

**IN THE MATTER OF THE SECURITIES ACT
R.S.N. 1990, CHAPTER S-13, AS AMENDED (the "Act")**

AND

**IN THE MATTER OF
TRADES BY ISSUERS UPON EXERCISE OF
CERTAIN CONVERSION OR EXCHANGE RIGHTS**

AND

**IN THE MATTER OF
THE FIRST TRADE IN SECURITIES ACQUIRED UPON EXERCISE OF
SUCH CONVERSION OR EXCHANGE RIGHTS**

**ORDER AND BLANKET RULING
(Section 144 and Subsection 75(1))**

UPON the application of certain interested parties to the Director of Securities (the "Director") pursuant to the powers conferred on the Director by section 146 of the Act for an order pursuant to section 144 of the Act and a blanket ruling pursuant to subsection 75(1) of the Act to revoke and replace with an expanded ruling three previous rulings of the Director dated October 15, 1992 entitled In the Matter of Subparagraph (iii) of Paragraph 73(1)(f) of the *Securities Act*, R.S.N. 1990, Chapter S-13; July 21, 1993 entitled In the Matter of a First Trade in a Security Acquired Under Subparagraph 73(1)(f)(iii) Where the Right was Distributed Under a Prospectus; and June 7, 1994 entitled In the Matter of Trades by Issuers Upon Exercise of Certain Conversion or Exchange Rights and the First Trade in Securities Acquired Upon Exercise of Such Conversion or Exchange Rights (the "Previous Rulings");

AND UPON the Director being of the opinion that to so order and rule would not be prejudicial to the public interest;

IT IS ORDERED AND RULED pursuant to section 144 of the Act that the Previous Rulings are revoked and it is ruled pursuant to subsection 75(1) of the Act that the following is substituted therefor:

**BLANKET RULING
(Subsection 75(1))**

UPON the application of certain interested parties to the Director of Securities (the "Director") pursuant to the powers conferred on the Director by section 146 of the *Securities Act* R.S.N. 1990, chapter S-13, as amended (the "Act") for a blanket ruling pursuant to subsection 75(1) of the Act in respect of trades in Convertible Securities and Exchangeable Securities (as defined below);

AND WHEREAS in this ruling:

"*Convertible Securities*" means securities of an issuer which are convertible into, exchangeable for or carry a right to purchase other securities of that issuer; and

"*Exchangeable Securities*" means securities of an issuer which are convertible into, exchangeable for or carry a right to purchase securities of another issuer;

AND UPON it appearing to the Director that:

1. the purchase, exchange or conversion rights attaching to Convertible Securities and Exchangeable Securities may be exercised (i) at the option of the holder thereof, (ii) at the option of the issuer thereof or (iii) automatically upon the occurrence of certain events;
2. the distribution of securities by an issuer upon the exercise by holders of Convertible Securities of the right to purchase, convert or exchange attached thereto and previously granted by the issuer may be effected in reliance on the exemptions from the registration and prospectus requirements of the Act contained in subparagraphs 36(1)(l)(iii) and 73(1)(f)(iii), respectively, of the Act, subject to the conditions contained therein;
3. the distribution of securities of a reporting issuer by an issuer upon the exercise by holders of Exchangeable Securities of the right to purchase, convert or exchange attached thereto and previously granted by the issuer may be effected in reliance on the exemptions from the registration and prospectus requirements of the Act contained in subparagraphs 36(1)(n)(ii) and 73(1)(h)(ii), respectively, of the Act, subject to the conditions contained therein;
4. an exemption from the registration and prospectus requirements of the Act is not available with respect to the distribution of securities by an issuer to holders of Convertible Securities or Exchangeable Securities upon the exercise by the issuer of its right thereunder to cause the holders to purchase, convert or exchange such securities or upon the automatic conversion or exchange thereof;

IT IS RULED pursuant to subsection 75(1) of the Act that trades by an issuer in securities of its own issue to holders of Convertible Securities upon the exercise by the issuer of its rights thereunder to cause such holders to purchase, convert or exchange such securities or upon the automatic conversion or exchange thereof shall not be subject to sections 26 or 54 of the Act provided that:

- (a) no commission or other remuneration is paid or given to others in respect of such trade except for ministerial or professional services or for services performed by a registered dealer;
- (b) the issuer shall file the notice prescribed as if the securities had been acquired pursuant to the exemption referred to in subparagraph 73(1)(f)(iii) of the Act; and

- (c) in respect to section 26 only, the issuer is not a market intermediary as defined in subsection of 169(1) of The Securities Regulations, 1991 made under the Act (the "Regulation");

and provided further that the first trade in securities acquired upon the conversion or exchange of Convertible Securities pursuant to this ruling shall be a distribution;

AND IT IS FURTHER RULED pursuant to subsection 75(1) of the Act that trades by an issuer (the "first issuer") in securities of a reporting issuer held by the first issuer to holders of Exchangeable Securities of the first issuer upon the exercise by the first issuer of its right thereunder to cause such holders to purchase, convert or exchange such securities or upon the automatic exchange or conversion thereof shall not be subject to sections 26 or 54 of the Act provided that:

- (a) the first issuer has given the Director written notice stating the date, amount, nature and conditions of the proposed trade, including the net proceeds to be derived by the first issuer on the basis of such additional securities being fully taken up and either:
 - (i) the Director has not informed the first issuer in writing within ten days of the giving of the notice that he objects to the proposed trade, or
 - (ii) the first issuer has delivered to the Director information relating to the securities that is satisfactory to and accepted by the Director;
- (b) the issuer has paid the fees prescribed by section 8 of Schedule 1 to the Regulation as if the securities had been acquired pursuant to the exemption referred to in paragraph 73(1)(h) of the Act; and
- (c) in respect to section 26 only, the first issuer is not a market intermediary as defined in subsection 169(1) of the Regulation;

and provided further that the first trade in securities acquired upon the conversion or exchange of Exchangeable Securities pursuant to this ruling shall be a distribution;

AND IT IS FURTHER RULED pursuant to subsection 75(1) of the Act that:

- (1) the first trade in securities acquired upon the conversion or exchange of Convertible Securities or Exchangeable Securities effected pursuant to either of the foregoing rulings shall not be subject to section 54 of the Act, provided that such first trade is made in compliance with the requirements set out in subsections 73(5), 73(15), 73(16), 73(24) and 73(25) of the Act as if the securities had been acquired pursuant to the exemption contained in subparagraph 73(1)(f)(iii) of the Act; and
- (2) notwithstanding subsection 73(5) of the Act, the first trade in securities acquired by the vendor pursuant to a distribution exempted from section 54 of the Act by subparagraphs 73(1)(f)(iii), 73(1)(h)(ii) or either of the foregoing rulings where, in respect of the right to

purchase, convert or exchange, a prospectus was filed by the issuer with the Director and a receipt obtained therefor (other than from a holding of a person or company or combination of persons or companies referred to in subparagraph (iii) of the definition of "distribution" in paragraph 2(1)(l) of the Act) shall not be subject to section 54 of the Act, provided that:

- (a) at the time of the trade, the issuer is a reporting issuer; and
- (b) no unusual effort is made to prepare the market or to create a demand for the securities and no extraordinary commission or other consideration is paid in respect of the trade.

DATED at St. John's, Newfoundland this 8th day of September, 1994.

GEORGE F. KENNEDY
Director of Securities