling the distribution of flawed Non Bank Asset Backed Commercial Paper into the retail marketplace, pension funds, governments and corporations throughout Canada. Ontario Government-related entities themselves own \$1,302 million of Non Bank ABCP, that could have been prevented had the Ontario Securities Commission not been assisting the bank and securities industries in formulating and distributing the flawed Non Bank ABCP:

- In 2005, the \$50,000 minimum sale allotment test for the commercial paper prospectus exemption was changed by the Ontario Government to a test based on getting an approved credit rating from an approved credit rating agency. There was no simultaneous introduction of government quality control supervision over the credit rating agencies, who were given investor protection responsibilities in the public interest.
- In 2005, the Ontario Government provided an exemption to the credit rating agencies as experts subject to civil liability for misrepresentation in information provided to the secondary market. This exemption from civil liability occurred at about the same time that the credit rating agencies were given public interest responsibility for determining the safety of commercial paper, without any government supervision.
- In 2006, the Ontario Securities Commission (OSC) gave exemptive relief to BMO, CIBC/CIBC World Markets and Toronto Dominion Bank to distribute commercial paper, including Non Bank ABCP, on the basis of just one credit rating agency meeting its minimum credit rating standard, even though the other three credit rating agencies gave ratings that were below the minimum standard in the regulations. This exemptive relief diluted the rigour of not failing any of the DBRS, Standard and Poor's, Moody's or Fitch minimum rating standards in the regulations. On Non Bank ABCP, DBRS was always the one credit rating agency giving top credit ratings, while Standard and Poor's and Moody's credit ratings failed the minimum standards for commercial paper set out in the regulations.

The consequences of these Ontario Government actions relating to commercial paper is that the high risk Non Bank ABCP market grew enormously, despite no transparency on the contents of the product and the now widespread allegations of negligence, and possible fraud, in its design and distribution. It may be that the Ontario Government's actions were not inadvertent and that specific government officials marshaled the machinery of government to assist the banks, securities dealers, DBRS and sponsors of the Non Bank ABCP to attract Canadian savers and Ontario Government-related entities to buy the product. There was unjust enrichment accruing to the sophisticated investment industry players, and it is certainly not clear why any Ontario Government official would want to expose the investing public and even the Ontario Provincial, Municipal and crown agency treasuries to billions of dollars of losses.

The rest of this report describes in detail the Ontario Government actions taken that in retrospect now look to be extremely problematic.

(1) Order in Council to amend the Ontario Financial Administration Act to permit the Minister of Finance to invest in asset-backed commercial paper was signed by Ontario Minister of Finance Greg Sorbara and Chair of Cabinet Dwight Duncan on November 17, 2004.

(2) (i) The Budget Measures Act (Fall) 2004, Bill 149, amends the definition of expert to provide an exemption from civil liability in the secondary market for an approved rating organization. This Act is under the jurisdiction of the Ontario Minister of Finance Greg Sorbara and it received Royal Assent on December 16, 2004.

“The definition of "expert" in section 138.1 of the Act is amended to exclude an entity that is an approved rating organization under National Instrument 44-101 of the Canadian Securities Administrators.”

(ii) The Budget Measures Act (Fall) 2002, Bill 198 does not carve out an approved credit rating organization from the definition of expert and as such does not provide an exemption from civil liability in the secondary market for an approved rating organization. This Act is under the jurisdiction of Ontario Finance Minister Janet Ecker and it received Royal Assent on December 9, 2002.

“"expert" means a person or company whose profession gives authority to a statement made in a professional capacity by the person or company including, without limitation, an accountant, actuary, appraiser, auditor, engineer, financial analyst, geologist or lawyer; ("expert")”

(3) Notice of Commission Approval of National Instrument 45-106 was published on June 14, 2005, which added the new prospectus exemption for commercial paper if it has an approved credit rating from an approved credit rating agency. This changed the prospectus exemption for commercial paper from needing to be sold in minimum allotments of \$50,000 to being sold at any amount if it has an approved credit rating from an approved credit rating agency. This change effectively endorsed retail market reliance on a credit rating agency to determine the safety of commercial paper. There was no quality control procedure placed in the Ontario Securities Act and Regulations at the time of this significant change in public policy that would ensure the credit rating agencies conducted their investor protection role effectively.

There were no readings and votes on NI 45-106 in the Ontario Legislature or at the Standing Committee of Finance and Economic Affairs.

David Brown was the Chairman of the Ontario Securities Commission, Greg Sorbara was the Ontario Minister of Finance and Dwight Duncan was the Chair of Cabinet when NI 45-106 was adopted by way of an Order in Council.

**National Instrument 45-106
Prospectus And Registration Exemptions**

Part1: Definitions And Interpretation

“approved credit rating” has the same meaning as in National Instrument 81-102 Mutual Funds;

“approved credit rating organization” has the same meaning as in National Instrument 81-102 Mutual Funds;

Short-term debt

2.35 (1) The dealer registration requirement does not apply in respect of a trade in a negotiable promissory note or commercial paper maturing not more than one year from the date of issue, if the note or commercial paper traded

(a) is not convertible or exchangeable into or accompanied by a right to purchase another security other than a security described in this section,

and (b) has an approved credit rating from an approved credit rating organization.

(2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

**National Instrument 81-102
*Mutual Funds***

1.1 Definitions - In this Instrument

“approved credit rating” means, for a security or instrument, a rating at or above one of the following rating categories issued by an approved credit rating organization for that security or instrument or a category that replaces one of the following rating categories if:

(b) no approved credit rating organization has rated the security or instrument in a rating category that is not an approved credit rating:

Approved Credit Rating Organization	Commercial Paper/ Short Term Debt	Long Term Debt
Dominion Bond Rating Service Limited	R-1 (low)	A
Fitch Ratings	F1	A
Moody's Investors Service	P-1	A2
Standard & Poor's	A-1(Low)	A

“approved credit rating organization” means Dominion Bond Rating Service Limited, Fitch Ratings, Moody's Investors Service, Standard & Poor's and any of their respective successors;

- (4) The Notice of Amendment to Securities Act and Regulations dated August 8, 2005, contains the following blacklined Ontario Securities Act amendment for the definition of expert to provide an exemption from civil liability in the secondary market for an approved rating organization. This notice reports that the amendment of the Securities Act and Regulations will go into effect on December 31, 2005.

David Wilson was the Chairman of the OSC, Gerry Phillips was the Ontario Minister of Government Services with jurisdiction over the OSC and Dwight Duncan was the Chair of Cabinet when this amendment to the Ontario Securities Act and Regulations was given Royal Assent.

PART XXIII.1 CIVIL LIABILITY FOR SECONDARY MARKET DISCLOSURE

Definitions

138.1 In this Part,

“expert” means a person or company whose profession gives authority to a statement made in a professional capacity by the person or company including, without limitation, an accountant, actuary, appraiser, auditor, engineer, financial analyst, geologist or lawyer, but not including an entity that is an approved rating organization for the purposes of National Instrument 44-101 of the Canadian Securities Administrators; (“expert”)

Experts are included in the list of issuers and persons who may be sued for damages associated with documents containing misrepresentations.

Liability for secondary market disclosure Documents released by responsible issuer

138.3 (1) Where a responsible issuer or a person or company with actual, implied or apparent authority to act on behalf of a responsible issuer releases a document that contains a misrepresentation, a person or company who acquires or disposes of the issuer's security during the period between the time when the document was released and the time when the misrepresentation contained in the document was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against,

(a) the responsible issuer;

(b) each director of the responsible issuer at the time the document was released;

(c) each officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document;

(d) each influential person, and each director and officer of an influential person, who knowingly influenced,

(i) the responsible issuer or any person or company acting on behalf of the responsible issuer to release the document, or

(ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the release of the document; and

(e) each expert where,

(i) the misrepresentation is also contained in a report, statement or opinion made by the expert,

(ii) the document includes, summarizes or quotes from the report, statement or opinion of the expert, and

(iii) if the document was released by a person or company other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document.

(5) MRRS Exemptive Relief Decision for Toronto Dominion Bank signed by Susan Wolburgh Jena and Wendell Wigle, OSC Commissioners, on April 26, 2006.

Mutual Reliance Review System for Exemptive Relief Applications -- Relief from the prospectus and registration requirements granted for trades in negotiable promissory notes and commercial paper (short-term debt instruments). The short-term debt instruments may not meet the "approved credit rating" requirement contained in the short-term debt exemption in section 2.35 of National Instrument 45-106 Prospectus and Registration Exemptions (NI 45-106). The definition of an "approved credit rating" requires, among other things, that every rating of the short-term debt instrument be at or above a prescribed standard. The relief is granted provided the short-term debt instrument:

(i) matures not more than one year from the date of issue;

(ii) is not convertible or exchangeable into or accompanied by a right to purchase another security other than a short-term debt instrument; and

(iii) has a rating issued by one of the following rating organizations at or above one of the following rating categories: DBRS: "R-1(low); Fitch: "F2"; Moody's: "P-2" or S&P "A-2".

The relief will terminate on the earlier of 90 days upon an amendment to section 2.35 of NI 45-106 or three years from the date of the decision.

(6) MRRS Exemptive Relief Decision for Bank of Montreal signed by Susan Wolburgh Jena and David Knight, OSC Commissioners, on May 17, 2006. .

Mutual Reliance Review System for Exemptive Relief Applications – relief from the dealer registration and prospectus requirements in connection with trades of short-term negotiable promissory notes and commercial paper (short term debt instruments)- sufficient that short term debt instrument has one credit rating at or above a revised rating category from a recognized credit rating agency, subject to conditions.

NI 45-106 incorporates by reference the definitions for “approved credit rating” and “approved credit rating organization” that are used in National Instrument 81-102 Mutual Funds (NI 81-102). **The definition of an “approved credit rating” in NI 81-102, requires, among other things, that (a) the rating assigned to such debt must be “at or above” certain prescribed short-term ratings, and (b) such debt must not have been assigned a rating by any “approved credit rating organization” that is not an “approved credit rating”.**

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

c) has a rating issued by one of the following rating organizations, or any of their successors, at or above one of the following rating categories or a rating category that replaces a category listed below: Rating Organization Rating, Dominion Bond Rating Service Limited R-1 (low); Fitch Ratings Ltd. F2; Moody's Investors Service P-2; Standard & Poor's A-2.

For each Jurisdiction, this decision will terminate on the earlier of:

(a) 90 days after the coming into force of any rule, other regulation or blanket order or ruling under the Legislation of the Jurisdiction that amends section 2.35 of NI 45-106 or provides an alternate exemption; and (b) three years from the date of this decision.

(7) MRRS Exemptive Relief Decision for CIBC and CIBC World Markets signed by Paul Moore and Harold Hands, OSC Commissioners, on October 23, 2006.

Mutual Reliance Review System for Exemptive Relief Applications -- Relief from the prospectus and registration requirements granted for trades in negotiable promissory notes and commercial paper (short-term debt instruments). The short-term debt instruments may not meet the "approved credit rating" requirement contained in the short-term debt exemption in section 2.35 of National Instrument 45-106 Prospectus and Registration Exemptions (NI 45-106). **The definition of an "approved credit rating"**

requires, among other things, that every rating of the short-term debt instrument be at or above a prescribed standard. The relief is granted provided the short-term debt instrument:

(i) matures not more than one year from the date of issue;

(ii) is not convertible or exchangeable into or accompanied by a right to purchase another security other than a short-term debt instrument; and

(iii) has a rating issued by one of the following rating organizations at or above one of the following rating categories: DBRS: "R-1(low); Fitch: "F2"; Moody's: "P-2" or S&P: "A-2".

The relief will terminate on the earlier of 90 days upon an amendment to section 2.35 of NI 45-106 or three years from the date of the decision.

(8) David Wilson, the OSC Chairman, has conflicts of interest that may be inhibiting the OSC from taking enforcement action on Non Bank ABCP, similar to what is being done in New York, Massachusetts, Texas, Missouri and others in the 12 State Consortium that is forcing full cash settlements and fines on auction rate securities from Citigroup, UBS, Merrill Lynch, Morgan Stanley, Deutsche Bank, Goldman Sachs, Wachovia Bank, and JPMorgan. A Nominating Committee chaired by Purdy Crawford, recommended David Wilson, the former CEO of Scotia Capital Markets and Vice Chairman of Scotiabank, to become the Chairman of the OSC on November 1, 2005. If David Wilson were to authorize sanctions and ABCP owner restitution for breaches of the Ontario Securities Act, he would be sanctioning his own misconduct, while he was CEO of Scotia Capital. As CEO of Scotia Capital, he supervised the initial distribution of Planet Trust and Structured Investment Trust III prior to becoming OSC Chairman on November 1, 2005.

David Wilson was already Chairman of the OSC, when the OSC Commissioners approved the MRRS Exemptive Relief Decisions for the BMO, CIBC/CIBC World Markets and Toronto Dominion Bank to trade Non Bank ABCP on only one DBRS credit rating being above its minimum prescribed standard, where such trade was otherwise unlawful under Ontario securities regulations. David Wilson has turned a blind eye to the unlawful issuance of Non Bank ABCP without a prospectus between his arrival at the OSC on November 1, 2005 to the date of the Non Bank ABCP standstill agreement on August 13, 2007.

David Wilson as Chairman of the OSC has appointed Purdy Crawford's son-in-law Lawrence Ritchie to be Vice Chairman and key OSC decision-maker on legal matters at the OSC, such as the restitution remedies that the OSC could seek at the Ontario Court of Justice pertaining to the unlawful sale of Non Bank ABCP to Canadians.

Initial Distribution Agents Estimated Share of Initial Distributions

	Initial Distribution Non Bank ABCP		Non Bank ABCP Owned	
	\$ Millions	%	\$ Millions	%
BMO Nesbitt Burns	\$1,300	4%	\$360	6%
BNP Paribas	\$900	3%	NA	
CIBC World Markets	\$6,300	20%	\$358	6%
Desjardins Securities	\$800	2%	\$1,920	34%
Deutsche Bank Securities	\$2,500	8%	NA	
HSBC Securities	\$5,400	17%	\$327	6%
Laurentian Bank Securities	\$3,300	10%	\$20	0%
National Bank Financial	\$8,000	25%	\$2,250	40%
RBC Dominion	\$300	1%	\$4	0%
Scotia Capital	\$1,700	5%	\$207	4%
Societe Generale Securities	\$1,700	5%	\$137	2%
Total	\$32,200	100%	\$5,583	100%

Initial Distribution Agents By Non Bank ABCP

Montreal Accord	BMO Nesbitt Burns	BNP Paribas	CIBC World Markets	Desjardins Securities	Deutsche Bank Securities	HSBC Securities	Laurentian Bank Securities	National Bank Financial	RBC Dominion	Scotia Capital	Societe Generale Securities
Apollo Trust			1			1	1	1			
Apsley Trust			1	1	1	1	1	1			1
Aria Trust	1				1	1	1				1
Aurora Trust								1			
Comet Trust			1			1	1	1			
Encore Trust	1		1		1	1	1	1			1
Gemini Trust			1			1	1	1			
Ironstone Trust			1								
MMAI-I Trust		1		1				1			
Newshore Canadian Trust	1					1	1	1			
Opus Trust	1		1		1	1		1			1
Planet Trust			1			1	1	1	1	1	
Rocket Trust			1			1	1	1			
Selkirk Funding Trust	1					1	1				
Silverstone Trust		1	1		1	1		1			
Skeena Capital Trust										1	
SLATE Trust								1			
Structured Asset Trust			1			1					1
Structured Investment Trust III			1			1				1	
Symphony Trust	1		1		1	1	1	1			1
Whitehall Trust			1		1			1			

Initial Distribution Dates

Apollo Trust	2/28/2003
Apsley Trust	11/24/2005
Aria Trust	Post Newshore Financial registration on 5/14/2003
Aurora Trust	2/28/2003
Comet Trust	1/25/2002
Devonshire Trust	8/14/2006
Encore Trust	Post Newshore Financial registration on 5/14/2003
Gemini Trust	1/25/2002
Ironstone Trust	10/28/2004
MMAI-I Trust	8/27/2004
Newshore Canadian Trust	Post Newshore Financial registration on 5/14/2003
Opus Trust	1/2/2006
Planet Trust	2/28/2003
Rocket Trust	2/12/2002
Selkirk Funding Trust	9/21/2006
Silverstone Trust	02-/2005
Skeena Capital Trust	5/28/2006
SLATE Trust	9/20/2004
Structured Asset Trust	10/31/2005
Structured Investment Trust III	10/31/2003
Symphony Trust	1/2/2006
Whitehall Trust	8/15/2005

- (9) One arm of the Ontario Government, the Ontario Securities Commission, turning a blind eye to unlawful distributions of Non Bank ABCP or alternatively giving MRRS Exemptive Relief Decisions for paper sold on only one approved credit rating by DBRS, was acting contrary to the interest of the Ontario Government as an investor in commercial paper. Enforcement of the current NI 45-106 commercial paper regulation would have protected Ontario Government-related entities, and Canadians generally, who invested in Non Bank ABCP. The Non Bank ABCP as an investment asset class is tying up public revenues within the Ontario, municipal and crown agency treasuries of at least \$1,302 million for up to nine years, the term of the new long term notes that will be received upon the ABCP CCAA Restructuring.

