

Monday March 6, 2006

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# SECONDARY MARKET LIABILITY

Tuesday March 7, 2006

# DISCLOSURE CONTROLS AND PROCEDURES

The Metropolitan Centre • Calgary

## SECONDARY MARKET LIABILITY: PREPARING FOR THE NEW REGIME

- Key provisions of Ontario's new regime
- Update on B.C. provisions and differences with Ontario
- Liability for reporting issuers, non-issuers, and other parties
- Expected impact on corporate practices
- Risk management, D&O insurance and underwriting
- Impact on class actions

### Participating Organizations:

Aon Reed Stenhouse Inc. • Arch Insurance Group (Canada)  
• B.C. Securities Commission • Bennett Jones LLP  
• Burnet, Duckworth & Palmer LLP • Executive Risk Insurance  
• Fasken Martineau DuMoulin LLP • Lang Michener LLP  
• Macleod Dixon LLP • McCarthy Tétrault LLP  
• McNally Cuming Raymaker • Osler Hoskin & Harcourt LLP  
• Purves Redmond NMB Ltd.

### PROGRAM CHAIR:

René R. Sorell, Partner, McCarthy Tétrault LLP

## DISCLOSURE CONTROLS & PROCEDURES COURSE: EFFECTIVE COMPLIANCE FOR CIVIL LIABILITY AND CERTIFICATION

- Corporate disclosure and civil liability: the new regime
- Beyond the bare certificate: phase II of certification
- Mapping the disclosure universe and identifying disclosure risks
- Disclosure controls: the elements of effective design
- Testing, evaluating, and MD&A
- The disclosure committee: membership and mandate
- Disclosure controls and procedures at Arsenal Energy Inc.

### COURSE LEADERS:

Christopher J. Cummings, Partner, Shearman & Sterling LLP  
Samuel Dergel, Partner, CFO2Grow  
Stuart Hartley, President, FocusROI Inc.  
Jeanie McKibbin, Senior Manager, Ernst & Young LLP  
Jesse Meidl, CFO, Arsenal Energy Inc.  
Denis Posten, Partner, Grant Thornton LLP  
Paul Zonneveld, Partner, Deloitte & Touche LLP

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### *Corporate/Financial Executives:*

- *CEOs*
- *CFOs*
- *Chief Risk Officers*
- *Chief Compliance Officers*
- *VPs, Directors, and Managers of Financial Reporting and Regulatory Compliance*
- *Corporate Secretaries*
- *Directors and Officers*
- *Controllers*
- *Internal Auditors*
- *Risk Management Professionals*

### *Legal Experts:*

- *In-house Counsel*
- *General Counsel*
- *Associate General Counsel*
- *Securities Lawyers*
- *Plaintiff and Defense Lawyers*
- *Regulatory Experts*

**Insight Information** is pleased to present **SECONDARY MARKET LIABILITY: PREPARING FOR THE NEW REGIME** on March 6 and **DISCLOSURE CONTROLS AND PROCEDURES COURSE: EFFECTIVE COMPLIANCE FOR CIVIL LIABILITY AND CERTIFICATION** on March 7.

We have made these programs as accessible as possible by offering convenient one or two day pricing to best suit your organization's needs.

### **MARCH 6, 2006**

#### **SECONDARY MARKET LIABILITY: PREPARING FOR THE NEW REGIME**

On August 2, 2005, the Government of Ontario announced the "in force" date for civil liability provisions introduced by Ontario Bills 198 and 149. Effective December 31, 2005, Ontario's new civil liability regime for secondary market disclosure becomes law.

This new regime gives secondary market investors a statutory right to sue companies that are Ontario reporting issuers, and other issuers with a "**substantial connection to Ontario**", for misleading, insufficient, or late corporate disclosures. It will also allow proceedings against directors, senior officers, and other parties. Available defenses are narrower than and different from those currently available under U.S. law.

These provisions represent a fundamental and controversial change to existing securities law and will impact issuers, stakeholders and market participants across the country. Similar provisions in B.C. are expected to become law in 2006 and other jurisdictions are expected to follow.

Insight was the first to offer a comprehensive conference on this topic (Secondary Market Liability: Preparing for Ontario's New Regime, October 2005, Toronto) shortly after the Government of Ontario announced the "in force" date last August.

