

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

**AND**

**IN THE MATTER OF  
DIVIDEND REINVESTMENT  
AND  
STOCK DIVIDEND PLANS**

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

**UPON** the motion of 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 and a blanket ruling pursuant to subsection 75(1) of the Act to revoke and replace with an expanded ruling two previous rulings of the Director dated October 18, 1991 entitled *In The Matter of Dividend Reinvestment and Share Purchase Plans* and June 16, 1992 entitled *In The Matter of Dividend Reinvestment and Stock Dividend Plans* (the "Previous Rulings");

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

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

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

**UPON** the motion of 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 ruling pursuant to subsection 75(1) of the Act, in respect of dividend reinvestment and stock dividend plans;

**AND UPON** it appearing to the Director that:

1. pursuant to subparagraph 73(1)(f)(i), paragraphs 54(3)(e), 36(1)(l), and 36(1)(x) of the Act (the "existing exemptions") a trade by an issuer of equity securities pursuant to certain dividend or interest reinvestment or stock dividend plans is not subject to section 26 and 54 of the Act;
2. most dividend or interest reinvestment plans and stock dividend plans include an added feature (the "cash payment option") which allows the participants to make cash payments to purchase additional securities of the issuer beyond the amount

of the dividend or interest payable to such participants (such a dividend or interest reinvestment or stock dividend plan being referred to herein as a "combined plan");

3. the existing exemptions are not available with respect to securities issued pursuant to a combined plan because of the cash payment option;
4. subsection 54(7) of the Act provides that the first trade in securities acquired under the exemption contained in paragraph 54(3)(e) of the Act is a distribution unless such first trade is made in accordance with subsection 73(5) of the Act as if subsection 73(5) were applicable thereto;
5. pursuant to paragraph 73(5)(b) of the Act, the first trade in securities acquired under an exemption specified therein is a distribution except where disclosure to the Securities Commission of Newfoundland has been made of the exempt trade;
6. subsection 57(3) of The Securities Regulations, 1991 made under the Act (the "Regulation") sets out the manner in which the disclosure required by paragraph 73(5)(b) and subsection 54(9) of the Act is to be made and, further, provides that the filing must be effected prior to any resale of the securities that would be a distribution but for the exemption in subsection 73(5) of the Act;
7. in the case of employee share purchase plans or arrangements operated without a prospectus in reliance upon the exemption in paragraph 73(1)(n) of the Act, subsection 57(4) of the Regulation provides that it is sufficient for the purposes of subsection 57(3) of the Regulation if the disclosure contemplated is made when the plan is first commenced and not less frequently than annually thereafter unless the volume of trading and securities sold in reliance upon the exemption in a month exceeds 1% of the securities of that class that were outstanding at the beginning of the month in which the securities were sold, in which case a separate report is required in respect of that month; and
8. there is no provision in the Act or the Regulation comparable to subsection 57(4) of the Regulation applicable to dividend reinvestment and stock dividend plans.

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

**IT IS RULED** pursuant to subsection 75(1) of the Act that section 26 or 54 of the Act shall not apply to a trade (the "subject trade") made by an issuer of equity securities pursuant to a combined plan, provided that:

- A. (a) the issuer is a reporting issuer under the Act and to the best of its information, knowledge and belief, not in default under the Act or the issuer is recognized for the purpose of this ruling by the Director; and either

- (b) in any financial year of the issuer, the aggregate number of securities issued pursuant to the cash payment option of such combined plan does not exceed 2% of the number (at the commencement of the financial year) of the outstanding securities of the class of securities that is available for purchase under the cash payment option;

or

- (c) at the time of the subject trade, residents of Newfoundland hold not more than 5% of the outstanding securities of the class available for purchase under the cash payment option of such combined plan; and

B. the first trade in the securities acquired by the seller pursuant to a combined plan shall be a distribution unless:

- a.
  - (i) such trade is made in compliance with subsections 73(5), 73(15) and 73(16) of the Act, as if the securities had been acquired pursuant to one of the exemptions referred to in subsection 73(5) of the Act, except for the requirement contained in subsection 57(3) of the Regulation which requires that the filing referred to therein must be effected prior to any resale of the securities that would be a distribution but for the exemption in subsection 73(5); and
  - (ii) the disclosure required by paragraphs 73(5)(b) of the Act is made by the issuer when the dividend reinvestment and stock dividend plan is first commenced and not less frequently than annually thereafter (provided that in the case of a plan in effect at the date of this ruling, such disclosure shall only be required to be made annually thereafter) unless the aggregate volume of trading in securities of a class sold in reliance on the exemptions contained in paragraph 54(3)(b) of the Act and on this ruling in a month exceeds 1% of the securities of that class that were outstanding at the beginning of the month in which the securities were sold, in which case a separate report shall be filed in respect of that month; or
- b.
  - (a) the issuer of such security is incorporated, organized or continued under the laws of a jurisdiction other than Newfoundland and is not a reporting issuer in Newfoundland;
  - (b) at the time of the acquisition of the security that is the subject of such first trade, residents of Newfoundland hold not more than 10% of the outstanding securities of the particular class, and the number of Newfoundland residents holding securities of the particular class is

not more than 10% of the total number of holders of securities of the particular class;

- (c) such first trade is executed:
  - (i) through the facilities of a stock exchange outside of Newfoundland; or
  - (ii) on The Nasdaq Stock Market;
- (d) such first trade is made in accordance with the rules of the stock exchange or market upon which the trade is made and in accordance with all laws applicable to such stock exchange or market;
- (e) such first trade is made in accordance with all laws applicable in the jurisdiction in which the trade is made as if the seller had acquired such securities in that jurisdiction in the same manner as the seller acquired such securities in Newfoundland; and
- (f) all disclosure material relating to the issuer furnished to securityholders resident in the jurisdiction in which the trade is made is, at the relevant time, being furnished to securityholders resident in Newfoundland.

**DATED** at St. John's, Newfoundland this 5th day of January, 1995.

GEORGE F. KENNEDY  
Director of Securities