Ontario Government-Related Non Bank ABCP Owners (\$ Millions of Original Face Amount)

Ontario Financing Authority	\$720
Greater Toronto Airport Authority	\$249
Ontario Power Generation	\$58
Hamilton City	\$97
Toronto Hydro	\$88
Ontario Teachers Pension Plan	\$60
University of Western Ontario	\$30
Total Ontario Government Related Exposure	\$1,302

Consolidated Financial Statements of the Province of Ontario for 2007-2008 report an ABCP exposure of \$644.2 million face amount, which is about \$75 million less than what Dwight Duncan reported in the Legislature on about December 4, 2007. I believe the \$75 million difference is due to the Province of Ontario owning Skeena Trust, which has been settled for cash at about \$0.98 per \$1.00 face amount separately from the ABCP CCAA Restructuring Plan. The Ontario Government has booked an impairment loss of - \$106.8 million or -17% on this fully consolidated exposure to ABCP.

JPMorgan, financial advisor to the Pan Canadian Committee, provided a marked-to-market valuation for the 20 Non Bank ABCP trusts under CCAA of \$0.49 per \$1.00 at March 4, 2008. Market trading conditions for asset backed commercial paper and structured credit securities are worse than this today. The JPMorgan marked-to-market valuation suggest the Ontario Government-related entities have marked-to-market losses of about -\$636 million. My own independent financial analysis of the expected average trading valuation for all 20 Non Bank ABCP trusts is in the range \$0.43 to \$0.51. This trading range estimate implies aggregate losses for the Ontario Government-related entities in Non Bank ABCP is in the range of -\$623 million to -\$712 million.

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September 8, 2008

Background Notes

Moody's and Standard and Poor's Fail Ontario Securities Act Regulations for an Approved Credit Rating for Non Bank ABCP

A. Kriegler., S. Pilcer, J. Dornhofer, and V. Poole. "Alternatives for Structuring Liquidity for Asset-Backed Commercial Paper Programs: Conduit Issuer Ratings and Pure Liquidity Support." Moody's Investors Service, February 26, 2002:

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GAPS IN THE CANADIAN LIQUIDITY STANDARD

The structure of Canadian ABCP lines can be traced to a 1994 guideline which clearly segregated the different classes of bank support: *first loss protection*, *credit enhancement* and *liquidity*; and attempted to ensure that each was supported by appropriate levels of capital. In particular, presaging actions by supervisors in other jurisdictions, OSFI has long tried to make certain that credit enhancement could not masquerade as liquidity support and minimize what they believed to be necessary capital charges as a result. The lack of an objective and quantitative standard by which the use of a liquidity line could be shown to be for pure liquidity purposes - rather than for credit support - caused OSFI to take the most conservative view and adopt a GMD standard. Regrettably, while this accomplishes OSFI's goal of excluding credit risks from ABCP liquidity lines, it also precludes lines from providing support both for non-credit risks as well as in those circumstances where credit issues, while present, are not material.

There are many potential non-credit related disruptions that could cause an ABCP conduit to need to draw, if only briefly, on liquidity support. Examples can range from market concerns about the credit quality of a sponsoring institution to legal risks about the enforceability of collections on the primary asset class underlying the conduit. At the extreme, the payment system interruptions resulting from the physical destruction of facilities as occurred in New York on September 11, 2001 also represent a non-credit disruption.

Several ABCP conduits in the United States drew down on their liquidity lines between Tuesday, September 11th and Friday, September 14th but the market did not grind completely to a halt. As a result, had such a circumstance taken place in Canada, liquidity draws - even though they were clearly not related to the credit quality of the conduits - would not technically have been permitted under OSFI's general market disruption doctrine.

Moody's Prime-1 rating means that ABCP investors will be paid in full and on time to a very high probability. The gaps that exist in Canadian style liquidity lines have led Moody's to conclude that it is unable to assign a P-1 rating to any Canadian ABCP

programs as currently described because the timeliness in repayment to ABCP investors is not assured in the absence of liquidity lines.

M. Rabiansz, T. Connell, J. Sheridan, T. Fritz. "Leap Of Faith: Canadian Asset-Backed Commercial Paper Often Lacks Liquidity Backup." Standards and Poor's, August 1, 2002:

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Without liquidity lines, there are other imaginable ways that a conduit could try to manage through a refinancing problem, such as asset sales, the sale of CP to another conduit managed by the same bank, or reliance on general support from the sponsoring bank. Each of these avenues requires a leap of faith that liquidity relief will actually be available, which is insufficient as a primary response to liquidity risk for a conduit to achieve an investment-grade CP rating.

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The Canadian market is unique in its acceptance of ABCP conduits with extremely limited-use liquidity support.

Why has this situation evolved? The arrangement was initially implemented in 1994 as the sponsoring banks interpreted then-issued regulation B-5 of the Office of the Superintendent of Financial Institutions (OSFI). Since then, the practice has become institutionalized among market participants. OSFI's concern is with ensuring banking system stability, and the capital adequacy of individual banks. To the extent a bank takes credit risk through the provision of a lending facility, OSFI requires the bank to hold capital against that exposure. In B-5, OSFI makes an exception for liquidity lines to ABCP special-purpose entities. OSFI allows zero-capital treatment for a liquidity line if it is cancelable or reducible and only available in circumstances of widespread market disruption.

The established interpretation of this, built into conduit liquidity agreements, is that for the credit line to be drawn, no CP can be issued at any price by any issuer within the Canadian market. This condition for a liquidity line advance is narrow to the point of being almost meaningless. More importantly, such a facility provides no benefit at all against the range of circumstances that a conduit needs to manage liquidity pressures, even assuming the conduit's credit fundamentals remain intact. These circumstances may include: reputational issues, event risk, credit concerns relating to the conduit administrator or enhancement providers, operational setbacks (for example, labor strikes, terrorist attacks, or product line contamination), adverse litigation, rumors, management impropriety, and the loss of market confidence in financial statement presentation, or operational disruption with the management or administration of a conduit. Given the material potential for a conduit to require liquidity in the absence of substantive credit deterioration, in the view of Standard & Poor's, a conduit with a Canadian-style liquidity facility would be rated no differently from a conduit with no contractual liquidity facility

at all that is reliant on the non contractual "moral obligation" of the program administrator.

In many Canadian conduits, the deficiency of the liquidity facilities is compounded by the incorporation of a ratings affirmation test (or "ratings trigger") as a condition precedent for drawing a liquidity facility. Far from providing a sound mechanism to separate credit and liquidity risk, ratings affirmation tests have highly problematic implications, not only for issuers and investors, but even for ratings services.

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Although efforts have been made by Standard & Poor's and others to reconcile Canadian liquidity structures with globally recognized standards, the unique nature of entrenched liquidity conventions in Canada is, for the time being, a fundamental obstacle to increased ratings coverage of the Canadian ABCP sector. Extension of ratings coverage for Canadian conduits is likely to depend on some combination of OSFI policy easing or clarification, definitional changes to the maturity terms of ABCP notes, and the crystallization of investor insistence on meaningful mitigation of liquidity risk.



Ontario
Executive Council
Conseil des ministres

Order in Council Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

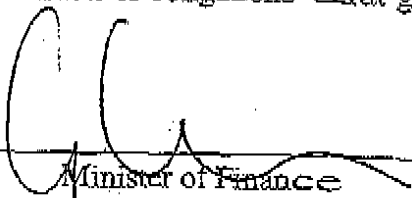
Sur la recommandation du soussigné, le lieutenant-gouverneur, sur l'avis et avec le consentement du Conseil des ministres, décrète ce qui suit :

WHEREAS the Minister of Finance considers it advisable for the sound and efficient management of public money, the public debt or the Consolidated Revenue Fund to invest in asset-backed commercial paper, notes, bonds, debentures and other evidences of indebtedness;

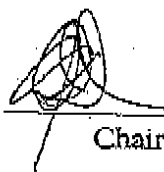
THEREFORE:

Pursuant to clause 3(1)(i) of the *Financial Administration Act*, as amended, the Minister of Finance is authorized to invest in asset-backed commercial paper, notes, bonds, debentures and other evidences of indebtedness, issued by a trust, corporation, partnership or other entity organized for the principal purpose of issuing fixed-income securities secured by a security interest in its assets which consist of debts, receivables, accounts, claims or other rights to payments or contracts or obligations that generate or secure debts, receivables, accounts or claims.

Recommended


Minister of Finance

Concurred


Chair of Cabinet

Approved
and Ordered

NOV 17 2004

Date


Lieutenant Governor

SCHEDULE 34 AMENDMENTS TO THE SECURITIES ACT

The definition of "forward-looking information" in section 138.1 of the Securities Act is moved to subsection 1 (1) of the Act and is amended to specify that it includes all disclosure regarding possible events, conditions or results of operations, not just future-oriented financial information.

The definition of "mutual fund" in subsection 1 (1) of the Act is amended by deleting the authority for the Commission to designate an issuer or class of issuers as mutual funds or designating them not to be mutual funds.

A definition of "non-redeemable investment fund" is added to the Act.

Section 3.4 of the Act is amended in connection with the requirement that the Ontario Securities Commission pay into the Consolidated Revenue Fund certain money received by it to settle enforcement proceedings. The Minister of Finance is authorized to establish guidelines about the allocation of money received by the Commission in specified circumstances.

Clause 75 (3) (a) of the Act is amended to correct an error in a cross-reference.

Currently, section 126.2 of the Act prohibits the making of misleading or untrue statements that significantly affect or would reasonably be expected to have a significant effect on the market price or value of a security. It is amended so that it prohibits misleading or untrue statements that would reasonably be expected to have a significant effect on the market price or value of a security. A further amendment specifies that a breach of this prohibition does not give rise to a cause of action for damages.

Subsection 127 (3.1) of the Act provides that, in specified circumstances, a person is not entitled to participate in a proceeding in which an order may be made under paragraph 10 of subsection 127 (1) of the Act against another person to disgorge amounts obtained as a result of non-compliance. An amendment provides that, in the specified circumstances, a person is also not entitled to participate in a proceeding in which an order may be made under paragraph 9 of subsection 127 (1) of the Act against another person to pay an administrative penalty.

Technical amendments are made to subsections 130 (1), 130.1 (1) and 131 (1) and (2) of the Act concerning liability for misrepresentation in various types of documents.

New section 132.1 of the Act provides that a person or company is not liable for a misrepresentation in forward-looking information contained in specified types of documents in the circumstances described in that section.

Technical amendments are made to sections 138.1 to 138.14 of the Act. They include replacing references to "proceeding" with "action" in those sections.

The definition of "expert" in section 138.1 of the Act is amended to exclude an entity that is an approved rating organization under National Instrument 44-101 of the Canadian Securities Administrators.

Subsection 138.4 (9) of the Act establishes a statutory defence in specified circumstances for persons and companies when there is a misrepresentation in a public oral statement containing forward-looking information. The new subsections 138.4 (9.1) and (9.2) of the Act provide that, in specified circumstances, a person or company shall be deemed to have satisfied certain requirements for the statutory defence.

An amendment to subsection 142 (2) of the Act provides that the Crown is exempt from liability under sections 126.1 (fraud and market manipulation), 126.2 (misleading or untrue statements) and 130.1 (liability for misrepresentation in offering memorandum) of the Act.

An amendment to subsection 143 (1) of the Act specifies that the Commission may make rules under the Act to provide that Part XXIII.1 (Civil Liability for Secondary Market Disclosure) of the Act applies to certain acquisitions or dispositions of an issuer's security, and to provide that the Part does not apply to certain transactions or classes of transactions.

The enactment of subsection 143.12 (1.1) of the Act provides for the appointment by the Minister of advisory committees to review securities legislation and rules every four years after the appointment of the previous advisory committee.

**PART XXIII.1
CIVIL LIABILITY
FOR SECONDARY MARKET
DISCLOSURE**

Interpretation and Application

Definitions

138.1 In this Part,

"compensation" means compensation received during the 12-month period immediately preceding the day on which the misrepresentation was made or on which the failure to make timely disclosure first occurred, together with the fair market value of all deferred compensation including, without limitation, options, pension benefits and stock appreciation rights, granted during the same period, valued as of the date that such compensation is awarded; ("rémunération")

"control person" means,

(a) a person or company who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer, or

(b) each person or company or 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, where a person or company, or combination of persons or companies, holds more than 20 per cent of the voting rights attached to all outstanding voting securities of an issuer, the person or company, or combination of persons or companies, shall, in the absence of evidence to the contrary, be deemed to hold a sufficient number of the voting rights to affect materially the control of the issuer; ("personne qui a le contrôle")

"core document" means,

(a) where used in relation to,

(i) a director of a responsible issuer who is not also an officer of the responsible issuer,

(ii) an influential person, other than an officer of the responsible issuer or an investment fund manager where the responsible issuer is an investment fund, or

(iii) a director or officer of an influential person, other than an officer of an investment fund manager, who is not also an officer of the responsible issuer,

a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, and annual financial statements of the responsible issuer, or

(b) where used in relation to,

(i) an officer of the responsible issuer,

(ii) an investment fund manager where the responsible issuer is an investment fund, or

(iii) an officer of an investment fund manager where the responsible issuer is an investment fund,

a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, annual financial statements, interim financial statements, and a report required by subsection 75 (2), of the responsible issuer, and

(c) such other documents as may be prescribed by regulation for the purposes of this definition; ("document essentiel")

"document" means any written communication, including a communication prepared and transmitted only in electronic form,

(a) that is required to be filed with the Commission, or

(b) that is not required to be filed with the Commission and,

(i) that is filed with the Commission,

(ii) that is filed or required to be filed with a government or an agency of a government under applicable securities or corporate law or with any stock exchange or quotation and trade reporting system under its by-laws, rules or regulations, or

(iii) that is any other communication the content of which would reasonably be expected to affect the market price or value of a security of the responsible issuer; ("document")

"expert" means a person or company whose profession gives authority to a statement made in a professional capacity by the person or company including, without limitation, an accountant, actuary, appraiser, auditor, engineer, financial analyst, geologist or lawyer; ("expert")

"failure to make timely disclosure" means a failure to disclose a material change in the manner and at the time required under this Act; ("non-respect des obligations d'information occasionnelle")

"forward-looking information" means all disclosure regarding possible events, conditions or results (including future-oriented financial information with respect to prospective results of operations, a prospective financial position or prospective changes in financial position that is based on assumptions about future economic conditions and courses of action) that is presented as either a forecast or a projection; ("information prospective")

"influential person" means, in respect of a responsible issuer,

(a) a control person,

(b) a promoter,

(c) an insider who is not a director or senior officer of the responsible issuer, or

(d) an investment fund manager, if the responsible issuer is an investment fund; ("personne influente")

"issuer's security" means a security of a responsible issuer and includes a security,

(a) the market price or value of which, or payment obligations under which, are derived from or based on a security of the responsible issuer, and

(b) which is created by a person or company on behalf of the responsible issuer or is guaranteed by the responsible issuer; ("valeur mobilière d'un émetteur")