The conference features a roster of senior securities law and risk management experts and is intended to provide issuers and legal counsel the tools to prepare for this new regime.

### **MARCH 7, 2006**

#### **DISCLOSURE CONTROLS AND PROCEDURES COURSE: EFFECTIVE COMPLIANCE FOR CIVIL LIABILITY AND CERTIFICATION**

The new civil liability regime in Ontario will have a significant impact on disclosure controls and procedures for all Canadian issuers. Being able to document due diligence in relation to disclosure policies will be vital in mitigating liability risks. How will disclosure policies and procedures at public companies be affected and what is being done?

This one-day course is an information-packed examination of the critical aspects of disclosure controls and procedures. It will walk you through the critical elements of the regulations, design of controls issues, effective evaluation and testing, and answers to the tough questions that must be confronted for effective compliance and risk management in today's business environment.

The course builds on Insight's expertise in this area (previous conferences have been held in Calgary on CEO/CFO Certification, April 2005 and Advanced Disclosure and Internal Controls, November 2005).

*Delegates will receive a set of original materials as well as online access to conference papers through Insight's **in**CONFERENCE™ that will serve as invaluable reference sources after the program.*

Monday March 6, 2006

## SECONDARY MARKET LIABILITY: PREPARING FOR THE NEW REGIME

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### 7:30 Registration and Continental Breakfast

### 8:30 Welcome Remarks from Insight Information

### 8:35 Opening Remarks from Chair

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**René R. Sorell**

*Partner*

*McCarthy Tétrault LLP*

### 8:40 Ontario's Secondary Market Liability Regime: The Key Provisions

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**Tristram Mallett**

*Partner*

*Osler Hoskin & Harcourt LLP*

**Richard A. Shaw, Q.C.**

*Partner*

*McCarthy Tétrault LLP*

**Stephen M. Zolnay**

*Associate*

*Lang Michener LLP*

*This session outlines in detail the key provisions of Ontario's secondary market liability legislation, including:*

- How these provisions apply to issuers, directors and officers, and influential persons and experts
- Issuers with a "substantial connection to Ontario:" who are they and what do they need to know?
- Definitions of influential persons and experts
- Distinction between core and non-core documents
- Other continuous disclosure documents
- Non-core documents and public oral statements
- Standards of proof
- Deemed reliance
- Class action provisions and hearings for non-core documents
- What will the OSC be doing to accommodate or respond to new laws?
- How will the new law affect regulation of future-oriented information and continuous disclosure reviews by staff?

### 10:00 The B.C. Perspective

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**Andrew D. Borrell**

*Partner*

*Fasken Martineau DuMoulin LLP*

**Leigh-Anne Mercier**

*Senior Legal Counsel*

*British Columbia Securities Commission*

*Canada's capital markets have been under pressure for some time to create a civil liability regime that approximated that available to U.S. investors. Ontario and B.C. have both responded with secondary market liability provisions in their securities law. This session provides an update on the B.C. legislation and addresses similarities and differences between the Ontario and proposed B.C. provisions, with a focus on what Canadian issuers should be aware of.*

### 10:45 Coffee Break

### 11:00 Who's Liable and What's at Stake? Liability for Reporting Issuers, Non-Issuers, and Other Parties

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**Roger F. Smith**

*Partner*

*Macleod Dixon LLP*

**Daniel J. McDonald, Q.C.**

*Partner*

*Burnet, Duckworth & Palmer LLP*

*Secondary market liability is an indirect means of regulating directors and other senior officers. It will also impact non-issuers such as brokers, investment bankers, lawyers and other professional service providers. This session details liability issues under this new regime and will cover:*

- Liability for directors and senior officers
- Damages: caps on damages and how they are calculated – some examples
- Liability for non-issuers, including brokers, investment bankers, lawyers and other professionals and service providers
- Practical and legal impact of the cases on the broker-client relationship
- Defending and managing liability claims
- What are the trends emanating from decisions at the court?
- Impact of regulatory proceedings on civil cases

### 12:15 Networking Lunch

### 1:15 Expected Impact on Corporate Practices of Canadian Issuers

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**Darrell R. Peterson**

*Partner*

*Bennett Jones LLP*

**René R. Sorell**

*Partner*

*McCarthy Tétrault LLP*

- How disclosure policies followed by public companies will be affected
- How do different categories of potential defendants show they have done due diligence?
- Liability risks attached to different categories of continuous disclosure filings
- What will be necessary to get the benefit of the new safe harbour for forward looking information?