"liability limit" means,

(a) in the case of a responsible issuer, the greater of,

(i) 5 per cent of its market capitalization (as such term is defined in the regulations), and

(ii) \$1 million,

(b) in the case of a director or officer of a responsible issuer, the greater of,

(i) \$25,000, and

(ii) 50 per cent of the aggregate of the director's or officer's compensation from the responsible issuer and its affiliates,

(c) in the case of an influential person who is not an individual, the greater of,

(i) 5 per cent of its market capitalization (as defined in the regulations), and

(ii) \$1 million,

(d) in the case of an influential person who is an individual, the greater of,

(i) \$25,000, and

(ii) 50 per cent of the aggregate of the influential person's compensation from the responsible issuer and its affiliates,

(e) in the case of a director or officer of an influential person, the greater of,

(i) \$25,000, and

(ii) 50 per cent of the aggregate of the director's or officer's compensation from the influential person and its affiliates,

(f) in the case of an expert, the greater of,

(i) \$1 million, and

(ii) the revenue that the expert and the affiliates of the expert have earned from the responsible issuer and its affiliates during the 12 months preceding the misrepresentation, and

(g) in the case of each person or company who made a public oral statement, other than an individual under clause (a), (b), (c), (d), (e) or (f), the greater of,

(i) \$25,000, and

(ii) 50 per cent of the aggregate of the person or company's compensation from the responsible issuer and its affiliates; ("limite de responsabilité")

"management's discussion and analysis" means the section of an annual information form, annual report or other document that contains management's discussion and analysis of the financial condition and results of operations of a responsible issuer as required under Ontario securities law; ("rapport de gestion")

"public oral statement" means an oral statement made in circumstances in which a reasonable person would

believe that information contained in the statement will become generally disclosed; ("déclaration orale publique")

"release" means, with respect to information or a document, to file with the Commission or any other securities regulatory authority in Canada or a stock exchange or to otherwise make available to the public; ("publication", "publier")

"responsible issuer" means,

(a) a reporting issuer, or

(b) any other issuer with a substantial connection to Ontario, any securities of which are publicly traded; ("émetteur responsable")

"trading day" means a day during which the principal market (as defined in the regulations) for the security is open for trading. ("jour de Bourse")

Application

138.2 This Part does not apply to,

(a) the acquisition of an issuer's security under a prospectus;

(b) the acquisition of an issuer's security pursuant to an exemption from section 53 or 62, except as may be prescribed by regulation;

(c) the acquisition or disposition of an issuer's security in connection with or pursuant to a take-over bid or issuer bid, except as may be prescribed by regulation; or

(d) such other transactions or class of transactions as may be prescribed by regulation.

Liability

Liability for secondary market disclosure

Documents released by responsible issuer

138.3 (1) Where a responsible issuer or a person or company with actual, implied or apparent authority to act on behalf of a responsible issuer releases a document that contains a misrepresentation, a person or company who acquires or disposes of an issuer's security during the period between the time when the document was released and the time when the misrepresentation contained in the document was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against,

(a) the responsible issuer;

(b) each director of the responsible issuer at the time the document was released;

(c) each officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document;

(d) each influential person, and each director and officer of an influential person, who knowingly influenced,

(i) the responsible issuer or any person or company on behalf of the responsible issuer to release the document, or

(ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the release of the document; and

(e) each expert where,

(i) the misrepresentation is also contained in a report, statement or opinion made by the expert,

(ii) the document includes, summarizes or quotes from the report, statement or opinion of the expert, and

(iii) if the document was released by a person or company other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document.

Public oral statements by responsible issuer

(2) Where a person with actual, implied or apparent authority to speak on behalf of a responsible issuer makes a public oral statement that relates to the business or affairs of the responsible issuer and that contains a misrepresentation, a person or company who acquires or disposes of an issuer's security during the period between the time when the public oral statement was made and the time when the misrepresentation contained in the public oral statement was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against,

(a) the responsible issuer;

(b) the person who made the public oral statement;

(c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the making of the public oral statement;

(d) each influential person, and each director and officer of the influential person, who knowingly influenced,

(i) the person who made the public oral statement to make the public oral statement, or

(ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the making of the public oral statement; and

(e) each expert where,

(i) the misrepresentation is also contained in a report, statement or opinion made by the expert,

(ii) the person making the public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and

(iii) if the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the public oral statement.

Influential persons

(3) Where an influential person or a person or company with actual, implied or apparent authority to act on behalf of the influential person releases a document or makes a public oral statement that relates to a responsible issuer and that contains a misrepresentation, a person or company who acquires or disposes of an issuer's security during the period between the time when the document was released or the public oral statement was made and the time when the misrepresentation contained in the document or public oral statement was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against,

- (a) the responsible issuer, if a director or officer of the responsible issuer, or where the responsible issuer is an investment fund, the investment fund manager, authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;
- (b) the person who made the public oral statement;
- (c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;
- (d) the influential person;
- (e) each director and officer of the influential person who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement; and
- (f) each expert where,
 - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
 - (ii) the document or public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and
 - (iii) if the document was released or the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document or public oral statement.

Failure to make timely disclosure

(4) Where a responsible issuer fails to make a timely disclosure, a person or company who acquires or disposes of an issuer's security between the time when the material change was required to be disclosed in the manner required under this Act and the subsequent disclosure of the material change has, without regard to whether the person or company relied on the responsible issuer having complied with its disclosure requirements, a right of action for damages against,

- (a) the responsible issuer;
- (b) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the failure to make timely disclosure; and
- (c) each influential person, and each director and officer of an influential person, who knowingly influenced,
 - (i) the responsible issuer or any person or company acting on behalf of the responsible issuer in the failure to make timely disclosure, or
 - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the failure to make timely disclosure.

Multiple roles

(5) In a proceeding under this section, a person who is a director or officer of an influential person is not liable in that capacity if the person is liable as a director or officer of the responsible issuer.

Multiple misrepresentations

(6) In a proceeding under this section,

(a) multiple misrepresentations having common subject matter or content may, in the discretion of the court, be treated as a single misrepresentation; and

(b) multiple instances of failure to make timely disclosure of a material change or material changes concerning common subject matter may, in the discretion of the court, be treated as a single failure to make timely disclosure.

No implied or actual authority

(7) In a proceeding under subsection (2) or (3), if the person who made the public oral statement had apparent authority, but not implied or actual authority, to speak on behalf of the issuer, no other person is liable with respect to any of the responsible issuer's securities that were acquired or disposed of before that person became, or should reasonably have become, aware of the misrepresentation.

Burden of proof and defences

Non-core documents and public oral statements

138.4 (1) In a proceeding under section 138.3 in relation to a misrepresentation in a document that is not a core document, or a misrepresentation in a public oral statement, a person or company is not liable, subject to subsection (2), unless the plaintiff proves that the person or company,

(a) knew, at the time that the document was released or public oral statement was made, that the document or public oral statement contained the misrepresentation;

(b) at or before the time that the document was released or public oral statement was made, deliberately avoided acquiring knowledge that the document or public oral statement contained the misrepresentation; or

(c) was, through action or failure to act, guilty of gross misconduct in connection with the release of the document or the making of the public oral statement that contained the misrepresentation.

Same

(2) A plaintiff is not required to prove any of the matters set out in subsection (1) in a proceeding under section 138.3 in relation to an expert.

Failure to make timely disclosure

(3) In a proceeding under section 138.3 in relation to a failure to make timely disclosure, a person or company is not liable, subject to subsection (4), unless the plaintiff proves that the person or company,

(a) knew, at the time that the failure to make timely disclosure first occurred, of the change and that the change was a material change;

(b) at the time or before the failure to make timely disclosure first occurred, deliberately avoided acquiring knowledge of the change or that the change was a material change; or

(c) was, through action or failure to act, guilty of gross misconduct in connection with the failure to make timely disclosure.

Same

(4) A plaintiff is not required to prove any of the matters set out in subsection (3) in a proceeding under section 138.3 in relation to,

(a) a responsible issuer;

- (b) an officer of a responsible issuer;
- (c) an investment fund manager; or
- (d) an officer of an investment fund manager.

Knowledge of the misrepresentation or material change

(5) A person or company is not liable in a proceeding under section 138.3 in relation to a misrepresentation or a failure to make timely disclosure if that person or company proves that the plaintiff acquired or disposed of the issuer's security,

- (a) with knowledge that the document or public oral statement contained a misrepresentation; or
- (b) with knowledge of the material change.

Reasonable investigation

(6) A person or company is not liable in a proceeding under section 138.3 in relation to,

(a) a misrepresentation if that person or company proves that,

(i) before the release of the document or the making of the public oral statement containing the misrepresentation, the person or company conducted or caused to be conducted a reasonable investigation, and

(ii) at the time of the release of the document or the making of the public oral statement, the person or company had no reasonable grounds to believe that the document or public oral statement contained the misrepresentation; or

(b) a failure to make timely disclosure if that person or company proves that,

(i) before the failure to make timely disclosure first occurred, the person or company conducted or caused to be conducted a reasonable investigation, and

(ii) the person or company had no reasonable grounds to believe that the failure to make timely disclosure would occur.

Factors to be considered by court

(7) In determining whether an investigation was reasonable under subsection (6), or whether any person or company is guilty of gross misconduct under subsection (1) or (3), the courts shall consider all relevant circumstances, including,

- (a) the nature of the responsible issuer;
- (b) the knowledge, experience and function of the person or company;
- (c) the office held, if the person was an officer;
- (d) the presence or absence of another relationship with the responsible issuer, if the person was a director;
- (e) the existence, if any, and the nature of any system to ensure that the responsible issuer meets its continuous disclosure obligations;

(f) the reasonableness of reliance by the person or company on the responsible issuer's disclosure compliance system and on the responsible issuer's officers, employees and others whose duties would in the ordinary course have given them knowledge of the relevant facts;

(g) the period within which disclosure was required to be made under the applicable law;

(h) in respect of a report, statement or opinion of an expert, any professional standards applicable to the expert;

(i) the extent to which the person or company knew, or should reasonably have known, the content and medium of dissemination of the document or public oral statement;

(j) in the case of a misrepresentation, the role and responsibility of the person or company in the preparation and release of the document or the making of the public oral statement containing the misrepresentation or the ascertaining of the facts contained in that document or public oral statement; and

(k) in the case of a failure to make timely disclosure, the role and responsibility of the person or company involved in a decision not to disclose the material change.

Confidential disclosure

(8) A person or company is not liable in a proceeding under section 138.3 in respect of a failure to make timely disclosure if,

(a) the person or company proves that the material change was disclosed by the responsible issuer in a report filed on a confidential basis with the Commission under subsection 75 (3);

(b) the responsible issuer had a reasonable basis for making the disclosure on a confidential basis;

(c) where the information contained in the report filed on a confidential basis remains material, disclosure of the material change was made public promptly when the basis for confidentiality ceased to exist;

(d) the person or company or responsible issuer did not release a document or make a public oral statement that, due to the undisclosed material change, contained a misrepresentation; and

(e) where the material change became publicly known in a manner other than the manner required under this Act, the responsible issuer promptly disclosed the material change in the manner required under this Act.

Forward-looking information

(9) A person or company is not liable in a proceeding under section 138.3 for a misrepresentation in forward-looking information if the person or company proves that,

(a) the document or public oral statement containing the forward-looking information contained, proximate to the forward-looking information,

(i) reasonable cautionary language identifying the forward-looking information as such and identifying material factors that could cause actual results to differ materially from a forecast or projection in the forward-looking information, and

(ii) a statement of the material factors or assumptions that were applied in making a forecast or projection in the forward-looking information; and

(b) the person or company had a reasonable basis for making the forecasts or projections in the forward-looking information.

Same

(10) Subsection (9) does not apply to a person or company in respect of forward-looking information contained in the prospectus of the responsible issuer filed in connection with the initial public distribution of securities of the responsible issuer or contained in financial statements prepared by the responsible issuer.

Expert report, statement or opinion

(11) A person or company, other than an expert, is not liable in a proceeding under section 138.3 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert in respect of which the responsible issuer obtained the written consent of the expert to the use of the report, statement or opinion, if the consent had not been withdrawn in writing before the document was released or the public oral statement was made, if the person or company proves that,

(a) the person or company did not know and had no reasonable grounds to believe that there had been a misrepresentation in the part of the document or public oral statement made on the authority of the expert; and

(b) the part of the document or oral public statement fairly represented the report, statement or opinion made by the expert.

Same

(12) An expert is not liable in a proceeding under section 138.3 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert, if the expert proves that the written consent previously provided was withdrawn in writing before the document was released or the public oral statement was made.

Release of documents

(13) A person or company is not liable in a proceeding under section 138.3 in respect of a misrepresentation in a document, other than a document required to be filed with the Commission, if the person or company proves that, at the time of release of the document, the person or company did not know and had no reasonable grounds to believe that the document would be released.

Derivative information

(14) A person or company is not liable in a proceeding under section 138.3 for a misrepresentation in a document or a public oral statement, if the person or company proves that,

(a) the misrepresentation was also contained in a document filed by or on behalf of another person or company, other than the responsible issuer, with the Commission or any other securities regulatory authority in Canada or a stock exchange and was not corrected in another document filed by or on behalf of that other person or company with the Commission or that other securities regulatory authority in Canada or stock exchange before the release of the document or the public oral statement made by or on behalf of the responsible issuer;

(b) the document or public oral statement contained a reference identifying the document that was the source of the misrepresentation; and

(c) when the document was released or the public oral statement was made, the person or company did not know and had no reasonable grounds to believe that the document or public oral statement contained a misrepresentation.

Where corrective action taken

(15) A person or company, other than the responsible issuer, is not liable in a proceeding under section 138.3 if the misrepresentation or failure to make timely disclosure was made without the knowledge or consent of the person or company and, if, after the person or company became aware of the misrepresentation before it was corrected, or the failure to make timely disclosure before it was disclosed in the manner required under this Act,

(a) the person or company promptly notified the board of directors of the responsible issuer or other persons acting in a similar capacity of the misrepresentation or the failure to make timely disclosure; and

(b) if no correction of the misrepresentation or no subsequent disclosure of the material change in the manner required under this Act was made by the responsible issuer within two business days after the notification under clause (a), the person or company, unless prohibited by law or by professional confidentiality rules, promptly and in writing notified the Commission of the misrepresentation or failure to make timely disclosure.

Damages

Assessment of damages

138.5 (1) Damages shall be assessed in favour of a person or company that acquired an issuer's securities after the release of a document or the making of a public oral statement containing a misrepresentation or after a failure to make timely disclosure as follows:

1. In respect of any of the securities of the responsible issuer that the person or company subsequently disposed of on or before the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the difference between the average price paid for those securities (including any commissions paid in respect thereof) and the price received upon the disposition of those securities (without deducting any commissions paid in respect of the disposition), calculated taking into account the result of hedging or other risk limitation transactions.
2. In respect of any of the securities of the responsible issuer that the person or company subsequently disposed of after the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the lesser of,
 - i. an amount equal to the difference between the average price paid for those securities (including any commissions paid in respect thereof) and the price received upon the disposition of those securities (without deducting any commissions paid in respect of the disposition), calculated taking into account the result of hedging or other risk limitation transactions, and
 - ii. an amount equal to the number of securities that the person disposed of, multiplied by the difference between the average price per security paid for those securities (including any commissions paid in respect thereof determined on a per security basis) and,
 - A. if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as those terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or
 - B. if there is no published market, the amount that the court considers just.
3. In respect of any of the securities of the responsible issuer that the person or company has not disposed of, assessed damages shall equal the number of securities acquired, multiplied by the difference between the average price per security paid for those securities (including any commissions paid in respect thereof

determined on a per security basis) and,

- i. if the issuer's securities trade on a published market, the trading price of the issuer' securities on the principal market (as those terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or
- ii. if there is no published market, the amount that the court considers just.

Same

(2) Damages shall be assessed in favour of a person or company that disposed of securities after a document was released or a public oral statement made containing a misrepresentation or after a failure to make timely disclosure as follows:

1. In respect of any of the securities of the responsible issuer that the person or company subsequently acquired on or before the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the difference between the average price received upon the disposition of those securities (deducting any commissions paid in respect of the disposition) and the price paid for those securities (without including any commissions paid in respect thereof), calculated taking into account the result of hedging or other risk limitation transactions.
2. In respect of any of the securities of the responsible issuer that the person or company subsequently acquired after the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the lesser of,
 - i. an amount equal to the difference between the average price received upon the disposition of those securities (deducting any commissions paid in respect of the disposition) and the price paid for those securities (without including any commissions paid in respect thereof), calculated taking into account the result of hedging or other risk limitation transactions, and
 - ii. an amount equal to the number of securities that the person disposed of, multiplied by the difference between the average price per security received upon the disposition of those securities (deducting any commissions paid in respect of the disposition determined on a per security basis) and,
 - A. if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as those terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or
 - B. if there is no published market, the amount that the court considers just.
3. In respect of any of the securities of the responsible issuer that the person or company has not acquired, assessed damages shall equal the number of securities that the person or company disposed of, multiplied by the difference between the average price per security received upon the disposition of those securities (deducting any commissions paid in respect of the disposition determined on a per security basis) and,
 - i. if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as such terms are defined in the regulations) for the 10 trading days following the disclosure of the material change in the manner required under this Act, or
 - ii. if there is no published market, then the amount that the court considers just.

Same

(3) Despite subsections (1) and (2), assessed damages shall not include any amount that the defendant proves is attributable to a change in the market price of securities that is unrelated to the misrepresentation or the failure to make timely disclosure.

Proportionate liability

138.6 (1) In a proceeding under section 138.3, the court shall determine, in respect of each defendant found liable in the action, the defendant's responsibility for the damages assessed in favour of all plaintiffs in the action, and each such defendant shall be liable, subject to the limits set out in subsection 138.7 (1), to the plaintiffs for only that portion of the aggregate amount of damages assessed in favour of the plaintiffs that corresponds to that defendant's responsibility for the damages.

Same

(2) Despite subsection (1), where, in a proceeding under section 138.3 in respect of a misrepresentation or a failure to make timely disclosure, a court determines that a particular defendant, other than the responsible issuer, authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing it to be a misrepresentation or a failure to make timely disclosure, the whole amount of the damages assessed in the action may be recovered from that defendant.

Same

(3) Each defendant in respect of whom the court has made a determination under subsection (2) is jointly and severally liable with each other defendant in respect of whom the court has made a determination under subsection (2).

Same

(4) Any defendant against whom recovery is obtained under subsection (2) is entitled to claim contribution from any other defendant who is found liable in the action.

Limits on damages

138.7 (1) Despite section 138.5, the damages payable by a person or company in a proceeding under section 138.3 is the lesser of,

(a) the aggregate damages assessed against the person or company in the action; and

(b) the liability limit for the person or company less the aggregate of all damages assessed after appeals, if any, against the person or company in all other actions brought under section 138.3, and under comparable legislation in other provinces or territories in Canada in respect of that misrepresentation or failure to make timely disclosure, and less any amount paid in settlement of any such actions.

Same

(2) Subsection (1) does not apply to a person or company, other than the responsible issuer, if the plaintiff proves that the person or company authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure, or influenced the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure.

Procedural Matters

Leave to proceed

138.8 (1) No proceeding may be commenced under section 138.3 without leave of the court granted upon motion with notice to each defendant. The court shall grant leave only where it is satisfied that,

(a) the action is being brought in good faith; and

(b) there is a reasonable possibility that the action will be resolved at trial in favour of the plaintiff.

Same

(2) Upon an application under this section, the plaintiff and each defendant shall serve and file one or more affidavits setting forth the material facts upon which each intends to rely.

Same

(3) The maker of such an affidavit may be examined on it in accordance with the rules of court.

Same

(4) A copy of the application for leave to proceed and any affidavits filed with the court shall be sent to the Commission when filed.

Notice

138.9 A person or company that has been granted leave to commence a proceeding under section 138.3 shall,

(a) promptly issue a news release disclosing that leave has been granted to commence a proceeding under section 138.3;

(b) send a written notice to the Commission within seven days, together with a copy of the news release; and

(c) send a copy of the statement of claim or other originating document to the Commission when filed.

Restriction on discontinuation, etc., of proceeding

138.10 A proceeding under section 138.3 shall not be stayed, discontinued, settled or dismissed for delay without the approval of the court given on such terms as the court thinks fit including, without limitation, terms as to costs, and in determining whether to approve the settlement of the proceeding, the court shall consider, among other things, whether there are any other proceedings outstanding under section 138.3 or under comparable legislation in the other provinces or territories in Canada in respect of the same misrepresentation or failure to make timely disclosure.

Costs

138.11 Despite the *Courts of Justice Act* and the *Class Proceedings Act, 1992*, the prevailing party in a proceeding under section 138.3 is entitled to costs determined by a court in accordance with applicable rules of civil procedure.

Power of the Commission

138.12 The Commission may intervene in a proceeding under section 138.3 and in an application for leave under section 138.8.

No derogation from other rights

138.13 The right of action for damages and the defences to a proceeding under section 138.3 are in addition to and without derogation from any other rights or defences the plaintiff or defendant may have in a proceeding brought otherwise than under this Part.

Limitation period

138.14 No proceeding shall be commenced under section 138.3,

(a) in the case of misrepresentation in a document, later than the earlier of,

(i) three years after the date on which the document containing the misrepresentation was first released, and

(ii) six months after the issuance of a news release disclosing that leave has been granted to commence a proceeding under section 138.3 or under comparable legislation in the other provinces or territories in Canada in respect of the same misrepresentation;

(b) in the case of a misrepresentation in a public oral statement, later than the earlier of,

(i) three years after the date on which the public oral statement containing the misrepresentation was made, and

(ii) six months after the issuance of a news release disclosing that leave has been granted to commence a proceeding under section 138.3 or under comparable legislation in another province or territory of Canada in respect of the same misrepresentation; and

(c) in the case of a failure to make timely disclosure, later than the earlier of,

(i) three years after the date on which the requisite disclosure was required to be made, and

(ii) six months after the issuance of a news release disclosing that leave has been granted to commence a proceeding under section 138.3 or under comparable legislation in another province or territory of Canada in respect of the same failure to make timely disclosure.

186. Subsection 142 (2) of the Act, as amended by the Statutes of Ontario, 1994, chapter 11, section 378, is amended by striking out the portion before clause (a) and substituting the following:

Exceptions

(2) Subsections 13 (1), (3) and (4), sections 60, 122, 126, 129, 130, 131, 134 and 135, Part XXIII.1 and section 139 do not apply to,

.....

187. (1) Paragraph 25 of subsection 143 (1) of the Act, as re-enacted by the Statutes of Ontario, 1994, chapter 33, section 8, is amended by striking out "and" at the end of subparagraph iv, by adding "and" at the end of subparagraph v and by adding the following subparagraph:

vi. defining auditing standards for attesting to and reporting on a reporting issuer's internal controls.

(2) Subsection 143 (1) of the Act, as re-enacted by the Statutes of Ontario, 1994, chapter 33, section 8 and amended by 1997, chapter 19, section 23, 1997, chapter 43, Schedule F, section 13, 1999, chapter 9, section 220 and 2001, chapter 23, section 217, is amended by adding the following paragraphs:

55.1 Prescribing documents for the purposes of the definition of "core document" in subsection 138.1 (1).

55.2 Prescribing exemptions from the prospectus requirement under this Act for the purposes of clause 138.2 (b), take-over bids and issuer bids for the purposes of clause 138.2 (c) and transactions or classes of transactions for the purposes of clause 138.2 (d).

55.3 Prescribing the meaning of "market capitalization", "trading price" and "principal market" and such other terms as are used in Part XXIII.1 and are not otherwise defined in this Act.

(3) Subsection 143 (1) of the Act, as re-enacted by the Statutes of Ontario, 1994, chapter 33, section 8 and amended by 1997, chapter 19, section 23, 1997, chapter 43, Schedule F, section 13, 1999, chapter 9, section 220 and 2001, chapter 23, section 217, is amended by adding the following paragraphs:

57. Requiring reporting issuers to appoint audit committees and prescribing requirements relating to the functioning and responsibilities of audit committees, including requirements in respect of,

- i. the standard of review to be applied by audit committees in their review of documents filed under Ontario securities law,
- ii. the certification or other evidence of review by audit committees,
- iii. the scope and content of an audit committee's review, and
- iv. the composition of audit committees and the qualifications of audit committee members, including independence requirements.

58. Requiring reporting issuers to devise and maintain a system of internal controls related to the effectiveness and efficiency of their operations, including financial reporting and asset control, sufficient to provide reasonable assurances that,

- i. transactions are executed in accordance with management's general or specific authorization,
- ii. transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles or any other criteria applicable to those statements,
- iii. transactions are recorded as necessary to maintain accountability for assets,
- iv. access to assets is permitted only in accordance with management's general or specific authorization, and
- v. the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

59. Requiring reporting issuers to devise and maintain disclosure controls and procedures sufficient to provide reasonable assurances that,

- i. information required to be disclosed under Ontario securities law is recorded, processed, summarized and reported, within the time periods specified under Ontario securities law, and
- ii. information required to be disclosed under Ontario securities law is accumulated and communicated to the reporting issuer's management, including its chief executive and financial officers, as appropriate, to allow timely decisions regarding required disclosure.

60. Requiring chief executive officers and chief financial officers of reporting issuers, or persons performing similar functions, to provide a certification that addresses the reporting issuer's internal controls, including a certification that addresses,

- i. the establishment and maintenance of the internal controls,

- ii. the design of the internal controls, and
- iii. the evaluation of the effectiveness of the internal controls.

61. Requiring chief executive officers and chief financial officers of reporting issuers, or persons performing similar functions, to provide a certification that addresses the reporting issuer's disclosure controls and procedures, including a certification that addresses,

- i. the establishment and maintenance of the disclosure controls and procedures,
- ii. the design of the disclosure controls and procedures, and
- iii. the evaluation of the effectiveness of the disclosure controls and procedures.

(4) Subsection 143 (2) of the Act, as enacted by the Statutes of Ontario, 1994, chapter 33, section 8, is amended by striking out "and" at the end of clause (a) and by adding the following clause:

- (a.1) the administration and distribution of amounts disgorged under paragraph 10 of subsection 127 (1);

**NOTICE OF COMMISSION APPROVAL OF NATIONAL INSTRUMENT 45-106,
FORM 45-106F1, FORM 45-106F2, FORM 45-106F3, FORM 45-106F4,
FORM 45-106F5 AND
COMPANION POLICY 45-106CP PROSPECTUS AND REGISTRATION EXEMPTIONS
AND
REPEAL AND REPLACEMENT OF
ONTARIO SECURITIES COMMISSION RULE 45-501,
FORM 45-501F1
AND
COMPANION POLICY 45-501CP EXEMPT DISTRIBUTIONS
AND
CONSEQUENTIAL AMENDMENTS**

All of the instruments listed below are being published in a Supplement to this Bulletin. Full notices of these instruments are contained in that Supplement.

On June 14, 2005, the Commission made as rules (the Rules) under the *Securities Act* (Ontario):

- **National Instrument 45-106 *Prospectus and Registration Exemptions*;**
- **Forms 45-106F1 *Report of Exempt Distribution*, 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*, 45-106F3 *Offering Memorandum for Qualifying Issuers*, 45-106F4 *Risk Acknowledgement* and 45-106F5 *Risk Acknowledgement (Saskatchewan)*;**
- **amended and restated Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions*;**
- **amended and restated Form 45-501F1 *Report of Exempt Distribution*;**
- **amendments to National Instrument 33-105 *Underwriting Conflicts*;**
- **amendments to National Instrument 45-101 *Rights Offerings*;**
- **amendments to National Instrument 62-103 *The Early Warning System and Related Take-over Bid and Insider Reporting Issues*;**
- **amendment instrument amending Ontario Securities Commission Rule 13-502 *Fees*;**
- **amendment instrument amending Ontario Securities Commission Rule 31-503 *Limited Market Dealers*;**
- **amendment instrument amending Ontario Securities Commission Rule 91-501 *Strip Bonds*;**
- **amendment instrument amending Ontario Securities Commission Rule 91-502 *Trades in Recognized***

Options;

- revocations of National Instrument 32-101 *Small Securityholder Selling and Purchase Arrangements*, Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors and Consultants* and National Instrument 62-101 *Control Block Distribution Issues*;
 - Ontario Securities Commission Rule 45-802 *Implementing National Instrument 45-106 Prospectus and Registration Exemptions* and Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions*; and
 - Ontario Securities Commission Rule 32-504 (under the Commodity Futures Act) *Adviser Registration Exemption*.
- Also on June 14, 2005, the Commission adopted as policies (the Policies):
- Companion Policy 45-106CP *Prospectus and Registration Exemptions*;
 - amended and restated Companion Policy 45-501CP *Ontario Prospectus and Registration Exemptions*; and
 - amendments to Multilateral Instrument 45-102 *Resale of Securities* and Companion Policy 45-102CP.

The Rules and Policies were most recently published for comment on December 17, 2004 at (2004) 27 OSCB (Supp-3).

The Rules were delivered to the minister responsible for the oversight of the Ontario Securities Commission (the Minister) on June 30, 2005. If the Minister does not approve or reject the Rules or return them for further consideration, they will come into force on September 14, 2005.



NOTICE OF AMENDMENTS TO THE SECURITIES ACT AND REGULATION, AND TO THE COMMODITY FUTURES ACT

On August 2, 2005, the Government of Ontario announced that the amendments to the *Securities Act* (Act) in respect of civil liability for continuous disclosure (Part XXIII.1 of the Act), as well as fraud and market manipulation (section 126.1 of the Act), and misleading or untrue statements (section 126.2 of the Act), will come into force on December 31, 2005.

Amendments made to the *Commodity Futures Act* respecting fraud and market manipulation, and misleading or untrue statements will also come into on December 31, 2005.

The amendments to the Act and to the *Commodity Futures Act* were enacted under the *Keeping the Promise for a Strong Economy Act (Budget Measures), 2002* (formerly Bill 198). These provisions were subsequently amended by the *Budget Measures Act (Fall), 2004* (formerly Bill 149).

On August 2, 2005, the Government of Ontario also announced amendments to Regulation 1015 under the Act. Some of the amendments made to Regulation 1015 relate to civil liability for continuous disclosure and will come into force on December 31, 2005. Other amendments to Regulation 1015 are housekeeping amendments and came into effect on the date they were filed, July 29, 2005. These housekeeping amendments include:

- amendments to remove "underwriter" as a separate category of registration;
- amendments to correctly reflect applicable sections of OSC Rule 31-505 *Conditions of Registration*;
- amendments to no longer require the filing with the Commission of financial statements and Statement C of Form 9 by mutual fund dealers that are members in good standing with the Mutual Fund Dealers Association of Canada;
- amendments to revoke Form 7 in connection with an application to amend an registration;
- amendments to revoke sections 38 and 79, and Forms 17, 18, and 19 in connection with the Commission's adoption of National Policy 46-201 *Escrow for Initial Public Offerings* and Form 46-201F1 *Escrow Agreement*; and
- amendments to refer to correct sections of the Act.

For ease of reference, we are publishing:

1. An unofficial consolidated blackline version of Part XXIII.1 of the *Securities Act*. This unofficial consolidation reflects the legislative amendments introduced by Bill 198, as amended by Bill 149.
2. The amendments made to the Regulation 1015 relating to the civil liability for secondary market disclosure.
3. An unofficial consolidated blackline version of sections 126.1 and 126.2 of the *Securities Act*, as amended by Bill 149.
4. An unofficial consolidated blackline version of sections 59.1 and 59.2 of the *Commodity Futures Act*, as amended by Bill 149.
5. The housekeeping amendments made to Regulation 1015.