- Information verification and use of experts in document preparation
- Earnings guidance
- Impact on indemnity agreements
- Responding to regulatory queries

## 2:15 Refreshment Break

## 2:30 A New Regime of Corporate and Executive Risk Exposures: Risk Management, D&O Insurance and Underwriting

RISK MANAGEMENT AND INSURANCE PANEL

### Valerie D. Cusano

*President*

**Purves Redmond NMB Ltd.**

### Sarah Johnson

*Financial Services Group*

**Aon Reed Stenhouse Inc.**

### Scott M. Saddington

*Chief Underwriting Officer*

**Executive Risk Insurance**

### Jordon S. Solway

*Vice President, Claims & Legal*

**Arch Insurance Group (Canada)**

- Secondary market liability in Canada and the personal liability of directors and officers:
  - issues to consider in assessing the adequacy of insurance and indemnification
  - potential changes/amendments to D&O coverage
- Underwriting the secondary market risk:
  - real time market underwriting views
  - pricing and terms implications
  - has there been a knee-jerk reaction from the underwriting community?
- Risk factors which have impacted the U.S. experience under rule 10(b)(5): will they apply in Canada?
- Structuring your insurance program:
  - how are the insurance markets reacting?
  - what to expect from your insurance advisors
  - how are insureds dealing with the new regulations?
  - claims management in advance of a claim
- Is "guidance to investors" a good thing?

## 3:45 Impact on Class Actions

### Steven H. Leidl

*Partner*

**Macleod Dixon LLP**

### William E. McNally

*Partner*

**McNally Cumming Raymaker**

- Test for certification
- Background on securities class actions in Ontario
- Effect of the Act on class action jurisprudence
- Litigation strategy

**Tuesday March 7, 2006**

# DISCLOSURE CONTROLS AND PROCEDURES COURSE: EFFECTIVE COMPLIANCE FOR CIVIL LIABILITY AND CERTIFICATION

## COURSE OUTLINE

### Corporate Disclosure and Civil Liability: The New Landscape

*The new civil liability regime for Ontario reporting issuers and those with a "substantial connection to Ontario" will have a significant impact on companies' disclosure controls and procedures.*

- Overview of the scope of misleading, insufficient, or late disclosure liability legislation
- What do civil liability provisions change?
- CEO/CFO certification: specific areas of concern for disclosure liability
- Differences between Canada and the U.S. in continuous disclosure requirements and related risks
- SEC requirements for Canadian companies

### Beyond the Bare Certificate: Phase II of Certification

- Understanding the key concepts
- Clarifying the relationship between disclosure controls and internal controls over financial reporting
- Grasping the breadth of certifying disclosure controls
- Overview of rule for CEO/CFO certification in Phase II

### Mapping the Disclosure Universe and Identifying Disclosure Risks

- Linking financial disclosure to CEO/CFO certification
  - periodic reporting and event-driven disclosures
  - how to define and document your disclosure universe
- Identification of disclosure risks arising from disclosure controls certification
  - compliance risks
  - disclosure risks
  - regulatory risks: fines, sanctions, penalties, liability exposures
- Evaluating and prioritizing disclosure risks
- Assessing materiality: differentiating material disclosures from non-material disclosures

### Disclosure Controls: The Elements of Effective Design

- Examination of disclosure controls as defined in 52-109
- Outward and upward
  - compliance with external filing requirements
  - internal upward communication to key decision makers

## 4:30 Chair's Closing Remarks and Conference Concludes

- Complying with external filing requirements
- Designing an effective internal control disclosure system
  - comprehensive disclosure policy
  - the disclosure culture
  - specific disclosure control activities and procedures
- Ensuring the proper involvement of the CEO, CFO and board of directors

### Testing, Evaluating, and MD&A

- Evaluating and testing operating effectiveness of disclosure controls
  - developing a framework and methodology
- Establishing a risk-based controls process to manage disclosure risks
- CEO/CFO disclosure requirements on disclosure of conclusions as a result of disclosure controls evaluation
- Governance issues in the oversight of the MD&A process by the audit committee and board