Questions may be referred to:

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Unofficial Blackline Consolidation

PART XXIII.1

CIVIL LIABILITY FOR SECONDARY MARKET DISCLOSURE

INTERPRETATION AND APPLICATION

Definitions

138.1 In this Part,

"compensation" means compensation received during the 12 month period immediately preceding the day on which the misrepresentation was made or on which the failure to make timely disclosure first occurred, together with the fair market value of all deferred compensation including, without limitation, options, pension benefits and stock appreciation rights, granted during the same period, valued as of the date that such compensation is awarded; ("rémunération")

"control person" means,

(a) a person or company who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer, or

(b) each person or company or 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, where a person or company, or combination of persons or companies, holds more than 20 per cent of the voting rights attached to all outstanding voting securities of an issuer, the person or company, or combination of persons or companies, shall, in the absence of evidence to the contrary, be deemed to hold a sufficient number of the voting rights to affect materially the control of the issuer; ("personne qui a le contrôle")

"core document" means,

(a) where used in relation to,

(i) a director of a responsible issuer who is not also an officer of the responsible issuer,

(ii) an influential person, other than an officer of the responsible issuer or an investment fund manager where the responsible issuer is an investment fund, or

(iii) a director or officer of an influential person who is not also an officer of the responsible issuer, other than an officer of an investment fund manager, ~~who is not also an officer of the responsible issuer,~~

a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, ~~and~~ annual financial statements and interim financial statements of the responsible issuer, ~~or~~

(b) where used in relation to,

(i) a responsible issuer or an officer of the responsible issuer,

(ii) an investment fund manager, where the responsible issuer is an investment fund, or

(iii) an officer of an investment fund manager, where the responsible issuer is an investment fund,

a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, annual financial statements, interim financial statements; and a report required by subsection 75 (2); of the responsible issuer, and

(c) such other documents as may be prescribed by regulation for the purposes of this definition; ("document essentiel")

"document" means any written communication, including a communication prepared and transmitted only in electronic form,

(a) that is required to be filed with the Commission, or

(b) that is not required to be filed with the Commission and,

(i) that is filed with the Commission,

(ii) that is filed or required to be filed with a government or an agency of a government under applicable securities or corporate law or with any stock exchange or quotation and trade reporting system under its by-laws, rules or regulations, or

(iii) that is any other communication the content of which would reasonably be expected to affect the market price or value of a security of the responsible issuer; ("document")

"expert" means a person or company whose profession gives authority to a statement made in a professional capacity by the person or company including, without limitation, an accountant, actuary, appraiser, auditor, engineer, financial analyst, geologist or lawyer, but not including an entity that is an approved rating organization for the purposes of National Instrument 44-101 of the Canadian Securities Administrators; ("expert")

"failure to make timely disclosure" means a failure to disclose a material change in the manner and at the time required under this Act; ("non-respect des obligations d'information occasionnelle")

"forward-looking information" means all disclosure regarding possible events, conditions or results ~~(including future- that is based on assumptions about future economic conditions and courses of action and includes future oriented financial information with respect to prospective results of operations, a prospective financial position or prospective changes in financial position that is based on assumptions about future economic conditions and courses of action)~~ cash flows that is presented as either a forecast or a projection; ("information prospective")
[This definition was moved to s. 1(1) of the Securities Act.]

"influential person" means, in respect of a responsible issuer,

(a) a control person,

(b) a promoter,

(c) an insider who is not a director or senior officer of the responsible issuer, or

(d) an investment fund manager, if the responsible issuer is an investment fund; ("personne influente")

"issuer's security" means a security of a responsible issuer and includes a security,

(a) the market price or value of which, or payment obligations under which, are derived from or based on a security of the responsible issuer, and

(b) which is created by a person or company on behalf of the responsible issuer or is guaranteed by the responsible issuer; ("valeur mobilière d'un émetteur")

"liability limit" means,

(a) in the case of a responsible issuer, the greater of,

(i) 5 per cent of its market capitalization (as such term is defined in the regulations), and

(ii) \$1 million,

(b) in the case of a director or officer of a responsible issuer, the greater of,

(i) \$25,000, and

(ii) 50 per cent of the aggregate of the director's or officer's compensation from the responsible issuer and its affiliates,

(c) in the case of an influential person who is not an individual, the greater of,

(i) 5 per cent of its market capitalization (as defined in the regulations), and

(ii) \$1 million,

(d) in the case of an influential person who is an individual, the greater of,

(i) \$25,000, and

(ii) 50 per cent of the aggregate of the influential person's compensation from the responsible issuer and its affiliates,

(e) in the case of a director or officer of an influential person, the greater of,

(i) \$25,000, and

(ii) 50 per cent of the aggregate of the director's or officer's compensation from the influential person and its affiliates,

(f) in the case of an expert, the greater of,

(i) \$1 million, and

(ii) the revenue that the expert and the affiliates of the expert have earned from the responsible issuer and its affiliates during the 12 months preceding the misrepresentation, and

(g) in the case of each person ~~or company~~ who made a public oral statement, other than an individual ~~under~~ referred to in clause (a), (b), (c), (d), (e) or (f), the greater of,

(i) \$25,000, and

(ii) 50 per cent of the aggregate of the person ~~or company~~'s compensation from the responsible issuer and its affiliates; (~~"limite de responsabilité"~~)

"management's discussion and analysis" means the section of an annual information form, annual report or other document that contains management's discussion and analysis of the financial condition and results of operations of a responsible issuer as required under Ontario securities law; ("rapport de gestion")

"public oral statement" means an oral statement made in circumstances in which a reasonable person would believe that information contained in the statement will become generally disclosed; ("déclaration orale publique")

"release" means, with respect to information or a document, to file with the Commission or any other securities regulatory authority in Canada or a stock exchange or to otherwise make available to the public; ("publication")

"responsible issuer" means,

(a) a reporting issuer, or

(b) any other issuer with a real and substantial connection to Ontario, any securities of which are publicly traded; ("émetteur responsable")

"trading day" means a day during which the principal market (as defined in the regulations) for the security is open for trading. ("jour de Bourse")

Application

138.2 This Part does not apply to,

(a) the ~~acquisition~~ purchase of an issuer's security ~~under~~ offered by a prospectus during the period of distribution;

(b) the acquisition of an issuer's security pursuant to ~~an exemption~~ a distribution that is exempt from section 53 or 62, except as may be prescribed by regulation;

(c) the acquisition or disposition of an issuer's security in connection with or pursuant to a take-over bid or issuer bid, except as may be prescribed by regulation; or

(d) such other transactions or class of transactions as may be prescribed by regulation.

LIABILITY

Liability for secondary market disclosure

Documents released by responsible issuer

138.3 (1) Where a responsible issuer or a person or company with actual, implied or apparent authority to act on behalf of a responsible issuer releases a document that contains a misrepresentation, a person or company who acquires or disposes of ~~an~~ the issuer's security during the period between the time when the document was released and the time when the misrepresentation contained in the document was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against,

- (a) the responsible issuer;
- (b) each director of the responsible issuer at the time the document was released;
- (c) each officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document;
- (d) each influential person, and each director and officer of an influential person, who knowingly influenced,
 - (i) the responsible issuer or any person or company acting on behalf of the responsible issuer to release the document, or
 - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the release of the document; and
- (e) each expert where,
 - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
 - (ii) the document includes, summarizes or quotes from the report, statement or opinion of the expert, and
 - (iii) if the document was released by a person or company other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document.

Public oral statements by responsible issuer

(2) Where a person with actual, implied or apparent authority to speak on behalf of a responsible issuer makes a public oral statement that relates to the business or affairs of the responsible issuer and that contains a misrepresentation, a person or company who acquires or disposes of ~~an~~ the issuer's security during the period between the time when the public oral statement was made and the time when the misrepresentation contained in the public oral statement was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against,

- (a) the responsible issuer;
- (b) the person who made the public oral statement;
- (c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the making of the public oral statement;
- (d) each influential person, and each director and officer of the influential person, who knowingly influenced,
 - (i) the person who made the public oral statement to make the public oral statement, or
 - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the making of the public oral statement; and
- (e) each expert where,
 - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
 - (ii) the person making the public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and
 - (iii) if the public oral statement was made by a person other than the expert, the expert consented in

writing to the use of the report, statement or opinion in the public oral statement.

Influential persons

(3) Where an influential person or a person or company with actual, implied or apparent authority to act or speak on behalf of the influential person releases a document or makes a public oral statement that relates to a responsible issuer and that contains a misrepresentation, a person or company who acquires or disposes of ~~on the~~ issuer's security during the period between the time when the document was released or the public oral statement was made and the time when the misrepresentation contained in the document or public oral statement was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against,

(a) the responsible issuer, if a director or officer of the responsible issuer, or where the responsible issuer is an investment fund, the investment fund manager, authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;

(b) the person who made the public oral statement;

(c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;

(d) the influential person;

(e) each director and officer of the influential person who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement; and

(f) each expert where,

(i) the misrepresentation is also contained in a report, statement or opinion made by the expert,

(ii) the document or public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and

(iii) if the document was released or the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document or public oral statement.

Failure to make timely disclosure

(4) Where a responsible issuer fails to make a timely disclosure, a person or company who acquires or disposes of ~~on the~~ issuer's security between the time when the material change was required to be disclosed in the manner required under this Act and the subsequent disclosure of the material change has, without regard to whether the person or company relied on the responsible issuer having complied with its disclosure requirements, a right of action for damages against,

(a) the responsible issuer;

(b) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the failure to make timely disclosure; and

(c) each influential person, and each director and officer of an influential person, who knowingly influenced,

(i) the responsible issuer or any person or company acting on behalf of the responsible issuer in the failure to make timely disclosure, or

(ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the failure to make timely disclosure.

Multiple roles

(5) In ~~a proceeding~~ an action under this section, a person who is a director or officer of an influential person is not liable in that capacity if the person is liable as a director or officer of the responsible issuer.

Multiple misrepresentations

(6) In ~~a proceeding~~ an action under this section,

(a) multiple misrepresentations having common subject matter or content may, in the discretion of the court, be treated as a single misrepresentation; and

(b) multiple instances of failure to make timely disclosure of a material change or material changes concerning common subject matter may, in the discretion of the court, be treated as a single failure to make timely disclosure.

No implied or actual authority

(7) In ~~a proceeding~~ an action under subsection (2) or ~~subsection~~ (3), if the person who made the public oral statement had apparent authority, but not implied or actual authority, to speak on behalf of the issuer, no other person is liable with respect to any of the responsible issuer's securities that were acquired or disposed of before that other person became, or should reasonably have become, aware of the misrepresentation.

Burden of proof and defences

Non-core documents and public oral statements

138.4 (1) In ~~a proceeding~~ an action under section 138.3 in relation to a misrepresentation in a document that is not a core document, or a misrepresentation in a public oral statement, a person or company is not liable, subject to subsection (2), unless the plaintiff proves that the person or company,

(a) knew, at the time that the document was released or public oral statement was made, that the document or public oral statement contained the misrepresentation;

(b) at or before the time that the document was released or public oral statement was made, deliberately avoided acquiring knowledge that the document or public oral statement contained the misrepresentation; or

(c) was, through action or failure to act, guilty of gross misconduct in connection with the release of the document or the making of the public oral statement that contained the misrepresentation.

Same

(2) A plaintiff is not required to prove any of the matters set out in subsection (1) in ~~a proceeding~~ an action under section 138.3 in relation to an expert.

Failure to make timely disclosure

(3) In ~~a proceeding~~ an action under section 138.3 in relation to a failure to make timely disclosure, a person or company is not liable, subject to subsection (4), unless the plaintiff proves that the person or company,

- (a) knew, at the time that the failure to make timely disclosure first occurred, of the change and that the change was a material change;
- (b) at the time or before the failure to make timely disclosure first occurred, deliberately avoided acquiring knowledge of the change or that the change was a material change; or
- (c) was, through action or failure to act, guilty of gross misconduct in connection with the failure to make timely disclosure.

Same

(4) A plaintiff is not required to prove any of the matters set out in subsection (3) in ~~a proceeding~~ an action under section 138.3 in relation to,

- (a) a responsible issuer;
- (b) an officer of a responsible issuer;
- (c) an investment fund manager; or
- (d) an officer of an investment fund manager.

Knowledge of the misrepresentation or material change

(5) A person or company is not liable in ~~a proceeding~~ an action under section 138.3 in relation to a misrepresentation or a failure to make timely disclosure if that person or company proves that the plaintiff acquired or disposed of the issuer's security,

- (a) with knowledge that the document or public oral statement contained a misrepresentation; or
- (b) with knowledge of the material change.

Reasonable investigation

(6) A person or company is not liable in ~~a proceeding~~ an action under section 138.3 in relation to,

- (a) a misrepresentation if that person or company proves that,
 - (i) before the release of the document or the making of the public oral statement containing the misrepresentation, the person or company conducted or caused to be conducted a reasonable investigation, and
 - (ii) at the time of the release of the document or the making of the public oral statement, the person or company had no reasonable grounds to believe that the document or public oral statement contained the misrepresentation; or
- (b) a failure to make timely disclosure if that person or company proves that,

(i) before the failure to make timely disclosure first occurred, the person or company conducted or caused to be conducted a reasonable investigation, and

(ii) the person or company had no reasonable grounds to believe that the failure to make timely disclosure would occur.

Factors to be considered by court

(7) In determining whether an investigation was reasonable under subsection (6), or whether any person or company is guilty of gross misconduct under subsection (1) or (3), the ~~court~~ court shall consider all relevant circumstances, including,

- (a) the nature of the responsible issuer;
- (b) the knowledge, experience and function of the person or company;
- (c) the office held, if the person was an officer;
- (d) the presence or absence of another relationship with the responsible issuer, if the person was a director;
- (e) the existence, if any, and the nature of any system designed to ensure that the responsible issuer meets its continuous disclosure obligations;
- (f) the reasonableness of reliance by the person or company on the responsible issuer's disclosure compliance system and on the responsible issuer's officers, employees and others whose duties would in the ordinary course have given them knowledge of the relevant facts;
- (g) the period within which disclosure was required to be made under the applicable law;
- (h) in respect of a report, statement or opinion of an expert, any professional standards applicable to the expert;
- (i) the extent to which the person or company knew, or should reasonably have known, the content and medium of dissemination of the document or public oral statement;
- (j) in the case of a misrepresentation, the role and responsibility of the person or company in the preparation and release of the document or the making of the public oral statement containing the misrepresentation or the ascertaining of the facts contained in that document or public oral statement; and
- (k) in the case of a failure to make timely disclosure, the role and responsibility of the person or company involved in a decision not to disclose the material change.

Confidential disclosure

(8) A person or company is not liable in a ~~proceeding~~ action under section 138.3 in respect of a failure to make timely disclosure if,

- (a) the person or company proves that the material change was disclosed by the responsible issuer in a report filed on a confidential basis with the Commission under subsection 75 (3);
- (b) the responsible issuer had a reasonable basis for making the disclosure on a confidential basis;
- (c) where the information contained in the report filed on a confidential basis remains material, disclosure of the material change was made public promptly when the basis for confidentiality ceased to exist;
- (d) the person or company or responsible issuer did not release a document or make a public oral statement that, due to the undisclosed material change, contained a misrepresentation, and
- (e) where the material change became publicly known in a manner other than the manner required under this Act, the responsible issuer promptly disclosed the material change in the manner required under this Act.

Forward-looking information

(9) A person or company is not liable in ~~a proceeding or an action~~ under section 138.3 for a misrepresentation in forward-looking information if the person or company proves ~~that~~, all of the following things:

~~(a) the~~ 1. The document or public oral statement containing the forward-looking information contained, proximate to the forward-looking information,

~~(i);~~ reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and

~~(ii);~~ a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information; ~~and~~.

~~(b) the~~ 2. The person or company had a reasonable basis for drawing the conclusions or making the forecasts or and projections set out in the forward-looking information.

Same

~~(10) Subsection (9) does not apply to a person or company in respect of forward-looking information contained in the prospectus of the responsible issuer filed in connection with the initial public distribution of securities of the responsible issuer or contained in financial statements prepared by the responsible issuer.~~ 9.1) The person or company shall be deemed to have satisfied the requirements of paragraph 1 of subsection (9) with respect to a public oral statement containing forward-looking information if the person who made the public oral statement,

(a) made a cautionary statement that the oral statement contains forward-looking information;

(b) stated that,

(i) the actual results could differ materially from a conclusion, forecast or projection in the forward-looking information, and

(ii) certain material factors or assumptions were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information; and

(c) stated that additional information about,

(i) the material factors that could cause actual results to differ materially from the conclusion, forecast or projection in the forward-looking information, and

(ii) the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information,

is contained in a readily-available document or in a portion of such a document and has identified that document or that portion of the document.

Same

(9.2) For the purposes of clause (9.1) (c), a document filed with the Commission or otherwise generally disclosed shall be deemed to be readily available.

Exception

(10) Subsection (9) does not relieve a person or company of liability respecting forward-looking information in a financial statement required to be filed under this Act or forward-looking information in a document released in connection with an initial public offering.

Expert report, statement or opinion

(11) A person or company, other than an expert, is not liable in ~~a proceeding~~ an action under section 138.3 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert in respect of which the responsible issuer obtained the written consent of the expert to the use of the report, statement or opinion if the consent had not been withdrawn in writing before the document was released or the public oral statement was made, if the person or company proves that,

(a) the person or company did not know and had no reasonable grounds to believe that there had been a misrepresentation in the part of the document or public oral statement made on the authority of the expert; and

(b) the part of the document or oral public statement fairly represented the report, statement or opinion made by the expert.

Same

(12) An expert is not liable in ~~a proceeding~~ an action under section 138.3 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert, if the expert proves that, the written consent previously provided was withdrawn in writing before the document was released or the public oral statement was made.

Release of documents

(13) A person or company is not liable in ~~a proceeding~~ an action under section 138.3 in respect of a misrepresentation in a document, other than a document required to be filed with the Commission, if the person or company proves that, at the time of release of the document the person or company did not know and had no reasonable grounds to believe that the document would be released.

Derivative information

(14) A person or company is not liable in ~~a proceeding~~ an action under section 138.3 for a misrepresentation in a document or a public oral statement, if the person or company proves that,

(a) the misrepresentation was also contained in a document filed by or on behalf of another person or company, other than the responsible issuer, with the Commission or any other securities regulatory authority in Canada or a stock exchange and was not corrected in another document filed by or on behalf of that other person or company with the Commission or that other securities regulatory authority in Canada or stock exchange before the release of the document or the public oral statement made by or on behalf of the responsible issuer;

(b) the document or public oral statement contained a reference identifying the document that was the source of the misrepresentation; and

(c) when the document was released or the public oral statement was made, the person or company did not know and had no reasonable grounds to believe that the document or public oral statement contained a misrepresentation.

Where corrective action taken

(15) A person or company, other than the responsible issuer, is not liable in ~~a proceeding~~ an action under section 138.3 if the misrepresentation or failure to make timely disclosure was made without the knowledge or consent of the person or company and, if, after the person or company became aware of the misrepresentation before it was corrected, or the failure to make timely disclosure before it was disclosed in the manner required under this Act,

(a) the person or company promptly notified the board of directors of the responsible issuer or other persons acting in a similar capacity of the misrepresentation or the failure to make timely disclosure; and

(b) if no correction of the misrepresentation or no subsequent disclosure of the material change in the manner required under this Act was made by the responsible issuer within two business days after the notification under clause (a), the person or company, unless prohibited by law or by professional confidentiality rules, promptly and in writing notified the Commission of the misrepresentation or failure to make timely disclosure.

DAMAGES

Assessment of damages

138.5 (1) Damages shall be assessed in favour of a person or company that acquired an issuer's securities after the release of a document or the making of a public oral statement containing a misrepresentation or after a failure to make timely disclosure as follows:

1. In respect of any of the securities of the responsible issuer that the person or company subsequently disposed of on or before the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the difference between the average price paid for those securities (including any commissions paid in respect thereof) and the price received upon the disposition of those securities (without deducting any commissions paid in respect of the disposition), calculated taking into account the result of hedging or other risk limitation transactions.

2. In respect of any of the securities of the responsible issuer that the person or company subsequently disposed of after the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the lesser of,

i. an amount equal to the difference between the average price paid for those securities (including any commissions paid in respect thereof) and the price received upon the disposition of those securities (without deducting any commissions paid in respect of the disposition), calculated taking into account the result of hedging or other risk limitation transactions, and

ii. an amount equal to the number of securities that the person disposed of, multiplied by the difference between the average price per security paid for those securities (including any commissions paid in respect thereof determined on a per security basis) and,

A. if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as those terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or

B. if there is no published market, the amount that the court considers just.

3. In respect of any of the securities of the responsible issuer that the person or company has not disposed of, assessed damages shall equal the number of securities acquired, multiplied by the difference between the average price per security paid for those securities (including any commissions paid in respect thereof determined on a per security basis) and,

i. if the issuer's securities trade on a published market, the trading price of the issuer' securities on

the principal market (as those terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or

ii. if there is no published market, the amount that the court considers just.

Same

(2) Damages shall be assessed in favour of a person or company that disposed of securities after a document was released or a public oral statement made containing a misrepresentation or after a failure to make timely disclosure as follows:

1. In respect of any of the securities of the responsible issuer that the person or company subsequently acquired on or before the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the difference between the average price received upon the disposition of those securities (deducting any commissions paid in respect of the disposition) and the price paid for those securities (without including any commissions paid in respect thereof), calculated taking into account the result of hedging or other risk limitation transactions.

2. In respect of any of the securities of the responsible issuer that the person or company subsequently acquired after the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the lesser of,

i. an amount equal to the difference between the average price received upon the disposition of those securities (deducting any commissions paid in respect of the disposition) and the price paid for those securities (without including any commissions paid in respect thereof), calculated taking into account the result of hedging or other risk limitation transactions, and

ii. an amount equal to the number of securities that the person disposed of, multiplied by the difference between the average price per security received upon the disposition of those securities (deducting any commissions paid in respect of the disposition determined on a per security basis), and,

A. if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as those terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or

B. if there is no published market, the amount that the court considers just.

3. In respect of any of the securities of the responsible issuer that the person or company has not acquired, assessed damages shall equal the number of securities that the person or company disposed of, multiplied by the difference between the average price per security received upon the disposition of those securities (deducting any commissions paid in respect of the disposition determined on a per security basis) and,

i. if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as such terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or

ii. if there is no published market, then the amount that the court considers just.

Same

(3) Despite subsections (1) and (2), assessed damages shall not include any amount that the defendant proves is attributable to a change in the market price of securities that is unrelated to the misrepresentation or the failure to make timely disclosure.

Proportionate liability

138.6 (1) In ~~a proceeding~~ an action under section 138.3, the court shall determine, in respect of each defendant found liable in the action, the defendant's responsibility for the damages assessed in favour of all plaintiffs in the action, and each such defendant shall be liable, subject to the limits set out in subsection 138.7 (1), to the plaintiffs for only that portion of the aggregate amount of damages assessed in favour of the plaintiffs that corresponds to that defendant's responsibility for the damages.

Same

(2) Despite subsection (1), where, in ~~a proceeding~~ an action under section 138.3 in respect of a misrepresentation or a failure to make timely disclosure, a court determines that a particular defendant, other than the responsible issuer, authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing it to be a misrepresentation or a failure to make timely disclosure, the whole amount of the damages assessed in the action may be recovered from that defendant.

Same

(3) Each defendant in respect of whom the court has made a determination under subsection (2) is jointly and severally liable with each other defendant in respect of whom the court has made a determination under subsection (2).

Same

(4) Any defendant against whom recovery is obtained under subsection (2) is entitled to claim contribution from any other defendant who is found liable in the action.

Limits on damages

138.7 (1) Despite section 138.5, the damages payable by a person or company in ~~a proceeding~~ an action under section 138.3 is the lesser of,

(a) the aggregate damages assessed against the person or company in the action, and,

(b) the liability limit for the person or company less the aggregate of all damages assessed after appeals, if any, against the person or company in all other actions brought under section 138.3, and under comparable legislation in other provinces or territories in Canada in respect of that misrepresentation or failure to make timely disclosure, and less any amount paid in settlement of any such actions.

Same

(2) Subsection (1) does not apply to a person or company, other than the responsible issuer, if the plaintiff proves that the person or company authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure, or influenced the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure.

PROCEDURAL MATTERS

Leave to proceed

138.8 (1) No ~~proceeding~~ action may be commenced under section 138.3 without leave of the court granted upon motion with

notice to each defendant. The court shall grant leave only where it is satisfied that,

- (a) the action is being brought in good faith; and
- (b) there is a reasonable possibility that the action will be resolved at trial in favour of the plaintiff.

Same

(2) Upon an application under this section, the plaintiff and each defendant shall serve and file one or more affidavits setting forth the material facts upon which each intends to rely.

Same

(3) The maker of such an affidavit may be examined on it in accordance with the rules of court.

Same

(4) A copy of the application for leave to proceed and any affidavits filed with the court shall be sent to the Commission when filed.

Notice

138.9 A person or company that has been granted leave to commence ~~a proceeding~~ an action under section 138.3 shall,

- (a) promptly issue a news release disclosing that leave has been granted to commence ~~a proceeding~~ an action under section 138.3;
- (b) send a written notice to the Commission within seven days, together with a copy of the news release; and
- (c) send a copy of the statement of claim or other originating document to the Commission when filed.

Restriction on discontinuation, etc., of proceedingaction

138.10 ~~A proceeding~~ An action under section 138.3 shall not be ~~stayed, discontinued, abandoned or settled or dismissed for delay~~ without the approval of the court given on such terms as the court thinks fit including, without limitation, terms as to costs, and in determining whether to approve the settlement of the ~~proceeding~~ action, the court shall consider, among other things, whether there are any other ~~proceedings~~ actions outstanding under section 138.3 or under comparable legislation in ~~the~~ other provinces or territories in Canada in respect of the same misrepresentation or failure to make timely disclosure.

Costs

138.11 Despite the *Courts of Justice Act* and the *Class Proceedings Act, 1992*, the prevailing party in ~~a proceeding~~ an action under section 138.3 is entitled to costs determined by a court in accordance with applicable rules of civil procedure.

Power of the Commission

138.12 The Commission may intervene in ~~a proceeding~~ an action under section 138.3 and in an application for leave under section 138.8.

No derogation from other rights

138.13 The right of action for damages and the defences to ~~a proceeding an action~~ under section 138.3 are in addition to, and without derogation from, any other rights or defences the plaintiff or defendant may have in ~~a proceeding an action~~ brought otherwise than under this Part.

Limitation period

138.14 No ~~proceeding an action~~ shall be commenced under section 138.3,

(a) in the case of misrepresentation in a document, later than the earlier of,

(i) three years after the date on which the document containing the misrepresentation was first released, and

(ii) six months after the issuance of a news release disclosing that leave has been granted to commence ~~a proceeding an action~~ under section 138.3 or under comparable legislation in the other provinces or territories in Canada in respect of the same misrepresentation;

(b) in the case of a misrepresentation in a public oral statement, later than the earlier of,

(i) three years after the date on which the public oral statement containing the misrepresentation was made, and

(ii) six months after the issuance of a news release disclosing that leave has been granted to commence ~~a proceeding an action~~ under section 138.3 or under comparable legislation in another province or territory of Canada in respect of the same misrepresentation; and

(c) in the case of a failure to make timely disclosure, later than the earlier of,

(i) three years after the date on which the requisite disclosure was required to be made, and

(ii) six months after the issuance of a news release disclosing that leave has been granted to commence ~~a proceeding an action~~ under section 138.3 or under comparable legislation in another province or territory of Canada in respect of the same failure to make timely disclosure.

CHANGES MADE TO REGULATION 1015

IN RESPECT OF CIVIL LIABILITY FOR SECONDARY MARKET DISCLOSURE

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 -- Legislative History Overview which can be found at www.e-laws.gov.on.ca.

.....

19. The Regulation is amended by adding the following Part:

PART XVI

CIVIL LIABILITY FOR SECONDARY MARKET DISCLOSURE

248. In this Part,

"equity security" has the same meaning as it has in subsection 89 (1) of the Act.

249. For the purposes of Part XXIII.1 of the Act, "market capitalization" means, in respect of an issuer, the amount determined as follows:

1. For each class of equity securities for which there is a published market, determine the sum of the number of outstanding securities of the class at the close of trading on each of the 10 trading days before the day on which the misrepresentation was made or the failure to make timely disclosure first occurred.
2. Divide the sum determined under paragraph 1 by 10.
3. Multiply the quotient determined under paragraph 2 for each class by the trading price of the securities of the class on the principal market for the securities for the 10 trading days before the day on which the misrepresentation was made or the failure to make timely disclosure first occurred.
4. Add the amounts determined under paragraph 3 for each class of equity securities for which there is a published market.
5. For each class of equity securities not traded on a published market, determine the fair market value of the outstanding securities of that class as of the day on which the misrepresentation was made or the failure to make timely disclosure first occurred.
6. Add the amounts determined under paragraph 5 for each class of equity securities not traded on a published market.
7. Add the amount determined under paragraph 4 to the amount determined under paragraph 6 to determine the market capitalization of the issuer.

250. For the purposes of Part XXIII.1 of the Act,

"principal market" means, in respect of a class of securities of a responsible issuer,

(a) the published market in Canada on which the greatest volume of trading in securities of that class occurred during the 10 trading days before the day on which the misrepresentation was made or the failure to make timely disclosure first occurred; or

(b) the published market on which the greatest volume of trading in securities of that class occurred during the 10 trading days before the day on which the misrepresentation was made or the failure to make timely disclosure first occurred, if securities of that class are not traded during those 10 trading days on a published market in Canada.

251. For the purposes of Part XXIII.1 of the Act, "trading price" means, in respect of a security of a class of securities for which there is a published market, the amount determined under the following rules:

1. Subject to paragraphs 2 and 3, the trading price of the security is the volume weighted average price of

securities of that class on the published market during the period for which the trading price is to be determined.

2. Subject to paragraph 3, if there was trading in the securities of that class in the published market on fewer than half of the trading days during the period for which the trading price of the securities is to be determined, the trading price of the security is determined as follows:

i. Calculate the sum of the average of the highest bid and lowest ask prices for each trading day in the period on which there were no trades in securities of that class in the published market.

ii. Divide the amount determined under subparagraph i by the number of trading days on which there were no trades in securities of that class in the published market.

iii. Add to the amount determined under subparagraph ii the volume weighted average price of securities of that class on the published market for those trading days on which securities of that class were traded.

iv. Divide by two the amount determined under subparagraph iii.

3. If there were no trades of securities of that class in the published market during the period for which the trading price is to be determined, the trading price of the security is the fair market value of the security.

252. (1) Part XXIII.1 of the Act applies to the acquisition of an issuer's security pursuant to an exemption from section 53 or 62 of the Act that is set out in clause 72 (7) (b) of the Act, which exemption is prescribed for the purposes of clause 138.2 (b) of the Act.

(2) Part XXIII.1 of the Act applies to the acquisition or disposition of an issuer's security in connection with or pursuant to a take-over bid described in clause 93 (1) (a), (b) or (e) of the Act or an issuer bid described in clause 93 (3) (e), (f) or (h) of the Act, which bids are prescribed for the purposes of clause 138.2 (c) of the Act.

.....

23.(1) Subject to subsection (2), this Regulation comes into force on the day it is filed.

(2) Section 19 comes into force on the day that section 185 of the *Keeping the Promise for a Strong Economy Act (Budget Measures), 2002* comes into force.

Unofficial Blackline Consolidation

SECTIONS 126.1 AND 126.2 OF THE SECURITIES ACT

Fraud and market manipulation

126.1 A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities or derivatives that the person or company knows or reasonably ought to know,

(a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security or derivative of a securities; or

(b) perpetrates a fraud on any person or company.

Misleading or untrue statements

126.2(1) A person or company shall not make a statement that the person or company knows or reasonably ought to know,

(a) in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; and

~~(b) significantly affects, or would reasonably be expected to have a significant effect on, the market price or value of a security.~~

Same

(2) A breach of subsection (1) does not give rise to a statutory right of action for damages otherwise than under Part XXIII or XXIII.1.

Unofficial Blackline Consolidation

SECTIONS 59.1 AND 59.2 OF THE COMMODITY FUTURES ACT

Fraud and market manipulation

59.1 A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to commodities or contracts that the person or company knows or reasonably ought to know,

(a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a commodity or contract; or

(b) perpetrates a fraud on any person or company.