### The Disclosure Committee: Membership and Mandate

*The establishment of a disclosure committee to consider the materiality of information and determine disclosure obligations on a timely basis has been a recommended practice and is being adopted by some of the largest issuers.*

- Establishing a disclosure committee
- Disclosure committee mandate
- Disclosure committee membership, roles and responsibilities

### Issuer's Perspective: Disclosure Controls and Procedures at Arsenal Energy Inc.

*This session details disclosure controls and procedures at a junior energy company focused on the economic exploration, acquisition, development and sale of oil and natural gas in specific international market places. It will focus on year-end lessons learned, completion of controls during audit, and what the company is doing to ensure strong disclosure controls and procedures for the future.*

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## COURSE LEADERS

### Christopher J. Cummings, Partner, Shearman & Sterling LLP

Christopher Cummings is the managing partner of the Toronto office of Shearman & Sterling LLP, practicing U.S. securities law with a particular emphasis on cross-border capital markets and mergers and acquisitions. He has worked on a broad range of public and private transactions for investment banks and companies in a number of industries, including insurance, oil and gas, and mining. Mr. Cummings' practice includes providing advice regarding corporate governance and other general corporate matters.

### Samuel Dergel, Partner, CFO2Grow

Samuel Dergel is a Partner at CFO2Grow. He has over 13 years experience in corporate strategic development, financial management and operations. His expertise in Sarbanes-Oxley compliance is shaping and expanding the firm's consulting services and bringing leadership, experience and knowledge to his clients. Samuel holds a BCom from McGill University as well as Chartered Accountant and Certified Public Accountant designations.

### Stuart Hartley, President, FocusROI Inc.

Stuart Hartley is the President of FocusROI Inc., a specialized consulting firm that provides training, mentoring, risk management, IT and internal auditing services. Stuart is currently focused on helping companies prepare for CEO/CFO certification of internal controls and is an experienced course leader and conference speaker. He is a chartered accountant in the UK and Canada and has worked extensively in the United States. He is the author of the CICA Professional Engagement Manual, the CICA Quality Assurance Manual, and Risk Management, Primer for Directors of Not-For-Profit organizations. Stuart is well known for his creativity and practical approach to problem solving.

### Jeanie McKibbin, Senior Manager, Ernst & Young LLP

Jeanie McKibbin is a Senior Manager in the Business Risk Services practice of Ernst & Young LLP in Calgary. She has over 18 years of audit and consulting experience that includes Sarbanes-Oxley compliance, strategic and operational risk assessment, process improvement, business planning, and financial and operational auditing. Jeanie is currently providing SOX advisory services to a large oil and gas company and is a Chartered Accountant and Certified Management Consultant.

### Jesse Meidl, CFO, Arsenal Energy Inc.

Jesse Meidl is Chief Financial Officer at Arsenal Energy Inc. Mr. Meidl is a Chartered Accountant and a key member of the senior executive management team, and liaison to the Board of Directors. Prior to joining Arsenal, he worked as an analyst at APF Energy Trust, listed on TSX. Mr. Meidl also worked with KPMG Chartered Accountants, where his primary focus was upstream oil and gas. Mr. Meidl has extensive exposure to International Financial Reporting Standards and U.S. Generally Accepted Accounting Principles.

### Denis Posten, Partner, Grant Thornton LLP

Denis is the partner with overall responsibility for controls certification assignments performed by Grant Thornton in Canada and is the practice leader for the firm's Business Risk Services practice in Alberta and Canada. Denis has considerable experience assessing disclosure issues and internal control systems in complex environments.

### Paul Zonneveld, Partner, Deloitte & Touche LLP

Paul Zonneveld is a Partner with Deloitte and is the firm's Energy and Resources leader for Enterprise Risk Services. Paul is also a Director with the IT Governance Institute (ITGI), based in Chicago, IL. He was the author of the COBIT 'lite' book entitled, "IT Control Objectives for Sarbanes-Oxley" (2003), published in 2003 by the ITGI. This publication has been used by some of the largest companies in the world for establishing IT compliance with Sarbanes-Oxley. Paul is a member of Deloitte's global leadership team providing guidance and instruction on the topics of regulatory compliance and information technology control.

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**DISCLOSURE CONTROLS AND PROCEDURES:  
EFFECTIVE COMPLIANCE FOR CIVIL LIABILITY  
AND CERTIFICATION**

**The Metropolitan Centre • Calgary**

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