Misleading or untrue statements

59.2 A person or company shall not make a statement that the person or company knows or reasonably ought to know,

(a) in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; and

~~(b) significantly affects, or would reasonably be expected to have a significant effect on, the market price or value of a commodity or contract.~~

CHANGES MADE TO REGULATION 1015

IN RESPECT OF HOUSEKEEPING AMENDMENTS

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 -- Legislative History Overview which can be found at www.e-laws.gov.on.ca.

1. Section 38 of Regulation 1015 of the Revised Regulations of Ontario, 1990 is revoked.

2. Section 79 of the Regulation is revoked.

3. Section 100 of the Regulation is revoked and the following substituted:

100. (1) The registration of a mutual fund dealer, scholarship plan dealer or securities issuer authorizes the dealer or issuer to act as an underwriter for the sole purpose of distributing the securities that the dealer or issuer is registered to trade but not for any other purpose.

(2) The registration of a limited market dealer, international dealer or financial intermediary dealer authorizes the dealer to act as an underwriter for the sole purpose of making a distribution that the dealer is authorized to make by section 208 or 209 or Ontario Securities Commission Rule 31-503 *Limited Market Dealers*, as the case may be, but not for any other purpose.

4. (1) Subsection 104 (1) of the Regulation is amended by striking out the portion before clause (a) and substituting the following:

(1) A registrant who is a registered dealer or adviser or a partner or officer of a registered dealer or adviser and who proposes to acquire, directly or indirectly, beneficial ownership of or control or direction over any security of another registered dealer or adviser shall give written notice of the proposed acquisition to the Director at least 30 days before the acquisition and shall provide with the notice all relevant facts to permit the Director to determine if the acquisition,

.....

(2) Clause 104 (4) (a) of the Regulation is revoked and the following substituted:

(a) a partner or officer of a registered dealer or adviser who, alone or in combination with any other person or company, proposes to acquire securities that, together with the securities already beneficially owned or over which control or direction is already exercised, do not exceed more than 5 per cent of any class or series of securities of any other registered dealer or adviser that are listed and posted for trading on a stock exchange anywhere in the world;

(3) Clause 104 (4) (d) of the Regulation is revoked and the following substituted:

(d) an acquisition by a registered dealer in the ordinary course of its business of trading in securities.

5. Subsection 107 (5) of the Regulation is revoked.

6. (1) Subsection 108 (3) of the Regulation is amended by striking out "every security issuer, every adviser and every underwriter" and substituting "every security issuer and every adviser".

(2) Subsection 108 (4) of the Regulation is amended by striking out "dealer, adviser or underwriter" in the portion before clause (a) and substituting "dealer or adviser".

(3) Subsection 108 (6) of the Regulation is revoked and the following substituted:

(6) The Director may exempt registrants who are members of a recognized self-regulatory organization referred to in section 21.1 of the Act or a recognized stock exchange from compliance with subsection (4) if the Director is satisfied that the registrant is subject to requirements imposed by that organization or exchange that provide at least equal protection for clients to the protection provided under subsection (4).

7. Subsection 110 (1) of the Regulation is revoked and the following substituted:

(1) Every dealer, other than a security issuer, shall participate in a compensation fund or contingency trust fund approved by the Commission and established by,

- (a) a recognized self-regulatory organization referred to in section 21.1 of the Act;
- (b) a recognized stock exchange; or
- (c) a trust corporation registered under the *Loan and Trust Corporations Act*.

8. (1) Paragraph 8 of subsection 113 (3) of the Regulation is amended by striking out "Subject to subsection 114 (4)" at the beginning and substituting "Subject to section 1.5 of Ontario Securities Commission Rule 31-505 *Conditions of Registration*".

(2) Subparagraph 8 iii of subsection 113 (3) of the Regulation is revoked and the following substituted:

iii. in the case of a margin account, a properly executed margin agreement containing the signature of the owner and the guarantor, if any, and the additional information obtained under section 115 of this Regulation and sections 1.2, 1.5 and 1.6 of Ontario Securities Commission Rule 31-505 *Conditions of Registration*,

9. Subsection 132 (1) of the Regulation is amended by striking out "dealer, adviser or underwriter" and substituting "dealer or adviser".

10. Sections 135, 137 and 138 of the Regulation are revoked.

11. Section 139 of the Regulation is revoked and the following substituted:

REPORTING TO ONTARIO SECURITIES COMMISSION

139. Every mutual fund dealer who is not a member in good standing of a self-regulatory organization that is recognized by the Commission under section 21.1 of the Act, every adviser and every scholarship plan dealer shall deliver to the Commission, not more than 90 days after the end of each financial year of the dealer or adviser, a copy of its financial statements for the year.

12. Sections 141 and 142 of the Regulation are revoked and the following substituted:

141. Every mutual fund dealer who is not a member in good standing of a self-regulatory organization that is recognized by the Commission under section 21.1 of the Act and every scholarship plan dealer shall deliver a report prepared in accordance with Statement C of Form 9 to the Commission not more than 90 days after the end of each financial year of the dealer.

142. Every securities dealer who is not a member in good standing of a self-regulatory organization that is recognized by the Commission under section 21.1 of the Act shall deliver a report prepared in accordance with Form 9 to the Commission not more than 90 days after the end of each financial year of the dealer.

13. Subsection 145 (1) of the Regulation is amended by striking out "self-regulatory body referred to in section 20 of the Act" in the portion before clause (a) and substituting "self-regulatory organization that is recognized by the Commission under section 21.1 of the Act or a recognized stock exchange".

14. Section 146 of the Regulation is revoked and the following substituted:

146. Every audit under section 21.10 of the Act shall satisfy the audit requirements published by the Commission, in addition to the requirements in that section, and in the event of a conflict, the requirements of section 21.10 prevail.

15. (1) Subsection 147 (1) of the Regulation is revoked.

(2) Subsection 147 (2) of the Regulation is amended by striking out "an audit under section 21 of the Act" and substituting "an audit under section 21.10 of the Act".

16. Subsection 212 (2) of the Regulation is revoked.

17. (1) Subsection 230 (1) of the Regulation is amended by striking out "other than sections 221 and 222".

(2) Subsection 230 (5) of the Regulation is revoked.

18. Section 232 of the Regulation is amended by striking out "sections 221 and 222" and substituting "section 2.1 of Ontario Securities Commission Rule 31-505 *Conditions of Registration*".

.....

20. Form 3 is revoked and the following substituted:

Ontario	Form 3	Application for Registration as
Securities	Securities Act	Dealer or Adviser
Commission		

NOTE: Should any space be insufficient for your answers, a statement may be attached and marked as an exhibit cross-referencing each statement to the item to which it pertains provided it is initialled by the applicant and the Commissioner taking the affidavit.

Application is made for registration under the *Securities Act*

(NOTE: Refer to sections 98 and 99 of the Regulation to confirm the appropriate category of registration.)

in the category of

1.

(a) Name of Applicant

(b) Head Office Business Address

Telephone No.

Postal Code

(c) Address for Service in Ontario:

Telephone No.

Postal Code

2. The applicant maintains accounts at the following bank(s): (State bank and branches through which business is transacted)

3. Is applicant applying for registration of any branch offices?

If so, state addresses:

INSTRUCTION: Answer "Yes" or "No" to the following questions. If "Yes", give particulars.

4. Has the applicant, or to the best of the applicant's information and belief, has any affiliate of the applicant,

(a) been registered in any capacity under any *Securities Act* of Ontario?

(b) applied for registration, in any capacity, under any *Securities Act* of Ontario?

5. Is the applicant, or to the best of the applicant's information and belief, is any affiliate of the applicant, now, or has any such person or company been,

(a) registered or licensed in any capacity in any other province, state or country which requires registration or licensing to deal or trade in securities?

(b) registered or licensed in any other capacity in Ontario or any other province, state or country under any legislation which requires registration or licensing to deal with the public in any capacity? (e.g., as an insurance agent, real estate agent, used car dealer, mortgage broker, etc.)

(c) refused registration or a licence mentioned in 5(a) or (b) above or has any registration or licence been suspended or cancelled in any category mentioned in 5(a) or (b) above?

(d) denied the benefit of any exemption from registration provided by any *Securities Act* of Ontario, or similar exemption provided by securities acts or regulations of any other province, state or country?

6. Is the applicant, or to the best of the applicant's information and belief is any affiliate of the applicant, now, or has any such person or company been,

(a) a member of any Stock Exchange, Association of Investment Dealers, Investment Bankers, Brokers, Broker-Dealers, or similar organization, in any province, state or country?

(b) refused membership in any Stock Exchange, Association of Investment Dealers, Investment Bankers, Brokers, Broker-Dealers, or similar organization, in any province, state or country?

(c) suspended as a member of any Stock Exchange, Association of Investment Dealers, Investment Bankers, Brokers, Broker-Dealers, or similar organization, in any province, state or country?

7. Has the applicant, or to the best of the applicant's information and belief, has any affiliate of the applicant, operated under, or carried on business under, any name other than the name shown in this application?

8. Has the applicant, or to the best of the applicant's information and belief, has any affiliate of the applicant,

(a) ever been convicted under the law of any province, state or country, excepting minor traffic violations?

Is there currently an outstanding charge or indictment against the applicant or affiliate?

INSTRUCTION: Question 8(a) refers to all laws, e.g., Criminal, Immigration, Customs, Liquor, etc. of any province, state or country in any part of the world. You are not required to disclose any convictions for which a pardon has been granted under the Criminal Records Act (Canada), and which pardon has not been revoked.

(b) ever been the defendant or respondent in any proceedings in any civil court in any jurisdiction in any part of the world wherein fraud was alleged?

(c) at any time declared bankruptcy, or made a voluntary assignment in bankruptcy? (If "Yes", give particulars and also attach a certified copy of discharge.)

(d) ever been refused a fidelity bond?

9. Set out in the space provided, the name of the applicant, or the name of and position held by each officer or partner of the applicant seeking or holding registration.

(In addition to last name, give full first and middle names)	Office Held	(In addition to last name, give full first and middle names)	Office Held
1. _____	_____	5. _____	_____
2. _____	_____	6. _____	_____

3. _____ 7. _____

4. _____ 8. _____

10. Attach and mark as an exhibit:

(a) a completed Form 4 for each partner or officer of the applicant seeking or holding registration, unless the information required by Form 4 has previously been filed by such person and remains unchanged;

(b) for each person or company who is a partner, officer or director of the applicant and not referred to in clause (a), the information required by Form 4 excluding questions 4, 7 and 10 and Part D thereof unless such information has previously been filed with the Commission and remains unchanged; and

(c) in the case of applicants for registration as investment counsel only, a letter from each person who, on behalf of the applicant will give investment advice, outlining directly related experience of such person so as to justify designation by the Director of such person to so act.

11. A - Capitalization of Company:

Other than a Security Issuer, complete below or attach marked as an exhibit to the application a statement containing the information called for below, to provide information with respect to the financial structure and control of the applicant company.

(a) The authorized and issued capital of the company, stating:

	Preferred Shares (State number of shares and dollar value) Shares \$	Common Shares (State number of shares and dollar value) Shares \$
(1) authorized capital	_____	_____
(2) issued	_____	_____
(3) total dollar value of other securities:	_____	_____
(i) Bonds	_____	_____
(ii) Debentures	_____	_____
(iii) Any other loans, state source and maturity dates	_____	_____
\$ _____	_____	_____
TOTAL \$ _____	_____	_____

(b) The names, addresses and usual place of residence of registered, and direct, and indirect, beneficial owners of each class of security or obligation issued, and if a trust is the beneficial owner, the names, addresses and usual place of residence of each person or company having a beneficial interest in the trust, and the nature and extent of the holdings and percentage of interest attributable to each security holder, lender or *cestui que* trust (beneficiary).

(c) State name and address of every depository holding any of the assets of the company:

INSTRUCTION: Answer "Yes" or "No" to the following questions. If "Yes", give particulars.

(d) Has any person or company undertaken to act as a guarantor in relation to the financial or other undertakings of the applicant?

(e) Has a subordination agreement been executed by the creditor(s) in relation to loans owing by the applicant?

(f) Is there any person or company whose name is not disclosed in the statement called for by (b) above who has any direct or indirect interest in the applicant, either beneficially or otherwise?

B - Capitalization of a Partnership or Proprietorship:

Attach, marked as an exhibit to the application, a statement containing the information called for below with respect to the assets of the partnership or proprietorship, and demonstrate therein the degree of control (voting power) of each of the participants in the applicant.

(a) Amount of paid-in capital \$

(b) Description of the assets:

(c) State name and address of every depository holding any of the assets:

(d) Source, amount and maturity date of any obligations owing by the partnership, if any: (Where applicable, give names and addresses of creditors).

INSTRUCTION: Answer "Yes" or "No" to the following questions. If "Yes", give particulars.

(e) Has any person or company undertaken to act as guarantor in relation to the financial or other undertakings of applicant?

(f) Has a subordination agreement been executed by the creditor(s) in relation to loans owing by the applicant?

(g) Is there any person or company whose name is not disclosed above who has any interest in the applicant, either beneficially or otherwise?

DATED at _____

(Name of applicant)

This _____ day of _____, 20____

By _____
(Signature of applicant, partner or officer)

(Official capacity)

AFFIDAVIT

In the matter of the Securities Act

Province of Ontario)
) I, _____
 _____ of _____) (Name in full)
) of the _____
)
 To Wit:) in the County of _____

MAKE OATH AND SAY:

- I am the applicant (or a partner or officer of the applicant) herein for registration and I signed the application.
- The statements of fact made in the application are true.

SWORN before me at the _____)
)
 in the _____ of _____)
) _____
) (Signature of Deponent)
 This _____ day of _____, 20____)

(A Commissioner, etc.))
)
)

It is an offence under the *Securities Act* to file an application containing a statement that, at the time and in light of the circumstances in which it is made, is a misrepresentation.

21. Form 5 is revoked and the following substituted:

Ontario **Form 5** **Application for Renewal of**
Securities **Securities Act** **Registration as Dealer or Adviser**
Commission

Note: This form is not to be used for the reporting of amendments.

Application is made for renewal of registration under the *Securities Act* as: _____

in the category of:

1. Name of Applicant:

2. Head Office Business Address:

Telephone No: Postal Code:

3. Attached as an exhibit is a statement giving the full particulars of all changes in the information given in my last application for registration under the *Securities Act* particulars of which have not been filed previously as an application for amendment or renewal of registration.

DATED at _____

(Name of applicant)

This _____ day of _____, 20 _____

By _____
(Signature of applicant, partner or officer)

(Official capacity)

AFFIDAVIT

In the matter of the *Securities Act*

Province of Ontario)

I, _____
(Name in full)

_____ of _____)
)

of the _____

To Wit:)
)

in the County of _____

MAKE OATH AND SAY:

1. I am the applicant (or a partner or officer of the applicant) herein for renewal of registration and I signed the application for renewal of registration.

2. The statements of fact made in the application for renewal of registration are true.

SWORN before me at the _____)	
)	
in the _____ of _____)	_____
)	(Signature of Deponent)
This _____ day of _____, 20_____)	
)	
_____)	
(A Commissioner, etc.))	

It is an offence under the *Securities Act* to file an application containing a statement that, at the time and in light of the circumstances in which it is made, is a misrepresentation.

22. Forms 7, 17, 18 and 19 are revoked.

23.(1) Subject to subsection (2), this Regulation comes into force on the day it is filed.

(2) Section 19 comes into force on the day that section 185 of the *Keeping the Promise for a Strong Economy Act (Budget Measures), 2002* comes into force.

Headnote

Mutual Reliance Review System for Exemptive Relief Applications -- Relief from the prospectus and registration requirements granted for trades in negotiable promissory notes and commercial paper (short-term debt instruments). The short-term debt instruments may not meet the "approved credit rating" requirement contained in the short-term debt exemption in section 2.35 of National Instrument 45-106 Prospectus and Registration Exemptions (NI 45-106). The definition of an "approved credit rating" requires, among other things, that every rating of the short-term debt instrument be at or above a prescribed standard. The relief is granted provided the short-term debt instrument:

- (i) matures not more than one year from the date of issue;
- (ii) is not convertible or exchangeable into or accompanied by a right to purchase another security other than a short-term debt instrument; and
- (iii) has a rating issued by one of the following rating organizations at or above one of the following rating categories: DBRS: "R-1(low); Fitch: "F2"; Moody's: "P-2" or S&P "A-2".

The relief will terminate on the earlier of 90 days upon an amendment to section 2.35 of NI 45-106 or three years from the date of the decision.

Applicable Ontario Statutory Provisions

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

April 26, 2006

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA,
ONTARIO, QUEBEC, NEW BRUNSWICK, PRINCE EDWARD ISLAND,
NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR, YUKON,
NORTHWEST TERRITORIES AND NUNAVUT
(THE JURISDICTIONS)
AND
IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS
AND
IN THE MATTER OF
THE TORONTO-DOMINION BANK
(THE FILER)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that trades in negotiable promissory notes and commercial paper (**Short-term Debt Instruments**) by the Filer be exempt from the dealer registration requirement and prospectus requirement (the **Requested Relief**).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

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

Representations

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

1. The Filer is a bank listed on Schedule I of the *Bank Act* (Canada). The head office of the Filer is located in Toronto, Ontario.
2. The Filer is a reporting issuer in all Jurisdictions and is not in default of its obligations under the Legislation in any Jurisdiction.
3. The Filer is not registered as a dealer or adviser under the Legislation in any Jurisdiction.
4. The Filer both trades and engages in distributions of Short-Term Debt Instruments in the Jurisdictions as part of its activities as a principal and as an agent for issuers.
5. Subsection 2.35(1)(b) of National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**) provides an exemption from the dealer registration requirement and prospectus requirement for a trade in a Short-term Debt Instrument (the **Short-term Debt Exemption**) where, among other things, the Short-term Debt Instrument "has an approved credit rating from an approved credit rating organization".
6. NI 45-106 incorporates by reference the definitions for "approved credit rating" and "approved credit rating organization" that are used in National Instrument 81-102 *Mutual Funds* (**NI 81-102**). The definition of an "approved credit rating" in NI 81-102, requires, among other things, that (a) the rating assigned to such debt must be "at or above" certain prescribed short-term ratings, and (b) such debt must not have been assigned a rating by any "approved credit rating organization" that is not an "approved credit rating".
7. The Filer has in the past traded and proposes in the future to trade Short-term Debt Instruments with the following general characteristics:
 - (a) they mature not more than one year from the date of issue;
 - (b) they are not convertible or exchangeable into or accompanied by a right to purchase another security other than another Short-term Debt Instrument; and
 - (c) they have a credit rating from at least one of the following credit rating organizations not less than the rating indicated:

Rating Organization	Rating
Dominion Bond Rating Service Limited	R-1 (low)
Fitch Ratings Ltd.	F2
Moody's Investors Service	P-2
Standard & Poor's	A-2

8. The Short-term Debt Instruments may have a lower rating than required by the Short-term Debt Exemption and accordingly, the Short-term Debt Exemption may not be available.

Decision

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

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that each Short-term Debt Instrument:

- (a) matures not more than one year from the date of issue;
- (b) is not convertible or exchangeable into or accompanied by a right to purchase another security other than a Short-term Debt Instrument; and
- (c) has a rating issued by one of the following rating organizations, or any of their successors, at or above one of the following rating categories or a rating category that replaces a category listed below:

Rating Organization	Rating
Dominion Bond Rating Service Limited	R-1 (low)
Fitch Ratings Ltd.	F2
Moody's Investors Service	P-2
Standard & Poor's	A-2

For each Jurisdiction, this decision will terminate on the earlier of:

- (a) 90 days after the coming into force of any rule, other regulation or blanket order or ruling under the Legislation of the Jurisdiction that amends section 2.35 of NI 45-106 or provides an alternate exemption; and
- (b) three years from the date of this decision.

"Susan Wolburgh Jenah"
 Vice-Chair
 Ontario Securities Commission

"Wendell S. Wigle"
 Commissioner
 Ontario Securities Commission

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from the dealer registration and prospectus requirements in connection with trades of short-term negotiable promissory notes and commercial paper (short term debt instruments)- sufficient that short term debt instrument has one credit rating at or above a revised rating category from a recognized credit rating agency, subject to conditions.

Applicable Alberta Statutory Provisions

Securities Act, R.S.A., 2000, c.S-4, sections 75, 110 and 144.

Citation: Bank of Montreal, 2006 ABASC 1375

Date: 20060517

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

AND

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

AND

IN THE MATTER OF
BANK OF MONTREAL
(the Filer)

MRRS DECISION DOCUMENT**Background**

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for:

- (a) an exemption from the dealer registration requirement in respect of a trade in a negotiable promissory note or commercial paper maturing not more than one year from the date of issue (together Commercial Paper); and

- (b) an exemption from the prospectus requirement in respect of the distribution of the Commercial Paper,

(collectively, the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

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

Representations

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

1. The Filer is a bank listed on Schedule I of the Bank Act (Canada). The Filer's head office is located in Montréal, Québec and its corporate headquarters and executive offices are located in Toronto, Ontario.
2. The Filer is a reporting issuer in each Jurisdiction having such a concept. The Filer is not in default of any of its obligations as a reporting issuer under the Legislation of any such Jurisdiction.
3. The Filer is not registered as a dealer or adviser under the Legislation in any province or territory of Canada.
4. The Filer trades in and distributes Commercial Paper in the Jurisdictions through the purchase of such Commercial Paper as principal for its own account or with a view to distribution or as agent for certain issuers.
5. Paragraph 2.35(1)(b) of National Instrument 45-106 Prospectus and Registration Exemptions (NI 45-106) provides an exemption from the dealer registration requirement and prospectus requirement for a trade in Commercial Paper (the Short-term Debt Exemption) where, among other things, the Commercial Paper "has an approved credit rating from an approved credit rating organization".
6. NI 45-106 incorporates by reference the definitions for "approved credit rating" and "approved credit rating organization" that are used in National Instrument 81-102 Mutual Funds (NI 81-102). The definition of an "approved credit rating" in NI 81-102, requires, among other things, that (a) the rating assigned to such debt must be "at or above" certain

prescribed short-term ratings, and (b) such debt must not have been assigned a rating by any “approved credit rating organization” that is not an “approved credit rating”.

7. The Filer proposes to trade in Commercial Paper with the following general characteristics:
- (a) it matures not more than one year from the date of issue;
 - (b) it is not convertible or exchangeable into or accompanied by a right to purchase another security other than Commercial Paper; and
 - (c) it has a credit rating from at least one of the following credit rating organizations at or above one of the following rating categories listed below:

Rating Organization	Rating
Dominion Bond Rating Service Limited	R-1 (low)
Fitch Ratings Ltd.	F2
Moody's Investors Service	P-2
Standard & Poor's	A-2

8. The Commercial Paper may have a lower rating than required by the Short-term Debt Exemption and accordingly, the Short-term Debt Exemption may not be available.

Decision

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

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

- (a) matures not more than one year from the date of issue;
- (b) is not convertible or exchangeable into or accompanied by a right to purchase another security other than Commercial Paper; and
- (c) has a rating issued by one of the following rating organizations, or any of their successors, at or above one of the following rating categories or a rating category that replaces a category listed below:

Rating Organization	Rating
Dominion Bond Rating Service Limited	R-1 (low)
Fitch Ratings Ltd.	F2
Moody's Investors Service	P-2
Standard & Poor's	A-2

For each Jurisdiction, this decision will terminate on the earlier of:

- (a) 90 days after the coming into force of any rule, other regulation or blanket order or ruling under the Legislation of the Jurisdiction that amends section 2.35 of NI 45-106 or provides an alternate exemption; and
- (b) three years from the date of this decision.

“David L. Knight”

Commissioner
Ontario Securities Commission

“Susan Wolburgh Jenah”

Vice-Chair
Ontario Securities Commission

Headnote

Mutual Reliance Review System for Exemptive Relief Applications -- Relief from the prospectus and registration requirements granted for trades in negotiable promissory notes and commercial paper (short-term debt instruments). The short-term debt instruments may not meet the "approved credit rating" requirement contained in the short-term debt exemption in section 2.35 of National Instrument 45-106 Prospectus and Registration Exemptions (NI 45-106). The definition of an "approved credit rating" requires, among other things, that every rating of the short-term debt instrument be at or above a prescribed standard. The relief is granted provided the short-term debt instrument:

- (i) matures not more than one year from the date of issue;
- (ii) is not convertible or exchangeable into or accompanied by a right to purchase another security other than a short-term debt instrument; and
- (iii) has a rating issued by one of the following rating organizations at or above one of the following rating categories: DBRS: "R-1(low); Fitch: "F2"; Moody's: "P-2" or S&P: "A-2".

The relief will terminate on the earlier of 90 days upon an amendment to section 2.35 of NI 45-106 or three years from the date of the decision.

Applicable Ontario Statutory Provisions

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

October 23, 2006

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,
MANITOBA, ONTARIO, QUEBEC, NEW BRUNSWICK,
PRINCE EDWARD ISLAND, NOVA SCOTIA,
NEWFOUNDLAND AND LABRADOR, YUKON,
NORTHWEST TERRITORIES AND NUNAVUT
(the Jurisdictions)
AND
IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS
AND
IN THE MATTER OF
CANADIAN IMPERIAL BANK OF COMMERCE (CIBC)

AND CIBC WORLD MARKETS INC.

(CIBC WORLD MARKETS)

(the Filers)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the **Legislation**):

(a) exempting CIBC from the dealer registration requirement in respect of a trade in a negotiable promissory note or commercial paper maturing not more than one year from the date of issue (together **Commercial Paper**); and

(b) exempting CIBC and CIBC World Markets from the prospectus requirement in respect of the distribution of the Commercial Paper,

(collectively, the **Requested Relief**).

Under the Mutual Reliance Review System for Exemptive Relief Applications

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

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

Interpretation

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

Representations

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

1. CIBC is a bank listed on Schedule I of the *Bank Act* (Canada). The head office of CIBC is located in Toronto, Ontario.
2. CIBC is a reporting issuer in each Jurisdiction having such a concept. CIBC is not in default of any of its obligations as a reporting issuer under the Legislation in any such Jurisdiction.
3. CIBC is not registered as a dealer or adviser under the Legislation in any Jurisdiction.
4. CIBC World Markets is a corporation governed by the laws of Ontario. The head office of CIBC World Markets is located in Toronto, Ontario.
5. CIBC World Markets is a wholly-owned subsidiary of CIBC. CIBC World Markets is registered as an investment dealer in each Jurisdiction having such concept.
6. The Filers trade in and distribute Commercial Paper in the Jurisdictions through the purchase of Commercial Paper as principal for their own account or with a view to distribution or as agents for certain issuers.

7. Paragraph 2.35(1)(b) of National Instrument 45-106 *Prospectus and Registration Exemptions* ("**NI 45-106**") provides an exemption from the dealer registration requirement and prospectus requirement for a trade in Commercial Paper (the "**Short-term Debt Exemption**") where, among other things, the Commercial Paper "has an approved credit rating from an approved credit rating organization".

8. NI 45-106 incorporates by reference the definitions for "approved credit rating" and "approved credit rating organization" that are used in National Instrument 81-102 *Mutual Funds* ("**NI 81-102**"). The definition of an "approved credit rating" in NI 81-102, requires, among other things, that (a) the rating assigned to such debt must be "at or above" certain prescribed short-term ratings, and (b) such debt must not have been assigned a rating by any "approved credit rating organization" that is not an "approved credit rating".

9. The Filers have in the past traded and propose in the future to trade in Commercial Paper with the following general characteristics:

- (a) it matures not more than one year from the date of issue;
- (b) it is not convertible or exchangeable into or accompanied by a right to purchase another security other than Commercial Paper; and
- (c) it has a credit rating from at least one of the following credit rating organizations at or above one of the following rating categories listed below:

Rating Organization	Rating
Dominion Bond Rating Service Limited	R-1 (low)
Fitch Ratings Ltd.	F2
Moody's Investors Service	P-2
Standard & Poor's	A-2

10. The Commercial Paper may have a lower rating than required by the Short-term Debt Exemption and accordingly, the Short-term Debt Exemption may not be available.

Decision

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

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

- (a) matures not more than one year from the date of issue;
- (b) is not convertible or exchangeable into or accompanied by a right to purchase another security other than Commercial Paper; and
- (c) has a rating issued by one of the following rating organizations, or any of their successors, at or above one of the following rating categories or a rating category that replaces a category listed below:

Rating Organization	Rating
Dominion Bond Rating Service Limited	R-1 (low)

Fitch Ratings Ltd.	F2
Moody's Investors Service	P-2
Standard & Poor's	A-2

For each Jurisdiction, this decision will terminate on the earlier of:

(a) 90 days after the coming into force of any rule, other regulation or blanket order or ruling under the Legislation of the Jurisdiction that amends section 2.35 of NI 45-106 or provides an alternative exemption; and

(b) three years from the date of this decision.

"Paul M. Moore"
Vice-Chair

"Harold P. Hands"
Commissioner

NATIONAL POST

Thursday, February 21, 2008

Curious optics

Barry Critchley, Financial Post

Published: Thursday, February 21, 2008

With all the regulatory actions launched in the U.S. into subprime matters, the question for Canadian investors is why hasn't the OSC waded in with its own inquiries into how \$35-billion of asset-backed commercial paper became stranded, and whether rules, procedures and disclosures were not properly followed.

Of course, we likely wouldn't know if an investigation were underway, as the country's largest regulator likes to keep its activities close to its chest, but there are some curious optics that have come to our attention -- thanks to the research efforts of Diane Urquhart, an independent analyst -- that could explain what's going on.

More than two years back, Purdy Crawford, a lawyer with Osler Hoskin & Harcourt and a veteran of the world of securities regulation, was named head of the nomination committee to name the next chair of the Ontario Securities Commission.

It selected David Wilson, former CEO of Scotia Capital Markets. Wilson was the first non-lawyer to hold the position at the body that "administers and enforces securities legislation in the Province of Ontario."

On Feb. 22, 2007, Wilson announced Lawrence Ritchie and James Turner as OSC vice-chairs. "Both Mr. Ritchie and Mr. Turner have outstanding reputations, extensive experience in securities law and a keen interest in policy development," he said, noting both had worked at the OSC.

At the time, Ritchie was a partner with Osler, Hoskin & Harcourt, while Turner was a senior partner with Torys. What the release didn't say was the link between Crawford and Ritchie. The link: Ritchie is married to Crawford's daughter, Heather.

Fast forward a few months to mid-August, when a liquidity crisis in the global debt markets caused Canada's \$35-billion non-bank asset-backed commercial-paper (ABCP) market to seize up. "The crisis was largely triggered by market sentiment as news of significant defaults on U.S. subprime mortgages spread, and not by the creditworthiness of the underlying assets of the ABCP," wrote Crawford in this paper last November.

Crawford noted that "a group of market participants -- including financial institutions, institutional investors and international banks -- signed the Montreal Accord on Aug. 16, 2007, preventing the default of most third-party ABCP and the accompanying destruction of value that a 'fire-sale' liquidation would undoubtedly have caused. The Montreal Accord led to the creation of a 'Pan Canadian Committee' of investors, which I was invited to chair."

A tentative workout plan was reached in December that is slated to be in place by next month. Most of the key details haven't been disclosed.

Back to Urquhart, who has written to the OSC wondering what it was doing on ABCP. The reply, dated Dec. 24, said, "The OSC is actively reviewing the causes, circumstances and consequences of recent developments in the credit markets ... we are participating with a number of international organizations in assessing the various factors that have led to these developments." But no

enforcement actions. (To date, at least two ABCP-related lawsuits have been filed.)

Urquhart has expressed an opinion regarding the role of the regulator in allowing the issuance of the now-stranded ABCP: The "securities commissions were enablers of DBRS being the only credit-rating organization providing credit ratings for the non-bank ABCP conduits and of DBRS providing top credit ratings."

bcritchley@nationalpost.com

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